



# Global instruments, local practices : Understanding the 'divergent convergence' of anti-corruption policy in Europe

Sofia Wickberg

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## Global instruments, local practices

*Understanding the 'divergent convergence' of anti-corruption  
policy in Europe*

Sofia Wickberg

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Professeur des universités*

defended on July 2<sup>nd</sup> 2020

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## Abstract

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On the basis of the comparison of conflict of interest regulation in Great Britain, France and Sweden, this dissertation set out to understand how anti-corruption policy became a case of what I have termed ‘divergent convergence’. Indeed, while conflict of interest regulation in the three countries grew increasingly alike between the 1990s and the 2010s with the adoption of similar instruments (public interest registers and codes of conduct), these instruments were actually implemented in strikingly different ways in the three contexts, resulting in significant divergence in practice. To do so, it uses a theoretical framework grounded in constructivist institutionalism and building on the notion of policy translation, drawing on primary empirical materials from archives, a range of documentary sources (official, media and civil society, national and international), participant observation and semi-structured interviews with key stakeholders in the making of conflict of interest regulation. The dissertation shows that policy convergence is here the result of the emulation of powerful pioneers in the Anglosphere reinforced by the emergence of a transnational anti-corruption community. International policy brokers created institutional tools to encourage anti-corruption reforms reflecting their policy preferences in member-states. They also shaped the cognitive framework of domestic policy-making through knowledge production and argumentation. This research however also shows that policies are translated as they travel into new political contexts and institutions. Intermediaries and national policy-makers indeed transform international templates as they put flesh on them, leading not to a linear process of convergence (of conflict of interest regulation) but to a more complex ‘divergent convergence’.

**Key words:** policy convergence – policy transfer – policy translation – constructivist institutionalism – transnationalisation – corruption – conflicts of interests - Europe

## Résumé de la thèse

Cette thèse part du constat que les politiques de prévention de la corruption ont suivi un processus de ‘convergence divergente’ en Europe, à partir de l’exemple de la régulation des conflits d’intérêts des parlementaires. Elle analyse les mécanismes, processus et configurations d’acteurs et d’organisations qui ont amené la France, la Suède et le Royaume-Uni à adopter des instruments de régulation similaires (registre de déclaration d’intérêts et code de conduite) et à les mettre en œuvre de manière différente, ce qui génère une divergence des pratiques de régulation. S’appuyant sur une enquête auprès des acteurs clés de ce processus, sur une analyse documentaire et l’observation directe de forums internationaux, elle suit ces deux instruments dans leur circulation du monde anglo-saxon où ils ont été imaginés, par-delà les frontières et les niveaux de gouvernance, jusqu’en France et en Suède où ils se sont traduits par une hybridation du modèle originel. Ses résultats soulignent que la convergence de ces politiques anti-corruption est le résultat, d’une part, de l’émulation des instruments élaborés par des États ‘pionniers’ (États-Unis et Royaume-Uni), qui ont fortement contribué à l’internationalisation de la lutte contre la corruption. D’autre part, elle est une conséquence de l’émergence d’une communauté transnationale de lutte contre la corruption ayant contribué à la légitimation de ces instruments en les inscrivant dans des conventions internationales et à leur diffusion par la production de rapports, de boîtes à outils et de benchmarks. Enfin, cette thèse s’appuie sur la notion de traduction des politiques publiques pour expliquer les dimensions divergentes de la régulation des conflits d’intérêts. Ces dernières sont en effet le résultat de la réinterprétation de ces instruments par les acteurs nationaux et les intermédiaires impliqués dans ce processus d’import/export. Le contexte de politisation et les agencements institutionnels façonnent également la manière dont les registres de déclaration d’intérêts et les codes de conduite ont été traduits dans les trois pays étudiés.



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## Acronyms and abbreviations

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<b>AFA</b>	Agence française anti-corruption
<b>CE</b>	Conseil d'État
<b>CoE</b>	Council of Europe
<b>CoG</b>	Centre for Government (OECD)
<b>CoSP</b>	Conference of States Parties
<b>CPI</b>	Corruption Perceptions Index
<b>CS</b>	Committee on Standards
<b>CSO</b>	Civil Society Organisation
<b>CSPL</b>	Committee on Standards in Public Life
<b>CTFVP</b>	Commission pour la transparence financière de la vie politique
<b>DFID</b>	Department for International Development (UK)
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>EC</b>	European Commission
<b>EQI</b>	European Quality of Government Index
<b>EU</b>	European Union
<b>FATF</b>	Financial Action Task Force on Money Laundering
<b>FCPA</b>	Foreign Corrupt Practices Act
<b>FP</b>	Folkpartiet
<b>G20</b>	Group of twenty
<b>G77</b>	Group of 77
<b>GMC</b>	Multidisciplinary Group on Corruption
<b>GOPAC</b>	Group of Parliamentarians Against Corruption
<b>GOV</b>	Directorate for Public Governance (OECD)
<b>GRECO</b>	Group of States Against Corruption
<b>HATVP</b>	Haute autorité pour la transparence de la vie publique
<b>HC</b>	House of Commons
<b>IACC</b>	International Anti-Corruption Conference
<b>ICRN</b>	Interdisciplinary Corruption Research Network
<b>IO</b>	Intergovernmental organisation
<b>IPI</b>	Index of Public Integrity
<b>IPSA</b>	Independent Parliamentary Standards Authority
<b>IRM</b>	Implementation Review Mechanism
<b>LR</b>	Les républicains
<b>LREM</b>	La République en marche
<b>M</b>	Moderaterna
<b>MODEM</b>	Mouvement démocrate
<b>MP</b>	Member of Parliament
<b>NGO</b>	Non-governmental organisation

<b>NIB</b>	National Integrity Blueprint
<b>NIS</b>	National Integrity System Assessments
<b>NORAD</b>	Norwegian Agency for Development Cooperation
<b>NPM</b>	New Public Management
<b>OAS</b>	Organization of American States
<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OECD ABC</b>	OECD Anti-Bribery Convention (officially Convention on Combating Bribery of Foreign Public Officials in International Business Transactions)
<b>OGE</b>	Office of Government Ethics
<b>OGP</b>	Open Government Partnership
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>PCS</b>	Parliamentary Commissioner for Standards
<b>PM</b>	Prime Minister
<b>PS</b>	Parti socialiste
<b>PSI</b>	Public Sector Integrity Division
<b>PUMA</b>	Public Management Committee or Service (OECD)
<b>QoG</b>	Quality of Government Institute
<b>S</b>	Sveriges socialdemokratiska arbetareparti
<b>SCPC</b>	Service central de prévention de la corruption
<b>SIDA</b>	Swedish International Development Cooperation Agency,
<b>SIGMA</b>	Support for Improvement in Governance and Management (OECD)
<b>SPC</b>	Standards and Privileges Committee
<b>TECO</b>	Technical Co-operation Service (OECD)
<b>TI</b>	Transparency International
<b>TI-F</b>	Transparency International France
<b>TI-S</b>	Transparency International Secretariat
<b>TI-UK</b>	Transparency International United Kingdom
<b>U4</b>	U4 Anti-Corruption Resource Centre
<b>UMP</b>	Union pour un mouvement populaire
<b>UN</b>	United Nations
<b>UNCAC</b>	United Nations Convention Against Corruption
<b>UNDP</b>	United Nations Development Programme
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>UNTOC</b>	United Nations Convention against Transnational Organized Crime
<b>WB</b>	World Bank
<b>WGI</b>	Worldwide Governance Indicators

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## General introduction

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“When I became High Commissioner within the government, I was very careful with my asset declaration, and considering that declarations should be controlled by authorised persons, I turned to a certified accountant. I admit that I did not pay as much attention to my interest declaration, certainly because I did not feel that I had any conflicts of interest and because I was obsessed with my asset declaration”

(Jean-Paul Delevoye, former High commissioner for pension reform, December 14<sup>th</sup> 2019)

Public concern about the risk of political leaders abusing their power is not a recent phenomenon. What is new, however, is the ambition to regulate their conduct through policy instruments that serve to formalise political ethics, externalise regulation and introduce transparency requirements for assets and private interests, as mentioned in the above quote. Expectations as to political actors’ integrity have indeed become ever more important, to contemporary democracies, as ideological politics weakened, officials’ morality become as important (or more so) than the ideas they defend.<sup>1</sup> Conflict of interest regulation, the umbrella term for these policy innovations, has emerged on the agenda of most advanced democracies in the last twenty years, resulting in the adoption of dedicated policy instruments. This dissertation sets out to understand how conflict of interest regulation became an ‘idea whose time had come’ in the early 2000s. It seeks to trace the journey of this policy idea, across jurisdictions and loci of policy-making.<sup>2</sup> It focusses on two policy instruments (public interest registers and codes of conduct) that have the particularity of targeting individual parliamentarians, and three countries in which they have been adopted, Britain, France and Sweden. The dissertation is interested in what, perhaps cryptically, I shall term the ‘*divergent convergence*’ of anti-corruption policy. This I understand as the process through which my three cases (Britain, France and Sweden) adopted similar policy instruments to regulate conflicts of interest while developing diverging regulatory practices in implementing the instruments differently (Chapter 1).

While the notion of conflict of interest has been a familiar political concept in the Anglo-American world for quite some time, it emerged (under this label) more recently elsewhere. In

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<sup>1</sup> ROSANVALLON, Pierre. *Le bon gouvernement*. Paris: éditions du Seuil, 2016, p. 353.

<sup>2</sup> GILMAN, Stuart C. An Idea Whose Time Has Come: The International Experience of the U.S. Office of Government Ethics in Developing Anticorruption Systems. *Public Integrity*, Vol. 2, n°2, 2000, pp. 135-155; KINGDON, John W. *Agendas, Alternatives, and Public Policies*. Essex: Pearson 2<sup>d</sup> edition, 2014.

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France, conflicts of interest in politics became a topic of public debate only ten years ago, corruption scandals having historically concerned the embezzlement of public funds or illegal party financing.<sup>3</sup> The “affaire Delevoye”, the scandal named after Jean-Paul Delevoye quoted above, is an illustration of the novelty of the politicisation of conflicts of interest in the French political landscape and the confusion it continues to generate. Didier Migaud, the new president of the administrative authority in charge of promoting integrity in French public life, for instance recently declared that “this notion of conflict of interest remains difficult to apprehend”.<sup>4</sup> On December 8<sup>th</sup> 2019, Jean-Paul Delevoye, the French High Commissioner in charge of the pension system reform, was found to have failed to declare outside activities linked to the insurance sector.<sup>5</sup> In the midst of the negotiations of the reform, which touched on the role of private pension funds, Delevoye’s connection to the private insurance sector was rapidly denounced as a conflict of interest,<sup>6</sup> leading him to resign from the government on December 16<sup>th</sup>.<sup>7</sup>

This brought conflicts of interest and their potentially corrupting effects on political decision-making under the spotlight like never before in France. The context certainly helped, with the strong opposition to the reform and the nationwide strikes initiated on December 5<sup>th</sup>. The ‘affaire’ fed the impression that the government did not have citizens’ best interests at heart and that the reform would benefit private companies at the expense of the public.<sup>8</sup> It illustrates the public perception that the State is run for the benefit of the few at the expense of the many.<sup>9</sup> By drawing attention to what the High Commissioner had failed to declare, the register and its use by the media sparked debates about the impact of outside interests and connections on political

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<sup>3</sup> Jean-Paul Delevoye’s statement, quoted above, is telling in this regard. He justifies his omission to declare his links to private pension funds by admitting that he was not overly concerned with his declaration of interests and did not imagine that he could potentially find himself in a conflict of interest. To reinforce his argumentation, he says that he was so concerned about declaring his assets – asset declarations being used to verify that officials do not enrich themselves illegally – that he forgot about his outside interests and activities. This focus on assets rather than interests is not anecdotal. It illustrates the interpretive ambiguity of political corruption, showing on the one hand that what is considered as (potentially) corrupt differs across time and space, and on the other hand that it progressively converges across borders.

<sup>4</sup> Assemblée nationale. Audition de M. Didier Migaud en vue de sa nomination aux fonctions de président de la Haute Autorité pour la transparence de la vie publique. Paris, January 27<sup>th</sup> 2020. Author’s own translation.

<sup>5</sup> GASTE, Catherine. Retraites : Jean-Paul Delevoye a «oublié» de déclarer ses liens avec le monde de l’assurance. *Le Parisien Aujourd’hui en France*, December 8<sup>th</sup> 2019.

<sup>6</sup> Conflicts of interests have a legal existence since the adoption of laws n°2013-906 and n°2013-907 in October 2013. Hence, the refusal to resolve a conflict of interest and the conscious omission to declare an outside interest to the High Authority for Transparency in Public Life (HATVP) are punishable by law. The former led the HATVP to refer the Delevoye case to the Office of the Public Prosecutor on December 18<sup>th</sup> (LAURENT, Samuel and MICHEL, Anne. Affaire Delevoye : la Haute Autorité pour la transparence de la vie publique a décidé de saisir la justice. *Le Monde*, December 18<sup>th</sup> 2019).

<sup>7</sup> PIETRALUNGA Cédric, BISSUEL Bertrand, BESSE DESMOULIERES Raphaëlle and FAYE Olivier. La démission de Jean-Paul Delevoye fragilise l’exécutif. *Le Monde*, December 16<sup>th</sup> 2019.

<sup>8</sup> COMETTI, Laure. Déclaration d’intérêts incomplète : Pourquoi l’« oubli » de Jean-Paul Delevoye pose problème. *20 minutes*, December 9<sup>th</sup> 2019.

<sup>9</sup> Sciences Po CEVIPOF. *Une colère qui vient de loin*. Baromètre de la confiance politique Vague 10. Paris: Sciences Po, 2019, p. 46.

decision-making and what constitutes a conflict of interest. This ultimately poses the question of democratic legitimacy and the increased concern for the “black box” of policy-making, what Vivien Schmidt terms *throughput* legitimacy.<sup>10</sup> Political corruption can indeed threaten the legitimacy of political institutions and open the “question of the principles on the basis of which the existing order claims people’s allegiance”.<sup>11</sup>

What chain of events led to the resignation of the minister in charge of the pension system reform on suspicions of a conflict of interest? In other words, how did conflicts of interest become a problem of public concern in France, after having been a longstanding problem elsewhere? To understand how this happened, I trace the path that led to the adoption of a public interest register and a code of conduct. To understand how conflict of interest regulation became a case of ‘divergent convergence’, the dissertation looks at the policy process in Britain, France and Sweden comparatively, but also transnationally, since national processes are not closed off from each other and increasingly interact with international processes. The issue of conflicts of interest did indeed not only attract attention in France recently. It was for instance raised repeatedly during the validation of Ursula Von der Leyen’s European Commission by the European Parliament in the fall of 2019<sup>12</sup> and continues to cast a shadow on Donald Trump’s presidency.<sup>13</sup> The dissertation seeks to understand the mechanisms and dynamics of policy-making in an interconnected world where the policy process has become increasingly transnational and multi-level, asking how two anti-corruption instruments came to be adopted in and *adapted* to three European countries, Britain, France and Sweden, between the 1990s and the 2010s.<sup>14</sup>

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<sup>10</sup> SCHMIDT, Vivien. Democracy and Legitimacy in the European Union Revisited: Input, Output and ‘Throughput’. *Political Studies*, Vol. 61, pp. 2-22.

<sup>11</sup> PHILP, Mark and DAVID-BARRETT, Elizabeth. Realism About Political Corruption. *Annual Review of Political Science*, Vol. 18, 2015, pp. 388-389.

<sup>12</sup> Sylvie Goulard was considered by MEPs, strategically or sincerely, as unfit for the position due to a case of alleged embezzlement of funds in creation of fictitious parliamentary assistant jobs for the centrist MoDem party and a possible conflict of interest stemming from her employment by the German-American think tank Berggruen. See for instance : Echec de Sylvie Goulard à la Commission européenne : les leçons d’un camouflet pour Emmanuel Macron. *Le Monde*, October 11<sup>th</sup> 2019; MEPs taste revenge with the axing of Sylvie Goulard. *Financial Times*, October 10<sup>th</sup> 2019.

<sup>13</sup> YOURISH Karen, GRIGGS Troy and BUCHANAN Larry. As Trump Takes Office, Many Conflicts of Interest Still Face His Presidency. *The New York Times*. January 20<sup>th</sup> 2017. Online, available at: <https://www.nytimes.com/interactive/2017/01/20/us/politics/trump-conflicts-of-interest.html>; KWONG, Jessica. Trump Has More Than 2,500 Conflicts of Interest and Counting, Live Tracker by Watchdog Finds. *Newsweek*, October 21<sup>st</sup> 2019. Online, available at: <https://www.newsweek.com/trump-conflicts-interest-tracker-1466800> (accessed on January 25<sup>th</sup> 2020); STEPHENSON, Matthew. Tracking Corruption and Conflicts of Interest in the Trump Administration—March 2020 Update. *The Global Anticorruption Blog*, March 5<sup>th</sup> 2020. Online, available at: <https://globalanticorruptionblog.com/2020/03/05/tracking-corruption-and-conflicts-of-interest-in-the-trump-administration-march-2020-update/> (accessed on April 8<sup>th</sup> 2020).

<sup>14</sup> The British register of Members of Parliament’s interests was introduced in 1974, as further described in Chapter 1. The analysis however focusses on the period that follows the internationalisation of the policy field in the 1990s and on the international transfer of this policy instrument.

This introductory Chapter presents the theoretical and methodological choices that have guided my research. In a first section it clarifies how I approach the object of the research and what we can learn about political corruption through studying the international transfer of conflict of interest regulation. It then lays out the theoretical framework that structure the analysis and explains how the dissertation applies a constructivist institutionalist perspective to the study of policy convergence, transfer and translation. A third section sets out the research questions and objectives. This leads to a description of the methodology and research design. Beyond seeking to understand the ‘divergent convergence’ of anti-corruption policy in Europe, the dissertation hopes to contribute to the emerging literature that studies new spaces and mechanisms of transnational policy making. It also wishes to add to constructivist institutionalist literature by proposing new ways to bridge ideational and material dimensions of public policy. Lastly, I briefly present the structure of the dissertation and its main findings.

## **I. Studying interest registers and codes of conduct to understand political corruption**

The exploratory phase of the research showed that, if conflict of interest regulation had indeed converged in Britain, France and Sweden, it was nevertheless not a case of linear convergence, making the object of the dissertation a case of ‘divergent convergence’, if not of divergence per se. The original topic of my research project was however much broader, as it concerned the social construction of political corruption as a public problem in Europe, understood as the redefinition of an (undesirable) condition into a problem to be governed.<sup>15</sup> How did a project on the construction of a public problem turn into a dissertation on the convergence of instruments?

As I was constructing the research design, I realised that political corruption was a relatively broad and ambiguous term, a public problem that had been interpreted in quite a number of different ways, making it hard to ‘seize’. Despite being a problem of concern to citizens all over the world,<sup>16</sup> there remains a great deal of confusion about what political corruption is and the practices to be labelled ‘corrupt’.<sup>17</sup> Existing studies have shown that, despite overwhelmingly

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<sup>15</sup> GUSFIELD, Joseph. *The Culture of Public Problems Drinking-Driving and the Symbolic Order*. Chicago: University of Chicago Press, 1980; PADIOLEAU, Jean-Gustave. *L’Etat au concret*. Paris: Presses universitaires de France, 1982; MULLER, Pierre. L’analyse cognitive des politiques publiques: vers une sociologie politique de l’action publique. *Revue française de science politique*, Vol. 50, n°2, 2000, pp. 189–207; KINGDON, John W. *Agendas, Alternatives, and Public Policies*. Essex: Pearson 2<sup>d</sup> edition, 2014.

<sup>16</sup> SOUSA Luis de, LARMOUR, Peter and HINDESS, Barry. *Governments, NGOs and Anti-Corruption: The New Integrity Warriors*. London; New York, NY: Routledge, 2009; PHILP, Mark. The Definition of Political Corruption. In HEYWOOD, Paul. *Routledge Handbook of Political Corruption*. Abingdon, New York: Routledge, 2015, pp. 17-29.

<sup>17</sup> ROSE, Jonathan. The Meaning of Corruption: Testing the Coherence and Adequacy of Corruption Definitions. *Public Integrity*, Vol. 20, n°3, 2018, pp. 220-233; NAVOT, Doron and BEERI, Itai. The public’s conception of Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

rejecting corruption, the public does not hold a “conceptually monolithic view of corruption”.<sup>18</sup> Corruption can mean different things to different people, groups of people and in different national contexts.<sup>19</sup> The United Nations Development Programme argues that “the term ‘corruption’ has been applied to such a wide variety of beliefs and practices that pinning down the concept is difficult [corruption being] interpreted (...) in [varying ways] in diverse national polities”.<sup>20</sup>

Therefore, I decided to focus on one specific way in which political corruption had been defined and, hence, constructed, namely through the risks posed by individual political actors’ outside interests, commonly known as conflicts of interest. Building on Carol Lee Bacchi’s argument that policies contribute to define public problems,<sup>21</sup> I chose to study conflict of interest regulation in order to understand one way in which political corruption has been defined. Studying the adoption and adaptation of two common instruments to regulate conflicts of interest (interest registers and codes of conduct) becomes a way to understand mobilisations, conflicts and dynamics around the definition of political corruption as a public problem.

### **a) Making sense of (political) corruption**

Borrowing the title of Bo Rothstein and Aiysha Varraich’ recent book,<sup>22</sup> this section examines how (academic) experts and policy-makers have sought to make sense of (political) corruption.<sup>23</sup> The very fact that a whole section is required for this suggests that corruption is an

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political corruption: A new measurement tool and preliminary findings. *European Political Science*, 2018, Vol. 17, n°1, pp. 1–18.

<sup>18</sup> ROSE, Jonathan. *Op. cit.* 2018; NAVOT, Doron and BEERI, Itai. *Op. cit.* 2018.

<sup>19</sup> GARDINER, John A. *The Politics of Corruption. Organised Crime in an American City*. New York: Russel Sage Foundation, 1970; HEIDENHEIMER, Arnold J. *Op. cit.* 1970; PETERS, John G. and WELCH, Susan. Political Corruption in America: A Search for Definition and a Theory or if Political Corruption is in the Mainstream of American Politics Why is it not in the Mainstream of American Politics Research. *American Political Science Review*, Vol. 72, n°3, 1978, pp. 974-984; GIBBONS, Kenneth M. Toward an Attitudinal Definition of Corruption. In HEIDENHEIMER, Arnold J., JOHNSTON, Michael and LEVINE, Victor T. (eds), *Handbook of Corruption*. New Brunswick: Transaction Publishers, 1989, pp. 165-171; LASCOUMES, Pierre, and BEZES, Philippe. Les formes de jugement du politique. Principes moraux, principes d'action et registre légal. *L'Année sociologique*, Vol. 59, n° 1, 2009, pp. 109-147 ; LASCOUMES, Pierre. *Op. cit.* 2010 ; BUCHAN, Bruce and HILL Lisa. *Op. cit.* 2014; KROEZE, Ronald, VITÓRIA, André and GELTNER, Guy. *Anticorruption in history: from antiquity to the modern era*. Oxford University Press, 2018.

<sup>20</sup> JUNE, Raymond, CHOWDHURY, Afroza, HELLER, Nathaniel and WERVE, Jonathan. *A Users' Guide To Measuring Corruption*. Oslo: United Nations Development Programme Oslo Governance Centre, 2008, pp. 10-11.

<sup>21</sup> BACCHI, Carol L. *Analysing Policy: What's the Problem Represented to be?* Frenchs Forest, N.S.W: Pearson, 2009.

<sup>22</sup> ROTHSTEIN, Bo and VARRAICH, Aiysha. *Making Sense of Corruption*. Cambridge University Press, 2017.

<sup>23</sup> For the sake of concision, this introduction summarises many contributions to this growingly rich literature to which it does not do justice. Chapter 4 provides a more ample discussion of this conceptual work through an examination of the definitional competition to make corruption a global public problem. For a detailed analysis of the concept of corruption see: TANZLER Dirk, KONSTADINOS, Maras, and GIANNAKOPOULOS, Angelos (eds.) *The social construction of corruption in Europe*. Farnham, Burlington: Ashgate, 2012; HEYWOOD, Paul. *Routledge Handbook of Political Corruption*. Abingdon, New York: Routledge, 2015; ROTHSTEIN, Bo and VARRAICH, Aiysha. *Making Sense of Corruption*. Cambridge University Press. 2017; KATZAROVA, Elitza. *The Social Construction of Global Corruption From Utopia to Neoliberalism*. London: Palgrave Macmillan. 2019.

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‘essentially contested concept’,<sup>24</sup> an ambiguous term which can be understood in different ways and sustain a variety of competing narratives.<sup>25</sup> This ambiguity stems from corruption being, at the same time (but not necessarily for the same people), a crime, an analytical concept, a negatively charged term of appraisal and a public problem whose definition evolves through the actions of policy actors. As Elizabeth Harrison suggests, corruption is “both a normative concept and a set of practices that help some people and seriously harm others”.<sup>26</sup> This duality captures the important idea that corruption is both ambiguous in the abstract (what *is* corruption?) and in the particular (what practices should be *labelled* corruption?). This section looks, albeit relatively briefly, at the ways in which corruption has been defined at the conceptual level, before moving on to consider the use of corruption to define social practices. Finally, it reflects on what is particular about corruption in the realm of politics, where the problem is especially ambiguous and its consequences particularly grave.

### i) Understanding corruption as a concept

Whether considering corruption as a category of criminal offenses or a broader group of unethical and/or abusive practices, scholars, practitioners and policy-makers have sought to identify common elements that define what can be considered as corruption. Controversy is still rife, leading some to argue against the need for a universal definition.<sup>27</sup> As Paul Heywood has flagged in his *Handbook of Political Corruption*, “there remains a striking lack of scholarly agreement over even the most basic questions about corruption, [such as] the very definition of ‘corruption’ as a concept”.<sup>28</sup> Defining a public problem is not a neutral exercise of truth-finding. It is a fundamental political process that can oppose different worldviews and that has political consequences as it categorises people and labels practices. Chapter 4 returns to the competition for

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<sup>24</sup> GALLIE, Walter B. Essentially contested concepts. *Proceedings of the Aristotelian Society*, Vol. 56, 1956, pp. 167–198; ROTHSTEIN, Bo. *State-of-the-art report on theories and harmonised concepts of corruption*. Working paper, ANTICORRP project, 2014; ROSE, Jonathan. *Op. cit.* 2018.

<sup>25</sup> BEST, Jacqueline. Ambiguity, Uncertainty, and Risk: Rethinking Indeterminacy. *International Political Sociology*, Vol. 2, n° 4, 2008, p. 356; CRAIG, Martin. Post-2008 British Industrial Policy and Constructivist Political Economy: New Directions and New Tensions. *New Political Economy*, Vol. 20, n°1, 2015, pp. 107–125; HAY, Colin. Good in a crisis: the ontological institutionalism of social constructivism. *New Political Economy*, Vol. 21, n°6, 2016, pp. 520–535;

<sup>26</sup> HARRISON, Elizabeth. Unpacking the Anti-corruption Agenda: Dilemmas for Anthropologists. *Oxford Development Studies*, Vol. 34, n° 1, 2006, pp. 15–29.

<sup>27</sup> For a (sometimes critical) analysis of these conceptual perspectives, see Paul Heywood on which questions to ask to gain new insights into the wicked problem of corruption. *Kickback The Global Anti-corruption Podcast*, June 10<sup>th</sup> 2019; ROTHSTEIN, Bo and VARRAICH, Aiysha. *Op. cit.* 2017; KURER, Oscar. Definitions of Corruption. In HEYWOOD, Paul. *Routledge Handbook of Political Corruption*. Abingdon, New York: Routledge, 2015; HEYWOOD, Paul and ROSE, Jonathan. Curbing Corruption or Promoting Integrity? Probing the Hidden Conceptual Challenge. In HARDI, Peter, HEYWOOD, Paul and TORSELLO, Davide. *Debates of Corruption and Integrity*. Basingstoke: Palgrave Macmillan. 2015; ROTHSTEIN, Bo. What is the opposite of corruption? *Third World Quarterly*, Vol. 35, n°5, 2014, pp. 737–752; ROSE, Jonathan and HEYWOOD, Paul M. Political Science Approaches to Integrity and Corruption. *Human Affairs*, Vol. 23, n° 2, 2013, pp. 148–159.

<sup>28</sup> HEYWOOD, Paul. *Routledge Handbook of Political Corruption*. Abingdon, New York: Routledge, 2015, pp. 1–2. Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

the definition of corruption as a global problem, while this section provides a rapid overview of the elements emphasised by different definitions and their relative normative dimensions.

From being broadly understood as the condition of things departing from an original pure state, the definition of corruption has progressively been narrowed down to describe a set of undesirable practices (Chapter 4 returns to this conceptual development).<sup>29</sup> The most widespread conception of corruption (often termed the ‘public office’ definition) describes it as the intentional violation of legal norms (crime) or formal rules of a given public office (abuse of office), usually for an expected (private or personal) gain.<sup>30</sup> It inspired the World Bank and Transparency International’s definitions of corruption, respectively the “abuse of public office for private gain” and the “abuse of entrusted power for private gain”, which are widely used in policy and academic spheres today. While some elements of this definition remain up to interpretation (what does *abuse* mean?), the identification of corrupt practices is dependent on rules of office. In this sense, the ‘public office’ definition is certainly the most ‘technical’, understood as operationalizable in different contexts.<sup>31</sup> Taking public office as a central definitional element indeed avoids engaging in debates on public goods, the public interest or moral ideals.<sup>32</sup> It does not presume some common understanding of public interest or what constitutes public goods.<sup>33</sup>

Some scholarly conceptions however retain parts of the normative dimension of the original conception of corruption, defining it in terms of the specific damages it does. Dennis F. Thompson argued against an excessive focus on individual gain and characterised corruption through its impact on the working of institutions and processes. For him, the consequences matter more than intention and motives.<sup>34</sup> Carl Friedrich, and more recently Mark E. Warren, understand corruption as an abuse of power that has negative consequences on the public interest.<sup>35</sup> Bo Rothstein and Davide Torsello proposed a ‘public goods theory’ of corruption which sees corruption as the

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<sup>29</sup> BUCHAN, Bruce and HILL Lisa. *An Intellectual History of Political Corruption*. Basingstoke: Palgrave Macmillan UK, 2014.

<sup>30</sup> NYE, Joseph. Corruption and Political Development: A Cost-Benefit Analysis. *The American Political Science Review*, Vol. 61, n° 2, 1967, p. 419; KLITGAARD, Robert. *Controlling Corruption*. University of California Press, 1988.

<sup>31</sup> BUCHAN, Bruce and HILL Lisa. *An Intellectual History of Political Corruption*. Basingstoke: Palgrave Macmillan UK, 2014.

<sup>32</sup> WEDEL, Janine R. Rethinking Corruption in an Age of Ambiguity. *The Annual Review of Law and Social Science*. 2012; BUKOVANSKY, Mlada. The hollowness of anti-corruption discourse. *Review of International Political Economy*, Vol. 13, n°2, 2006; GEBEL, Anja C. Human nature and morality in the anti-corruption discourse of Transparency International. *Public Administration and Development*, Vol. 32, 2012, pp.109-128.

<sup>33</sup> KURER, Oscar. *Op. cit.* 2015.

<sup>34</sup> THOMPSON, Dennis F. Mediated corruption: the case of the Keating Five. *American Political Science Review*, Vol. 8, n°2, 1993, pp. 369–381; PHILP, Mark and DAVID-BARRETT, Elizabeth. Realism About Political Corruption. *Annual Review of Political Science*, Vol. 18, 2015, pp. 387–402

<sup>35</sup> WARREN, Mark E. The Meaning of Corruption in Democracies. In HEYWOOD, Paul. *Routledge Handbook of Political Corruption*. Abingdon, New York: Routledge, 2015; FRIEDRICH, Carl. *The Pathology of Politics: Violence, Betrayal, Corruption, Secrecy and Propaganda*. New York: Harper and Row, 1972; ROGOW, Arnold A. and LASWELL, Harold D. *Power, Corruption and Rectitude*. Englewoods Cliffs: Prentice-Hall, 1966.

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conversion of public goods into private goods by those in charge of managing them.<sup>36</sup> Similarly, Valts Kalniņš defines corruption as the “particularistic (non-universal) allocation of public goods due to abuse of influence”.<sup>37</sup> These definition can be considered normative in comparison with the mainstream definition since practices need to be harmful to be labelled ‘corrupt’ (which the mainstream definition does not specify). Corruption is indeed seen as a synonym of duplicitous exclusion<sup>38</sup> or a form of unjustified partiality or injustice.<sup>39</sup>

The project of normalising a narrow ‘technical’ definition of corruption at the global level has greatly motivated this research project. Mark Philp suggests that, if a universal definition is to be used, it requires its user to be aware that the terms we use come from a particular worldview that might not necessarily be shared with others.<sup>40</sup> This suggestion can be extended to the notion of conflict of interest as well, as we will return to below. The dissertation is interested in the efforts to harmonise these potentially diverging conceptions of the problem (and its definitional elements) that accompanied the transnationalisation of the policy field.

## ii) Understanding corruption in practice

While corruption is conceptually ambiguous, it is also interpretively ambiguous – and these are not the same. Different ‘things’ can be said to be corrupt, and by labelling them such we confer (different) negative connotations upon them.<sup>41</sup> Historians and constructivist social scientists have sought to understand what phenomena and practices are or have been labelled corrupt (or ‘as corruption’), across time, space and/or social groups.<sup>42</sup> Corruption is then understood as a social and historical construct that should can be elucidated by studying the situated use of the term.<sup>43</sup>

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<sup>36</sup> ROTHSTEIN, Bo and TORSELLO, Davide. Bribery in Preindustrial Societies: Understanding the Universalism-Particularism Puzzle. *Journal of Anthropological Research*, Vol. 70, n° 2, 2014, pp. 263–284.

<sup>37</sup> KALNIŅŠ, Valts. Anti-corruption policies revisited: D3.2.8. Background paper on Latvia. In Mungiu-Pippidi, Alina (ed.), *Corruption and governance improvement in global and continental perspectives*. Gothenburg, Sweden: ANTICORRP, 2014, pp. 1–25.

<sup>38</sup> WARREN, Mark E. *Op. cit.* 2015, p. 47.

<sup>39</sup> ROTHSTEIN, Bo and VARRAICH, Aiysha. *Op. cit.* 2017, p. 55.

<sup>40</sup> PHILP, Mark. *Op. cit.* 2015, p. 27.

<sup>41</sup> PHILP, Mark. *Op. cit.* 2015.

<sup>42</sup> GARDINER, John A. *The Politics of Corruption. Organised Crime in an American City*. New York: Russel Sage Foundation, 1970; HEIDENHEIMER, Arnold J. *Op. cit.* 1970; PETERS, John G. and WELCH, Susan. Political Corruption in America: A Search for Definition and a Theory or If Political Corruption is in the Mainstream of American Politics Why is it not in the Mainstream of American Politics Research. *American Political Science Review*, Vol. 72, n°3, 1978, pp. 974-984; GIBBONS, Kenneth M. Toward an Attitudinal Definition of Corruption. In HEIDENHEIMER, Arnold J., JOHNSTON Michael, LEVINE Victor T. (eds), *Handbook of Corruption*. New Brunswick: Transaction Publishers, 1989, pp. 165-171; LASCOUMES, Pierre, et BEZES, Philippe. Les formes de jugement du politique. Principes moraux, principes d'action et registre légal. *L'Année sociologique*, Vol. 59, n° 1, 2009, pp. 109-147 ; LASCOUMES, Pierre. *Op. cit.* 2010 ; BUCHAN, Bruce and HILL Lisa. *Op. cit.* 2014; KROEZE, Ronald, VITÓRIA, André and GELTNER, Guy. *Anticorruption in history: from antiquity to the modern era*. Oxford University Press, 2018.

<sup>43</sup> SCHAFFER, Frederic Charles. *Elucidating Social Science Concepts: An Interpretivist Guide*. New York, NY: Routledge, Taylor & Francis Group, 2016.

They find that corruption has played a role in public and political discourse ever since Antiquity but that its boundaries fluctuate, from “the particularity of the abuse of public office [to] more nebulous fears of moral decay”,<sup>44</sup> from the decline of society to abusive individual practices.<sup>45</sup> The question of which practices feature under the label ‘corruption’ is not necessarily resolved, as meanings coexist. Policy actors, at the national and international level, might seek to resolve the ambiguity through policies listing practices considered ‘corrupt’, but these might clash with the ordinary use of the term, which can express general dissatisfaction with politics and the impression to systematically ‘lose out’ from political decisions.<sup>46</sup>

In ‘policy English’,<sup>47</sup> the dominant language of the ‘anti-corruption regime’,<sup>48</sup> corruption is understood as a category of unethical practices, which includes bribery, embezzlement, trading in influence, abuse of functions, illicit enrichment or money-laundering,<sup>49</sup> sometimes captured under the World Bank’s definition used above. Corruption is however not defined at all in most international conventions, which resolve the interpretive ambiguity of corruption through a list of practices. This perspective has been translated into other languages, like Swedish, where ‘*korruption*’ refers to a similar category of criminal offenses.<sup>50</sup> France featured among the exceptions, since ‘*corruption*’ in French refers to a specific criminal offense which translates to the English ‘bribery’.<sup>51</sup> The French ‘*corruption*’ however also has a wider meaning (that is similar the English or Swedish

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<sup>44</sup> BUCHAN, Bruce and HILL Lisa. *Op. cit.* 2014, p. 5.

<sup>45</sup> KROEZE, Ronald, VITÓRIA, André and GELTNER, Guy. *Anticorruption in history: from antiquity to the modern era*. Oxford University Press, 2018.

<sup>46</sup> PHILP, Mark. *Op. cit.* 2015, pp. 18-19; HAY, Colin. *Why We Hate Politics*. Cambridge: Polity Press, 2007.

<sup>47</sup> CLARKE, John. *What's culture got to do with it? Deconstructing welfare, state and nation*. Working Paper n° 136-06, Centre for Cultural Research, University of Aarhus, 2006, p. 8.

<sup>48</sup> COLE, Wade M. Institutionalizing a Global Anti-Corruption Regime: Perverse Effects on Country Outcomes, 1984–2012. *International Journal of Comparative Sociology*, Vol. 56, n° 1, 2015, pp. 53-80; HOUGH, Dan. *Corruption, Anti-Corruption and Governance*. Basingstoke: Palgrave Macmillan, 2013; SAMPSON, Steven. The anti-corruption industry: from movement to institution. *Global Crime*, Vol.11, n°2, 2010, pp. 261-278; SOUSA Luis de, LARMOUR, Peter and HINDESS, Barry. *Governments, NGOs and Anti-Corruption: The New Integrity Warriors*. London; New York, NY: Routledge, 2009.

<sup>49</sup> World Bank. *Helping Countries Combat Corruption The Role of the World Bank*. Poverty Reduction and Economic Management. Washington DC: World Bank, 1997, pp. 19-20; United Nations. United Nations Convention against Corruption. New York: United Nations, 2003; JUNE, Raymond, CHOWDHURY, Afroza, HELLER, Nathaniel and WERVE, Jonathan. *Op. cit.* 2008; U4 Anti-Corruption Resource Centre. UNCAC in a nutshell. U4 Brief September 2010:6 (updated May 2017). Bergen, 2017.

<sup>50</sup> Institutet mot mutor. Brottsbalken. n.d. Online, available at: <https://www.institutetmotmutor.se/regelverk/det-svenska-regelverket/brottsbalken/> (accessed on January 20<sup>th</sup> 2020); Transparency International Sverige. Vad är korruption? n.d. Online, available at: <https://www.transparency.se/korruption> (accessed on January 20<sup>th</sup> 2020)

<sup>51</sup> In the French criminal code, corruption is synonymous to bribery, extended from the act of giving a bribe to offering or promising a bribe. Code pénal, Article 432-11 (corruption passive – passive bribery), Article 433-1 (corruption active – active bribery).

terms), but the expressions ‘*atteintes à la probité*’<sup>52</sup> or ‘*manquements au devoir de probité*’<sup>53</sup> (meaning ‘violations of integrity’) are more commonly used than *corruption* in ‘official French’. Corruption might thus not always refer to the same ‘real world’ practices across borders, and as John Clarke notes, “the passage of concepts into and out of ‘policy English’ may be a site of significant articulation”,<sup>54</sup> as we will explore throughout the dissertation.

Indeed, corruption even has porous and movable definitional boundaries within the international policy community, as this quote taken from the *travaux préparatoires* of the United Nations Convention against Corruption (UNCAC) illustrates: “Notwithstanding the varying acts that may constitute corruption in different jurisdictions (...) Nothing herein shall limit the future criminalisation of further acts of corruption or the adoption of measures to combat such acts”.<sup>55</sup> If the definition of a public problem is political, so is the choice to remain vague. Interpretive ambiguity can indeed be politically useful, to allow the term to evolve as contexts and practices evolve.

### iii) Understanding corruption in politics

This dissertation is particularly interested in corruption in politics. If corruption itself is ambiguous, I argue that the relationship between politics and corruption is even more complex. Mark Philp proposes a definition of political corruption that combines an attention to the rules of public office and a concern for the public interest: “corruption in politics occurs where a public official, violates the norms of office, to the detriment of the interests of the public (or some subsection thereof) who is the designated beneficiary of that office, to benefit themselves and a third party who rewards or otherwise incentivises the official to gain access”.<sup>56</sup> When policy-makers at various levels tend to favour an understanding of corruption as a violation of the rules of public office, the understanding of political corruption is blurred by the fact that the rules of office might

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<sup>52</sup> VOKO, Sylvie. *Les atteintes à la probité*. Thèse présentée en droit des affaires. Paris: Université Panthéon-Sorbonne Paris I, 2016; BRIGANT, Jean-Marie. Les atteintes à la probité revues et corrigées. *La Semaine Juridique - Administrations et collectivités territoriales*, LexisNexis, 2014 ; MAZZOLENI, Oscar and LASCOUMES. Chapitre 4 / Fonction politique et atteintes à la probité publique dans le jugement des citoyens ordinaires. In LASCOUMES, Pierre (ed.) *Favoritisme et corruption à la française. Petits arrangements avec la probité*. Paris: Presses de Sciences Po, 2010, pp. 139-166.

<sup>53</sup> Code pénal. Section 3 : manquements au devoir de probité. Article 432-10 to 432-16 ; Ministère de la Justice Direction des affaires criminelles et des grâces Pôle d'évaluation des politiques pénales. *Manquements à la probité : éléments statistiques*. Paris, 2019.

<sup>54</sup> CLARKE, John. *What's culture got to do with it? Deconstructing welfare, state and nation*. Working Paper n° 136-06, Centre for Cultural Research, University of Aarhus, 2006, p. 8.

<sup>55</sup> United Nations. *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Corruption*. New York, 2010, p. 43 (footnote 79).

<sup>56</sup> PHILP, Mark. *Op. cit.* 2015, p. 22.

be less well defined in the political world than within the public administration for instance.<sup>57</sup> This is particularly true for the parliamentary mandate that is generally protected by parliamentary sovereignty and left relative free of constraints. There are of course a number of norms that elected representatives ought to comply with, as set out in a country's constitution, legal framework and/or rules of procedure of the parliament itself, and the instruments studied in this dissertation contribute to clarify and expend them.

While research and policy work on corruption often highlight the importance of impartiality as a means to prevent corruption or as a principle violated by it,<sup>58</sup> the notion loses pertinence when talking about politics, as politics is not an impartial neutral process. Politics involves competition between different social groups with different values and beliefs, and political representatives receive conflicting demands, from their constituents, from citizens at large, from their party, from social groups to which they belong (profession, gender, religion, ethnicity etc.) Any political decision, indeed, "has winners and losers and gives priority to some values over others".<sup>59</sup> The relation between politics and corruption is complex, since the rules and practices that determine the level of influence of these different groups are themselves political, and so are the boundaries of what is considered self-serving.<sup>60</sup> Political corruption is indeed closely connected to ethics of representation (descriptive, substantive etc.) and the accountability of political office. Is a parliamentarian supposed to relay the demands of her/his constituency even when they contradict the party's position, the public mood or their convictions? Should individual identity characteristics or professional experience guide her/his conduct in office, or would that be considered self-serving behaviour? Using the example of Jean-Paul Delevoye, should his connections to the insurance industry be considered as the token of his expertise on pensions or, on the contrary, as a risk that he might improperly favour sectoral interests? Mainstream definitions of corruption thus lack sensitivity to corruption in the sphere of politics.

Of course, stealing from the public purse or receiving large sums of money for defending a position one would otherwise not have defended would quite clearly be condemnable, at least in contemporary politics. But it might not be easy to know when outside interests actually change the behaviour of policy-makers. Corruption in politics can also be much more subtle (and herein lies

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<sup>57</sup> WARREN, Mark E. The Meaning of Corruption in Democracies. In HEYWOOD, Paul. *Routledge Handbook of Political Corruption*. Abingdon, New York: Routledge, 2015. Many interviewees also made this point, as will be discussed in the empirical chapters.

<sup>58</sup> ROTHSTEIN, Bo and VARRAICH, Aiysha. *Op. cit.* 2017; DAHLSTROM, Carl and LAPUENTE GINE, Victor. *Organizing Leviathan : politicians, bureaucrats, and the making of good government*. Cambridge: Cambridge University Press, 2017.

<sup>59</sup> PHILP, Mark and DAVID-BARRETT, Elizabeth. Realism About Political Corruption. *Annual Review of Political Science*, Vol. 18, 2015, pp. 388-389.

<sup>60</sup> *Ibid.*

more space for ambiguity). The grounds on which political conduct and decision-making are judged evolve overtime and across borders, as ideas about politics and representation change. These might not even be uniformly shared in a given society at a given time.

Political corruption is a particularly problematic form of corruption, not only because of its complexity but also because of its consequences. Through rigging the rules of the democratic game, it can lead to ‘policy capture’ (and in turn be a product of it), defined by the OECD as a situation whereby “public decisions over policies are consistently or repeatedly directed away from the public interest towards a specific interest”<sup>61</sup> and corrupt transactions can be institutionalised and serve to pass laws that render corrupt gains ‘legitimate’.<sup>62</sup> It thus ultimately poses the question of democratic legitimacy and the increased concern for the “black box” of policy-making; what Vivien Schmidt terms *throughput* legitimacy.<sup>63</sup> Political corruption can indeed threaten the legitimacy of political institutions and question the principles on which people’s acceptance of political authority lies.<sup>64</sup> In a democracy, political corruption can lead to the exclusion of groups that should have been considered in the process of decision-making, as it undermines their ability to influence collective decisions.<sup>65</sup>

## **b) Narrowing the scope: conflicts of interest in politics**

Current thinking about political corruption typically concerns the role of money and its influence in politics.<sup>66</sup> It can concern different categories of actors involved in decision-making, from political parties/candidates and their finances, elected officials or outside organisations seeking to lobby policy-makers.<sup>67</sup> This dissertation is interested in one particular subset of this

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<sup>61</sup> OECD. *Preventing Policy Capture Integrity in Public Decision Making*. OECD Public Governance Review. Paris: OECD Publishing, 2017, p. 3.

<sup>62</sup> World Bank. *Anti-Corruption in Transition: A Contribution to the Policy Debate*. Washington, DC: World Bank, 2000; PHILP, Mark. *Op. cit.* 2015, p. 22.

<sup>63</sup> SCHMIDT, Vivien. Democracy and Legitimacy in the European Union Revisited: Input, Output and ‘Throughput’. *Political Studies*, Vol. 61, 2010, pp. 2-22; Dogan, Mattei. La légitimité politique : nouveauté des critères, anachronisme des théories classiques. *Revue internationale des sciences sociales*, n° 196, 2013, pp. 21-39.

<sup>64</sup> PHILP, Mark and DAVID-BARRETT, Elizabeth. Realism About Political Corruption. *Annual Review of Political Science*, Vol. 18, 2015, pp. 388-389.

<sup>65</sup> WARREN, Mark E. The Meaning of Corruption in Democracies. In HEYWOOD, Paul. *Routledge Handbook of Political Corruption*. Abingdon, New York: Routledge, 2015.

<sup>66</sup> LESSIG, Lawrence. *Republic, lost: how money corrupts Congress, and a plan to stop it*. New York London: Twelve Little, Brown, 2013.

<sup>67</sup> WILLIAMS, Robert (ed.) *Party finance and political corruption*. Basingstoke, New York: Macmillan, 2000 ; BIEZEN, Ingrid van. State Intervention in Party Politics: The Public Funding and Regulation of political Parties. *European Review*, Vol. 16, 2008, pp. 337-354; KOSS, Michael (ed.) *The politics of party funding: state funding to political parties and party competition in Western Europe*. Oxford: Oxford University Press, 2011; GREENWOOD, Justin. The lobby regulation element of the European transparency initiative: between liberal and deliberative models of democracy. *Comparative European politics*, Vol.9, n° 3, 2011, pp. 317-343; ROBERT, Cécile. Les dispositifs de transparence entre instruments de gouvernement et “machines à scandales”. *Politique européenne*. Vol.61, no 3, 2018, pp. 174-210; MENDILOW, Jonathan and PHELIPPEAU, Éric. *Handbook of Political Party Funding*. Cheltenham: Edward Elgar, 2018; PHELIPPEAU, Éric. *L’argent de la politique*. Paris: Presses de Sciences Po, 2018; CAGÉ, Julia. *Le prix de la démocratie*. Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

category, namely conflict of interest. In a grey zone between political corruption and its causes, conflicts of interest are illustrative of the complexity of the issue of political corruption and the confusion it can generate. They are also particularly interesting when studying how the meaning of corruption becomes increasingly homogenous across jurisdictions, as it is a relative old problem in certain parts of the world while it only recently emerged elsewhere.

### i) What conflict? Which interests?

If (political) corruption is an ambiguous notion, so is ‘conflict of interest’. While in ordinary language it might be understood as a conflict between social interests competing for political influence, in ‘policy language’ it has been narrowed to refer to the conflicting interests inherent to public decision making that present a risk of corruption. Academic work and policy documents on conflict of interest often start off by stating that conflicts of interest are a normal fact of life that we all face in daily decisions.<sup>68</sup> They become a matter of public attention and policy intervention when they concern public officials. While they also have legitimate interests as private citizens, the latter have the capacity to make political decisions for their own benefit (or that of a group to which they are connected) to the detriment of the public interest.

There is no universal definition of conflict of interest, and different countries answer the question of what constitutes a conflict of interest quite differently, as Chapter 2 will show. The widely used OECD definition states that a conflict of interest “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”.<sup>69</sup> Many elements of this definition are left to interpretation. Conflicts of interests concern the individual decision-making process and the influence of diverse interests, pressures and convictions on the decision-maker. Since it is quite impossible to know what happens it the

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Paris: Fayard, 2018 ; ROBERT, Cécile. La transparence comme nouvel horizon des démocraties européennes. *Politique européenne*, vol.61, n° 3, 2018, pp. 8-43 ; COURTY, Guillaume. *Le lobbying en France : invention et normalisation d'une pratique politique*. Bruxelles: P.I.E Peter Lang, 2018 ; COURTY, Guillaume and MILET, Marc. Moraliser au nom de la transparence. Genèse et usages de l'encadrement institutionnel du lobbying en France (2004-2017). *Revue française d'administration publique*, Vol.165, n° 1, 2018, pp. 17-31 ; COURTY, Guillaume et MILET, Marc. Regulating lobbying by the law in France. *Politique européenne*, Vol.61, n° 3, 2018, pp. 78-113; VARGOVČÍKOVÁ, Jana. Translating transparency at national levels. *Politique européenne*, Vol.61 n° 3, 2018, pp. 44-77; BUNEA, Adriana. Legitimacy through targeted transparency? Regulatory effectiveness and sustainability of lobbying regulation in the European Union. *European Journal of Political Research*, Vol.57, n° 2, 2018, pp. 378-403.

<sup>68</sup> TROST, Christine and GASH, Alison L (eds.) *Conflict of Interest and Public Life: Cross-National Perspectives*. Cambridge, New York: Cambridge University Press, 2008; ROSE-ACKERMAN, Susan. Corruption and conflicts of interest. In AUBY, Jean-Bernard, BREEN, Emmanuel and PERROUD, Thomas. *Corruption and Conflicts of Interest: A Comparative Law Approach*. Cheltenham: Edward Elgar, 2014.

<sup>69</sup> OECD. Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service. Paris: OECD Publications, 2005.

mind of a policy-makers when s/he takes a decision, the interpretation of conflict of interest has increasingly focussed not on what ‘actually happens’ in the policy-maker’s mind but on what ‘might have happened’. As Andrew Stark puts it, it is not only to “succumb to temptation” that is prohibited but the very fact of “[entering] into relationships that are fraught with temptation”.<sup>70</sup> Similarly, the term influence (or ‘interference’ which is also often used) poses many questions since it is hard to know how private interests make a policy-maker depart from her/his original position. While there are debates about the degree of interference, conflicts of interest are sometimes extended to the ‘appearance’ of influence that policy-makers should guard themselves from to preserve public trust.<sup>71</sup>

The notion of private interests itself is also open to differences of interpretation, since it can be limited to pecuniary interests or be extended to ideological or ideational interests.<sup>72</sup> For instance, in France, public officials are required to declare their activities within non-profit organisations, whilst disclosure obligations are limited, at least on paper, to financial interests in Britain and Sweden (Chapter 1). Lastly, the notion of public interest, absent from the OECD’s definition (which prefers the term ‘public duty’ in line with the ‘public office’ definition of corruption) but generally presented as one of the interests in conflict, is notoriously vague and hard to ‘seize’. Different conceptions of democratic politics indeed understand the public interest differently, as the aggregation of private interests or a superior common good, as further explored in Chapter 9. Karen Getman and Pamela Karlan define conflict of interest as “a divergence between what should influence a public official’s decision and what does”.<sup>73</sup> The nature of conflict of interest becomes all the more complex but also more interesting when looking at politics, a sphere of society that is characterised by partiality and conflict between social groups with different interests.

## ii) The connection to political corruption

There is a fine line between conflict of interest and corruption, and the relation between the two phenomena has generated debates. While suggesting that there is a connection between the two is not widely controversial, not all analysts interested in conflicts of interest evidently establish

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<sup>70</sup> STARK, Andrew. *Conflict of Interest in American Public Life*. Cambridge: Harvard University Press, 2000, p. 4.

<sup>71</sup> Council of Europe. Codes of Conduct for Public Officials: Recommendation Rec(2000)10, adopted by the Committee of Ministers of the Council of Europe on 11 May 2000 and Explanatory Memorandum. Strasbourg, 2000.

<sup>72</sup> STARK, Andrew. *Op. cit.* 2000, p. 6.

<sup>73</sup> GETMAN, Karen and KARLAN, Pamela. ‘Pluralists and Republicans, Rules and Standards. In TROST, Christine and GASH, Alison L (eds.) *Conflict of Interest and Public Life: Cross-National Perspectives*. Cambridge, New York: Cambridge University Press, 2008, p. 56.

their connection to political corruption.<sup>74</sup> Some scholars consider ‘conflict of interest’ to be an umbrella term that incorporates the tensions between official and private roles, of which corruption is the most obvious “anti-social behaviour”.<sup>75</sup> Corruption in that case becomes a manifestation of conflict of interest ‘made real’ or acted upon. Others consider conflict of interest not as corruption but as a potential cause of corruption. Indeed, conflicts of interest are most often considered to generate a *risk* of corruption (Chapter 4). As Staffan Andersson and Frank Anechiarico write, “the potential for various types of corruption (...) inherent in conflicts of interest is generally considered reason enough to prohibit such conflicts, without the need for evidence of specific misconduct”.<sup>76</sup>

What is particularly interesting with conflicts of interest in politics is the centrality of the notion of ‘interests’ and how that affects our understanding of political corruption. As the dissertation explores, since the 2000s, conflicts of interest have increasingly been presented as one of the principal risks of corruption by the OECD, the Council of Europe, the United Nations, Transparency International and others, thus suggesting new ways of resolving the interpretive ambiguity of corruption. While, as we saw earlier, corruption is generally defined in relation to the rules and norms of public office, the increased concern about conflict of interest among policy actors involved in anti-corruption work suggests a return of public interest in how (political) corruption is understood. The OECD for instance defined public integrity, that it sees as the ‘opposite of corruption’,<sup>77</sup> as “the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector”.<sup>78</sup> This is consistent with Mark Philp and Mark Warren’s argument that the notion of public interest, no matter how vague, belongs to a definition of what corruption is in politics.<sup>79</sup>

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<sup>74</sup> See for instance MANCUSO, Maureen. *The Ethical World of MPs*. Montreal, London: McGill-Queen’s University Press, 1995; DAVIS, Michael and STARK, Andrew (eds.) *Conflict of Interest in the Professions*. New York: Oxford University Press, 2001; GAY, Oonagh and LEOPOLD, Patricia M. *Conduct Unbecoming: The Regulation of Parliamentary Behaviour*. London: Politico’s, 2004; MAESSCHALCK, J., HUBERTS, Leo and JURKIEWICZ, Carole (eds.) *Ethics and Integrity of Governance: Perspectives across Frontiers*. Cheltenham: Edward Elgar, 2007; TROST, Christine and GASH, Alison L. (eds.) *Conflict of Interest and Public Life: Cross-National Perspectives*. Cambridge, New York: Cambridge University Press, 2008; with noteworthy exceptions: ANECHIARICO, Frank and JACOBS, James B. *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective*. Chicago: University of Chicago Press, 1996; SANDOVAL, Irma Eréndira (ed.) *Contemporary debates on corruption & transparency: rethinking state, market and society*. Washington, DC: The International Bank for Reconstruction and Development, The World Bank, 2011; AUBY, Jean-Bernard, BREEN, Emmanuel and PERROUD, Thomas. *Corruption and Conflicts of Interest: A Comparative Law Approach*. Cheltenham: Edward Elgar, 2014.

<sup>75</sup> AUBY, Jean-Bernard, BREEN, Emmanuel and PERROUD, Thomas. *Corruption and Conflicts of Interest: A Comparative Law Approach*. Cheltenham: Edward Elgar, 2014, p. xv.

<sup>76</sup> ANDERSSON, Staffan and ANECHIARICO, Frank. The political economy of conflicts of interest in an era of public-private governance. In HEYWOOD Paul (ed.) *Routledge Handbook of Political Corruption*. Abingdon: New York: Routledge, 2015, p. 255, referring to KJELLBERG, Francesco. Conflict of Interest, Corruption or (Simply) Scandals? The Oslo Case 1989–91. *Crime, Law and Social Change*, Vol. 22, n°4, 1995, pp. 339–360.

<sup>77</sup> OECD. *Op. cit.* 2005, p. 6.

<sup>78</sup> OECD. OECD Recommendation on Public Integrity. Paris: OECD Publishing, 2017, p. 3.

<sup>79</sup> Mark Philp defines political corruption as a situation whereby a public official (A), violates the rules and/or norms of office, to the detriment of the interests of the public (B) (or some sub- section thereof) who is the designated  
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### c) Conflict of interest regulation as a means to prevent political corruption

This dissertation does not seek to propose a new definition of political corruption or conflict of interest. Instead, it puts the ambiguity of these public problems at the heart of the analysis and provides insights into how public policy (temporarily and partially) resolve this ambiguity. By studying the ways in which policy actors choose to tackle the issue, one can learn about how corruption is understood in a specific place at a given point in time. Problem definition is politically contingent<sup>80</sup> and public policies contribute to define problems as they *represent* them in a particular way.<sup>81</sup> Considered transnationally, anti-corruption policies thus contribute to the re-interpretation of corruption by social actors, by working as vehicles of meaning to be translated into new contexts. This dissertation contributes to the scholarship on corruption by studying a certain kind of anti-corruption policy, namely conflict of interest regulation in parliaments, as a way to reveal how the meaning(s) of corruption evolved through actors' interactions across sectors, borders and levels of governance.

#### i) Conflict of interest regulation and corruption prevention

John Anderton: Why'd you catch that?  
Danny Witwer: Because it was going to fall.  
John Anderton: You're certain?  
Danny Witwer: Yeah.  
John Anderton: But it didn't fall. You caught it. The fact that you prevented it from happening doesn't change the fact that it was *going* to happen.  
(SPIELBERG, Steven. *Minority Report*. Dreamworks, 2002)

In the last three decades, the 'fight against corruption' has developed as a transnational policy field.<sup>82</sup> Governments and international institutions have sought to resolve the ambiguity of corruption by criminalising certain practices and placing them within the category labelled *corruption* (Chapter 5). The realisation of the effects of corruption, made visible by criminalisation, sparked

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beneficiary of that office, to benefit them- selves and a third party (C) who rewards or otherwise incentivises A to gain access to goods or services they would not otherwise obtain (PHILP, Mark. *Op. cit.* 2015, p. 22)

<sup>80</sup> HAY, Colin. Good in a crisis: the ontological institutionalism of social constructivism. *New Political Economy*, Vol. 21, n°6, 2016, pp. 520-535.

<sup>81</sup> BACCHI, Carol L. *Analysing Policy: What's the Problem Represented to be?* Frenchs Forest, N.S.W: Pearson, 2009; KINGDON, John W. *Agendas, Alternatives, and Public Policies*. Essex: Pearson 2d edition, 2014.

<sup>82</sup> COLE, Wade M. Institutionalizing a Global Anti-Corruption Regime: Perverse Effects on Country Outcomes, 1984–2012. *International Journal of Comparative Sociology*, Vol. 56, n° 1, 2015, pp. 53-80; HOUGH, Dan. *Corruption, Anti-Corruption and Governance*. Basingstoke: Palgrave Macmillan, 2013; SAMPSON, Steven. The anti-corruption industry: from movement to institution. *Global Crime*, Vol.11, n°2, 2010, pp. 261-278; SOUSA Luis de, LARMOUR, Peter and HINDESS, Barry. *Governments, NGOs and Anti-Corruption: The New Integrity Warriors*. London; New York, NY: Routledge, 2009.

the need for ‘upstream interventions’ through the preventive side of anti-corruption policy.<sup>83</sup> Solutions to prevent corruption have diversified, from broad institutional reform projects, such as the good governance agenda, to targeted policy tools, such as public interest registers and codes of conduct (object of this dissertation).

Conflict of interest regulation is a particularly interesting form of corruption prevention since it defines policy-makers’ private interests and activities as potential causes of political corruption to be regulated before the problem occurs.<sup>84</sup> As the above excerpt from Steven Spielberg’s popular film *Minority Report* (which explored the work of the ‘precrime’ police force who apprehend murderers before their crime) suggests (in a less dramatic way), regulating conflicts of interest not only prevents corruption but identifies situations that public officials can find themselves in which are considered problematic even *before* they act on them. Studying how conflicts of interest are regulated reveals how a particular society or institution conceives of the role of different interests in politics. In turn this is telling (partially at least) of what constitutes political corruption, as it identifies what practices and conduct are considered inappropriate and what interests are seen as posing a *risk* to the integrity of democratic decision-making.

## ii) Public interest registers and codes of conduct

Policy-makers contribute to define public problems through the thought process leading to the adoption of policy instruments that “[organise] specific social relations between the state and those it is addressed to, according to the representations and meanings it carries”.<sup>85</sup> Policy instruments are carriers of meaning, values and ideas that contribute to construct reality and, more specifically here, the definition of a public problem.<sup>86</sup> Policy instruments, in this light, combine a cognitive role, as they organise and categorise *reality*, and a normative role, as they define legitimate behaviour.<sup>87</sup>

This is particularly relevant with regards to anti-corruption policy, which defines new categories of deviant behaviour. Public interest registers and codes of conduct (described in detail

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<sup>83</sup> COOTE, Anna. *The Wisdom of Prevention*. London: New Economics Foundation, 2012; GOUGH, Ian. The Political Economy of Prevention. *British Journal of Political Science*, Vol. 45, n°2, 2015, pp. 307-327.

<sup>84</sup> COOTE, Anna. *The Wisdom of Prevention*. London: New Economics Foundation, 2012.

<sup>85</sup> LASCOUMES, Pierre and LE GALES, Patrick. Introduction: Understanding Public Policy through Its Instruments—From the Nature of Instruments to the Sociology of Public Policy Instrumentation. *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 20, n° 1, 2007; LE GALES, Patrick. Chapter 10: Policy Instruments and Governance. In BEVIR, Mark (ed.). *The SAGE Handbook of Governance*. London: SAGE Publications Ltd, 2011, pp. 142-143.

<sup>86</sup> BRAUN, Dietmar and CAPANO, Giliberto. *The Missing Link – Policy Ideas and Policy Instruments*. Prepared for the Workshop on “Ideas, Policy Design and Policy Instruments: Casting Light on the Missing Link”, European Consortium for Political Research, Munster, Germany, 2010.

<sup>87</sup> HALPERN, Charlotte, LASCOUMES, Pierre and LE GALES, Patrick (eds.) *Op. cit.* 2014, p. 38.

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in Chapter 1) are not neutral technical devices since they contribute to define what is considered acceptable or reprehensible, and what are deemed private interests susceptible to cause corruption. Codes of conduct (regulating officials' behaviour) and public interest registers (requiring them to disclose elements of their private life) thus (partially) resolve the ambiguity of what constitute and causes political corruption in the polities where they are adopted. Illustrating this with the case of Jean-Paul Delevoye, one can see that the introduction of interest declarations as a requirement for political actors made it possible to label his connections differently than would have been the case prior to the emergence of the notion of conflict of interest in French law.

Studying anti-corruption policies targeting parliamentarians as a means to preserve the integrity of policy-making is particularly interesting given the relatively limited policy-making power of individual parliamentarians.<sup>88</sup> While it is generally accepted that the level of regulation imposed on officials should depend on the level of their political power,<sup>89</sup> choosing instruments that impose regulations on elected officials with relatively limited *individual* power over laws (Chapter 9) forces one to look beyond policy-making as rational problem-solving exercise, to see what other factors encourage policy-makers to adopt such policy.

### iii) Policy convergence, instrument transfer and problem definition

If these instruments reveal how policy-makers have resolved the ambiguity of what is considered acceptable behaviour and 'risky' private interests for elected officials, studying their convergence shows how conceptions of political corruption grew increasingly similar as anti-corruption policies became the subject of greater attention. If policy solutions contain within them representations of the public problem, then the transfer of policy instruments across borders may serve to carry the definition of the problem into new political contexts. This dissertation is interested in how public interest registers and codes of conduct came to be adopted and, in the process, adapted in Great Britain, France, and Sweden, between the 1990s and the 2010s.<sup>90</sup> It seeks to understand how policy ideas spread across jurisdictions using instruments as vehicles and how they were transformed along the way as they were (re-)interpreted (and implemented) by social actors.

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<sup>88</sup> ARTER, David. Introduction: Comparing the legislative performance of legislatures. *The Journal of Legislative Studies*, Vol.12, n° 3-4, 2006, pp. 245-257.

<sup>89</sup> BOIS, Carol-Anne, PRESTON, Noel, and SAMPFORD, Charles J. G. *Ethics and Political Practice: Perspectives on Legislative Ethics*. London, Annandale: Routledge Federation Press, 1998.

<sup>90</sup> The British register of Members of Parliament's interests was introduced in 1974, as further described in Chapter 1. The analysis however focusses on the period that follows the internationalization of the policy field in the 1990s and on the international transfer of this policy instrument.

Research on conflict of interest regulation, and anti-corruption policy more broadly, has focussed either on its definition as a global problem and the development of international standards and norms,<sup>91</sup> or on policy-making at the national level (see below), offering a comparative perspective based on ‘methodological nationalism’.<sup>92</sup> I argue that by taking the transnational dimension of policy-making seriously we can gain insight into how ideas about corruption spread and how social actors resolve the ambiguity not in isolation but through interactions across jurisdictions, sectors and levels of governance. Existing studies have rather been concerned with the success or failure of conflict of interest regulation,<sup>93</sup> or in the ways interest declarations or codes of conducts are used in practice.<sup>94</sup>

There is quite an extensive research on conflict of interest regulation in legislatures, but it principally analyses the Anglosphere, with the United States as drawing most attention, followed by the United Kingdom, Canada, New Zealand and Australia.<sup>95</sup> Scholarship indeed developed first

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<sup>91</sup> WANG, Hongying and ROSENAU, James N. Transparency International and Corruption as an Issue of Global Governance. *Global Governance*, Vol.7, n° 1, 2001, pp. 25-49; JAKOBI, Anja. The changing global norm of anti-corruption: from bad business to bad government. *Zeitschrift für Vergleichende Politikwissenschaft*, Vol. 7, n°1, 2013, pp. 243–264; MARQUETTE, Heather. *Corruption, Politics and Development The Role of the World Bank*. London : Palgrave Macmillan UK, 2003; MARQUETTE, Heather. The Creeping Politicisation of the World Bank: The Case of Corruption. *Political Studies*. Vol.52, n° 3, 2004, pp. 413-430; JAKOBI, Anja P. *Common goods and evils? the formation of global crime governance*. Oxford: Oxford University Press, 2013; ROSE, Cecily. *International anti-corruption norms: their creation and influence on domestic legal systems*. First edition. Oxford: Oxford University Press, 2015; COOLEY, Alexander et J SHARMAN, Jason. Transnational Corruption and the Globalized Individual. *Perspectives on Politics*, Vol.15, n° 3, 2017, pp. 732-753; Hortense, JONGEN. The authority of peer reviews among states in the global governance of corruption. *Review of International Political Economy*, Vol.25, n° 6, 2018, pp. 909-935; LOHAUS, Mathis. *Towards a global consensus against corruption : international agreements as products of diffusion and signals of commitment*. London: Routledge, 2019; CARRARO, Valentina, CONZELMANN, Thomas and JONGEN, Hortense. Fears of peers? Explaining peer and public shaming in global governance. *Cooperation and Conflict*, Vol.54, n° 3, 2019, pp. 335-355; KATZAROVA, Elitza. *The social construction of global corruption: from utopia to neoliberalism*. Basingstoke, Hampshire: Palgrave Macmillan, 2019.

<sup>92</sup> GORE, Charles G. Methodological nationalism and the misunderstanding of East Asian industrialization. The European journal of development research: journal of the European Association of Development Research and Training Institutes (EADI), Vol. 8, n° 1, 1996, pp. 77-122; WIMMER, Andreas and GLICK SCHILLER, Nina. Methodological Nationalism, the Social Sciences, and the Study of Migration: An Essay in Historical Epistemology. *International Migration Review*, Vol. 37, n° 3, 2003, pp. 576-610; JEFFERY, Charlie and WINCOTT, Daniel. The challenge of territorial politics: beyond methodological nationalism. In HAY, Colin (ed.) *New directions in political science: responding to the challenges of an interdependent world*. Basingstoke, New York: Palgrave Macmillan, in association with the Political Studies Association, 2010; BOUSQUET, Antoine and CURTIS, Simon. Beyond models and metaphors: complexity theory, systems thinking and international relations. *Cambridge Review of International Affairs*, Vol. 24, n° 1, 2011, pp. 43-62; MOLONEY, Kim et STONE, Diane. Beyond the State: Global Policy and Transnational Administration. *International Review of Public Policy*, Vol. 1, n°1, 2019, pp. 104-118.

<sup>93</sup> GAY, Oonagh. Comparing Systems of Ethics Regulation. *Public Ethics and Governance: Standards and Practices in Comparative Perspective*, Vol. 14, 2006, pp. 93–107.

<sup>94</sup> PRESTON, Noel, SAMPFORD, Charles J.G. BOIS, Carol-Ann. *Ethics and political practice perspectives on legislative ethics*. London: Federation Press/Routledge, 1998; RUSH, Michael and GIDDINGS, Philip James. *Parliamentary socialization: Learning the ropes or determining behaviour?* Basingstoke: Palgrave Macmillan. 2011; van AAKEN, Anne and VOIGT, Stefan. Do Individual Disclosure Rules for Parliamentarians Improve Government Effectiveness. *Economic Governance*, Vol. 12, pp. 301–324; FRANÇOIS, Abel and PHELIPPEAU, Éric. *Op. cit.* 2018.

<sup>95</sup> MANCUSO, Maureen. *Op. cit.* 1995; PRESTON, Noel, SAMPFORD, Charles J.G. BOIS, Carol-Ann. *Ethics and political practice perspectives on legislative ethics*. London: Federation Press/Routledge, 1998; DAVIS, Michael and STARK, Andrew (eds.) *Op. cit.* 2001; GAY, Oonagh and LEOPOLD, Patricia M. *Op. cit.* 2004; SAINT-MARTIN, Denis. Path Dependence and Self-Reinforcing Processes in the Regulation of Ethics in Politics: Toward a Framework for Comparative Analysis. *International Public Management Journal*, Vol. 8, n°2, pp. 135-152; MAESSCHALCK, J., Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

in politics where conflict of interest regulation was first institutionalised (Chapter 2). In France, the study of conflict of interest regulation emerged in the 2010s and has so far been largely dominated by legal scholars,<sup>96</sup> with few contributions from other social scientists,<sup>97</sup> while in Sweden the field remains largely untouched, with the exception of Staffan Andersson's work on public administration.<sup>98</sup>

There is thus a need for research on conflict of interest regulation that offers a comparative perspective and stretches beyond the Anglosphere, to understand how the problem of managing and identifying conflicts of interest has been internationalised and how this has influenced local conceptions of political corruption. While the convergence of anti-corruption policy is sometimes taken for granted as a consequence of the emergence and promotion of international standards, scholars have also investigated the complexity of parliamentary ethics and the rationales behind different regulatory choices, typically through a historical institutional perspective, highlighting national differences.<sup>99</sup> These studies generate important findings showing how countries make

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HUBERTS, Leo and JURKIEWICZ, Carole (eds.) *Op. cit.* 2007; TROST, Christine and GASH, Alison L. (eds.) *Op. cit.* 2008; HINE, David and PEELE, Gillian. *The Regulation of Standards in British Public Life: Doing the Right Thing?* Manchester: Manchester University Press, 2016; SAINT-MARTIN, Denis. Chapitre 22. L'analyse institutionnelle comparée de l'éthique parlementaire. In ROZENBERG, Olivier and THIERS, Eric. *Traité d'Études Parlementaires*. Bruxelles: Editions Larcier, 2018.

<sup>96</sup> PRAT, Michel-Pierre and JANVIER, Cyril. Les conflits d'intérêts chez les élus. *Pouvoirs*, n° 147, 2014, pp. 53-64; Rebut, Didier. Les conflits d'intérêts et le droit pénal. *Pouvoirs*, n° 147, 2014, pp. 123-131; AUBY, Jean-Bernard, BREEN, Emmanuel and PERROUD, Thomas. *Corruption and Conflicts of Interest: A Comparative Law Approach*. Cheltenham: Edward Elgar, 2014; ROUX, Adrien. *La corruption internationale : essai sur la répression d'un phénomène transnational*. PhD thesis defended on December 7<sup>th</sup> 2016 at the University of Aix-Marseille, 2016; DECHAMBRE, Anaïs, JAN, Pascal, MAGNON, Xavier, MELIN-SOUCRAMANIEN, Ferdinand, PEYROUX-SISSOKO, Marie-Odile, REGOURD, Cécile, ROBLOT-TROIZIER, Agnès et al. *Transparence et vie publique*. Paris: Dalloz, 2015; KERLEO, Jean-François. Etat des lieux des déclarations déontologiques. *Revue française de droit administratif*, n° 3, 2018; Segonds, Marc. Les conflits d'intérêts en droit pénal... ou l'avenir du délit de prise illégale d'intérêts (art. 432-12C. pen.) In Hélène Simonian-Gineste (ed.). *La (dis)continuité en Droit*. Toulouse: Presses de l'Université Toulouse 1 Capitole, 2018, pp. 323-335; KERLEO, Jean-François, LEMAIRE, Elina and RAMBAUD Romain. *Transparence et déontologie parlementaires : bilan et perspectives [Actes du colloque de l'Observatoire de l'Éthique Publique et du projet ANR ELUAR, Octobre 2016, Paris]*. Bayonne: Institut Universitaire Varenne, 2019.

<sup>97</sup> LASCOUMES, Pierre *Une démocratie corrompible. Arrangements, favoritisme et conflits d'intérêts*. Paris: Seuil, 2011 ; MENY, Yves. De la confusion des intérêts au conflit d'intérêts. *Pouvoirs*, Vol. 147, n° 4, 2013, pp. 5-15; AUBY, Jean-Bernard, BREEN, Emmanuel and PERROUD, Thomas. *Op. cit.* 2014 ; FRANCE, Pierre and VAUCHEZ Antoine. *Sphère publique, intérêts privés : enquête sur un grand brouillage*. Paris: Presses de Sciences Po, 2017 ; FRANÇOIS, Abel and PHELIPPEAU, Éric. Paraître transparent ? Les usages des déclarations d'intérêts des maires des grandes villes françaises. *Revue française d'administration publique*, Vol.165, n° 1, 2018, pp. 79-94.

<sup>98</sup> ANDERSSON, Staffan and ANECHIARICO, Frank. The political economy of conflicts of interest in an era of public-private governance. In HEYWOOD Paul (ed.) *Routledge Handbook of Political Corruption*. Abingdon: New York: Routledge, 2015; ANDERSSON, Staffan and BROMANDER, Tobias. *Politiska entreprenörer, nätverk och intressekonflikter. Politiskt entreprenörskap: Den offentliga sektorns sätt att skapa bättre förutsättningar för entreprenörskap lokalt, regionalt och nationellt*. Stockholm: Santérus Förlag, 2015.

<sup>99</sup> ATKINSON, Michael M. and MANCUSO, Maureen. Conflict of Interest in Britain and the United States: An Institutional Argument. *Legislative Studies Quarterly*, Vol. 16, n°4, 1991, pp. 471-493; SAINT-MARTIN, Denis. Path Dependence and Self-Reinforcing Processes in the Regulation of Ethics in Politics: Toward a Framework for Comparative Analysis. *International Public Management Journal*, Vol. 8, n°2, 2005, pp. 135-152; GAY, Oonagh. Comparing Systems of Ethics Regulation. *Public Ethics and Governance: Standards and Practices in Comparative Perspective*, Vol. 14, 2006, pp. 93-107; BOLLEYER, Nicole and SMIRNOVA, Valeria. Parliamentary ethics regulation and trust in European democracies. *West European Politics*, Vol.40, n° 6, 2017, pp. 1218-1240; BOLLEYER, Nicole, Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

different regulatory choices, based on a process-tracing analysis. None of these studies challenges ‘methodological nationalism’ and, as a consequence, pay too little attention to the similarities of conflict of interest regulation across countries or to international sources of policy-making.

My research is based on two related observations: firstly, that conflict of interest regulation in the British, French and Swedish Parliaments are growing increasingly similar; and secondly, that, zooming in on instruments, these are actually implemented quite differently from one country to the other. Following recent research on public ethics policy studying international and national politics in dialogue,<sup>100</sup> I consider a multi-level transnational perspective as a relevant, and relatively new, way of analysing what I term the *divergent* convergence of anti-corruption policy in Europe. This dissertation complements this existing literature by applying this analytical framework to conflict of interest regulation in parliaments, taking into account both converging and diverging dimensions, as well as policy-making at national and international levels.

Moreover, existing studies have not paid enough attention to the norms and values embedded and reflected in instruments regulating conflict of interest. Policies are here considered to contribute to the construction of public problem and to help resolve the ambiguity of what constitutes political corruption and its causes. Thus, studying conflict of interest regulation in a transnational perspective, looking at the interactions between actors and institutions at the national and international level, across levels of governance and sectors of society, helps to identify both the domestic and international sources of problem definition. Actors do not resolve the ambiguity of what constitutes corruption in isolation. They do so intersubjectively through interactions within and outside national borders. Indeed, considering anti-corruption instruments as vehicles of meaning allows one to trace the journey of ideas about political corruption across jurisdictions, sectors and levels of governance.

To return to my initial example, the fact that the ‘affaire Delevoye’ was seen to arise from a conflict of interest was made possible by the transfer of instruments to regulate conflict of interest that carry ideas about the role of interests in democratic politics and creates new standards of official conduct. As the empirical chapters will show, it is the consequence of processes at the national level, but also abroad – particularly in the Anglosphere – where conflicts of interest have been a source of concern for much longer than in France, and at the international level where

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SMIRNOVA, Valeria, DI MASCIIO, Fabrizio and NATALINI, Alessandro. Conflict of interest regulation in European parliaments: Studying the evolution of complex regulatory regimes. *Regulation and Governance*, 2018, pp. 1-19;

<sup>100</sup> VARGOVČÍKOVÁ, Jana. Traduire la transparence aux niveaux nationaux. Le cas des réglementations du lobbying en Pologne et en République tchèque. *Politique européenne*, Vol. 61, n°3, 2018, pp. 44-77; SCAPIN, Thomas. *Op. cit.* 2019.

international institutions raised the issue on their agenda and contributed to define it. The adoption of disclosure obligations as a means to regulate conflicts of interest helped social actors resolve the ambiguity of Jean-Paul Delevoye's position, framing the situation as a potential threat to the integrity of his decisions regarding the pension reform.

This dissertation seeks to contribute to the literature on political corruption by investigating the transfer of two anti-corruption instruments (public interest registers and codes of conduct) as a way to understand how ideas about political corruption travel across borders and sectors, and are transformed along the way, as they are reinterpreted by policy actors in new institutional contexts. The following section presents the theoretical framework of the dissertation.

## II. Theoretical considerations: constructivist institutionalism and policy translation

What does translating mean? We would like the first, reassuring reply to be: 'say the same thing in another language'. Unfortunately, establishing what 'saying *the same* thing' means is highly problematic. We cannot be sure because of all the operations involved, namely paraphrasing, defining, explaining and rephrasing; let alone the claims of synonym replacement. Also looking at the text to be translated, we cannot tell what *the thing* is. Finally, sometimes we cannot even tell what *saying* is (...) This is the purpose of the following chapters: to try to find, knowing that we cannot ever say the same thing, how we can say *almost* the same thing. At this point, the interesting problem is no longer the conception of the same thing, not that of the thing itself. It is the conception of *almost*.

(Umberto Eco. *Dire quasi la stessa cosa. Esperienze di traduzione*. Milano: Bompiani, 2003, p. 9)<sup>101</sup>

### a) How ideas and institutions shape the politics of anti-corruption policy-making

Craig Parsons listed four logics of explanation in policy research: structural, institutional, ideational and psychological.<sup>102</sup> This dissertation focusses on the institutional and ideational explanatory factors of the divergent convergence of anti-corruption policy in Europe, both because of my theoretical inclination and because they effectively solve the research puzzle of the 'divergent convergence' of anti-corruption policy in Europe. As Parsons suggests, a researcher should start with their preferred logics of explanation before turning to others if necessary. This section

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<sup>101</sup> The translation of this excerpt from Umberto Eco's work is a combination of Yves Gambier, Miriam Shlesinger, Rade Gundis Stolze. *Doubts and Directions in Translation Studies: Selected Contributions from the EST Congress, Lisbon 2004*. John Benjamins Publishing, 2007, p. 16, and my own translation, the section (ironically) not having been included in the English translation of the original book.

<sup>102</sup> PARSONS, Craig. *How to map arguments in political science*. Oxford New York: Oxford University Press, 2007; BELAND, Daniel. *How Ideas and Institutions Shape the Politics of Public Policy. Elements in Public Policy*. Cambridge: Cambridge University Press, 2019.

presents what is meant by institutions and ideas, and makes the case for a constructivist institutionalist framework to understand the politics of policy-making in this policy field.

### i) Defining ideas and institutions

Of the four types of explanations proposed by Parsons, ideas and institutions are certainly the most closely connected, as they could be understood as existing along a continuum. While structural factors refer to the impact of external, exogenous ‘material’ elements on people’s action and psychological factors explain what people do as a function of “hard-wired features” of how people think that are common across humankind, institutional and ideational factors are concerned with the impact of man-made elements.<sup>103</sup> While radical constructivism might assume that there is no such thing as material exogenous factors since they matter only through interpretation, the argument here is rather one of degree. Structure should be understood as macro-level factors such as power distribution at the national or international level or the organisation of the economy. Institutional and ideational factors are more political in nature, as they recognise the agency of social actors, albeit to a different extent as agency is never absolute but constrained by the products of past power struggles and (inter-) subjective beliefs.<sup>104</sup>

It is nevertheless necessary to see them as distinct explanatory factors to take the *politics* of policy-making seriously. As Daniel Béland suitably puts it: “much of the politics of ideas in public policy is about transforming these ideas into embedded institutions”. Following Parsons’ typology of logics of explanations, institutional claims are logics of position, which explain actions by “detailing the landscape around someone”, while ideational claims are logics of interpretation, which explain actions through one’s “interpretation of what is possible and/or desirable”.<sup>105</sup> This dissertation argues that policy actors’ decisions and behaviour should be understood as resulting from the interactions of institutional and ideational claims, as constructivist institutionalists argue. The following paragraphs however continue to treat them separately, before I combine them in Section ii.

Ideas are socially and historically “constructed beliefs and perceptions of individual and collective actors”.<sup>106</sup> There are different types of ideas and thus types of ideational power. Following Peter Hall’s seminar work, various typologies of ideas have emerged that differentiate them by their

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<sup>103</sup> PARSONS, Craig. *Op. cit.* 2007, p. 12.

<sup>104</sup> BLYTH Mark, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century*. Cambridge, Cambridge University Press, 2002 ; HAY, Colin. Ideas and the Construction of Interests. In BÉLAND, Daniel and COX, Robert (eds.) *Ideas and Politics in Social Science Research*. New York: Oxford University Press, 2011.

<sup>105</sup> *Ibid.* p. 13.

<sup>106</sup> BELAND, Daniel. *Op. cit.* 2019, p. 4.

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scope. In short, the highest order of ideas, policy paradigms or public philosophies, are abstract conceptions regarding human nature, the role of the state, market and society.<sup>107</sup> This dissertation is only indirectly interested in these in so far as theories about human nature and the role of the state (public choice theory especially) or about political representation contribute to shape the definition of corruption and conflict of interest as public problems. Other types of ideas (of Hall's first and second order) are more concrete and narrower, such as problem definitions, policy alternatives, frames and narratives.<sup>108</sup> As suggested in Section I of this introduction, it is with these types of ideas and their influence over policy-making that this dissertation is concerned. Concretely, the inter-related ideas that are considered here are the belief that corruption is a problem of individual opportunity calculation, that political actors' private interests constitute a risk of corruption and that the problem can be solved by changing the incentives structure (through increased transparency and the codification of ethical values).

Institutions on the other hand are *embedded* rules.<sup>109</sup> *The Oxford Handbook of Political Institutions* defines an institution as "a relatively enduring collection of rules and organized practices, embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances".<sup>110</sup> What is meant by institutions varies significantly from one theoretical standpoint to the other, but some general criteria can be identified to understand institutions and differentiate them from ideas. Rules, practices, procedures and ideas need some degree of permanence to be understood as institutions. As suggested by the definition above, institutions are embedded in cognitive and material systems that (can) remain stable despite changes in the individuals giving institutions a 'reality' or changes in their preferences. This dissertation is inspired by constructivist institutionalists' broad conception of political institutions as "codified systems of ideas and the practices they sustain".<sup>111</sup> Political institutions, as conceived of here, range

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<sup>107</sup> HALL, Peter A. Policy paradigms, social learning and the state: The case of economic policymaking in Britain. *Comparative Politics*, Vol. 25, n°3, 1993, pp. 275–296; CAMPBELL, John L. *Institutional Change and Globalization*. Princeton: Princeton University Press, 2004; METHA, Jal. The varied roles of ideas in politics: From "whether" to "how." In BÉLAND, Daniel and COX, Robert (eds.) *Ideas and Politics in Social Science Research*. New York: Oxford University Press, 2011; BELAND, Daniel. *Op. cit.* 2019.

<sup>108</sup> *Ibid.*, SCHÖN, Donald A. and REIN, Martin. *Frame reflection: toward the resolution of intractable policy controversies*. New York : Basic Books, 1994; ROE Emery M. *Narrative policy analysis: theory and practice*. Durham, N.C : Duke University Press, 1994; JONES, Michael D. and RADAELLI, Claudio M. The narrative policy framework's call for interpretivists. *Critical Policy Studies*, Vol. 10, n° 1, 2016, pp. 117-120; VAN HULST, Merlijn and YANOW, Dvora. From Policy "Frames" to "Framing": Theorizing a More Dynamic, Political Approach. *The American Review of Public Administration*, vol.46, n° 1, 2016, pp. 92-112.

<sup>109</sup> BELAND, Daniel. *Op. cit.* 2019, p. 5.

<sup>110</sup> BINDER, Sarah A., RHODES, R. A. W., ROCKMAN, Bert A., MARCH, James G., and OLSEN, Johan P. Elaborating the "New Institutionalism". In *The Oxford Handbook of Political Institutions*. Oxford University Press, 2008.

<sup>111</sup> HAY, Colin. Constructivist Institutionalism. In BINDER, Sarah A., RHODES, R. A. W. and ROCKMAN, Bert A. *The Oxford Handbook of Political Institutions*. Oxford University Press, 2008, p. 60; HAY, Colin. *Op. cit.* 2011.

from formal rules such as constitutional design, political and electoral systems, organisational characteristics, routines and past policy choices, to conceptions of politics and of appropriate behaviour in the political sphere.

Ideas can be(come) institutions but not all ideas are institutions. Institutions have a more durable impact on political actors (enabling and constraining them), on political conflicts and the policy process than ideas. For instance, the idea of corruption as a problem of incentives structures or the idea of conflicts of interest as a risk of corruption have existence and impact on their own. They however only become institutionalised when they shape policy and influence sustained practices. Ideas can be institutionalised as broad policy programmes and as policy instruments, defined by Patrick Le Galès and Pierre Lascombes as “a device that is both technical and social, that organizes specific social relations between the state and those it is addressed to, according to the representations and meanings it carries”.<sup>112</sup> Policy instruments are thus not neutral technical devices; they are vehicles of meaning. It is thus possible to study ideas through policy instruments that make the ‘recipes’ of policies visible and allow one to trace change.<sup>113</sup> When institutionalised, ideas start to shape people’s behaviour (and thus political competition and the policy process) in a different way.<sup>114</sup>

This dissertation is interested in the politics of ideas in anti-corruption policy-making, but also in the role of (international and national) institutions in shaping the process of convergence. More specifically, it seeks to understand the transformation of ideas about political corruption risks into embedded institutions in the form of policy instruments to regulate conflict of interest in Britain, France and Sweden.

## ii) Analysing the politics of policy-making through a constructivist institutionalist lens

The object of this research is the journey of an idea towards cross-border institutionalisation. Considering political corruption as a public problem and not as an age-old fact of life inevitably makes ideational dimensions central to the analysis. The policy changes and the policy-making process that the dissertation is interested in are indeed best understood by combining ideational and institutional logics of explanation. The conceptions of ideas and institutions presented above

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<sup>112</sup> LASCOUMES, Pierre and LE GALES, Patrick. Introduction: Understanding Public Policy through Its Instruments—From the Nature of Instruments to the Sociology of Public Policy Instrumentation. *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 20, n° 1, 2007; LE GALES, Patrick. Chapter 10: Policy Instruments and Governance. In BEVIR, Mark (ed.). *The SAGE Handbook of Governance*. London: SAGE Publications Ltd, 2011, pp. 142-143.

<sup>113</sup> *Ibid.*

<sup>114</sup> PARSONS, Craig. *Op. cit.* 2007.

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easily lend themselves to be considered in interaction or even as interdependent elements. Studying policy change comparatively makes it particularly relevant to analyse both logics in interaction. Ideas, constructed intersubjectively and promoted by policy actors, indeed do not ‘float freely’, but are shaped by the institutional context in which policy actors are embedded and are transformed as they are taken up and reinterpreted by other actors in other institutional contexts.

Accounting for the institutional framework shaping the policy process is necessary to understand how policy actors promoting change (or resisting it) are constrained or enabled. The policy process is thus most often not the outcome of rational policy-makers using all available information to solve a well-defined problem, but the result of policy-makers and their intermediaries working under pressure, often in situations of uncertainty, to respond to (what they perceive as) a changing context. Beyond the constraining and enabling features of institutions on policy actors, institutionalist theory (especially its historical branch) takes temporality and timing seriously when analysing institutional change. On the one hand, it is interested in the long-term process of reform through its *sequences* rather than one-off events.<sup>115</sup> This is an appropriate framework for the study of the adoption and reformulation of anti-corruption policies, that I operationalise using a process-tracing method outlined in the methodological section.

As this dissertation seeks to understand the processes that led to a divergent convergence of anti-corruption policy in Europe, constructivist institutionalism appears as a relevant analytical framework that combines the explanatory power of (new) ideas to understand policy change (towards convergence) and a consideration for the constraining, enabling and ultimately transformative role of political institutions for the institutionalisation of new ideas.<sup>116</sup> Promoters of this fourth institutionalism argue that it is better placed than its theoretical siblings to explain institutional and policy change, since it pays closer attention to post-formative institutional developments.<sup>117</sup> Importantly, constructivist institutionalism endogenises change. Through its consideration for actors’ interactions and the intersubjective construction of meaning to bring

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<sup>115</sup> BEZES, Philippe and PALIER, Bruno. Le concept de trajectoire de réformes Comment retracer le processus de transformation des institutions. *Revue française de science politique*, Vol. 68, n°6, 2018, pp. 1083-1112.

<sup>116</sup> In 1996, Peter A. Hall and Rosemary Taylor identified three schools of new institutionalism, namely (i) a historical institutionalism (HI), paying close attention to past decisions and the paths they trace; (ii) a rational-choice institutionalism (RC), focussing on strategic interactions among actors; and (iii) a sociological institutionalism (SI), putting social norms, culture and symbols centre stage (HALL, Peter A. and TAYLOR, Rosemary C. R. Political Science and the Three New Institutionalisms. *Political Studies*. XLIV, 1996, pp. 936-957). This dissertation uses the framework proposed by the newest new institutionalism which pays a closer attention to the role of ideas and discourse to understand post-formative institutional change (SCHMIDT, Vivien A. Discursive Institutionalism: The Explanatory Power of Ideas and Discourse. *Annual Review of Political Science*. Vol. 11, 2008, pp. 303-326; HAY, Colin. *Op. cit.* 2008; SCHMIDT, Vivien A. Taking ideas and discourse seriously: explaining change through discursive institutionalism as the fourth ‘new institutionalism’. *European Political Science Review*, Vol. 2, n°1, 2010; HAY, Colin. *Op. cit.* 2016).

<sup>117</sup> HAY, Colin. *Op. cit.* 2008, p. 60.

about policy change, it offers a different, more political perspective on actors' agency than other institutionalisms. Actors' normative and cognitive frames (their "background ideational abilities") progressively evolve notably through their "foreground discursive abilities"<sup>118</sup>, stimulated through exchanges with others and confrontation with alternative ideas, especially in moments of uncertainty. It takes policy actors' preferences and strategies seriously and sheds light on changes in their normative orientations.<sup>119</sup>

Considering *how* ideas matter requires a broad view of power, similar to Steven Lukes' three-dimensional conception of power which includes Robert Dahl's direct decision-making power,<sup>120</sup> Peter Bachrach and Morton Baratz' indirect agenda-setting power,<sup>121</sup> to which he adds the influence on or over others' preferences.<sup>122</sup> From these conceptions of power, Colin Hay suggests that power should be understood both as *conduct*-shaping and as *context*-shaping, and thus defined as "the ability of actors (individual or collective) to 'have an effect' upon the context which defines the range of possibilities of others".<sup>123</sup> Starting from this broad conception of power, Martin Carstensen and Vivien Schmidt's three types of ideational power will serve to illustrate the power dynamics within this policy field: power *through* ideas (actors' use of persuasion, reasoning and argumentation), power *over* ideas (actors' capacity to impose or resist ideas as function of their position) and power *in* ideas (authority of certain idea that resonate with existing systems of knowledge and institutions).<sup>124</sup> Carstensen and Schmidt's typology clarifies the specificity of constructivist institutionalism and the interaction of ideas and institutions as conceived of in this dissertation that analyses the power of an idea (the prevention of corruption through changes to the incentive structure), promoted by structurally powerful actors and actors constructing their authority through their cognitive resources (NGOs, international bureaucracies, experts), who persuade others through the use of ideational elements (knowledge, frames, discourse). Ideas are thus considered through their relation to institutions, since actors' access to resources (material and immaterial), the resonance and acceptability of ideas and venues of negotiations are dependent on political institutions.

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<sup>118</sup> SCHMIDT, Vivien A. *Op. cit.* 2010.

<sup>119</sup> SCHMIDT, Vivien A. *Op. cit.* 2010.

<sup>120</sup> DAHL, Robert A. The concept of power. *Behavioral Science*, Vol. 3, n°3, 1957, pp. 201-215.

<sup>121</sup> BACHRACH, Peter and BARATZ, Morton S. Two faces of power. *American Political Science Review*, Vol. 56, 1962, pp. 947-952.

<sup>122</sup> LUKES, Steven. *Power: a Radical View*. Basingstoke: MacMillan, 1974; HAY, Colin. *Op. cit.* 2002, p. 171-193.

<sup>123</sup> HAY, Colin. *Op. cit.* 2002, p. 185.

<sup>124</sup> CARSTENSEN, Martin B. and SCHMIDT, Vivien A. Power through, over and in ideas: conceptualizing ideational power in discursive institutionalism. *Journal of European Public Policy*, Vol. 23, n°3, 2016, pp. 318-337.

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### iii) Understanding institutions beyond national borders

Institutionalist theory generally pays little attention to transnational actors and processes.<sup>125</sup> Constructivist institutionalism, with its focus on ideas, might be a more flexible framework to extend the analysis beyond ‘methodological nationalism’. Ideas are indeed particularly important when considering multi-level transnational policy processes,<sup>126</sup> as international and transnational actors do not enjoy the traditional authority of national governments. Cognitive authority and power *through* ideas play a particularly important role when considering policy-making beyond national borders.

Scandinavian institutionalism, another branch of the new (constructivist) institutionalism interested in comparative analysis, has bridged the ideational and material aspects of public policy, arguing that ideas need to be materialised into objects to travel across borders.<sup>127</sup> This dissertation, interested in how ideas travel across borders to be institutionalised in new jurisdictions, borrows this useful framework to study policy ideas empirically through their material expression in policy instruments (here registers and codes). As such, policy instruments are considered as vehicles of meaning that carry ideas about what political corruption is and what causes it, and more indirectly about the political order and human nature. Instruments are thus deeply normative, under their clothes of neutral technicity. A focus on the international transfer of policy instruments brings a new perspective to constructivist institutionalism, by suggesting that the causality relation is not unidimensional and can be reversed, instruments travelling across borders and bringing a new set of political ideas and values with them.<sup>128</sup>

A comparative policy analysis requires one to consider that societies are not “hermetically sealed containers but rather open systems where flows of capital, labour, ideas, technologies (...) are the norm”.<sup>129</sup> While considering institutions through their local specificities, this theoretical framework recognises their embeddedness in wider international systems and the related interconnectedness of societies. Moreover, institutions should also be understood as existing outside of national borders. As new cross-border problems emerge, international institutions multiply, in the form of intergovernmental organisations, international civil society organisations,

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<sup>125</sup> BELAND, Daniel. *Op. cit.* 2019, p. 26.

<sup>126</sup> The introduction returns to this and what it means in Section b.

<sup>127</sup> CZARNIAWSKA-JOERGES Barbara, and SEVÓN Guje. Translation is a vehicle, imitation its motor, and fashion sits at the wheel. In CZARNIAWSKA-JOERGES Barbara, and SEVÓN Guje (eds.) *Global ideas: How ideas, objects and practices travel in the global economy*. Malmö: Liber & Copenhagen Business School Press, 2005.

<sup>128</sup> MUSSELIN, Christine. *The Role of Ideas in the Emergence of Convergent Higher Education Policies in Europe: The Case of France*. Working Paper Series n° 73, Center for European Studies, Harvard University, 2000; HALPERN, Charlotte, LASCOUMES, Pierre and LE GALES, Patrick (eds.) *Op. cit.* 2014.

<sup>129</sup> MORGAN, Glenn, CAMPBELL, John L., CROUCH, Colin, PEDERSEN, Ove Kaj, and WHITLEY, Richard. Introduction. In *The Oxford Handbook of Comparative Institutional Analysis*. Oxford University Press, 2010.

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think tanks or expert networks.<sup>130</sup> This engages a discussion about the willingness and capacity of policy-makers to comply with international norms, since different governments do not react to such pressure in the same manner.<sup>131</sup> Changes outside national boundaries should thus be included in the sequencing of events that led to the (differentiated) adoption of conflict of interest regulation in the three countries.<sup>132</sup>

Using the theoretical toolbox of institutionalism in a rather unorthodox way, I suggest that the concept of path dependence can apply to transnational policy-making. As national policy-makers are constrained by institutions, values and beliefs, so are policy-makers and intermediaries within international organisations. The latter develop policy-relevant knowledge and set international standards based on institutional memory, rules and practices. The increased institutionalisation and integration of global policy-making can thus lead to international norms against corruption becoming path dependent.<sup>133</sup> As Pierre-Yves Saunier has noted, many historical institutionalists observe an international circulation of norms, ideas or policies but only mention them in passing instead of considering them as part of the path to trace.<sup>134</sup> Institutional theory should thus consider institutions as possibly being interconnected across borders but also as existing beyond national jurisdictions. A focus on ideational factors certainly allows for such a change of perspective.

## **b) Using policy translation to understand divergent convergence**

Institutionalist scholars tend to focus their analysis on national institutions and policy processes. They are thus well equipped to explain cross-national differences between public policies by the variations in how political power is structured and how problems have been understood and solved at the national level. Path dependence, a notion central to historical institutionalism, is

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<sup>130</sup> STONE, Diane, and MOLONEY, Kim. The Rise of Global Policy and Transnational Administration. In *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.

<sup>131</sup> HAY, Colin. *Op. cit.* 2004.

<sup>132</sup> ABBOTT, Andrew and DEVINEY, Stanley. The Welfare State as Transnational Event: Evidence from Sequences of Policy Adoption. *Social Science History*, Vol. 16, n°2, 1992, pp. 245-274.

<sup>133</sup> BUKOVANSKY, Mlada. The hollowness of anti-corruption discourse. *Review of International Political Economy*, Vol. 13, n°2, 2006; SAMPSON, Steven. The anti-corruption industry: from movement to institution. *Global Crime*, Vol. 11, n°2, 2010, pp. 261-278; KEOHANE, Robert O. Observations on the Promise and Pitfalls of Historical Institutionalism. In FIORETOS, Orfeo. *International Politics and Institutions in Time*. Oxford University Press, 2017.

<sup>134</sup> SAUNIER, Pierre-Yves. Les régimes circulatoires du domaine social 1800-1940 : projets et ingénierie de la convergence et de la différence. *Genèses*, Vol. 71, n°2, 2008, pp. 4-25, writing about RUESCHEMEYER, Dietrich and SKOCPOL, Theda (eds.) *States, Social Knowledge and the Origins of Social Policies*. New York: Princeton University Press/Russell Sage Foundation, 1996.

particularly useful to understand national policy continuity, with the assumption that past choices limit the possibilities available to policy-makers in the future.<sup>135</sup>

The dissertation seeks to build a theoretical framework that can elucidate the ‘divergent convergence’ of conflict of interest regulation, thus paying close attention also to factors that explain convergence. While “[policy] hybrids are the rule”<sup>136</sup> rather than the exception, scholars have so far focussed either on converging policy dimensions and their explanatory factors or on explaining differences, against proponents of hyperglobalisation and mechanistic assumptions of convergence.<sup>137</sup> The emerging literature on policy translation offer the framework for understanding both convergence and divergence, simultaneously.

### i) Understanding convergence

The initial motivation of my research was to understand the *convergence* of anti-corruption policy in Britain, France and Sweden, a phenomenon often taken for granted, as a result of the construction of an international anti-corruption regime.<sup>138</sup> An attentive comparative study however shows that the situation, unsurprisingly, is more complex than such statements suggest. Policy convergence is the process of *becoming* more alike over time. Convergence has been used to mean a varieties of things, and here it describes a dynamic process of alignment of public policies across countries, which can touch on various dimensions of a public policy.<sup>139</sup> Policy convergence might concern at least one of seven things: (i) a cognitive convergence or convergence of policy goals and paradigm; (ii) a convergence of input; (iii) a convergence of policy content and norms; (iv) a convergence of policy instruments; (v) a convergence of institutions and actors; (vi) convergence of policy outcomes or effects related to the implementation of the policy; and lastly (vii) a

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<sup>135</sup> STEINMO, Sven, THELEN, Kathleen Ann and LONGSTRETH, Frank (eds.) *Structuring Politics: Historical Institutionalism in Comparative Analysis*. Cambridge: Cambridge University Press, 1992; PIERSON, Paul. *Politics in Time: History, Institutions, and Social Analysis*. Princeton N.J.: Princeton University Press, 2004; STREECK, Wolfgang and THELEN, Kathleen Ann (eds.) *Beyond Continuity: Institutional Change in Advanced Political Economies*. Oxford: Oxford University Press, 2005.

<sup>136</sup> MARSH, David and EVANS, Mark. Policy transfer: coming of age and learning from the experience. *Policy Studies*, Vol. 22, n°6, 2012, pp. 477-481.

<sup>137</sup> HAY, Colin. Common Trajectories, Variable Paces, Divergent Outcomes? Models of European Capitalism under Conditions of Complex Economic Interdependence. *Review of International Political Economy*, Vol. 11, n° 2, 2004, pp. 231-262; STONE, Diane. Transfer and Translation of Policy. *Policy Studies*, Vol. 33, n° 6, 2012, pp. 483-499.

<sup>138</sup> DE SOUSA, Luís. Anti-Corruption Agencies: Between Empowerment and Irrelevance. *Crime, Law and Social Change*, Vol. 53, n°1, 2010, pp. 5-22; MUNGIU-PIPPIDI, Alina. *The Quest for Good Governance: How Societies Develop Control of Corruption*. Cambridge University Press. 2015; COLE, Wade M. Institutionalizing a Global Anti-Corruption Regime: Perverse Effects on Country Outcomes, 1984–2012. *International Journal of Comparative Sociology*, Vol. 56, n° 1, 2015, pp. 53–80.

<sup>139</sup> HAY, Colin. *Op. cit.* 2004, p. 244; KNILL, Christoph. Introduction: Cross-national policy convergence: concepts, approaches and explanatory factors. *Journal of European Public Policy*, 2005, vol. 12, n°5, p. 764; HASSENTEUFEL, Patrick. Convergence. In BOUSSAGUET Laurie et al., *Dictionnaire des politiques publiques*. Presses de Sciences Po (P.F.N.S.P.), 2019, p. 177-185.

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convergence of policy style.<sup>140</sup> Here again, looking at instruments rather than policy programmes uncovers new aspects of policy change and, in a comparative perspective, other dimensions of convergence. In the case of conflict of interest regulation in Britain, France and Sweden, it made it clear that this is a case of convergence of instruments, while their implementation resulted in a divergence of regulatory practices, as I detail in Chapter 1. While initially analysing the convergence of conflict of interest regulation, the focus on the formulation and implementation of public interest registers and codes of conduct revealed a more complex picture that included diverging elements. In a multi-level study, a focus on instruments allows for a fine-grained analysis of diffusion, transfer and hybridisation.<sup>141</sup>

Considering policy convergence as the dependent variable, scholars have sought to explain what causes policies in different countries to grow more alike. Acknowledging that the hyperglobalisation thesis is too simplistic and mechanistic,<sup>142</sup> they identify at least six main factors explaining convergence: (i) emulation, (ii) transnational communication/communities, (iii) international harmonisation, (iv) regulatory competition, (v) parallel problem-solving and (vi) imposition.<sup>143</sup> Identifying which of these factors explain the convergence of anti-corruption policies in Europe will occupy the empirical chapters of the dissertation. It is necessary at this point to clarify where the dissertation stands on the issue of structural versus agential factors of convergence. None of these explanatory factors are purely agent-centred or structure-centred. To differentiate them simply, processes suggesting of policy diffusion (harmonisation, regulatory competition...) posit that policy convergence happens by osmosis or contagion,<sup>144</sup> while those that assume policies are transferred rather emphasise agential forces (transnational communication, parallel problem-solving). While paying attention to the institutional and cognitive structures that

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<sup>140</sup> BENNETT, Colin J. What is policy convergence and what causes it? *British Journal of Political Science*, Vol. 21, n°2, 1991a, p. 218; HAY, Colin. *Op. cit.* 2004, p. 245; BOUSSAGUET, Laurie. *La pédophilie, problème public. France, Belgique, Angleterre*. Paris: Dalloz, 2008; HASSENTEUFEL, Patrick. *Op. cit.* 2019.

<sup>141</sup> TREIB, Olivier, BÄHR, Holger and FALKNER, Gerda. Modes of Governance: Towards a Conceptual Clarification. *Journal of European Public Policy*, Vol. 14, n° 1, 2007, pp. 1-20; KASSIM, Hussein and LE GALÈS, Patrick. Governing the European Union: Policy Instruments in a Multi-Level Polity. *West European Politics*, Vol. 33, n°1, 2010, pp. 1-170; HALPERN, Charlotte and LE GALÈS, Patrick. Pas d'Action Publique Autonome Sans Instruments Propres. *Revue française de science politique*, Vol. 61, n° 1, 2011, pp. 51-78 ; DUMOULIN, Laurence and SAURUGGER, Sabine. Les policy transfer studies : analyse critique et perspectives. *Critique internationale*, Vol. 48, n° 3, 2010, pp. 9-24.

<sup>142</sup> HAY, Colin. *Op. cit.* 2004 ; LEVI-FAUR, David and JORDANA, Jacint. Regulatory Capitalism: Policy Irritants and Convergent Divergence. *Annals of the American Academy of Political and Social Science*, 2005, vol. 598, p. 191-197.

<sup>143</sup> BENNETT, Colin J. What is policy convergence and what causes it? *British Journal of Political Science*, Vol. 21, n°2, 1991a, pp. 215-233; HOLZINGER, Katharina and KNILL, Christoph. Causes and conditions of cross-national policy convergence. *Journal of European Public Policy*, Vol. 12, n°5, 2005, pp. 775-796; HASSENTEUFEL, Patrick. Convergence. In BOUSSAGUET, Laurie (ed.) *Dictionnaire des politiques publiques 4<sup>e</sup> édition*. Paris: Presses de Sciences Po. 2014, pp. 180-188.

<sup>144</sup> STONE, Diane. *Op. cit.* 2012.



individual and collective actors are embedded in, the dissertation affords them some agency over the policy-making process and consider that they (can) mediate structural forces.<sup>145</sup>

The transfer of policies has attracted extensive scholarly attention over the last decades. It is generally understood as the process of knowledge about policy in one time/place being used in the development of policy in another time/place.<sup>146</sup> In their seminal article, David Dolowitz and David Marsh sketched a framework for analysing policy transfer, asking a number of questions that guide this research: Who transfers policy? Why engage in policy transfer? What is transferred? From where are lessons drawn? What are the different degrees of transfer? What restricts or facilitates the policy transfer process?<sup>147</sup> Starting from the observation that conflict of interest regulation converges across European countries on the instruments adopted, the dissertation is of course interested in how policy instruments are transferred. It is however relevant to this analysis to consider the transfer of ideas as well, although as presented above, these elements might not always be easy to study separate from one another. Considering policy-making at multiple levels, the dissertation looks beyond national borders to identify the actors involved in policy transfer and the sources of policy knowledge. It thus considers the role of international organisations, civil society networks and (academic) experts in shaping the mechanisms and necessary conditions for the transfer of public interest registers and codes of conduct. Looking beyond peer-to-peer exchanges between government officials poses the question of why actors, on the exporting and importing side, engage in transfer quite in a different manner, since voluntary or coercive transfer might manifest itself differently and be understood differently by different actors. A social constructivist perspective, taking the role of ideas seriously, might thus be particularly helpful to rethink the central notions of the policy transfer literature and identify the mechanisms through which public interests registers and codes of conduct travelled across governance levels and jurisdictions.<sup>148</sup>

While the instruments of the policies grow similar, the implementation of these anti-corruption policies in Britain, France and Sweden suggests a divergence in how conflicts of interest are regulated in practice. Research has acknowledged the need to consider ‘policy irritants’ rather than ‘transplants’ the outcome of policy transfers not necessarily being complete repulsion or

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<sup>145</sup> *Ibid.*

<sup>146</sup> DOLOWITZ, David and MARSH, David. Who Learns What from Whom: a Review of the Policy Transfer Literature. *Political Studies*, Vol. XLIV, 1996, pp. 343-357.

<sup>147</sup> DOLOWITZ, David and MARSH, David. Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making. *Governance: An International Journal of Policy and Administration*, Vol. 13, n° 1, 2000, pp. 5-24; BENSON, David and JORDAN, Andrew. What Have We Learned from Policy Transfer Research? Dolowitz and Marsh Revisited. *Political Studies Review*, Vol. 9, n° 3, 2011, pp. 366-378.

<sup>148</sup> BENSON, David and JORDAN, Andrew. *Op. cit.* 2011; STONE, Diane. *Op. cit.* 2012; DELCOUR, Laura and TULMETS, Elsa. *Policy Transfer and Norm Circulation: Towards an Interdisciplinary and Comparative Approach*. New York: Routledge, 2019.

integration.<sup>149</sup> As Cornel Ban metaphorically puts it, “rather than a mass-produced (...) off-the-rack ideological suit, neoliberalism [here anti-corruption policy] is a bespoke outfit made from a dynamic fabric that absorbs local colour”.<sup>150</sup> Policy translation helps us understand the role of ‘local colour’ in transforming imported ideas.

## ii) Understanding ‘divergent convergence’

Policy *translation* allows us to reconcile the study of global diffusion of public policy and attention to the stickiness of national institutions – thus bridging two theoretical traditions conventionally conceived as opposed. As Patrick Hassenteufel and Jacques de Maillard argue, these two theoretical schools do not truly pose the question of policy convergence, the first presuming an automatic convergence as a result of global dynamics, while the other tends to deny changes of external origins and prefers to search for factors making national trajectories unique.<sup>151</sup> Translation suggests a “move away from thinking of knowledge transfer as a form of technology transfer or dissemination, rejecting, if only by implication, its mechanistic assumptions and its model of linear messaging from A to B”.<sup>152</sup> It differs from transfer mainly because it takes interest in the distortion and recreation of ideas as they travel.<sup>153</sup> It also takes the complexity of convergence seriously and helps us understand how policies can converge across countries, while displaying domestic features or developing context-specific traits over time.

What is meant by policy translation? For Patrick Hassenteufel et al., policy translation corresponds to the “process of reformulation of policy problems, orientations and proposals in a different language and context”<sup>154</sup>, as a “cognitive process re-creating a model and resulting from negotiations among different policy actors”.<sup>155</sup> Our approach to policy translation is also close to Farhad Mukhtarov’s definition:

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<sup>149</sup> HAY, Colin. *Op. cit.* 2004; LEVI-FAUR, David and JORDANA, Jacint. *Op. cit.* 2005; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. *Op. cit.* 2013.

<sup>150</sup> BAN, Cornel. *Rulin Ideas. How Global Neoliberalism Goes Local*. Oxford: Oxford University Press, 2016, p. 5.

<sup>151</sup> HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. Convergence, transferts et traduction. Les apports de la comparaison transnationale. *Gouvernement et Action Publique*, Vol. 3, n° 3, 2013, pp. 377-393.

<sup>152</sup> FREEMAN, Richard. What is translation? *Evidence & policy: a journal of research, debate and practice*, Vol. 5, n° 4, 2009, p. 429.

<sup>153</sup> LENDVAI, Noémi and STUBBS, Paul. Policies as translation: situating transnational social policies. In HODGSON, Susan H. and IRVING, Zoë (ed.) *Policy reconsidered Meaning, politics and practices*. Bristol: The Policy Press. 2007, pp. 173-189; STONE, Diane. *Op. cit.* 2012.

<sup>154</sup> HASSENTEUFEL, Patrick, BENAMOUZIG, Daniel, MINONZIO, Jérôme and ROBELET, Magali. Policy Diffusion and Translation The Case of Evidence-based Health Agencies in Europe. *Novos Estudos CEBRAP*, Vol. 36, n°1, 2017, p. 81.

<sup>155</sup> HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. *Op. cit.* 2013, p. 377, translated by DELCOUR, Laura and TULMETS, Elsa. *Policy Transfer and Norm Circulation: Towards an Interdisciplinary and Comparative Approach*. New York: Routledge, 2019, p. 7.

Policy translation can be defined as the process of modification of policy ideas and creation of new meanings and designs in the process of the cross-jurisdictional travel of policy ideas. Translation allows viewing the ‘global’ in ‘local’, and ‘local’ in ‘global’, with regard to the adoption, implementation and travel of ideas, and enables simultaneous consideration of ideas, objects and interests.<sup>156</sup>

Policy translation is ultimately about the process of transforming and adapting policy ideas while importing or exporting them. It is a metaphor that contains the idea of connecting separate worlds and transferring meaning. Used in the social sciences, policy translation can constitute a bridge within political science and with other social sciences. In a written exchange following the publication of David Benson and Andrew Jordan’s 2011 article “Dolowitz and Marsh Revisited” in which the authors encourage scholars to move beyond the traditional focus on national government and to adopt a constructivist perspective to consider *softer* forms of transfer,<sup>157</sup> Eugene McCann and Kevin Ward, both geographers, argue that disciplines outside political science had engaged in such discussions for years, having reinterpreted the notion of policy transfer as mobility, assemblages or mutation.<sup>158</sup> David Marsh and Mark Evans, in turn, respond to the latter highlighting the move towards a consideration of the transnational dimension of policy and the recognition that “copying is the exception; hybrids are the rule”.<sup>159</sup> Laura Delcour and Elsa Tulmets identify this compartmentalised and fragmented development of the literature on policy transfer.<sup>160</sup> Policy translation constitutes a bridge between different disciplines interested in policy, since it departs from the traditional focus on the nation-state and takes the mobility of ideas, instruments and actors seriously.

Through its interest in the transnational dimension of public policy, it is also a bridge within the discipline of political science, and especially between public policy analysis and international relations. Moving beyond the old methodological nationalism or Westphalian grammar, as Diane Stone and Kim Moloney put it,<sup>161</sup> public policy scholars have looked towards the research fields traditionally associated with international relations scholarship (IR), such as international institutions, global governance or the construction and diffusion of international norms, to better

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<sup>156</sup> MUKTHAROV, Farhad. Rethinking the travel of ideas: policy translation in the water sector. *Policy & Politics*, Vol. 42, n° 1, 2020, p. 76.

<sup>157</sup> BENSON, David and JORDAN, Andrew. What Have We Learned from Policy Transfer Research? Dolowitz and Marsh Revisited. *Political Studies Review*, Vol. 9, n° 3, 2011, pp. 366–378.

<sup>158</sup> McCANN, Eugene and WARD, Kevin. Policy Assemblages, Mobilities and Mutations: Toward a Multidisciplinary Conversation. *Political Studies Review*, Vol. 10, pp. 325–332.

<sup>159</sup> MARSH, David and EVANS, Mark. Policy transfer: coming of age and learning from the experience. *Policy Studies*, Vol. 22, n°6, 2012, pp. 477–481.

<sup>160</sup> DELCOUR, Laura and TULMETS, Elsa. Policy Transfer and Norm Circulation: Towards an Interdisciplinary and Comparative Approach. New York: Routledge, 2019.

<sup>161</sup> STONE, Diane and MOLONEY, Kim. *Op. cit.* 2019.

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understand policy-making in an interconnected world.<sup>162</sup> Combining IR and public policy analysis helps us learn about policy actors beyond the national borders, as it normalises international organisations and transnational non-state actors as policy-makers and sites of policy-making, in the vein of research on global policy-making, seeing them as brokers, mediators and sometimes creators of public policy.<sup>163</sup>

Transnationalisation does not equate globalisation, and policy translation is a response, *inter alia*, to the criticism of a scholarship that overestimates the influence of globalisation and sees the international diffusion of policy as automatic, with the character of what is transferred essentially conserved.<sup>164</sup> This perspective allows one to unpack the process of convergence of anti-corruption policy that is all too often assumed or taken for granted. Policy translation enables a fine-grained analysis of the mechanisms and processes that lead to the ‘divergent convergence’ of conflict of interest regulation for parliamentarians across Europe. Considering public policy transnationally indeed means moving away from a consideration of states (as units of analysis) as holistic entities, and instead considering them as constructed in interaction and/or in opposition to one another.<sup>165</sup> It also means that, while acknowledging that social actors are embedded in national institutions that shape their worldview and agency, they can also be embedded in other *transnational* institutions, such as professional or expert networks, thematic coalitions or international organisations, which also shape their cognitive and political resources. I return to the transnational dimension in the section exposing the methodology of the dissertation below.

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<sup>162</sup> DELCOUR, Laure and TULMETS, Elsa (ed.) *Policy Transfer and Norm Circulation Towards an Interdisciplinary and Comparative Approach*. New York: Routledge, 2019; SKOGSTAD, Grace (ed.) *Policy Paradigms, Transnationalism and Domestic Politics*. Toronto: University of Toronto Press, 2011.

<sup>163</sup> BÖRZEL, Tanja and RISSE, Thomas. Conceptualizing the Domestic Impact of Europe. In FEATHERSTONE, Keith and RADAELLI, Claudio M. (eds.) *The Politics of Europeanization*. Oxford: Oxford University Press, 2003, pp. 57-80; SMITH, Andy. How the WTO Matters to Industry: The Case of Scotch Whisky. *International Political Sociology*, Vol. 3, n°2, 2009, pp. 176-193; WOLL, Cornelia and JACQUOT, Sophie. Using Europe: Strategic Action in Multi-Level Politics. *Comparative European Politics*, Vol. 8, n°1, 2010, pp. 110-126; NAY, Olivier and PETITTEVILLE Franck. Éléments pour une sociologie du changement dans les organisations internationales. *Critique internationale*, Vol. 53, 2011, pp. 9-20; SAURUGGER, Sabine. Europeanization in Times of Crisis. *Political Studies Review*, Vol. 12, n°2, 2014, pp. 181-192; COMAN, Ramona, KOSTERA, Thomas and TOMINI, Luca (eds.) *Europeanization and European Integration: From Incremental to Structural Change*. Basingstoke: Palgrave-Macmillan, 2014; ADLER-NISSEN, Rebecca. Towards a practice turn in EU studies: the everyday of European integration. *JCMS: Journal of Common Market Studies*, Vol. 54, n°1, 2016, pp. 87-103; FIORETOS, Karl-Orfeo (ed.) *International Politics and Institutions in Time*. Oxford: Oxford University Press, 2017; KNILL, Christoph and BAUER, Michael W. Policy-making by international public administrations: concepts, causes and consequences. *Journal of European Public Policy*, Vol. 23, n°7, 2016, pp. 949-959; PETITTEVILLE Franck. International Organizations Beyond Depoliticized Governance. *Globalizations*, Vol. 15, n°3, 2018, pp. 301-313; STONE, Diane and MOLONEY, Kim. *Op. cit.* 2019.

<sup>164</sup> HALL, Peter A. and SOSKICE, David (eds) *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford: Oxford University Press, 2001; HAY, Colin et WINCOTT, Daniel. The Political Economy of European Welfare Capitalism. Basingstoke: Palgrave-Macmillan, 2012; HAY, Colin. Globalization and its Impact on States. In RAVENHILL, John (ed.) *Global Political Economy*. Oxford: Oxford University Press, 2016, pp. 287-316.

<sup>165</sup> SAUNIER, Pierre-Yves. Les régimes circulatoires du domaine social 1800-1940 : projets et ingénierie de la convergence et de la différence. *Genèses*, Vol. 71, n°2, 2008, pp. 4-25.

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Interactions between actors (individual or collective) across levels of governance, institutions, sectors and national borders are thus central to the study of policy translation. Hassenteufel et al., who have operationalised the analytical translation framework, see three main dimensions that ought to be included in such a study:<sup>166</sup>

- i. The discursive dimension pays close attention to ideas, argumentation, frames and interpretation. The subsequent empirical chapters look at the role of language and framing in changing not only the meaning of policy ideas. Conflict of interests, corruption and integrity are translated between national languages but also to “policy English”<sup>167</sup>, as John Clarke puts it, which dominates transnational policy networks and is thus an interesting site of variation and neutralisation.
- ii. The actors’ dimension identifies supporters and opponents, as well as their mobilisation and interactions. Ideas do not ‘float freely’<sup>168</sup> and one ought to understand who carries them, where they take them, what other ideas they encounter and what they do with them. Choosing policy translation implies identifying translators – individuals or organisations – and understand their role in making policy ideas acceptable. It ‘makes visible’ the work of ‘brokers’, ‘mediators’, “agents who mediate languages, contexts, sites and levels”.<sup>169</sup> One should thus pay attention to importers and exporters, as well as to strategic entrepreneurs as well as more *passive* intermediaries, who can all play a role in interpreting ideas through their own perspective and experience.
- iii. Lastly, the institutional dimension takes into account the institutional context, power dynamics and implementation capacities. Policy ideas and instruments indeed have to adapt both to the polity’s institutional framework, with its representations and political myths, as well as to policy trajectory that previous governments already embarked on.

This thesis contributes to this emerging literature by identifying various levels of translation. It looks, quite conventionally, at the interactions of actors across national borders (between Britain, France and Sweden),<sup>170</sup> but it highlights the importance of mediation by international institutions and transnational actors. While studying the role played by international organisations, transnational NGOs and think tanks or professional networks in domestic policy-making is nothing new,<sup>171</sup> the dissertation offers a reading of translation as a form of bottom-up/top-down

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<sup>166</sup> HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. *Op. cit.* 2013; HASSENTEUFEL, Patrick, BENAMOUZIG, Daniel, MINONZIO, Jérôme and ROBELET, Magali. *Op. cit.* 2017, pp. 81-82.

<sup>167</sup> CLARKE, John. What’s culture got to do with it. Paper presented to the Research Seminar “Anthropological Approaches to Studying Welfare” University of Aarhus, 2005, cited in LENDVAI, Noémi and STUBBS, Paul. *Op. cit.* 2007, p. 178.

<sup>168</sup> RISSE-KAPEN, Thomas. Ideas do not float freely: transnational coalitions, domestic structures, and the end of the cold war. *International Organization*, Vol. 48, n° 2, 1994, pp. 185-214.

<sup>169</sup> CLARKE, John. *Op. cit.* 2005, p. 8; NAY, Olivier and SMITH, Andy (eds.) *Le gouvernement du compromis. Courtiers et généralistes dans l’action publique*. Paris: Economica, 2002.

<sup>170</sup> HASSENTEUFEL, Patrick, BENAMOUZIG, Daniel, MINONZIO, Jérôme and ROBELET, Magali. *Op. cit.* 2017.

<sup>171</sup> CAIRNEY, Paul. The role of ideas in policy transfer: the case of UK smoking bans since devolution. *Journal of European Public Policy*, Vol. 16, n°3, 2009, pp. 471-488; STONE, Diane. *Op. cit.* 2012; CLAVIER, Carole. Les causes locales de la convergence La réception des transferts transnationaux en santé publique. *Gouvernement et action publique*, Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

transfer, a two-way process. It indeed looks at the domestic translation of international norms, but it also unpacks the translation of policies regulating conflicts of interest (in the Anglosphere) into an anti-corruption policy promoted by international organisations, thus highlighting the importance of translation from the national to the international level (from the Anglosphere to international organisations), as well as between international actors (inter alia OECD, United Nations, Council of Europe, Transparency International).

### III. Research questions, expectations and objectives

Based on the current state of the literature and the theoretical framework presented above, this section now turns directly to the questions that my dissertation seeks to answer. I categorise my research questions into three groups. The main questions are empirical, and concern the problem of political corruption and the convergence of anti-corruption policy. Other questions are more theoretical and touch, on the one hand, on the study of transnational policy-making, and on the link between the ideational and material dimensions of the public policy, on the other.

The object of the dissertation is the ‘divergent convergence’ of conflict of interest regulation, whereby Britain, France and Sweden came to adopt similar policy instruments to regulate conflicts of interest (public interest registers and codes of conduct) while developing diverging regulatory practices in implementing the instruments so differently. The central research questions are thus:

- i. How did conflicts of interest emerge as a public problem in Great Britain, France and Sweden? How come the three countries adopted the same policy instruments to regulate parliamentarians’ conflicts of interest despite the differences between their political systems, institutions and context?
- ii. How did the three countries develop such different regulatory practices despite having adopted the same instruments?

Based on the literature on policy convergence and transfer, I expect that policy convergence is the result of some form of external pressure for policy change (the nature of which will be the subject of the empirical chapters) and that the internationalisation of the policy field will have had an effect on all countries, albeit to different degrees and in different ways. Paying attention to the temporal dimension of policy-making and to the sequential adoption of the policy instruments in the three countries, one can expect that international pressure will have affected early adopters less than those joining the bandwagon of reform at a later stage. While ideational perspectives on policy

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Vol. 3, n°3, 2013, pp. 395-413; SMITH, Andy. Transferts institutionnels et politiques de concurrence Les cas communautaire, français et britannique. *Gouvernement et action publique*, Vol. 3, n°3, 2013, pp. 415-440 ; BACHE, Ian and REARDON, Louise. An Idea Whose Time has Come? Explaining the Rise of Well-Being in British Politics. *Political Studies*, Vol. 61, n°4, 2013, pp. 898-914; LOVELL, Heather. The role of international policy transfer within the multiple streams approach: the case of smart electricity metering in Australia. *Public Administration*, Vol. 94, n° 3, 2016, pp. 754-768.

transfer focus on the social construction of problems to understand what determines the origin and type of policy solutions transferred, others seeing that ideas need to be materialised in objects (or instruments) to be transferred make it harder to propose a hypothesis as to the order of the transfer process, which I will study inductively. Based on existing studies using the concept of policy translation, I expect individual and collective domestic actors to mediate the external pressure to adopt anti-corruption policies and to reinterpret policy ideas to make them fit national institutions, while their level of agency to do so would be determined by the context in which ideas are transferred and policy instruments adopted.

- iii. How should we study policy-making in a growingly independent world? How do national actors use foreign knowledge and ideas? What is the role of international/transnational actors in policy-making? Through which mechanisms do public and private international actors influence policy-making?

Challenging both the traditional institutional literature that tends to overestimate national specificities and scholarship that, on the contrary, presupposes the effect of exogenous pressure, this dissertation wonders how one can acknowledge the interactions between international and national politics and policy and how social scientists should study transnational policy-making. Following recent efforts to combine the various sub-disciplines of political science to adapt existing tools to contemporary policy-making, it seeks to understand how policy ideas and norms circulate across jurisdictions, sectors and governance levels. It therefore wishes to identify policy actors beyond national boundaries, understand the mechanisms through which they transfer policy ideas and consider power beyond the traditional focus of state actors and coercion.

- iv. How do ideas matter for policy-making? How can we bridge together ideational and material dimensions in understanding and explaining public policy?

My last investigation is situated in between a theoretical and a methodological reflexion, and concerns mainly the way in which ideas can be studied within political science and how they can be shown to ‘matter’ in the generation of policy outcomes and political effects. The theoretical framework indeed combines constructivist institutionalism, which is based on an *ideational* approach to the political world, and an instrument-based perspective, which is typically assumed to take the opposite stance in looking at the *material* dimension of politics and policy. This dissertation is thus interested in the causal direction of ideas and instruments: can – and indeed, does – the adoption of new instruments precede the diffusion of new ideas? As the empirical chapters will show, the process of institutionalising ideas about political corruption through designing new policy instruments did not follow the same path in the three countries. In countries importing policy for abroad, the instruments functioned as vehicles of meaning, transferring ideas

about politics and corruption that might not have been present or at least as influential before. On a methodological level, this poses the question of the way in which ideas can be studied and I argue that it is possible to study the travel of ideas through an interest in the mobility of policy instruments. Criticised for being overly interested in the material aspects of policy and reifying institutions,<sup>172</sup> an instrument-centred approach detached from a functionalist perspective can actually be useful for constructivists interested in the circulation of ideas and norms, even if only as a means to collect empirical material.

#### IV. A qualitative approach to the transfer and translation of policy

Having presented the main questions that guide the analysis, this section presents the methodological choices that inform the dissertation's research design. Building on the theoretical preferences outlined above, it presents the methods that I thought most appropriate to understand how two specific policy instruments came to be adopted in countries faced with fairly different political systems and within different contexts, and how these instruments adapted to the local contexts leading to diverging outcomes.

Approaching policy analysis through the angle of instruments has methodological benefits, as instruments offer a *concrete* object to analyse and from which to suggest broader conclusions about the policy field, on the one hand, and about the policy-making process in a multi-level context, on the other. In this Section, I present how I apply an inductive process-tracing approach to the study of anti-corruption policy using methods borrowed from geographers and urban scholars who *follow the policy* to analyse the circulation of knowledge and ideas (4.1). As suggested in the theoretical section, this research favours transnational comparison over a more traditional international comparison, as it is interested in the interactions of actors across jurisdictional boundaries and in policy-making sites that exist outside of these borders (4.2). It then presents the empirical data on which the study is based as well as the way it was collected and used (4.3). Lastly, it explores some of the challenges that I was faced with, which relates to the researcher's position vis-à-vis the topic and her critical reflexivity (4.4).

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<sup>172</sup> BENAMOUZIG, Daniel. Des idées pour l'action publique Instruments ou motifs cognitifs ? In HALPERN, Charlotte, LASCOUTES, Pierre and LE GALES, Patrick (eds.) *L'instrumentation de l'action publique Controverses, résistances et effets*. Paris: Presses de Sciences Po, 2014, pp. 95-118; BAUDOT, Pierre-Yves. Le temps des instruments Pour une socio-histoire des instruments d'action publique. In HALPERN, Charlotte, LASCOUTES, Pierre and LE GALES, Patrick (eds.) *L'instrumentation de l'action publique Controverses, résistances et effets*. Paris: Presses de Sciences Po, 2014, pp. 193-236.



## **a) Tracing processes and following instruments**

### **i) Considering time through inductive process-tracing**

This dissertation is interested in the process of policy change overtime, seeking to shed light on anti-corruption reforms in several European countries. A diachronic analysis thus seems the most appropriate method to allow one to *trace* the process and seek causal explanation for the convergence and divergence of countries' reform trajectories.<sup>173</sup> Using a metaphor not of roads and paths but of visual media, Colin Hay explains the comparative benefit of the approach:

If the synchronic approach is analogous to the taking of a photograph at a particular instant and the comparative static approach to the taking of photographs at different points in time, the diachronic approach is the equivalent of a video 'panning' shot which follows the motion of the object in question.<sup>174</sup>

Process-tracing, as the preferred method for scholars of the new institutionalist persuasion, is thus a good fit to operationalise our theoretical framework. Constructivist institutionalists focus on processes of change and innovation overtime, accounting for institutional change, the context in which it happens and the institutionally embedded actors and ideas that favour this change. Colin Hay suggests that process-tracing is the most appropriate method for research projects using a constructivist institutional framework.<sup>175</sup>

More specifically, this dissertation uses the (growing) scholarship of process-tracing to construct its research design. After four decades of use, several approaches to process-tracing have emerged, inductive and theory-building or deductive and theory-testing, using probabilistic or deterministic ontologies.<sup>176</sup> This study makes use of inductive process-tracing, which seeks to deliver a long-term perspective on policy change. It takes temporality and the sequencing of events seriously, starting with observations to identify causal mechanisms. Inductive process-tracing is one of the most appropriate methods to employ in studies theoretically based within constructivist institutionalism, since neither institutional equilibrium nor actors' interests are presupposed.

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<sup>173</sup> TRAMPUSCH, Christine and PALIER, Bruno. Between X and Y: how process tracing contributes to opening the black box of causality. *New Political Economy*, Vol. 21, n° 5, 2016, pp. 437-454; BEACH, Derek. It's all about mechanisms – what process-tracing case studies should be tracing. *New Political Economy*, Vol.21 n° 5, 2016, pp. 463-472; BEACH, Derek and BRUN PEDERSEN, Rasmus. Selecting Appropriate Cases When Tracing Causal Mechanisms. *Sociological Methods & Research*, Vol.47 n° 4, 2018, pp. 837-871; BEACH, Derek. Process-Tracing Methods in Social Science. *Oxford Research Encyclopedia of Politics*. Oxford University Press, 2017.

<sup>174</sup> HAY, Colin. *Op. cit.* 2002, p. 149.

<sup>175</sup> HAY, Colin. *Op. cit.* 2008.

<sup>176</sup> TRAMPUSCH, Christine and PALIER, Bruno. *Op. cit.* 2016.

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Considering institutional dynamics and policy change as political and contingent required one to identify explanatory factors from studying the empirical material and elucidate them along the way.

Practically, I started from the current state of affairs, in other words the policy instruments as implemented in the three cases when the study started in 2015, and worked backwards to identify the events that had led to their implementation. It is inductive because it used empirical observations to trace the process of reform from outcome to triggers. However, as Bruno Palier and Christine Trampusch argue, this does not consist of “naïve observations of empirical events”.<sup>177</sup> Indeed, despite its name, inductive process-tracing remains informed by theory, not the least because the researcher’s prior knowledge and theoretical leaning will guide her empirical observations (see Section IV.d.). Within the framework of this research, Allen Jacobs approach of ideational process-tracing is particularly useful. He suggests should follow gauge ideational influence by analysing the paths of ideational diffusion, in three steps identifying (i) the origins of ideas; (ii) the transmission of ideas across actors, and (iii) the movement of ideational “carriers” across institutional settings.<sup>178</sup> The more appropriate term for the analytical process might be ‘abductive’ process-tracing, borrowing from interpretivists’ abductive reasoning which suggests that the researcher continuously goes back and forth between empirical materials and theoretical literature, learning about her research question while conducting the research and adapting the research design (and where to trace the process in this case) in light of field realities.<sup>179</sup>

## ii) Tracing processes by following instruments

Tracing processes of change is not a straightforward exercise. As Hay, in his conclusion to a special issue on process-tracing, notes “process tracing is, and still remains, a very considerable methodological challenge. For identifying, let alone tracing, processes is not easy”.<sup>180</sup> I attempt to solve the challenge of identifying the process by using a method employed by urban studies scholars interested in policy mobility, who found inspiration in multi-sited ethnography. George E. Marcus proposed several ways in which scholars could construct multi-sited ethnographies, including ‘following the thing’.<sup>181</sup> Along these lines, Janine Wedel et al. suggest that scholars should take *policy*

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<sup>177</sup> *Ibid.* p. 445.

<sup>178</sup> JACOBS, Alan, M. Process tracing the effects of ideas. In BENNETT, Andrew and CHECKEL, Jeffrey (eds.) *Process Tracing From Metaphor to Analytic Tool*. Cambridge: Cambridge University Press, 2015.

<sup>179</sup> SCHWARTZ-SHEA, Peregrine and YANOW, Dvora. *Interpretive Research Design. Concepts and Processes*. Abingdon, New York: Routledge, 2012, pp. 27-34.

<sup>180</sup> HAY, Colin. Process tracing: a laudable aim or a high-tariff methodology? *New Political Economy*, Vol. 21, n° 5, 2016, p. 500.

<sup>181</sup> MARCUS, George E. Ethnography in/of The World System: The Emergence of Multi-Sited Ethnography. *Annual Review of Anthropology*, Vol. 24, 1995, pp. 95-117.

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as the object of analysis, and “[follow] the source of a policy – its discourses, prescriptions, and programs – through to those affected by the policy”.<sup>182</sup>

Borrowing from geographers and urban scholars interested in policy mobility and the increased pace of international circulation of policies, what they call “fast policy”,<sup>183</sup> I trace the circulation and transformation of ideas about political corruption and integrity by following two policy instruments, public interest registers and codes of conduct, along their journey across jurisdictional boundaries and levels of governance. As Astrid Wood presents it, this method allows one to “track the interactions between actors and institutions across space and time (...) retroactively from the adoption process back to the initial learning.”<sup>184</sup> In doing so, I work backwards from the current implementation of conflict of interest regulation in Britain, France and Sweden, described in Chapter 1, to “[trace] (...) the places [the] policy has travelled through and interrogating how the policy has mutated or been transformed along the way”.<sup>185</sup>

Following the policy is indeed an appropriate method for analysing the translation of policy since, as suggested by the last quote, scholars applying this method are particularly attentive to the mutation, transformation or translation of the policy as it moves across institutions and polities. Indeed, policy ideas and instruments do not “[transit] intact between jurisdictions” but are transformed as they are transferred.<sup>186</sup> It requires the researcher to pay attention to actors who make the circulation of ideas possible, the institutions in which they are embedded and the context in which the circulation takes place, and the way they transform policy along the way. Moreover, these methodological indications guide the collection of the empirical data. Indeed, following policies points to key informants, documents and archives as well as the most important sites and events. It allows us to identify the translators and sites of translations along the journey of the policy.

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<sup>182</sup> WEDEL, Janine R., SHORE, Cris, FELDMAN, Gregory and LATHROP, Stacy. Toward an Anthropology of Public Policy. *The Annals of the American Academy of Political and Social Science*, Vol. 600, The Use and Usefulness of the Social Sciences: Achievements, Disappointments, and Promise, 2005, p. 40.

<sup>183</sup> PECK, Jamie. Geographies of Policy: From Transfer-Diffusion to Mobility-Mutation. *Progress in Human Geography*, Vol. 35, n° 6, 2011, pp. 773-797; McCANN, Eugene and WARD, Kevin. Assembling urbanism: following policies and ‘studying through’ the sites and situations of policy making. *Environment and Planning A*, Vol. 44, 2012, pp. 42-51; PECK, Jamie and THEODORE, Nik. Follow the Policy: A Distended Case Approach. *Environment and Planning A*, Vol. 44, n°1, 2012, pp. 21-30; PECK, Jamie and THEODORE, Nik. *Fast Policy: Experimental Statecraft at the Thresholds of Neoliberalism*. Minneapolis, London: University of Minnesota Press, 2015.

<sup>184</sup> WOOD, Astrid. Tracing Policy Movements: Methods for Studying Learning and Policy Circulation. *Environment and Planning A: Economy and Space*, Vol. 48, n° 2, 2016, p. 395.

<sup>185</sup> McCANN, Eugene and WARD, Kevin. *Op. cit.* 2012, p. 46.

<sup>186</sup> CZARNIAWSKA-JOERGES, Barbara and SEVÓN Guje. *Translating Organizational Change*. New York, Berlin: Walter de Gruyter, 1996; PEDERSEN, Lene Holm. Ideas are transformed as they transfer: a comparative study of eco-taxation in Scandinavia. *Journal of European Public Policy*, Vol.14, n°1, 2007, pp. 59-77.

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## **b) Considering space, tracing process across borders**

Comparative studies have become common in public policy analysis, almost to the point of being the norm rather than the exception. For deductive approaches, comparison is one of the principle means of testing theoretically-informed hypotheses. For scholars using an inductive methodology, comparison is a way to “decentre” one’s perspective from what is familiar and appears obvious. My interest in conflict of interest regulation came both from my professional experience<sup>187</sup> and from the tide of reforms that overtook France in 2013. Confronting what I knew about corruption prevention and conflicts of interest with the British and the Swedish case allowed me to question my assumptions and refine my understanding of the problem and the policy field.

As Laurie Boussaguet and Patrick Hassenteufel suggest, the question to ask oneself is not anymore ‘why compare’ but ‘how to compare’.<sup>188</sup> This section challenges the prevailing “methodological nationalism”.<sup>189</sup> It thus makes the case for a move from traditional international comparison to transnational comparison, which is more aligned with the objective of an inquiry into factors of convergence and divergence (Section IV.b.i). There is nevertheless a component of international comparison in the analysis and this section thus also serves to justify my case selection (Section IV.b.ii).

### **i) The case for a ‘transnational’ comparison**

This dissertation is interested in understanding the divergent convergence of anti-corruption policy in Britain, France and Sweden. While international comparison serves the purpose of acknowledging convergence and divergence, by shedding light on differences and similarities overtime, understanding the phenomenon requires one to approach comparison transnationally.<sup>190</sup>

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<sup>187</sup> I present a summary of reflexive consideration, detailing my position as an embedded research and the possible biases that stem from it in Section 4.4.

<sup>188</sup> HASSENTEUFEL, Patrick. De la comparaison internationale à la comparaison transnationale. Le déplacement de la construction d’objets comparatifs en matière de politiques publiques. *Revue française de science politique*, Vol. 55, n°1, 2005, p. 114 ; BOUSSAGUET, Laurie. *La Pédophilie, Problème Public. France, Belgique, Angleterre*. Paris: Dalloz, 2008, p. 47-48.

<sup>189</sup> GORE, Charles G. Methodological nationalism and the misunderstanding of East Asian industrialization. *The European journal of development research: journal of the European Association of Development Research and Training Institutes (EADI)*, Vol. 8, n° 1, 1996, pp. 77-122; WIMMER, Andreas and GLICK SCHILLER, Nina. Methodological Nationalism, the Social Sciences, and the Study of Migration: An Essay in Historical Epistemology. *International Migration Review*, Vol. 37, n° 3, 2003, pp. 576-610; JEFFERY, Charlie and WINCOTT, Daniel. The challenge of territorial politics: beyond methodological nationalism. In HAY, Colin (ed.) *New directions in political science: responding to the challenges of an interdependent world*. Basingstoke, New York: Palgrave Macmillan, in association with the Political Studies Association, 2010; BOUSQUET, Antoine and CURTIS, Simon. *Beyond models and metaphors: complexity theory, systems thinking and international relations*. Cambridge Review of International Affairs, Vol. 24, n° 1, 2011, pp. 43-62; MOLONEY, Kim et STONE, Diane. *Beyond the State: Global Policy and Transnational Administration*. *International Review of Public Policy*, Vol.1, n°1, 2019, pp. 104-118.

<sup>190</sup> HASSENTEUFEL, Patrick. *Op. cit.* 2005 ; ENGELI, Isabelle and ROTHMAYR, Allison Christine. *Comparative policy studies: conceptual and methodological challenges*. Basingstoke, GB: Palgrave Macmillan, 2014.  
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Transnational comparison starts from the assumption that “national entities (...) should not be seen as closed off (as they are in international comparisons)”. Thus, one needs to consider “how they are affected by supranational processes and how they interact with one another”.<sup>191</sup> Inspired by the tradition of *histoire croisée* which looks at the interactions between societies and their interwoven history, transnational comparison sees the *transnational* not as a « supplementary level that comes in addition to the local, regional and national (...) [but as] as level that is made out of the interactions with the former”.<sup>192</sup> Transnational comparison pays close attention to the interactions and interdependence between national phenomena, as well as to the actors that cannot be considered as belonging solely to a national context and operate across countries and levels of governance, such as international bureaucracies, international NGOs, think tanks, academics, experts and multinational companies.<sup>193</sup> Daniel Béland argues that a more systematic consideration of transnational actors and their interactions with domestic actors improves comparative policy analysis and complements existing theories that have, so far, only paid limited attention to this dimension of the policy process.<sup>194</sup>

Adapting process-tracing to this transnational perspective means considering the influence of actors and events outside the domestic realm, within other countries and at the international or supranational level, as well as national policy-makers’ interactions with their peers abroad, through bilateral exchange or multilateral networks. This dissertation gives a rather unusual spin to process-tracing by taking it beyond national borders. Process-tracing is conventionally used in case studies and seen as a tool for within-case analysis. Scholars however use it comparative settings as well, most often to generalise findings.<sup>195</sup> Against their observation that process-tracers’ “aim is seldom comparison between cases”, Bo Bengtsson and Hannu Ruonavaara introduced comparative process-tracing, understood as “a two-step methodological approach that combines theory, chronology, and comparison”,<sup>196</sup> introducing the spatial dimension in the framework.

As mentioned already, even inductive process-tracing is theoretically informed, and the object of this study as well as our analytical intuition leans towards rejecting methodological

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<sup>191</sup> HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. *Op. cit.* 2013, p. 380.

<sup>192</sup> WERNER, Michael and ZIMMERMANN, Bénédicte. Penser l'histoire croisée: entre empirie et réflexivité. *Annales. Histoire, Sciences Sociales*, Vol. 58, n° 1, 2003, pp. 22-23.

<sup>193</sup> STONE, Diane. Transfer Agents and Global Networks in the “Transnationalization” of Policy. *Journal of European Public Policy*, Vol. 11, n° 3, 2004, pp. 545–66; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. *Op. cit.* 2013.

<sup>194</sup> BÉLAND, Daniel. *Op. cit.* 2019, p. 26 ; WEIBLE, Christopher M. and SABATIER, Paul A. (eds.). *Theories of the Policy Process*, 4th edn., Boulder: Westview, 2018.

<sup>195</sup> BEACH, Derek. Process-Tracing Methods in Social Science. *Oxford Research Encyclopedia of Politics*. Oxford University Press, 2017.

<sup>196</sup> BENGTSSON, Bo and RUONAVAARA, Hannu. Comparative Process Tracing: Making Historical Comparison Structured and Focused. *Philosophy of the Social Sciences*, Vol. 47, n°1, 2017, p. 45.

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nationalism. If so, our use of process-tracing needs to be adjusted accordingly since it proves limiting to consider events within national borders to the *exclusion* of what happened in other countries or at other levels of governance. Tracing the process of reform in France, Sweden and the United Kingdom thus takes into account events that happen outside domestic borders. If one takes the idea of internationalisation of problems and policies seriously, the sequence of events is necessarily a transnational one. Thus, policy developments in country A may very well have a significant impact on policy-making in country B. Moreover, I take the role of international organisations and transnational networks and actors seriously. Hence, policy developments in country A might be consequential for policy-making at the international and transnational level, and subsequently have an impact on policy-making in country C. The objective of transnational comparison is not to replace international comparison but to complement it with the consideration of new actors and events that do not fit the conventional levels of analysis, but also with an account of the interactions between levels of policy-making.<sup>197</sup> Tracing the reform process backwards, I find that one cannot understand developments in this policy field with an analytical frame prisoner to national borders. Zooming out, and combining national events and actors with developments abroad provides a fuller and more accurate picture of how public interest registers and codes of conduct came to be adopted and adapted in Britain, France and Sweden.

## ii) Case selection

A transnational multi-level comparison requires one to select cases at both the national and the international level. In the following paragraphs, I will expose the reasons that led me to choose Britain, France and Sweden as country cases and how I selected the international organisations to analyse. Given the type of questions that the dissertation seeks to answer and the transnational multi-level nature of the analysis, I opted for a small-N design to investigate the policy-making processes in depth. Transnational comparison does not study the cases in isolation from each other but, on the contrary, it explores the interactions between them, which renders the discussion of most-different (MDSD) or most-similar research (MSSD) design less crucial with regards to the choice of country cases.<sup>198</sup> Stating that this dissertation follows one or the other design is actually not straightforward, given that they share similarities while also being quite different both in general terms (see table 1) and with regards to conflict of interest regulation. Indeed, the three countries

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<sup>197</sup> WERNER, Michaël and ZIMMERMANN, Bénédicte. *Op. cit.* 2003; HASSENTEUFEL, Patrick. *Op. cit.* 2005; INFANTINO, Federica. *Schengen Visa Implementation and Transnational Policymaking: Bordering Europe*. Berlin: Springer, 2019, p. 233.

<sup>198</sup> MILLS, Albert J., DUREPOS, Gabrielle and WIEBE, Elden. *Encyclopedia of Case Study Research*. Thousand Oaks, CA: SAGE Publications, Inc., 2010.

had adopted similar policies, including the interest declaration obligations and codes of conduct that we analyse here, but they had done so at different moments in time and they implement them quite differently.

Table 1. Characteristics of the country cases

	<b>Great Britain</b>	<b>France</b>	<b>Sweden</b>
Political system	Parliamentary monarchy	Semi-presidential	Parliamentary monarchy
Electoral system (lower house)	First-past-the-post	Two-round system	Proportional
State-society relations <sup>199</sup>	Pluralistic	Antagonistic	Organicist
Trust in parliament <sup>200</sup>	37%	25%	60%
Trust in politicians <sup>201</sup>	10% (very low and declining)	21,5% (low and declining)	38% (moderate and relatively stable)
Level of perceived integrity <sup>202</sup>	77/100	69/100	85/100
‘World of compliance’ (to international norms) <sup>203</sup>	Domestic politics	Transposition neglect	Law observant

The two are of course not unrelated, as we will see in Part Three of the dissertation especially. In terms of more general differences between the countries, I found it interesting to compare three countries that have a different political history, and in which parliamentarians play quite a different role and have a different level of political influence. Focusing on parliamentarians is indeed interesting when studying policies against political corruption, since it is generally accepted that the level of control over the conduct and personal life of officials depend on the level of their political power.<sup>204</sup> Thus the ‘Mezey question’ matters since an increased control of parliamentarians’ connections and interests, as a way to safeguard the integrity of political decision-making, suggests

<sup>199</sup> HENDRIKS, Frank, LIDSTRÖM, Anders and LOUGHLIN, John. Introduction: Subnational Democracy in Europe: Changing Backgrounds and Theoretical Models. In *The Oxford Handbook of Local and Regional Democracy in Europe*. Oxford University Press, 2010.

<sup>200</sup> The percentage corresponds to the respondents choosing answers 6 to 10 to the question “do you trust your country’s parliament?” (0 being no trust at all and 10 complete trust) (European Social Survey. Dataset: ESS8-2016, ed.2.1, 2016).

<sup>201</sup> The percentage corresponds to the respondents choosing answers 6 to 10 to the question “do you trust your country’s politicians?” (0 being no trust at all and 10 complete trust) (European Social Survey. Dataset: ESS8-2016, ed.2.1, 2016).

<sup>202</sup> Transparency International. *Corruption Perceptions Index 2019*. Online, available at : <https://www.transparency.org/cpi2019> (accessed on February 7th 2020).

<sup>203</sup> FALKNER, Gerda and TREIB, Oliver. Three Worlds of Compliance or Four? The EU-15 Compared to New Member States. *JCMS: Journal of Common Market Studies*, Vol.46, n° 2, 2008, pp. 293-313.

<sup>204</sup> BOIS, Carol-Anne, PRESTON, Noel, and SAMPFORD, Charles J. G. *Ethics and Political Practice: Perspectives on Legislative Ethics*. London, Annandale: Routledge Federation Press, 1998.

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that legislatures actually have a substantial policy-*making* power, which is not necessarily the case.<sup>205</sup> The political system, parliamentary history and practices in Great Britain, France and Sweden indeed entrust individual parliamentarians with different roles and levels of influence. While the hybrid French system makes the policy-making power of the parliament rather weak, even in parliamentary systems the policy-making power of parliamentarians and their individual influence is limited by the concentration of power in Britain and by the list-based system in Sweden.<sup>206</sup> The three countries also have quite different practices and ideas about political representation, as will be detailed in Chapter 9, which make them interesting cases to compare.

As Table 1 show, despite the methodological weaknesses of such measurements (Chapter 4), the three countries experience different levels of public trust in institutions and perceived corruption, making it all the more interesting to compare a country that is generally presented as having a relatively low level of corruption and imposes limited control on political personnel (Sweden), with countries where the level of perceived corruption is higher while they apply stronger controls on politicians (Britain and France). Sweden is indeed often considered as one of the ‘least ill patients’ according to international measurements, and existing studies of corruption in Sweden indicate that the problem might be more significant within municipalities than at the level of the national government.<sup>207</sup> If low control is a function of the perceived absence of (serious) corruption problems or whether such control only has limited impact on the occurrence of corruption or its perception is beyond the scope of this study, but these general differences between the countries in terms of institutions and political misconduct set an interesting framework to study a policy field that seems to relate as much to the preservation of the integrity of policy-making as it does to other dimensions of political life.

Case selection was guided by theoretical choices and related practical reasons. As language, meaning and interpretation are central to my analysis, familiarity with the language and context were important to guide the case selection. Among many other possible cases in Europe, I chose Great Britain, France and Sweden because of my ability to understand and speak these languages, making it possible to access local knowledge and grasp, at least to some extent, the subtleties of

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<sup>205</sup> ARTER, David. Introduction: Comparing the legislative performance of legislatures. *The Journal of Legislative Studies*, Vol.12, n° 3-4, 2006, pp. 245-257.

<sup>206</sup> FLINDERS, Matthew, GAMBLE, Andrew, HAY, Colin, KENNY, Michael, and KELSO, Alexandra. Parliament. In *The Oxford Handbook of British Politics*. Oxford University Press, 2009; Pierre, Jon and MÖLLER, Tommy. The Parliamentary System. In *The Oxford Handbook of Swedish Politics*. Oxford University Press, 2015; ELGIE, Robert, Emiliano, GROSSMAN, Amy, G. MAZUR and Olivier COSTA. Legislative Politics: going international, while staying native. In *The Oxford Handbook of French Politics*. Oxford University Press, 2016.

<sup>207</sup> HOLS SALÉN, Linda and KORSELL, Lars. *Den anmälda korruptionen i Sverige*. Stockholm: Brå, 2003; BERGH, Andreas, ERLINGSSON, Gissur Ó, ÖHRVALL, Richard, and SJÖLIN, Mats. *A clean house? studies of corruption in Sweden*. Lund: Nordic Academic Press, 2016, p. 73.



interpretation.<sup>208</sup> I originally chose to analyse France and Sweden, given my close acquaintance with the two countries, but also due to the puzzle posed by the adoption of similar policies against conflicts of interest by relatively different countries, with different levels of trust in parliament, approaches to interest representation and political system. An exploratory study of conflict of interest regulation in parliaments in Europe however made it clear that a study on the transfer of such instruments needed to include the country from which this policy idea originates, namely Great Britain.

As Lisa Markowitz and later Johanna Siméant-Germanos put it, to do fieldwork, one needs to “find the field”.<sup>209</sup> This can be especially challenging for the study of international politics, where the loci of exchanges and decisions are multiple and moving between organisations, forums and conferences. In the framework of this study, I opted to ‘follow the policy’ as explained above, which led me to put a particular emphasis on the OECD and on the Council of Europe, as these organisations were frequently mentioned in policy documents and by interviewees in all three countries. As explored at length in the empirical chapters that follow, the OECD’s Public Management, later Public Governance, Directorate played a pivotal role in putting conflicts of interest on the international agenda. The Council of Europe’s Group of States against Corruption (GRECO) is the international organisation that developed the most intrusive system to evaluate is member-states comply with international anti-corruption standards, including interest declaration and registration and codes of conduct for parliamentarians. I also conducted fieldwork at Transparency International, an international civil society coalition founded in 1993 to ‘fight corruption’. It is the largest and oldest transnational non-state actor in this policy field, and I benefit from a thorough knowledge of how the coalition functions, having worked there during three years before starting my doctoral studies. I return to this point in Section IV.d.

### **c) A qualitative approach to data collection and analysis**

Seeking to shed light on the transformation of policies as they circulate and to understand how policy instruments are adopted within and adapted to different contexts, this analysis is based mainly on semi-structured interviews and archival documents as well as participant observation to a lesser extent. As Dvora Yanow writes in her handbook on interpretive policy analysis, “interviews, observation and document analysis constitute the central interpretive methods for accessing local

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<sup>208</sup> YANOW, Dvora. *Conducting interpretive policy analysis*. Thousand Oaks, Calif: SAGE, 2012; SCHWARTZ-SHEA, Peregrine and YANOW, Dvora. *Interpretive Research Design. Concepts and Processes*. Abingdon, New York: Routledge, 2012.

<sup>209</sup> MARKOWITZ, Lisa. Finding the field: Notes on the ethnography of NGOs. *Human Organization*, Vol.60, n° 1. 2001, pp. 40-46; SIMEANT, Johanna. Localiser le terrain de l'international. *Politix*, Vol.100, n° 4, 2013, pp. 129-147. Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

knowledge and identifying communities of meaning and their symbolic artefacts”.<sup>210</sup> The choice of sources is the result (i) of my prior knowledge of the policy field and (ii) of snowballing sampling. The latter follows logically from my theoretical and methodological framework, going back and forth between theory and empirics. It allowed me to be guided through the process by key informants or references in policy documents, and gave me access to elite informants who might otherwise have been hard to interview. I address the former in the last subsection through a necessary reflexive exercise. Diversifying the sources of information allowed me to triangulate the information found in documents and provided orally. The material collected was coded to identify clues about problem definition, sources of policy information, uses of foreign knowledge, interactions with others, participation in events and networks etc. to trace the journey of policy ideas and instruments and understand how they transformed along the way.

### i) Archival and documentary work

Firstly, I base my study on archives and policy documents. Text indeed seems the obvious source of information for the scholar interested in language and words. The dissertation starts with an analysis of conflict of interest regulation in Britain, France and Sweden. Establishing the convergence of a policy across countries requires one to study the text of the legal framework – past and present – as well as documents regarding implementation and prior negotiations. The first set of policy documents thus groups laws, decrees, resolutions, evaluation reports and parliamentary debates.<sup>211</sup> When analysing public policy through actors’ (re)interpretation of problems and solutions, textual data becomes a particularly valuable source of information, making parliamentary debates and policy-makers public statements all the more relevant. Following the policy idea means that, besides national governmental documents, I also make use of the documents references in the former, produced by academics, experts and civil society actors operating at the national level, as well as parliamentary auditions, administrative reports, ex-ante impact studies etc.

I also include international legal instruments – conventions and monitoring mechanisms – and policy documents produced by international organisations (OECD, UNODC, Council of Europe, OSCE, World Bank, European Commission and European Parliament) and transnational actors and organisations (i.e. Transparency International, GOPAC). These international policy documents are necessary to analyse as they come up as references for domestic policy-makers. But

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<sup>210</sup> YANOW, Dvora. *Qualitative Research Methods: Conducting interpretive policy analysis*. Thousand Oaks, CA: Sage Publications, Inc., 2000, p. 31.

<sup>211</sup> The list of all documents analysed in this dissertation can be found in Annexe 2.  
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they are also useful as they themselves are based on sources – both international and country examples – that one needs to trace in order to reveal the journey of the problem and policy idea. The timeframe of the analysis extends from the 1990s to the 2010s, but the conceptual history included in Chapter 4 on the problem stream requires a more long-term perspective. I thus include etymological dictionaries, legal and administrative documents and relevant social science literature pre-dating the timeframe to the analysis.<sup>212</sup>

## ii) Semi-structured interviews with key informants

Secondly, the dissertation is based on information provided by key informants. I selected informants based on the analysis of archives and policy documents (identifying authors, rapporteurs, experts etc.), my prior knowledge of the field and the snowballing method. Indeed, policy documents contain important information about which actors are seen as relevant by policy-makers, intermediaries or organisations, making it easy to trace idea carriers and translators. Having worked for the United Nations Office on Drugs and Crime (UNODC) and Transparency International (TI), as well as with the OECD, the Open Government Partnership (OGP) and the U4 Anti-corruption Resource Centre as an independent researcher, I had a relatively good understanding of the network of actors working on corruption at the international level. This prior knowledge guided my selection of informants and gave me easier access to key stakeholders, while at the same time creating certain biases that I explore below. Lastly, the informants selected through these means oriented me towards other potential interviewees and facilitated access to them. An anonymised list of interviewees can be found in Annexe 1.

The interviews served to clarify the processes of problem definition and policy formulation, informants' sources of information/inspiration, their interpretation of the problem and their framing of the policy. To collect information from the interviewees, I used semi-structured interviews since they are relatively fluid and flexible, whilst allowing for a degree of coherence and comparability of data. Semi-structured interviews' logic is to "generate data interactively"<sup>213</sup> where the interviewee as well as the interviewer have a "constitutive role in the process of knowledge construction" – which make the question of reflexivity developed below all the more important. The flexibility of semi-structured interviews allows informants to share their own interpretation, framing, understanding and experience of the problem, instruments, policy field, actors and context, which are all relevant to answer the research questions.

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<sup>212</sup> A list of all the written sources used in this study can be found in Annexe 2.

<sup>213</sup> LEWIS-BECK, Michael S., BRYMAN, Alan, and FUTING LIAO, Tim. *The SAGE Encyclopedia of Social Science Research Methods*. Thousand Oaks, CA: Sage Publications, Inc., 2004, pp. 1020-1021.  
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I developed a series of interview guides corresponding to the different groups of informants and adapted them to the context and particular experience of interviewees. The interview guides served as an aide-memoire more than a strict structure, and I took a relatively open approach to the interviews, leaving the possibility for informants to introduce elements they found important and relevant. Flexibility and openness are particularly relevant in the framework of elite interviews, which qualify most of those conducted in this study, as interviewees as perceived both as the actors making up the community of interest but also as experts and gate-keepers of information. Interviewing elite actors meant that I had to adapt the data collection to the usual challenges of such interviews (time constraints, interviewee's experience in media interviews etc.) All interviews were recorded and transcribed, safeguarding the informants' anonymity.<sup>214</sup>

### iii) Seeing from within: Participant observation

Document analysis and interviews were complemented with participant observation of a number of policy events. My position as a relative *insider* of the field made me take part in a number of conferences organised by the OECD – the annual Global Anti-Corruption and Integrity Forum – and the Open Government Partnership – Biannual OGP summits – during the time of my doctoral studies. These events offer a good opportunity to identify participants, to observe the interactions between actors and organisations and the role they play in the event, which is telling of the international dynamics of the policy community, as described in Chapter 3.

A more unorthodox source of information that I made use of is the knowledge that I acquired working for the French permanent representation to the UN Vienna, the UNODC and Transparency International. As mentioned above, I benefited from this experience as it gave me access to informants and venues that might have been difficult to access otherwise. It also provided me with quite a lot of insider information on the internal working of these organisations and their relation to other actors in the field. I did not enter the field as an academic researcher and did not approach any of these experiences with the mind of an ethnographer – taking field notes, maintaining records etc. It is however impossible to 'unknow' what has been learned and I thus disposed of a substantive amount of information, gathered in international conferences and internal meetings as well as through professional practices – that is hard to situate within

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<sup>214</sup> Given that the policy field at the international and national levels is relatively small, anonymization can prove challenging. Most informants did however not mind their names being revealed – I chose to maintain everyone's anonymity to safeguard, to the extent possible, the anonymity of others. All quotes were sent to interviewees for approval.

conventional scientific categories. It was suggested to be that I should refer to this as “post-participant observation”.<sup>215</sup>

#### **d) One foot in, one foot out: reflecting on the researcher’s position**

This position as an insider-outsider poses a number of important and interesting questions regarding the researcher’s objectivity and neutrality, which requires one to be attentive to the context of knowledge construction in an exercise of reflexivity. I thus wish to conclude this methodological section with a note on my position as a scholar embedded in the policy field that I study. A critical reflexion on the researcher’s position is necessary in all good social science, particularly qualitative social sciences and more specifically interpretive or constructivist social science. Requirements of scientific neutrality might question the possibility to combine being an actor of a policy field and an academic studying that field. I however do not consider my position as an ‘insider’ as a problem. My view on neutrality is aligned with interpretive scholarship that considers it impossible “for an analyst to stand outside of the policy issue being studied, free of its values and meanings and of the analyst’s own values beliefs and feelings”.<sup>216</sup> Peregrine Schwartz-Shea and Dvora Yanow indeed recognise that it is not uncommon for the germ of a research idea to come from a scholar’s everyday experience, including as it is the case here from prior professional occupations, and for research to, sometimes, “begin without the researcher quite knowing it – for instance, while talking to people with whom the researcher regularly interacts (...) without the intention of doing research on that topic”.<sup>217</sup>

Approaching policy studies this way makes my position a strength, providing me an access and knowledge; it is certainly not, in itself, a weakness. It replaces the concern for neutrality with that of reflexivity. An honest description of one’s values and beliefs, and relation to the object of study, informants and empirical data provides important information on one’s frames of reference and potential biases. As Annette Markham advises, locating the self’s position with the studied field is a good way to enable one to acquire a reflexive view on the research topic.<sup>218</sup>

There are two dimensions that should be accounted for in this critical reflexion of my position as a researcher: firstly, my previous professional experience, and secondly, my current role within the policy field. As mentioned above, I worked on the topic of corruption within several

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<sup>215</sup> The expression was a suggestion from my PhD supervisor Colin Hay, who deserves the credit – or blame – for the invention.

<sup>216</sup> YANOW, Dvora. *Op. cit.* 2000, p. 6.

<sup>217</sup> SCHWARTZ-SHEA, Peregrine and YANOW, Dvora. *Interpretive Research Design. Concepts and Processes*. Abingdon, New York: Routledge, 2012, pp. 25-26.

<sup>218</sup> MARKHAM, Annette. Reflexivity: Some techniques for interpretive researchers. 2017. Online, available at: <https://annettemarkham.com/2017/02/reflexivity-for-interpretive-researchers/> (accessed on April 8<sup>th</sup> 2020).

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organisations before starting my doctoral studies. I worked for the French foreign office for six months, being placed at the permanent representation of France to the United Nations in Vienna where the UNODC is located. I later joined the communications and public affairs team of the UNODC for a period of three months, and joined Transparency International's International Secretariat (TI-S) in Berlin, where I worked for three years.

These placings gave me the opportunity to build a network within these organisations and beyond, allowing me to undertake a number of tasks as an independent researcher after having joined academia. I continued to work with the research team of TI-S, producing syntheses of existing knowledge on various topics. I also assisted the U4 Anti-Corruption Resource Centre with the French translation of reports and with their training module for civil servants. I assisted the OECD Public Integrity division with some background research, and was selected as the independent researcher for France to undertake the evaluation of the development and implementation of the country's national action plan. Lastly, I am part of the expert network coordinated by Ecorys and the Interdisciplinary Corruption Research Network (ICRN) – of which I am a co-founder – which was selected by the European Commission to produce reports on anti-corruption issues in EU member-states.

These experiences clearly position me within the anti-corruption community at the transnational level, even though I do not have any employment affiliation with any of its organisations. This position allowed me to acquire a substantial knowledge of the field before starting my academic research and helped me build a strong network of personal connections. Logically, it also framed my understanding of the problem, of the community and its actors. While working within the policy field, I rarely questioned the definition of corruption that most actors working on the topic shared, nor did I reflect on the pertinence of the solutions that they promoted. When I started this study, it seems obvious to me that codes of conduct and transparency instruments served to fight corruption. It was the exploration of my empirical data, especially national-level data from before the 2000s, that made me put this in perspective. This realisation opened a new set of questions regarding policy (re)framing and narratives.

Secondly, my proximity with actors working transnationally made me approach the subject with a bias regarding the influence of these actors, which I might overestimate. I chose to exploit this bias, since it allowed me access to venues and actors. Indeed, my experience and network puts me in a privileged position to develop a perspective on public policy that helps understand the policy-making in an integrated world. I however strived to constantly reflect on this bias and put my analytical process and conclusions in question. Establishing a dialogue between the

international level and the national level helped me put the role of international actors into perspective and recognise the influence of national actors on the transnationalisation of the anti-corruption field. The framework of policy translation appeared all the more appropriate as it encouraged the researcher to ask new questions regarding this dialogue, which do not focus on ranking the evaluation of actors put rather on the process of transforming policy while moving it across borders and organisations.

Lastly, being relatively integrated within the field influences the relation that the researcher established with her informants. Whilst providing access, knowing informants personally creates a different setting for conducting interviews. On the one hand, it makes the setting less formal which might help interviewees feel comfortable and in a trusting environment faster than if they did not know the interviewer. On the other hand, balancing between formality and informality can create confusion as to the purpose of the discussion, making it difficult for the researcher to differentiate between what was said by an interviewee to an interviewer and what was said between former colleagues or acquaintances. I based my judgment as to how to use the interview material on the changing tone of the discussion and made sure to ask informants for their agreement to use direct quotes. Moreover, knowing some of the informants, and more significant having them know that I share a basic knowledge of the topic and relevant actors, makes it more difficult to ask informants to verbalise and detail certain things. Interviewees sometimes used expressions such as “as you know” or “you are already aware of this” etc. which pose a challenge to the researcher since it means that the interviewee might avoid delving into the obvious and also prevents the researcher to access the informants’ interpretation.

## V. Outline of the dissertation

The dissertation is divided in three parts, that correspond to the different steps of the policy instruments’ journey across jurisdictions and levels of governance. As presented above, this research traces these instruments to identify the places through which they travelled and “track the interactions between actors and institutions across time and space”.<sup>219</sup> While the analytical process took me from the current state-of-affairs to the initial moments of learning, the dissertation is structured the other way around to present its findings as a (more or less) chronological narrative and, hopefully, ease the reading of these many pages. The dissertation firstly presents the three country cases and demonstrates that conflict of interest regulation in Europe can be termed a case of ‘divergent convergence’ (Chapter 1). It then takes the reader from the policy instruments’ place

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<sup>219</sup> WOOD, Astrid. *Op. cit.* 2016, p. 395.

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of origin to their uptake by international policy brokers, constructing a transnational policy community dedicated to anti-corruption policy work (Part One). Having traced the process to the level of global policy-making, proceeds to explain how they became part of a global prescriptive framework against corruption and what happened to these instruments as they were translated into international standards (Part Two). Lastly, it follows the instruments as they are transferred into new national contexts to understand how the transfer process led to a form of ‘divergent convergence’ (Part Three).

Part One is composed of two chapters. Chapter 2 explores the sequential adoption of public interest registers and codes of conduct in selected countries and provides evidence of transnational exchanges in the process of transferring ideas about how to regulate conflicts of interest. It is interested in the order of in which public interest registers and codes of conduct were adopted to understand how the path that other countries were to follow was initially traced, from ‘pioneers’ in the Anglosphere to France and Sweden. Chapter 3 turns to the efforts by certain governments in the Anglosphere to become policy leaders who actively seek to push other countries to follow their approach to conflict of interest regulation. It looks at the role played by international policy brokers in making policy ideas move across borders and focusses on the domestic sources of international policy-making.

Part Two is made up of three chapters. Chapter 4 explains how corruption was constructed as a global problem to be governed by policy instruments and looks at its ‘riskification’ by international institutions. Chapter 5 studies the redefinition of public interest registers and codes of conduct as international standards through the formulation of international legal instruments against corruption. It also looks into the development of monitoring mechanisms as a tool of policy harmonisation. Finally, Chapter 6 analyses how international institutions use knowledge production and a scientific-technical rhetoric to build their cognitive authority and render their preferred policy solutions ‘technically feasible’.

Part Three is also composed of three chapters. Chapter 7 identifies transfer agents and translators at the national level. It studies how they imported and reinterpreted the notion of conflict of interest and the idea that they can be prevented through registers and codes. It is interested in their resources and power struggles and how these were affected by successive events that eventually opened the policy window. Chapter 8 comes back to the idea that policy solutions can chase problems. It focusses on policy-makers and their discursive efforts to endogenise imported ideas and couple them with emerging salient problems, and explains how contingency can lead to diverging policy outcomes. Lastly, Chapter 9 analyses the role of existing institutions,



understood in a broad sense that includes norms, practices and representations, in translating policy ideas to make them *fit* the local context.

# Chapter 1. Conflict of interest regulation: converging instruments, diverging implementation

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*We are far away from the Swedish model... We still have a long way to go!*  
(Parliamentary clerk, National Assembly, May 7th 2018)

This contrite statement from a French parliamentary clerk involved in the development of the French system of parliamentary ethics, or *déontologie* as it is referred to in French, suggests that bureaucrats and other policy-relevant actors are interested in what happens abroad. The dissertation is constructed as a *transnational* comparison,<sup>2</sup> analysing the three cases together rather than separately. However, this chapter more classically compares conflict of interest regulation in the British, French and Swedish Parliaments, with a focus on two instruments that they (now) have in common: public interest registers and codes of conduct. It thus combines a comparative approach and an interest in processes of convergence and divergence. This implies both a diachronic analysis of trajectories (convergence meaning that something grows alike over time) and a synchronic comparison of how conflict of interest regulation looks at a given point in time (here 2017, when my analysis stops).

Public policies are multi-dimensional. Comparing policies can mean comparing institutions, styles, paradigms, outcomes or actors. Similarly, understanding convergence as multi-dimensional means asking the question “what is being said to converge?”<sup>3</sup> Colin Bennett sees it to mean at least one of five things: (i) a convergence of policy goals; (ii) a convergence of policy content; (iii) a convergence of policy instruments; (iv) a convergence of policy outcomes or effects related to the implementation of the policy; and lastly (v) a convergence of policy style.<sup>4</sup> While this dissertation pays particular attention to the role of ideas, their circulation and acceptance, the object(s) of comparison are here more concrete. Restating what has already been presented, I compare public

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<sup>1</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018.

<sup>2</sup> HASSENTEUFEL, Patrick. De la comparaison internationale à la comparaison transnationale. Les déplacements de la construction d'objets comparatifs en matière de politiques publiques. *Revue française de science politique*, 2005, vol. 55, n° 1, p. 113-132.

<sup>3</sup> HAY, Colin. Common Trajectories, Variable Paces, Divergent Outcomes ? Models of European Capitalism under Conditions of Complex Economic Interdependence. *Review of International Political Economy*, 2004, vol. 11, n° 2, p. 245.

<sup>4</sup> BENNETT, Colin J. What is policy convergence and what causes it? *British Journal of Political Science*, Vol. 21, n°2, 1991a, p. 218.

policies to regulate conflict of interest in parliaments focussing on the policy instruments that are adopted to *operationalise* it and the mechanisms and tools through which they are implemented. The object of comparison was constructed following an exploratory analysis which sparked a puzzle: how can three countries whose policy to regulate conflicts of interest in parliament look so similar at first sight still deal with the problem in such different ways? Indeed, I expose in this chapter how, while conflict of interest regulation has grown more alike with the adoption of the same repertoire of instruments (public interest registers and codes of conduct), these instruments do not mobilise the same resources, institutions and actors for their implementation, leading the regulation of conduct to grow more dissimilar over time.

This chapter presents the puzzle of the research project in detail and sets the scene for its analysis, the remaining chapters seeking to elucidate the different factors that led to this case of ‘divergent convergence’. Firstly, it compares how Britain, France and Sweden (seek to) regulate conflict of interest in the lower chamber of their parliament, presenting some of the main dimensions of the regulatory framework, including public interest registers and codes of conduct (Section 1.1). Secondly, it looks more specifically at the way in which conflicts of interest are regulated in practice, zooming in on the actors in charge of regulating conflicts of interest, highlighting the Britain and France’s move away from the tradition of parliamentary self-regulation that Sweden managed to maintain (Section 1.2). Finally, it takes a diachronic perspective on the three country cases to argue that it is in fact a case of ‘divergent convergence’ that the dissertation is interested in (Section 1.3).

## **1.1. Comparing conflict of interest regulation in Britain, France and Sweden: towards an instrumentation of political ethics**

Representative democracies have certainly tried to govern the conduct of elected representatives and power-holders long before the integrity of political decision-making and corruption became a global concern.<sup>5</sup> This section is interested in a relatively recent development regarding the regulation of elected officials’ conduct, namely its formalisation and instrumentation. While some measures such as professional incompatibilities have been in place longer, it is mostly in the last decades that formal rules have been adopted to regulate parliamentarian’s conduct and

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<sup>5</sup> HINE, David and PEELE, Gillian. *The regulation of standards in British public life. Doing the right thing?* Manchester University Press, 2016; BOLLEYER, Nicole, SMIRNOVA, Valeria, DI MASCO, Fabrizio and NATALINI, Alessandro. Conflict of interest regulation in European parliaments: Studying the evolution of complex regulatory regimes: COI regulation in parliaments. *Regulation & Governance*. 2018.  
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conflicts of interest.<sup>6</sup> As representative democracies have sought to prevent power-holders from abusing their power and to safeguard the integrity of democratic decision-making, they have increasingly done so through different policy instruments,<sup>7</sup> as this section shows. Scholars have constructed two categories of mechanisms to prevent or regulate conflicts of interest: ‘preventive mechanisms’ (bans of activities, professional incompatibilities etc.) and ‘disclosure mechanisms’ (transparency requirements).<sup>8</sup> Approaching the question of conflict of interest regulation through the conceptual lens of the policy instrument approach allows for a more fine-grained comparison of existing systems, since it makes the concrete *recipes* of policies visible.<sup>9</sup> The emergence of conflict of interest as a public problem will be explored in Chapter 2. This section presents the main instruments to prevent or regulate conflicts of interest, targeting individual parliamentarians, comparing existing incompatibility rules (1.1.1) and recusal rules (1.1.2). It lays a particular emphasis on the two policy instruments that are at the heart of this research project, namely codes of conduct (1.1.3) and public interest registers (1.1.4).

### **1.1.1. Preventing conflicts of interest through incompatibility rules**

Rules banning certain activities considered incompatible with the parliamentary mandate (referred to as ‘incompatibilities’) are considered as a preventive rather than a regulatory measure as they do not ban a ‘bad’ but rather the holding of a post likely to be conducive to corruption and hence to the generation of a ‘bad’. Incompatible functions can concern both the public and the private sector, the former often relating to the separation of powers, while the latter denotes a concern to preserve the political decision-making from undue influence from the private sector. Debates in France have also pointed to the risk of two public interests (if a parliamentarian is also

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<sup>6</sup> DAVID-BARRETT, Elizabeth. Nolan’s Legacy: Regulating Parliamentary Conduct in Democratising Europe. *Parliamentary Affairs*, Vol.68, n° 3, 2015, pp. 514-532; BOLLEYER, Nicole and SMIRNOVA, Valeria. Parliamentary ethics regulation and trust in European democracies. *West European Politics*, Vol. 40, n°6, 2017, pp. 1218-1240.

<sup>7</sup> HOOD, Christopher. *The Tools of Government*. Chatham N.J.: Chatham House, 1986; LASCOUMES, Pierre and LE GALES, Patrick. Introduction: Understanding Public Policy through Its Instruments—From the Nature of Instruments to the Sociology of Public Policy Instrumentation. *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 20, n° 1, 2007; LE GALES, Patrick. Chapter 10: Policy Instruments and Governance. In BEVIR, Mark (ed.). *The SAGE Handbook of Governance*. London: SAGE Publications Ltd, 2011, pp. 142-143.

<sup>8</sup> MATTARELLA, Bernardo Giorgio. The Conflicts of Interest of Public Officials: Rules, Checks and Penalties. In AUBY, Jean-Bernard, BREEN, Emmanuel and PERROUD, Thomas (eds.) *Corruption and Conflicts of Interest A Comparative Law Approach*. Cheltenham: Edward Elgar, 2014, pp. 30–38; ROSE-ACKERMAN, Susan. Corruption and Conflicts of Interest. In AUBY, Jean-Bernard, BREEN, Emmanuel and PERROUD, Thomas (eds.) *Corruption and Conflicts of Interest A Comparative Law Approach*. Cheltenham: Edward Elgar, pp. 3–14; BOLLEYER, Nicole and SMIRNOVA, Valeria. Parliamentary ethics regulation and trust in European democracies. *West European Politics*, Vol. 40, n°6, 2017, pp. 1218-1240.

<sup>9</sup> LASCOUMES, Pierre and LE GALES, Patrick. Introduction : L’action publique saisie par ses instruments. In LASCOUMES, Pierre (ed.) *Gouverner par les instruments*. Paris: Presses de Sciences Po. 2005, pp. 11-44. Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

a local official for instance, the national and local interests risking being in conflict),<sup>10</sup> but conflicts of interest are most often understood as involving an official's *private* interests. In many countries, but more prominently so in France, conflicts of interest were traditionally prevented through incompatibility rules and bans on certain parallel positions and activities.

In France, there are indeed a number of restrictions on the mandates and activities that members of Parliament can exercise.<sup>11</sup> Incompatibilities first concerned public offices that parliamentarians were not allowed to hold during their mandate and were later extended to activities in the private sector. Rooted in the principle of the separation of powers, incompatibility first prohibited the accumulation of certain public functions with a parliamentary mandate. A parliamentarian cannot, for instance, also be a member of the European Parliament, President of the Republic or a member of government (parliamentarians nominated to the government need to renounce their seat in parliament, in accordance to article 23 of the Constitution). Civil servants who get elected to a parliamentary chamber need to take a leave of absence to be allowed to sit in Parliament. It is generally prohibited to hold a position within the civil service.<sup>12</sup> Parliamentarians cannot be a member, less so manage, an independent administrative authority – except if they were nominated in their capacity as parliamentarian. A law adopted in 2014 made it illegal (from 2017 on) for members of the Assembly to hold certain executive local mandates, such as mayor, deputy mayor or (vice)president of a local government.<sup>13</sup>

In addition to the restriction regarding the accumulation of functions within the public sector, parliamentarians should not hold a managing position in a state-owned company or in a national public establishment, nor should they hold a managing position in any private company or enterprise that receive public subsidies or executes work for the State. Lastly, a parliamentarian cannot start a consultancy activity during their mandate – though they do not have to renounce it if they were exercising it prior to their election. The initial bill on transparency in public life presented by the government in 2013 included a complete ban on consultancy activities for

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<sup>10</sup> Assemblée nationale. Compte rendu n°1 Groupe de travail sur la prévention des conflits d'intérêts. Paris, December 9th 2010 ; Assemblée nationale. Compte rendu n°2 Groupe de travail sur la prévention des conflits d'intérêts. Paris, January 13th 2011; Assemblée nationale. Compte rendu n°3 Groupe de travail sur la prévention des conflits d'intérêts. Paris, January 20th 2011; Commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique. *Pour une nouvelle déontologie de la vie publique*. Paris, 2011; Commission de rénovation et de déontologie de la vie publique. *Pour un renouveau démocratique*. Paris, 2012.

<sup>11</sup> Éric Phélippeau is currently conducting a research project on the genesis of the incompatibility policy on the French Parliament.

<sup>12</sup> Assemblée nationale. Fiche de synthèse n°16 : Le statut du député. n.d. Online, available at: <http://www2.assemblee-nationale.fr/decouvrir-l-assemblee/role-et-pouvoirs-de-l-assemblee-nationale/le-depute/le-statut-du-depute> (accessed on December 12th 2019)

<sup>13</sup> LOI organique n° 2014-125 du 14 février 2014 interdisant le cumul de fonctions exécutives locales avec le mandat de député ou de sénateur. Paris: JORF, n°0040, 16 février 2014 p. 2703.

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parliamentarians,<sup>14</sup> but this article was subsequently amended to banning only new ones. This does not concern professions under a regulated status, such as lawyer for instance.<sup>15</sup> The issue of the compatibility of outside employment with the parliamentary mandate came back in all recent discussions regarding conflict of interest prevention,<sup>16</sup> regarding extending prohibited activities or even inverting the logic of *a priori* compatibility to make professional activities *a priori incompatible* with a parliamentary mandate.<sup>17</sup> The current system however remains one of *a priori* compatibility between the parliamentary mandate and professional activities, although the rules are stricter in France than in Britain or Sweden.

In the UK, MPs can engage in almost any kind of additional non-parliamentary activity. They do not have to follow standard working hours and a principle of discretion applies to how they organise their parliamentary activities.<sup>18</sup> The UK Parliament imposes very few restrictions on MPs regarding outside activities, favouring transparency and registration over prohibition. In its first report from 1995, the Committee on Standards in Public Life (CSPL) made the argument that “the House of Commons would be less effective if all MPs were full-time professional politicians and MPs should not be prevented from having outside employment”.<sup>19</sup> The House of Commons Disqualification Act of 1975 however establishes a list of offices that are incompatible with a parliamentary mandate. The act provides for the disqualification of an MP who would also be a Lord Spiritual;<sup>20</sup> hold a judicial office; be employed by the service of the Crown; be a member of the regular armed forces, of a police force, of a legislature of a State outside de Commonwealth; or hold certain administrative or diplomatic offices.

The only exception to the right to outside employment is the prohibition to undertake paid advocacy. The restriction on paid advocacy exists in the House of Commons since 1695 and was

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<sup>14</sup> Assemblée nationale. Projet de loi organique relatif à la transparence de la vie publique n°1004. Paris: Assemblée nationale, April 24th 2013.

<sup>15</sup> Assemblée nationale. Fiche de synthèse n°16 : Le statut du député. n.d. Online, available at: <http://www2.assemblee-nationale.fr/decouvrir-l-assemblee/role-et-pouvoirs-de-l-assemblee-nationale/le-depute/le-statut-du-depute> (accessed on December 12th 2019)

<sup>16</sup> Assemblée nationale. Compte rendu n°1 Groupe de travail sur la prévention des conflits d'intérêts. Paris, December 9th 2010 ; Assemblée nationale. Compte rendu n°2 Groupe de travail sur la prévention des conflits d'intérêts. Paris, January 13th 2011; Assemblée nationale. Compte rendu n°3 Groupe de travail sur la prévention des conflits d'intérêts. Paris, January 20th 2011; Commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique. *Pour une nouvelle déontologie de la vie publique*. Paris, 2011; Commission de rénovation et de déontologie de la vie publique. *Pour un renouveau démocratique*. Paris, 2012

<sup>17</sup> Commission de rénovation et de déontologie de la vie publique. *Pour un renouveau démocratique*. 2012, p. 100.

<sup>18</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>19</sup> Chairman Lord Nolan. Standards in Public Life. First Report of the Committee on Standards in Public Life. Volume 1: Report. Presented to the Parliament by the Prime Minister on May 1995.

<sup>20</sup> Lord Spirituals 26 bishops of the Church of England sit in the House of Lords. Known as the Lords Spiritual, they read prayers at the start of each daily meeting and play a full and active role in the life and work of the Upper House.

reinforced in legislation in 1858 and 1947.<sup>21</sup> The 1994 “cash-for-questions” scandal, by which *The Guardian* revealed that two MPs had accepted to table parliamentary questions in exchange for cash, exposed flaws in the system. The CSPL, created subsequently, warned in its first report that “it reduces the authority of Parliament if MPs sell their services to firms engaged in lobbying on behalf of clients”<sup>22</sup>. This ban was adopted by resolution in 1995 and integrated into the House of Commons Code of Conduct in 1996.<sup>23</sup>

Swedish parliamentarians are similarly free to organise their mandate as they best see fit. While there are no formal rules about attendance and presence, they are expected to work full-time and during the entire year.<sup>24</sup> Law 1994:1065, detailing parliamentarians’ economic benefits, indeed considers them to be working full-time on their mandate,<sup>25</sup> but there is no law or rule that prohibits or restricts outside employment or activities. Swedish parliamentarians are free to hold positions in the public and private sector, remunerated or not. A Council of Europe Group of States against Corruption (GRECO) evaluation mentions that a number of parliamentarians have carried on parallel occupations during their mandate, such as lawyer or doctor, and that many of them hold additional political mandates at the local level.<sup>26</sup>

While not the main focus of the analysis, it is nevertheless necessary to study the instruments in focus in this research (public registers and codes) within the broader institutional setting regulating conflicts of interest (to which Chapter 9 will return), especially since incompatibility rules poses essential questions regarding the representativity of parliament, an argument that often comes up in parliamentary debates (Chapter 7). While the principle of compatibility by default with exceptions exists in the three countries, there is a notable difference between France and the two others. It is interesting, as we will see in the following subsections, that despite having ‘preventive mechanisms’ in place in the form of incompatibilities of functions – which are seen as pre-empting the need for disclosure, France later introduced a number of transparency requirements, imposing quite intrusive measures on its elected representatives.

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<sup>21</sup> Resolutions of May 2d 1695, June 22th 1858, and July 15th 1947 as amended on November 6<sup>th</sup> 1995 and May 14th 2002.

<sup>22</sup> Chairman Lord Nolan. Standards in Public Life. First Report of the Committee on Standards in Public Life. Volume 1: Report. Presented to the Parliament by the Prime Minister on May 1995.

<sup>23</sup> House of Commons. Resolution of November 6<sup>th</sup> 1995: Standards in Public Life; House of Commons. Resolution of July 24<sup>th</sup> 1996: Code of Conduct.

<sup>24</sup> Sveriges riksdag. Konstitutionsutskottets betänkande 1983/84:15. Stockholm, December 1983, p. 3; Sveriges riksdag. Lag (1994:1065) om ekonomiska villkor för riksdagens ledamöter. Stockholm, June 1994.

<sup>25</sup> Council of Europe GRECO. Eval IV Rep (2013) 1E. Strasbourg, 2013; Sveriges riksdag. Lag (1994:1065) om ekonomiska villkor för riksdagens ledamöter. Stockholm, June 1994.

<sup>26</sup> Council of Europe GRECO. Eval IV Rep (2013) 1E. Strasbourg, 2013, p. 11-12.

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### **1.1.2. Recusal rules, or disqualification from decision-making**

If France is remarkable in its use of incompatibilities to safeguard the integrity of political decision-making, Sweden departs from its peers due to the presence of formal recusal rules. Recusal rules provide for the possibility and/or obligation for a person to disqualify themselves from a discussion or a decision if they find themselves in a situation of conflict of interest. Recusal obligations are commonly used within the executive and judicial branches of government to safeguard the impartiality of their decisions, as it is the case in the United States for instance.<sup>27</sup> In Sweden, such a rule exists for parliamentarians, and France has very recently started on this path. It should be noted that the House of Commons has an unwritten rule forbidding members from voting on matters in which they have a personal interest.<sup>28</sup> While this parliamentary convention was strictly enforced in the past (MPs with financial interests in legislation not being allowed to vote, withdrawing themselves from debates and even being banned from sitting in Parliament), it is no longer upheld.<sup>29</sup> As Mark Knights writes: “Parliament, in the era of ‘Old Corruption’, was tougher on conflicts of interest than it is today”.<sup>30</sup>

The Swedish Act of Parliament (*Riksdagsordningen*) in Chapter 6 article 19 provides that “no one may be present at a meeting of the Chamber when a matter is being deliberated which personally concerns her/himself or a close associate”.<sup>31</sup> A parliamentarian can then neither take part in the debates nor in the decision. The Act’s Chapter 7 article 21 provides for the same rule to apply to parliamentary committees. As Section 2.1.1 on conflict of interest definition will show, the chapter of the Swedish code of conduct that concerns ‘jäv’ mainly focusses on when it is appropriate for a parliamentarian to abstain from participation in a parliamentary activity, which gives an indication of the importance of this recusal rule for conflict of interest prevention in the Swedish context. The code of conduct does not add much to the rules that existed prior to its adoption but it does give the possibility for parliamentarians recusing themselves to add their decision to the meeting minutes, thus making their decision public. The code of conduct’s guide to the rules explains that recusal rules are an exceptional obstruction of parliamentarians’ freedom of speech justified by the need to shield the public interest. The understanding of conflict of interest

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<sup>27</sup> United States Code. Title 18. Section 208. Acts affecting a personal financial interest.

<sup>28</sup> ROGERS Robert and WALTERS Rhodri. *How Parliament Works*. Abingdon: Routledge, 2015 ; KAYE, Robert. *Regulating Pecuniary Interest in The United Kingdom: A Comparative Examination*. Paper prepared for ECPR joint sessions workshops, University of Grenoble 5th-11th April, 2001; House of Commons. HC Deb 22 May 1974 vol 874 cc391-513. London, 1974.

<sup>29</sup> KNIGHTS, Mark. *Parliament and Conflicts of Interest*. Corruption, Now And Then. A blog by Professor Mark Knights, reflecting on historical and current corruption scandals. April 15<sup>th</sup> 2019. Online, available at: <https://blogs.warwick.ac.uk/historyofcorruption/> (accessed on April 15<sup>th</sup> 2020)

<sup>30</sup> *Ibid.*

<sup>31</sup> Sveriges riksdag. Riksdagsordning (2014:801). 6 Kap. 19 §. Translation by Council of Europe GRECO. Eval IV Rep (2013) 1E. Strasbourg, 2013, p. 15.

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situations that would require a parliamentarian to recuse him/herself are very narrow and relate to the direct financial interests of individual parliamentarian and his/her relatives and friends, but not any other group to which they belong. The code of conduct explains that, due to the nature of parliamentary work where few decisions could concern the individuals, there are very few situations that would actually require a parliamentarian to recuse him/herself.<sup>32</sup> The practice of vote compensation (*kvittning*), an agreement by which parliamentarians from other groups abstain from voting if a parliamentarian is absent or has to recuse him/herself thus maintaining the political balance of the chamber, facilitates the enforcement of recusal rules.<sup>33</sup>

In France, the question of recusal was discussed by the working group on conflict of interest prevention, during expert hearings, but it was not initially retained as an appropriate instrument to prevent conflicts of interest due to the risk of such a rule being unconstitutional.<sup>34</sup> It nevertheless regularly reappeared in policy documents produced by the Assembly's 'ethics bureaucracy'.<sup>35</sup> The adoption of Law n°2017-1339 on trust in political life provides for each parliamentary chamber to introduce a recusal register in which parliamentarians finding themselves in a conflict of interest can register their decision not to take part in a specific parliamentary matter. The Resolution adopted on June 4<sup>th</sup> 2019 modifying the rules of the National Assembly introduces a public register of recusals that is managed by the chamber's leadership,<sup>36</sup> which its content being available in open data format.<sup>37</sup> The initial concerns regarding the constitutionality of recusal remains and recusals are not an obligation but is left for parliamentarians to determine.<sup>38</sup> This echoes the similar practice introduced by the Swedish code of conduct described above and suggests that it has become increasingly important for political actors to *be seen* as following (even informal) rules – although only two members of the National Assembly are currently listed in this recusal register.<sup>39</sup>

These concerns for parliamentarians' freedom of speech and the public's right to representation are not unique to France. Indeed, only a few countries around the world (notably

<sup>32</sup> Sveriges riksdag. En uppförandekod för ledamöterna i Sveriges riksdag. Stockholm, 2016.

<sup>33</sup> Sveriges riksdag. Så arbetar partierna. n.d. Online, available at: <https://www.riksdagen.se/sv/sa-funkar-riksdagen/arbetet-i-riksdagen/sa-arbetar-partierna/> (accessed on April 20<sup>th</sup> 2020).

<sup>34</sup> Assemblée nationale. Compte rendu n°1 Groupe de travail sur la prévention des conflits d'intérêts. Paris, December 9<sup>th</sup> 2010 ; Assemblée nationale. Compte rendu n°2 Groupe de travail sur la prévention des conflits d'intérêts. Paris, January 13<sup>th</sup> 2011; Assemblée nationale. Compte rendu n°3 Groupe de travail sur la prévention des conflits d'intérêts. Paris, January 20<sup>th</sup> 2011.

<sup>35</sup> BOLLEYER, Nicole and SMIRNOVA, Valeria. *Op. cit.* 2017, p. 1219.

<sup>36</sup> Assemblée nationale. Résolution modifiant le Règlement de l'Assemblée nationale n°281. Paris, June 4<sup>th</sup> 2019.

<sup>37</sup> Assemblée nationale. Liste des déports. n.d. Online, available at: <http://www.assemblee-nationale.fr/dyn/deports> (accessed on December 13<sup>th</sup> 2019)

<sup>38</sup> Conseil constitutionnel. Décision n° 2017-752 DC. Paris, September 8<sup>th</sup> 2017; Assemblée nationale. *Un nouvel élan pour la déontologie parlementaire*. Rapport annuel de la déontologue. Paris, January 2019.

<sup>39</sup> Assemblée nationale. Liste des déports. n.d. Online, available at: <http://www.assemblee-nationale.fr/dyn/deports> (accessed on April 20<sup>th</sup> 2020).

Canada, Québec Australia, Finland, Sweden) have chosen this option to prevent conflict of interest in the legislative branch, according to the comparative analysis conducted by the National Assembly's ethics commissioner.<sup>40</sup> In the framework of this research, Sweden is the outlier in this regard, the possibility for an parliamentarian to recuse her/himself certainly being facilitated by the agreement among political groups to maintain the political balance of the parliament, thus not putting the individual parliamentarian in a position to decide between following ethical norms and fulfilling their political duty.

### **1.1.3. Codification of parliamentary ethics**

Concern for the proper behaviour of elected representatives and the maintenance of high standards of conduct is nothing new, most representative democracies regulating the conduct of public officials through articles of the constitution, specific laws and/or the internal rules of parliamentary chambers. What is new however is the move, in the last decades, towards a codification of ethical principles and standards.<sup>41</sup> Like a lesser Hippocratic Oath (the ancestor of codes of professional ethics), parliamentary codes of conduct seek to clarify what can and should be expected from parliamentarians, and what is considered as (un)acceptable behaviour.<sup>42</sup> Lord Nolan, the first Chair of the Committee on Standards in Public Life set up by Prime Minister John Major after the cash-for-questions scandal in 1994 (Chapter 2), promoted the idea of a code of conduct for MPs because:

Changes over the years in the roles and working environment of politicians (...) have led to confusion over what is and what is not acceptable behaviour (...) accompanied by a number of well-publicised incidents indicating a certain slackness in the observance and enforcement of high standards by those concerned... (which) helped to generate a widespread suspicion that much more misconduct occurs than is revealed to public gaze.<sup>43</sup>

In Britain, the idea of a code of conduct for MPs was first uttered by the Strauss Committee in 1969,<sup>44</sup> but the House of Commons Code of Conduct was only approved decades later, through the resolution of the House Resolution of the House of 19th July 1995 together with the Guide to the Rules relating to the Conduct of Members. It took almost two decades for France (2011) and

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<sup>40</sup> Assemblée nationale. *Un nouvel élan pour la déontologie parlementaire*. Rapport annuel de la déontologue. Paris, January 2019, p. 50.

<sup>41</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR). *Background Study: Professional and Ethical Standards for Parliamentarians*. Warsaw, 2013, pp. 5-6.

<sup>42</sup> PELIZZO, Riccardo and STAPENHURST, Rick. *Legislative Ethics and Codes of Conduct*. Working Paper 37237. Washington, DC: World Bank Institute. 2004.

<sup>43</sup> Chairman Lord Nolan. *Standards in Public Life*. First Report of the Committee on Standards in Public Life. Volume 1: Report. Presented to the Parliament by the Prime Minister on May 1995.

<sup>44</sup> Strauss Report, paragraph 17, cited by GAY, Oonagh. *Aspects of Nolan - Members' Financial Interests*. Research Paper 95/62. House of Commons Library. 1995, p. 4

Sweden (2017) to join the trend. In France, the *Code de déontologie* was adopted on the April 6<sup>th</sup> 2011 through a decision of the Bureau of the Assembly, on the basis of the conclusion of a parliamentary working group on the prevention of conflicts of interest (Chapter 7 returns to the activities of the working group in more detail). An instrument of *soft law*, the French code was progressively institutionalised, being recognised by law in 2013 and integrated in the Rules of Procedure of the National Assembly (articles 80-1 to 80-6).<sup>45</sup> The Swedish Parliament adopted its code of conduct (*Uppförandekod för ledamöterna i Sveriges riksdag*) on December 14<sup>th</sup> 2016, which entered into force on January 1<sup>st</sup> 2017. It was adopted by the Speaker, the deputies and the leaders of all the eight party groups represented in parliament. The code of conduct is the result of the efforts of a working group set up in November 2013, after the publication of the Council of Europe's evaluation of Sweden's efforts to prevent corruption in parliaments (Chapter 7 returns to the elaboration of the code in more detail).<sup>46</sup>

The following compares various dimensions of this policy instrument that has become a central element of conflict of interest regulation in the three countries, looking at its purpose and structure in each country, the ethical principles it promotes, and the rules it contains, especially regarding gifts and travels.

### 1.1.3.1. Structure and purpose of codes of conduct

Codes of conduct can be rules-based or values-based. They are often a mix of the two. Paul Heywood and Jonathan Rose explain that the rules- or compliance-based tradition rests upon formalised rules and aims to demarcate what can and cannot be done by the target population.<sup>47</sup> Its emphasis on acts, detection and sanction makes the objective of such codes adherence to set rules. The values-based tradition is less focussed on rules and more on the values of the institution that the target population ought to live up to. It relies on the ability of the official to make ethical choices and on trust in the possibility of them regulating themselves. Traditional compliance-based approaches are largely reactive, treating misconduct (such as corruption) as “critical-care

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<sup>45</sup> MELIN-SOUCRAMANIEN, Ferdinand. *Les progrès de la déontologie à l'Assemblée nationale*. Rapport public annuel sur la mise en œuvre du Code de déontologie. Paris : Assemblée nationale, 2015.

<sup>46</sup> Council of Europe GRECO. Eval IV Rep (2013) 1E. Strasbourg, 2013. Before the common code of conduct was adopted, it was left to the party groups to decide on the need for ethical rules for MPs belonging to their group and on the form that such rules should take. During the initial phase of the evaluation in 2013, the GRECO team consulted the eight parties represented in Parliament and was informed that three of them had developed ethical guidelines for their members and another party had set out ethical rules that concerned all party representatives (for more details see Part 3).

<sup>47</sup> ROSE, Jonathan and HEYWOOD, Paul M. Political Science Approaches to Integrity and Corruption. *Human Affairs*, Vol. 23, n° 2, 2013, pp. 148–159; HEYWOOD, Paul and ROSE, Jonathan. Curbing Corruption or Promoting Integrity? Probing the Hidden Conceptual Challenge. In HARDI, Peter, HEYWOOD, Paul and TORSELLO, Davide. *Debates of Corruption and Integrity*. Basingstoke: Palgrave Macmillan. 2015.

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situations”<sup>48</sup> to which remedies should be applied. Values-based approaches, on the other hand, rather rely on the socialisation of norms and the internalising of principles, through trainings for instance. The objective is to proactively prevent corruption “through the self-conscious pursuit of integrity”.<sup>49</sup>

The British, French and Swedish codes combine values, often in the form of a list of principles, with rules, regarding the receipt of gifts, paid travel or the use of expenses for instance. The code of conduct of the French National Assembly is, of the three cases, the one that gives most prominence to values (over rules). It is indeed short (three pages), with only two articles (7 and 8) providing specific rules on what needs to be declared and how the code should be implemented. The French code was initially only a list of principles (listed in Table 2), the rules regarding declarations and enforcement being included in the Bureau’s decision.<sup>50</sup> The two last articles were added in January 2016, following the adoption of Law n°2013-906 and n°2013-907 on transparency in public life (see Section 1.1.4), a subsequent reform of the Assembly’s internal rules in 2014, and the *déontologue*’s (see Section 1.2) suggestion to revise the code in 2015.<sup>51</sup> In France, the code of conduct is not accompanied by a guide to the rules, as is the case in Britain and Sweden. Rather, article 8 of the Code provides for the possibility for members of the Assembly to consult the *déontologue* (ethics commissioner) with their questions and concerns.

The Swedish code of conduct is also short (four pages) but it is complemented by a longer guide to the code (ten pages) which aims to facilitate understanding of (and compliance with) the principles and rules of the code. The guide specifies that the code is not legally binding and that it is neither a contract nor an oath, but rather a declaration of intent on behalf of parliamentarians. The code is a collection of existing rules (from the constitution, laws, regulations, handbooks and practice) intended to clarify parliamentarians’ obligations. It presents the principles and expectations regarding parliamentarians’ conduct, and sets out rules regarding conflicts of interest, the registration of economic interests, bribes and gifts. The guide that accompanies the code provides additional details as to how rules should be interpreted. It, for instance, provides a list of questions that parliamentarians should ask themselves when being offered a gift from a third party (Is this an advantage? Why am I offered this advantage? Is there a link to my function? What is it worth?) as well as a list of potential benefits that would be considered inappropriate (monetary

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<sup>48</sup> HEYWOOD, Paul and ROSE, Jonathan. *Op. cit.* 2015, p. 114

<sup>49</sup> *Ibid.* p. 116

<sup>50</sup> Assemblée nationale. Décision du Bureau relative au respect du code de déontologie des députés. Paris: Assemblée nationale, April 6th 2011; Assemblée nationale. Code de déontologie (version en vigueur du 6 avril 2011 au 26 janvier 2016). Paris: Assemblée nationale, 2011.

<sup>51</sup> MELIN-SOUCRAMANIEN, Ferdinand. *Les progrès de la déontologie à l'Assemblée nationale*. Rapport public annuel sur la mise en œuvre du Code de déontologie. Paris : Assemblée nationale, 2015.

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gifts, stocks, advantageous loans, collaterals, private access to vehicles, residences etc. or paid holiday trips).

The House of Commons Code of Conduct combines principle-based and rule-based approaches by setting out seven principles and eight high level rules of conduct, and providing more detailed rules in the Guide to the Rules. As Kathryn Hudson, then Parliamentary Commissioner for Standards explains, the Code “moved from broad ethical principles, to rules which guide the application of those principles to the behaviour of members and from there to the third stage of detailed and specific instructions applicable to Members’ day to day conduct”.<sup>52</sup> These principles and rules are further detailed in the subsections below.

### 1.1.3.2. What principles should parliamentarians uphold?

The three codes of conduct list certain values and principles that should guide the conduct of parliamentarians during their mandate, focussing on the safeguard of the integrity of political decision-making, the independence of decision-makers, the prevention of conflicts of interest and, ultimately, the ambition to foster public trust. While the British and French codes provide a list of principles with attached definitions, the Swedish code includes these principles in its five introductory articles. This subsection provides an overview of the ethical principles retained by the authors of the code in each country and compares them (and their definition) as presented in the respective codes. The principles set out in the code of conduct of the House of Commons are taken from the first report of the Committee on Standards for Public Life published in 1995. These seven principles, known as the ‘Nolan principles’, thought to have been scribbled by Lord Nolan on the back of an envelope on an airplane,<sup>53</sup> apply to anyone who works as a public office-holder, elected or appointed. These seven principles logically informed the British code of conduct, but it also inspired policy-makers and bureaucrats in charge of preparing codes of conduct in other countries,<sup>54</sup> including France.<sup>55</sup> Table 2 shows the similarity between the ethical principles listed in the House of Commons Code of Conduct and the National Assembly *Code de déontologie*.

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<sup>52</sup> House of Commons Parliamentary Commissioner for Standards. Review of the Code of Conduct (...) Consultation Paper. London, 2016, p. 4

<sup>53</sup> Professor of History and Politics, University of Warwick (UKEXP1). Interview with author. November 14<sup>th</sup> 2017.

<sup>54</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR). Background Study: Professional and Ethical Standards for Parliamentarians. Warsaw, 2013; POWER, Greg. Handbook on Parliamentary Ethics and Conduct A Guide for Parliamentarians. London: Westminster Foundation for Democracy, Ottawa: Group of Parliamentarians against Corruption, 2009; DAVID-BARRETT, Elizabeth. Nolan’s Legacy: Regulating Parliamentary Conduct in Democratising Europe. Parliamentary Affairs, Vol.68, n° 3, 2015, pp. 514-532.

<sup>55</sup> MELIN-SOUCRAMANIEN, Ferdinand. *Op. cit.* 2015, p. 15; Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018; Parliamentary clerk 2, National Assembly (FRPC2). Interview with author. April 5<sup>th</sup> 2019.

Table 2. Principles of parliamentary mandate according to respective codes of conduct

House of Commons Code of Conduct (UK) <sup>56</sup>	National Assembly <i>Code de déontologie</i> (FR) <sup>57</sup>
<b>Selflessness</b> <p>Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.</p>	<b>The general interest</b> <p>Members of the National Assembly must act in the sole interest of the nation and the citizens they represent, to the exclusion of any satisfaction of a private interest or acquisition of a financial or material benefit for themselves or their families.</p>
<b>Integrity</b> <p>Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.</p>	<b>Independence</b> <p>Under no circumstances must members of the National Assembly find themselves in a situation of dependence upon a natural or legal person who could divert them from complying with their duties as set out in this Code. They verify the object and the finances of the structure and activities in which they take part.</p>
<b>Objectivity</b> <p>In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.</p>	<b>Objectivity</b> <p>Members of the National Assembly may not take action in a personal situation except in consideration solely of the rights and merits of the person in question.</p>
<b>Accountability</b> <p>Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.</p>	<b>Accountability (<i>responsabilité</i>)</b> <p>Members of the National Assembly shall be accountable for their decisions and actions to the citizens they represent. To this end, they must act in a transparent manner in the exercise of their duties.</p>
<b>Openness</b> <p>Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.</p>	
<b>Honesty</b> <p>Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.</p>	<b>Probity</b> <p>Members ensure that the resources put at their disposal are used in conformity with their intended purpose. They do not use the parliamentary facilities to promote private interests.</p> <p>(until October 9<sup>th</sup> 2019: Members have a duty to disclosure any personal interest that could interfere with their mandate and take measures to resolve</p>

<sup>56</sup> House of Commons. The Code of Conduct Approved by the House of Commons on 12 March 2012, 17 March 2015 and 19 July 2018 together with The Guide to the Rules relating to the Conduct of Member Approved by the House of Commons on 17 March 2015 and 7 January 2019. HC 1882 Published on 10 October 2019 by authority of the House of Commons.

<sup>57</sup> Assemblée nationale. Code de déontologie des députés. Nouvelle rédaction issue de la réunion du Bureau du 9 octobre 2019.

	such conflict of interest at the benefit of the sole public interest)
<b>Leadership</b> Holders of public office should promote and support these principles by leadership and example.	<b>Exemplarity</b> All members of the National Assembly shall, in the exercise of their office, promote the principles set out in this Code. Violations of the code will be sanctioned as provided for in article 80-4 of the Rules of procedures of the National Assembly.

The principles listed in the French parliamentary code are indeed very similar to those of the British code. The label used to describe what appears as the same principles however varies, reflecting certain dimensions of ‘intranslatability’,<sup>58</sup> and the attempt to say “*almost* the same thing”.<sup>59</sup> The British ‘selflessness’ became ‘*intérêt général*’ in French, ‘integrity’ became ‘*indépendance*’, etc. In Britain, the principles have remained the same since their adoption in 1995 but their descriptors were revised in 2013. In its 2013 report *Standards Matter*, the Committee on Standards for Public Life admitted that if it was to select the principles in 2013 they would probably not look the same but that changing them would create unnecessary confusion. The CSPL justified its choice to change the descriptors rather than the principles arguing that “leaving the principles as they are does not mean that we cannot change the words used to describe them. Since the seven principles were first formulated our understanding of the meaning of certain words has developed”.<sup>60</sup> Adapting the principles to the context of adversarial politics is seen as important for the principles to be effective and legitimate.<sup>61</sup>

The Swedish code is less straightforward regarding principles to be upheld, it was thus less easy to put them in a form that would have made it possible to include them in a comparative table. The introduction to the code emphasises the Parliament’s role as representative of the people and the centrality of the public’s trust for the function of parliamentarian and the legitimacy of their decisions. The guide to the code identifies three pillars of people’s trust in Parliament: the democratic process for selecting parliamentarians, the laws and rules guiding the work in Parliament and lastly parliamentarians themselves, past and present. The Swedish code recognises that there are high expectations on parliamentarians’ judgement and conduct, and that they should thus

<sup>58</sup> RICOEUR, Paul. *De la traduction*. Paris: Payot, 2004, p. 13.

<sup>59</sup> ECO, Umberto. *Dire quasi la stessa cosa. Esperienze di traduzione*. Milano: Bompiani, 2003, p. 9.

<sup>60</sup> House of Commons Committee on Standards in Public Life. *Standards matter A review of best practice in promoting good behaviour in public life*. London, 2013, p. 31. The Code has not automatically integrated the new descriptors and the current review of the Code suggests modifying the descriptors of the Principles to reflect the revisions to the Nolan principles, adapting them to the context of the Parliament (Parliamentary Commissioner for Standards. *Review of the Code of Conduct (...) Consultation Document 2*. 2016)

<sup>61</sup> PHILP, Mark. *Public Ethics and Political Judgment*. Report commissioned by the Committee on Standards in Public Life. London, 2014.

behave democratically and demonstrate mutual respect. The notion of the protection of the public interest is introduced together with the injunction for parliamentarians not to use their position for personal gain. The introduction is concluded with a summary statement setting high standards of integrity and prompting parliamentarians to avoid all situations that could hurt people's trust in the Parliament.<sup>62</sup> The working group's report interprets the code's introduction as establishing the important principles and ideals justifying the existence of rules regarding conflicts of interest, bribery and the register of economic interests.<sup>63</sup>

### 1.1.3.3. Rules regarding bribes, gifts and travels

Codes of conduct generally remind readers of existing laws and go beyond legal requirements to specify *softer* additional rules regarding gifts, travels and expenses. The Swedish and British codes include articles about the need for parliamentarians to register interests, which we return to in next subsection. In France, before becoming a legal obligation with the adoption of Law n°2013-906, the obligation to declare interests was included in the decision of the bureau of April 6<sup>th</sup> 2011 but was not part of the code itself. This subsection presents similarities and differences of the rules included in the British, French and Swedish codes of conduct.

Gifts received by parliamentarians in their official capacity are a central element of most codes of conduct. When the Swedish code was introduced to parliamentarians in the closing remarks before the winter break in December 2016, the Speaker joked about the gift register not concerning Christmas presents.<sup>64</sup> Gifts are understood as material or immaterial gifts, meaning that they concern travels paid by third parties, invitation to cultural and sport events etc.<sup>65</sup> None of them prohibits parliamentarians from receiving gifts, but they have different ways of handling the practice so as to prevent it from influencing parliamentarians' decisions. The UK code of conduct regulates gifts received from UK and foreign sources that exceed £300 which MPs have to register together with their financial interests.<sup>66</sup> In France, parliamentarians also need to declare gifts of a value exceeding €150, but the register is separate from that of interests and assets (the former being

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<sup>62</sup> Sveriges riksdag. En uppförandekod för ledamöterna i Sveriges riksdag. Slutrapport. 2014; Sveriges riksdag. *En uppförandekod för ledamöterna i Sveriges riksdag*. 2016.

<sup>63</sup> *Ibid.*

<sup>64</sup> Sveriges riksdag. Avslutning. December 16 2016. Available at [http://www.riksdagen.se/sv/webb-tv/video/avslutning/avslutning\\_H4C120161216av](http://www.riksdagen.se/sv/webb-tv/video/avslutning/avslutning_H4C120161216av) (accessed on January 11 2018)

<sup>65</sup> The UK code of conduct lists the following as “gifts, benefits and hospitality”: event or travel tickets; hospitality in the UK, including receptions, meals and accommodation; gifts such as clothing or jewellery; club subscriptions and memberships; loans or credit arrangements; discount cards.

<sup>66</sup> House of Commons. The Code of Conduct Approved by the House of Commons on 12 March 2012, 17 March 2015 and 19 July 2018 together with The Guide to the Rules relating to the Conduct of Member Approved by the House of Commons on 17 March 2015 and 7 January 2019. HC 1882  
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handled by the *déontologue* while the latter are managed by the High Authority for Transparency in Public Life – Section 1.2). The French code of conduct also provides for the possibility to deposit gifts with the *déontologue*. Declared gifts of an unusually high value can be stored by the Commissioner and sold by the National assembly at the end of the legislature.<sup>67</sup> Swedish parliamentarians are required to register gifts of ‘significant value’ within the two weeks following reception and literally hand them over to the parliamentary administration. The Swedish code states that the gifts do not belong to parliamentarians but to the parliament, and that parliamentarians are thus not allowed to dispose of them. They are responsible for estimating the value of a gift and the need to register and hand it over to the parliament’s service centre (shown in Box 1).

Box 1. Service centre of the Swedish Parliament(gift storage)



Source: Photographs taken by Thomas Karlsson and published in SUNDBERG, Marit. Kaftan och kristallklubba – talmännen får flest gåvor i riksdagen. *Dagens Nyheter*, August 8<sup>th</sup> 2019.

This rule, suggested by the parliamentary working group who developed the code of conduct, required the adoption of Law 2016:1117 on the registering and management of gifts received by parliamentarians before it could be included in the code of conduct.<sup>68</sup> Swedish parliamentarians are thus supposed to register the gifts that receive in their official capacity and hand them over to the Service centre. In the British case, gifts and hospitality received by parliamentarians are thus made public in the register of interests. In France, the declaration is made to the *déontologue* who advises a parliamentarian that could find him/herself with a conflict of interest. The register of gifts is public, but it currently only contains two entries.<sup>69</sup>

Administrative reports and interviews with parliamentary clerks were informative regarding MPs’ attitude to the registration of gifts. In Britain, the inclusion of gifts among interests to register with the House registrar give some weight to the rule. The values of gifts to register is also higher,

<sup>67</sup> MELIN-SOUCRAMANIEN Ferdinand. *Op. cit.* 2016.

<sup>68</sup> Sveriges riksdag. En uppförandekod för ledamöterna i Sveriges riksdag. Stockholm, 2016.

<sup>69</sup> Assemblée nationale. Dons, avantages ou invitations à des événements sportifs et culturels dont la valeur est supérieure à 150€ XVe législature. n.d. Online, available at: [http://www2.assemblee-nationale.fr/qui/deontologie-a-l-assemblee-nationale#node\\_64233](http://www2.assemblee-nationale.fr/qui/deontologie-a-l-assemblee-nationale#node_64233) (accessed on December 15th 2019)

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which could lead MPs to ponder about the influence of gifts – although no empirical material collected allows me to confirm this. In France, the practice of declaring gifts took a few years to be appropriated by parliamentarians. After the code was adopted, few parliamentarians knew about the obligation, or cared to comply with it. Noëlle Lenoir, a former *déontologue* noted that she only received twelve declarations during her mandate (2012-2014) out of which 5 came from the same parliamentarian. Ferdinand Mélin-Soucramanien (2014-2017) similarly received very few declarations. Since June 2017, the new *déontologue* Agnès Roblot-Troizier received 110 declarations from 63 parliamentarians,<sup>70</sup> which suggests that the rule has progressively been acknowledged by parliamentarians with time and with the new legislature. A parliamentary clerk indicated that parliamentarians had found it difficult to understand that they needed to declare invitations to cultural or sports events since it was “part of the culture”.<sup>71</sup> Under Ferdinand Mélin-Soucramanien’s mandate, the code was modified to explicitly mention invitations to cultural or sports events. In Sweden, parliamentary clerks suggested that parliamentarians really tried to comply with the rules and that many had sought help from the service centre, but that it was not a “huge thing”. Parliamentarians register gifts from time to time, “especially after trips abroad, since it is part of the international custom to give gifts, and then this register gives a clear routine”.<sup>72</sup>

The reception of gifts is an important issue to govern in a parliamentary ethics policy because of the ambiguity that exists between gift-giving and bribery, the main difference between an acceptable gift and an unacceptable bribe often being the suggested reciprocity of a bribe binding the recipient and obliging them vis-à-vis the giver.<sup>73</sup> British and Swedish codes include articles about bribery, which refer to the laws and resolution that prohibit bribery. The French code does not make such a reference.

The management of parliamentary expenses is not a common feature of all codes. The British code has an article in its section outlining that “Members are personally responsible and accountable for ensuring that their use of any expenses, allowances, facilities and services provided from the public purse is in accordance with the rules laid down on these matters”. The French code includes this aspect of parliamentary ethics in its list of principles (see Table 2). Interestingly, the Assembly’s leadership changed the definition attributed to *probity* in 2019, from an obligation

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<sup>70</sup> Assemblée nationale. *Un nouvel élan pour la déontologie parlementaire*. Rapport annuel de la déontologue. Paris, January 2019.

<sup>71</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018.

<sup>72</sup> Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19<sup>th</sup> 2017.

<sup>73</sup> SCHILKE, Oliver and ROSSMAN, Gabriel. It’s Only Wrong If It’s Transactional: Moral Perceptions of Obfuscated Exchange. *American Sociological Review*, Vol. 83, n°6, 2018, pp. 1079-1107. Using experiments, the authors show that audiences morally condemn such exchanges if they are perceived as transactional. Actors’ obfuscation of the transactional dimension reduces the audience’s moral offense.

to declare interests to an obligation to use resources at their disposal in conformity with intended purposes. The Swedish code does not mention parliamentary expenses at all. While outside of the scope of the analysis, the use of parliamentary expenses came under focus recently, in Britain after the expenses scandal, and in France with the “Penelopegate”<sup>74</sup> during the 2017 presidential campaign. With a similar dynamic to other dimensions of the instrumentation of parliamentary ethics, further developed in Section 1.2 of this chapter, British policy-makers reacted to the expenses scandal with the adoption of a new policy, here externalising the management of expenses to the Independent Parliamentary Standards Authority (IPSA). While French officials visited IPSA when seeking to reform expenses management, it did not fully externalise it, but gave new prerogatives to the *déontologue* who is now in charge of regularly controlling expenses – although Transparency International France and the *déontologue* herself find the process far from ideal.<sup>75</sup> In Sweden, expenses are reimbursed upon presentation of cost justification. In a few cases have Swedish parliamentarians been accused of abusing the rules in the media, but as Emma Carlsson Löfdahl (a Liberal parliamentarian who was compensated by the parliament for renting her husband’s apartment in Stockholm) argued: “we follow existing rules. If one considers that the rules are wrong, then one needs to change the rules”.<sup>76</sup> Chapter 9 returns to parliamentarians economic benefits and situation.

While there are many similarities between the content of the three codes, their differences are worth noting. The French code is thus the one that gives the most prominence to principles over rules, at least in its original version, while the Swedish code is most rules-based as it compiles existing laws that frame the parliamentary mandate. The British code should be situated somewhere in between. Despite the visibility of principles in the French and British codes, the target population (and the public’s) focus is (too) often on the rules, which are more concrete and can lead to the detection of abuse.<sup>77</sup> A British parliamentary clerk expressed scepticism towards what she saw as an excessive focus on rules: “rules-based approaches make us concentrate on these rules but the rest is free. Parliamentarians see that the standards system is there to make sure that these rules are

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<sup>74</sup> A neologism using candidate François Fillon’s wife’s name and resonating like Watergate, which was often used in the media. For an example of such an article in English, see CHRISAFIS, Angelique. 'Penelopegate' casts dark shadow over Fillon's presidential prospects. *The Guardian*, January 27<sup>th</sup> 2017.

<sup>75</sup> Transparency International France. Derrière la démission de François de Rugy, l’opacité des frais de mandat. July 17<sup>th</sup> 2017. Online, available at : <https://transparency-france.org/actu/opacite-frais-de-mandat/#.XfdwUZNKiRs> (accessed on December 16<sup>th</sup> 2019); MATHON, Philippe and DEPIERRE, Stéphanie. Les doutes de la déontologue sur le contrôle des frais de mandat des députés. *LCP*, December 4<sup>th</sup> 2017.

<sup>76</sup> LAURELL, Agnes. L-ledamot hyr lägenhet av sin make – får boendeersättning av riksdagen. *Dagens Nyheter*, March 6<sup>th</sup> 2019.

<sup>77</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20<sup>th</sup> 2017; Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018; Ethics commissioner, Assemblée nationale (FREC1). Interview with author. March 28<sup>th</sup> 2018.

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not broken rather than seeing that the whole system works with integrity beyond those rules”,<sup>78</sup> which reflects the quote by the Swedish parliamentarian above. The clerk suggests that officials working within ethics bureaucracies are well aware of the risk that by listing what is not allowed other practices that could be problematic are perceived by parliamentarians as permissible. At the same time, they thought parliamentarians also saw these rules as there to “catch them”.<sup>79</sup> This reflects Nicole Bolleyer and Valeria Smirnova’s observation that the very existence of rules create the possibility for their violation.<sup>80</sup> Codes of conduct indeed resolve the ambiguity of (un)acceptable behaviour in a new (or at least clearer) way and thus define new categories of deviant behaviour that (might) go beyond what is prescribed by law.

#### **1.1.4. Transparency and disclosure requirements**

Transparency policies take many forms in modern democracies. The most all-encompassing transparency policy are undoubtedly Freedom of Information laws (FoI), giving the general public the right to access data held by national governments, which countries around the world have adopted at unprecedented pace since the 1990s,<sup>81</sup> long after the first such law was adopted in Sweden in 1766.<sup>82</sup> France adopted its FoI law in 1978<sup>83</sup> and Britain passed its Freedom of Information Act 2000, in the year 2000 (unsurprisingly). The focus of this research project is however on a more targeted form of transparency requirement, organised around public interest registers. These registers are a centralised system for parliamentarians to declare their privately-held interests in writing which makes the information registered available to the public. The three countries have adopted such an instrument: Britain in 1974, Sweden in 1996 and France in 2013. While incompatibility rules are expected to *prevent* the very possibility of certain conflicts of interest (upstream intervention), interest declaration and registration sets out to *regulate* or manage conflicts of interest (midstream intervention).<sup>84</sup> The rationale behind making officials declare their private interests is for their peers as well as the general public, the media and organised civil society to be aware of a representatives’ ties to certain sectors, companies, associations etc. This is expected to

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<sup>78</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>79</sup> *Ibid.*

<sup>80</sup> BOLLEYER, Nicole and SMIRNOVA, Valeria. *Op. cit.* 2017, p. 1222.

<sup>81</sup> HOOD, Christopher and HEALD, David (eds). *Transparency. The Key to Better Governance ?* Oxford: Oxford University Press, 2006; MICHENER, Greg. FOI laws around the world. *Journal of democracy*, vol.22, no 2, 2011, pp. 145-159; FORSSBÆCK Jens, and OXELHEIM Lars. The Multifaceted Concept of Transparency. *The Oxford Handbook of Economic and Institutional Transparency*. Oxford University Press, 2014.

<sup>82</sup> NORDIN, Jonas. *1766 års tryckfrihetsförordning Bakgrund och betydelse*. Kungliga Biblioteket (National Library of Sweden), 2015.

<sup>83</sup> Loi n° 78-753 du 17 juillet 1978 portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal.

<sup>84</sup> COOTE, Anna. *The Wisdom of Prevention*. London: New Economics Foundation, 2012; GOUGH, Ian. The Political Economy of Prevention. *British Journal of Political Science*, Vol. 45, 2013, p. 308.

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reveal potential conflicts of interest and make the legislative footprint (more) visible. It is also expected to make officials more reflexive on existing relationships and ties that might influence them. While Britain, France and Sweden all have a public interest register for parliamentarians, its implementation looks quite different in practice from one context to the next.

Transparency requirements are the oldest element of the modern British standards system and take two forms: the declaration of relevant interests and the registration of financial interests. In 1974, the House complemented a long-standing tradition of orally declaring any relevant pecuniary interest in debate or other proceeding with the introduction of a compulsory public register of interests which aims to provide information about any interest which might reasonably be thought by others to influence an MP's actions, speeches or votes.<sup>85</sup>

In France, the current arrangements regarding the declaration of interests and activities are governed by laws n°2013-906 and n°2013-907 on transparency in public life. French officials currently need to file two separate declarations, one concerning their assets and one concerning their interests and activities, making France an odd case in the international landscape of disclosure obligations. Between 2011 and 2013, French parliamentarians actually had three declarations to fill out, until the interest declaration and the declaration of outside activities were merged. In a recent evaluation of corruption prevention in the French Parliament, the Council of Europe qualified the disclosure system in France as 'fairly complex' because of the various declarations applicable to parliamentarians and the ambiguity of their terms.<sup>86</sup> Declaring their assets became a requirement for parliamentarians before they had to declare their outside activities and interests. In 1988, Law n°88-226 on financial transparency of political life indeed made it mandatory for them to file a declaration of assets, in order to detect any illicit enrichment resulting from their parliamentary mandate. In 2011, Law n° 2011-410 made them declare their professional activities to the Bureau of their chamber (in charge then of verifying their compatibility with a parliamentary mandate and to seize the Constitutional Court in case of doubt). In April 2011, the decision of the National Assembly's Bureau to create a code of conduct introduced an interest declaration for

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<sup>85</sup> UK House of Commons. Resolution of the House of 22d May 1974 relating to Registration of Members' Financial Interests. London, 1974. My research is interested in public interest registers, which require MPs to register their interests in writing, but the UK has had a long-standing tradition of MPs declaring their interests orally when taking part in a debate or a vote, a tradition that is being picked up elsewhere, like in France for instance. More information on this tradition and its relation to public interest registers can be found in this section as well as in Chapter 9.

<sup>86</sup> Council of Europe GRECO, Evaluation Report France Greco Eval IV Rep (2013) 3E. Strasbourg, 2013, p. 23.  
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parliamentarians,<sup>87</sup> which was actually not enforced before the adoption of the 2013 laws on transparency in public life.<sup>88</sup>

The Swedish Parliament introduced its register of economic interests in 1996, with the adoption of Law 1996:810. According to the guide to the code of conduct, the *raison d'être* of the register goes beyond conflict of interest regulation and stems from the people's legitimate plea for information on their representatives, regardless of the influence of a specific interest on a given decision. It also aims to encourage parliamentarians to report any situation susceptible to generate a conflict of loyalty and thus to influence political decision-making. During its first years of existence the registration of interests was voluntary for Swedish parliamentarians. The decision to leave it up to parliamentarians to decide whether they wished to register their interests or not was seen as a compromise for the fear of parliamentarians' privacy being violated.<sup>89</sup> Some interpreted the voluntary register as a necessary incentive for parliamentarians to register, the refusal to register risking attracting the attention of journalists and creating suspicion among citizens.<sup>90</sup> Interest registration became mandatory with the adoption of Law (2008:38) which entered into force on March 1<sup>st</sup> 2008.

#### 1.1.4.1. What should parliamentarians declare?

Parliamentarians in the three countries have to register their interests within a set timeframe and update their declaration regularly. The UK House of Commons requires new MPs to register within one month of their election all of their financial interests and any benefits received in the 12 months preceding their election. Any change to an MPs' financial interests should be registered within 28 days. In France, Law n°2013-906 amends the Electoral Code to include the obligation for parliamentarians to submit, within two months of taking office, a declaration of assets and a declaration of interests and activities. Swedish parliamentarians have to register their interests and activities within four weeks of taking office, and to report any change once per semester.

Table 3 compares the categories of information that parliamentarians have to declare. One easily sees that there is a difference in specificity between the countries, the British categories being relatively broad whereas the Swedish and French categories are more specific. The French

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<sup>87</sup> Assemblée nationale. Décision du Bureau relative au respect du code de déontologie des députés. April 6<sup>th</sup> 2011. The declaration included current and past paid activities, consultancy activities, direct investments in corporate capital above 15,000€ as well as the professional activities of their partner, ascendants and descendants.

<sup>88</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018.

<sup>89</sup> Sveriges riksdag. Konstitutionsutskottets betänkande 1995/96:KU13. Stockholm, November 7<sup>th</sup> 1995, adjusted on May 7<sup>th</sup> 1996.

<sup>90</sup> Sveriges riksdag. Motion 1995/96:K9. Stockholm, October 26<sup>th</sup> 1995; Riksdagens protokoll 1995/96:97. Stockholm, May 22<sup>d</sup> 1996, p. 11.

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declarations are the most detailed ones, with many categories to fill out. Law n°2013-906 requires parliamentarians to declare their assets separately as well as those collectively or jointly owned with their partner within two months of taking office and to signal all significant changes. They also need to submit a new declaration of assets prior to leaving office, allowing the dedicated agency (described in Section 1.2) to detect any unexplained variation in wealth. The control of unjustified enrichment was facilitated by the introduction of declarations of interests and activities, giving the controlling entity access to information regarding parliamentarians' total income. Officials from the High Authority for Transparency in Public Life (HATVP) now consider these declarations to be complementary and inseparable.<sup>91</sup> In addition to cross-checking declarations, the HATVP has privileged access to fiscal data and can request the fiscal administration to launch an international assistance procedure to obtain information on assets held abroad. The disclosure requirements concern both assets and liabilities, as detailed in Box 2.

Box 2. Details regarding the assets that French officials need to declare

**WITH REGARD TO THE DECLARATION OF ASSETS, PUBLIC OFFICIALS MUST DETAIL**

<ul style="list-style-type: none"> <li>&gt; <b>Their personal situation (name, marital status, personal contact details, etc.)</b></li> <li>&gt; <b>Real estate (house, flats, fields, etc.)</b></li> <li>&gt; <b>Securities (shares in a company for instance)</b></li> <li>&gt; <b>Life insurances</b></li> <li>&gt; <b>Bank accounts</b></li> <li>&gt; <b>Moveable properties (furnishing, artworks, jewellery, hard cash, etc. valued at €10,000 or more)</b></li> <li>&gt; <b>Motorized vehicles (cars, boats, aircrafts)</b></li> </ul>	<ul style="list-style-type: none"> <li>&gt; <b>Goodwill or clients, missions and functions held</b></li> <li>&gt; <b>Other properties, including corporate current accounts valued at €10,000, or stock options valued above €10,000</b></li> <li>&gt; <b>Movable property, real estate, and accounts held in foreign countries;</b></li> <li>&gt; <b>Liabilities</b></li> <li>&gt; <b>And, in the end-of-office asset declaration, revenue collected from the start of the term of office or start of the duties under which the statement is being filed</b></li> </ul>
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\* Only assets detained under the common property regime with the spouse, civil partner or common-law partner have to be declared. If the marital status is different, assets of the spouse or partner do not have to be declared. Ascendants and descendants are not covered by the declarations of interest or assets.

Source: Haute autorité pour la transparence de la vie publique. What to declare. n.d. Online, available at: <https://www.hatvp.fr/en/high-authority/ethics-of-publics-officials/list/#what-to-declare-rp> (accessed on December 9<sup>th</sup> 2019)

British and Swedish parliamentarians also need to declare certain specific assets, but their declarative obligations do not reach as far as the French ones. In addition to the number of elements to declare, interests, activities and even assets are not interpreted in the same manner.

<sup>91</sup> Public official, HATVP (FRPO1). Interview with author. October 27 2017.  
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The Swedish Parliament, like its British counterpart, has a single declaration, and Swedish parliamentarians are not required to declare their property. In the British case, MPs are only required to declare their activities and earnings that relate to the business sector as well as information about the land and property they own but on which they do not live.<sup>92</sup> In Sweden, private property need not be registered if the property does not have any agricultural or production function. The difference between France and Britain with regards to assets to declare can be found in the level of details that should be declared. The French system provides more details as to what needs to figure in declarations, leaving officials with less leeway to omit interests or assets to declare. The focus on *interests* indicates that the goal of the Swedish registration of interests is solely to regulate conflicts of interest and not to detect illicit enrichment, as is the case in France for instance.

While the British and Swedish declarations are largely focussed on economic interests, the French system interprets interests and activities more broadly. French parliamentarians indeed have to declare their present and past activities and interests, understood both as pecuniary and non-pecuniary interests.<sup>93</sup> In the UK and Sweden, only the involvement in organisations whose purpose is to promote the financial interests of its members need to be registered, which means that activities in non-profit organisations need not be signalled. Parliamentary clerks in both countries however indicated in my interviews with them that they encouraged parliamentarians to declare as much as possible, even going beyond what the system requires.<sup>94</sup> In Sweden, clerks said that many parliamentarians do it anyway.<sup>95</sup> In Britain, the oral declarations are seen as a complement to the register, since the latter focusses on financial interests while oral declarations should concern all relevant interests. There is an ambiguity about what needs to be registered, which is contained in the sentence “any financial interest or other material benefit (..) which might *reasonably* be thought by others to influence his or her actions...” (emphasis by the author) used in the guide to the rules outlined in the code of conduct.<sup>96</sup> This phrasing reflects the willingness to avoid full disclosure,

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<sup>92</sup> Parliamentary clerk, UK House of Commons (UKPC4). Personal communication via email with author. November 7<sup>th</sup> 2017.

<sup>93</sup> The obligation to declare non-pecuniary interests draw a lot of public attention in December 2019, when it was revealed that Jean-Paul Delevoye, the cabinet member in charge of leading the government’s pension reform, had knowingly omitted to declare his membership or chairmanship in numerous civil society organization, considering that it concerned his “social engagement” and could not generate any conflict of interest (LAURENT, Samuel and MICHEL, Anne. Jean-Paul Delevoye reconnaît finalement 13 mandats sur sa déclaration d’intérêts, avec des salaires révisés à la hausse. *Le Monde*, December 14<sup>th</sup> 2019)

<sup>94</sup> Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19<sup>th</sup> 2017; Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20<sup>th</sup> 2017.

<sup>95</sup> Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19<sup>th</sup> 2017.

<sup>96</sup> The Guide indicates that “when considering registration, Members are also required to keep in mind the overall purpose of the Register, which is to provide information about any financial interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament.” (House of Commons. The Code of *Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020*



which was thought to present a risk for MPs' privacy and to generate noise that might "obscure significant matters in a blizzard of trivial details".<sup>97</sup> The inherent subjectivity of the approach remains a point of tension for the bodies in charge of overseeing the process. A parliamentary clerk said that the House of Commons ethics bureaucracy used, and advised MPs to use the 'reasonable man test', to know what should be declared, leading to them recommending that MPs declare as much as possible because there might be someone who would find it relevant. The clerk indicated that ultimately, the point was to "show that you have nothing to hide".<sup>98</sup>

Contrary to French policy, in Britain and Sweden, parliamentarians do not have to provide the exact value of their outside income or financial interests. The Swedish registration system does not require any quantitative information about assets or income, nor does it include relatives' assets and interests. Moreover, while there are thresholds in Britain and Sweden, there are none in France, meaning that parliamentarians have to declare all of their financial interests. This reflects the fact that, in practice, France has a broader understanding of what constitute a conflict of interest for parliamentarians than the United Kingdom or Sweden, the latter focussing mainly on conflicts of interest of a monetary nature.

The scope of declaration is also different in the three countries. The Swedish system concerns the parliamentarian only, even though some of shares and debts might be shared with a partner, the declaration does not ask about the activities of family members.<sup>99</sup> The British system asks about family members broadly but only concerns those working with the parliamentarian and those engaged in lobbying activities. In France, the interests and activities of parliamentarians are extended to include the activities of their partner, as well as those of their parliamentary assistants. The Swedish system also asks about parliamentarians' assistants in case these are paid for by a third party. The British system includes gifts, travels and hospitality in the registration of interests, which contrast with the French and Swedish systems.

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Conduct Approved by the House of Commons on 12 March 2012, 17 March 2015 and 19 July 2018 together with The Guide to the Rules relating to the Conduct of Member Approved by the House of Commons on 17 March 2015 and 7 January 2019. HC 1882, published on 10 October 2019 by authority of the House of Commons, p. 10)

<sup>97</sup> House of Commons Committee on Standards. Guide to the Rules relating to the conduct of Members: GRECO Report and other developments. First Report of Session 2012–13. London, 2013, p. 16

<sup>98</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>99</sup> One needs to take into consideration however that the recusal rules in Sweden include conflicts of interest that might concern a family member or a friend (Section 1.2).

Table 3. Comparative table of elements that parliamentarians must register

United Kingdom <sup>100</sup>	Sweden <sup>101</sup>	France <sup>102</sup>
Employment and earnings	Remunerated employment which is not temporary	Paid professional activity at the time of the election
	Income-generating independent activity which is carried out by a parliamentarian in addition to the tasks performed in the <i>Riksdag</i> .	Paid professional activity during the five years prior to the election
	Membership of a board or position of auditor in a stock company, a partnership, an economic association, an equivalent foreign legal entity, a non-profit organisation whose purpose is to promote the financial interests of the members, a foundation carrying out business or other economic activity, or an equivalent foreign legal entity	Functions on managing boards of private and public bodies at the time of the election and five years prior
	Agreements of an economic nature with a former or present employer, for instance pensions or fringe benefits	Consultancy activities at the time of the election and five years prior
		Voluntary and unpaid activities
Miscellaneous (Any relevant interest or material benefit which does not clearly fall into one of the other categories)	Assignments performed for Central government or for municipal or county councils, if the assignments are not temporary	Other functions and mandates
Land and property	Business property which is wholly or partly owned by a parliamentarian	(in separate asset declaration)
Shareholdings	Ownership of shares of stock in a company, assets in a partnership or in an economic association or assets in an equivalent foreign legal entity (over a certain value)	Direct investments in corporate capital

<sup>100</sup> House of Commons. The Code of Conduct Approved by the House of Commons on 12 March 2012, 17 March 2015 and 19 July 2018 together with The Guide to the Rules relating to the Conduct of Member Approved by the House of Commons on 17 March 2015 and 7 January 2019. HC 1882, published on 10 October 2019 by authority of the House of Commons. There are currently ten categories of interests but the structure of the Register of Members' Interests has changed several times, going from nine categories in 1974 to twelve in 2012. It was reduced to ten when the categories "Remunerated employment, office, profession, etc" and "Clients" were merged.

<sup>101</sup> Sveriges lagbok. SFS 2016:1118 Lag om ändring i lagen (1996:810) om registrering av riksdagsledamöters åtaganden och ekonomiska intressen. Stockholm, November 24<sup>th</sup> 2016.

<sup>102</sup> LOI organique n° 2013-906 du 11 octobre 2013 relative à la transparence de la vie publique. *Journal officiel de la République française* n°0238 du 12 octobre 2013, p. 16824.

	Debts, bailments and other commitments which relate to economic activities as understood in the previous sections of the register, above the threshold of two price base amounts	(in separate asset declaration)
Family members employed		Current activities of the spouse or partner
Family members engaged in lobbying		<i>Ibid.</i>
	Permanent economic benefits and secretarial or research assistance which have a connection with the remit as a parliamentarian, if the support is not contributed by the State, the parliamentarian or by the party	Parliamentary assistance and their other professional activities
Donations and support		(in separate gift register)
Gifts, benefits and hospitality from UK sources		(in separate gift register)
Visits outside the UK		(in separate gift register)
Gifts and benefits from sources outside the UK		(in separate gift register)

#### 1.1.4.2. Who manages the register?

While Section 1.2 presents more details about the supervision and enforcement of conflict of interest regulation, it is worthwhile providing some information about the attribution of responsibility for the management of the public interest register. The responsibility to register interests lies with parliamentarians themselves, but the three countries have indeed adopted very different systems to oversee the implementation of this instrument. Sweden has inscribed the interest register in the tradition of parliamentary self-regulation, while Britain has departed from its tradition of pure self-regulation by creating an independent institution within the Parliament to oversee conflict of interest regulation. France on the other hand partly externalised the management of the public interest register.

In Sweden, the central office of the Parliament, in charge of organising and facilitating the work of the chamber, is in charge of managing the register. It does not have the responsibility over compliance with the registration obligations, this responsibility ultimately lies with parliamentarians themselves. The latter are informed of these obligations in the handbook they are given at the start of their mandate, and during their individual induction in the case of replacements. They are also

reminded of these obligations via email, ahead of all registration periods. Parliamentary clerks however ensure that parliamentarians comply with the rules and register in a timely manner. They remind parliamentarians of their obligations by writing or by phone, and request any missing information. The administration plays a support role in the implementation of this policy and do not have the prerogative to verify the veracity and sincerity of the content of the declarations. The legal framework does not provide for checks by the administration and the system is entirely build on trust in the honesty and compliance of parliamentarians. The only prerogative that the central office has with regards to the content of declarations has to do with legal and natural persons referred to in the register, such as clients or employers, whom the administration has to inform and to give a chance to comment – often those mentioned in parliamentarians declaration need to be briefed about the register of interests (knowledge of its existence does indeed not stretch far beyond the narrow circle of political officials, journalists and business executives).<sup>103</sup>

In Britain, a specific function has been created for overseeing the implementation of the public interest register. The House of Commons indeed has a Registrar, under the authority of the Parliamentary Commissioner for Standards, who is in charge of the preparation and maintenance of the register. The Registrar provides advice to individual MPs and answers their questions about what interests to register. The Parliamentary Commissioner for Standard, under the authority of which the Registrar operates, can launch an investigation if there is evidence that an MP did not declare their interests as required.<sup>104</sup>

In France, all declarations are submitted to the High Authority for Transparency in Public Life (*Haute autorité pour la transparence de la vie publique*, HATVP), an independent administrative authority further described in Section 1.2, and to the Bureau of the chamber of which the parliamentarian is a member. While the HATVP receives the declarations and is in charge of publishing them online, the institution does not have any injunction power over parliamentarians (while it does for other public officials who are required to declare interests and assets), in respect of the separation of powers.<sup>105</sup> The HATVP thus monitors compliance with obligations to register interests and assets, verifies the content of declarations and makes sure there are available to the public. In case of late submission or incomplete declaration, the HATVP informs the bureau of the chamber of which the parliamentarian is part, which can in turn seize the Constitutional Court who can pronounce the parliamentarians' ineligibility and his/her compulsory resignation (*démission*

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<sup>103</sup> Council of Europe GRECO. Eval IV Rep (2013) 1E. Strasbourg, 2013, p. 21; Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19<sup>th</sup> 2017.

<sup>104</sup> Parliamentary clerk, UK House of Commons (UKPC4). Personal communication via email with author. November 7<sup>th</sup> 2017.

<sup>105</sup> Conseil constitutionnel. Décision n° 2013-675 DC du 9 octobre 2013.  
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*d'office*). Similarly, if the HATVP detects a potential conflict of interest, it cannot ask a parliamentarian to resolve it. It must instead inform the President of the parliamentary chamber who decides whether to apply the measures that have been decided by the chamber itself. Likewise, it is for the bureau of the Assembly to seize the Constitutional Court to appreciate potential incompatibilities.

In the three cases, officials have been tasked to verify that transparency requirements are followed. But while they have some control capacity in Britain and France, they only have a support role in Sweden. The principles of parliamentary sovereignty and separation of powers make parliamentarians an exception among public officials as to how control can be exercised regarding their conduct. Control has progressively been externalised in France and partly so in Britain, but these independent bodies are only tasked with verifying compliance and cannot themselves request parliamentarians to declare additional information or to resolve a conflict of interest nor can they decide on sanctions. More information on enforcement and sanctions is provided in Section 1.2.

#### 1.1.4.3. What is meant by *public* in public interest registers?

Not unlike the other comparative elements provided here, the devil is in the details regarding what is meant by *public*. There is a great deal of ambiguity about what is meant here, made apparent even in the use of words. Indeed, publicity and transparency are used interchangeably, or more precisely *public* is used as the adjective of transparency, as objectified in Bolleyer and Smirnova's transparency index which uses public disclosure of information as a criteria.<sup>106</sup> Some legal experts in France, who took part in policy commission prior to the adoption of the 2013 transparency laws, are quite sceptical towards the word transparency, as one interviewee made clear: "What does it mean to be transparent? I do not know what that means for a representative of the Nation. It is a term that is so vague and ambiguous that it can cover many things and lead to excesses (...) The term publicity is enough".<sup>107</sup> A conceptual analysis of the term *transparency* goes beyond the scope of this work, and Carloyn Ball already offers a thorough study of the political meanings of the terms.<sup>108</sup> I will rather focus the next paragraphs on what the three countries mean by publicity or transparency in the narrow case of this policy instrument, looking specifically at what is published and how.

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<sup>106</sup> In addition to scope of information and publicity of information regarding violation of rules (BOLLEYER, Nicole and SMIRNOVA, Valeria. *Op. cit.* 2017, p. 1226).

<sup>107</sup> Professor of public law (FREX1). Interview with author. December 20th 2017.

<sup>108</sup> BALL, Carolyn. What Is Transparency? *Public Integrity*, Vol. 11, n°4, 2009, pp. 293-308.  
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The level of information about parliamentarians' interests depends both on specific policies to regulate conflicts of interest and on broader transparency laws. As we see in this subsection, there is a difference between theory and practice/technology. In Sweden, the principle of openness of public information and the broader rules on income and tax transparency<sup>109</sup> make most information regarding parliamentarians' economic situation, economic benefits and interests and use of public funds available for public scrutiny, but only upon request. In France, on the contrary, detailed information regarding parliamentarians' interests are made available online. As noted above, French parliamentarians are required to file more detailed declarations, which go beyond financial interests and concern their partner/spouse as well (some information regarding private residency and family being blurred). British MPs, on the other hand, have to include information about gifts and travels in their interest declaration, which make it easier for the public to access this information than in France or Sweden. Lastly, the British standards system provides for the systematic publication of rules violations by MPs, while that is only an option available to parliamentary leadership in France and Sweden, rendering "shaming through transparency" more common in the UK.<sup>110</sup>

The three countries have adopted different ways to make information available to the public. Britain regularly published its register of members' interests online in pdf format, and Sweden makes the information available upon request to the parliamentary administration. France has a hybrid system, which combines interest declarations made available in machine-readable open data format with a rather more complicated system of accessing asset declarations in designated official buildings. All declarations are processed through the software ADEL, to facilitate registration as well as data standardisation and readability. The choice of keeping interests and asset declarations separate is partly justified by the different levels of publicity that apply to the two declarations.<sup>111</sup> Contrary to members of government whose declarations are published online, parliamentarians' asset declarations can be accessed only in local governmental buildings (*préfectures*), as illustrated in the political cartoon featured in Box 3. There is, in reality, only limited access to the information contained in asset declarations, since Law n°2013-906 provides for sanctions the publication of the information contained in declarations (45,000€ fine).

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<sup>109</sup> HAMBRE, Anna-Maria. Tax Confidentiality in Sweden and the United States – A Comparative Study. *International Journal of Legal Information*, Vol. 43, n°2-3, 2015, pp. 165-233; When less is more; tax transparency. *The Economist*, n°419, April, 16<sup>th</sup> 2016, pp. 24-47.

<sup>110</sup> BOLLEYER, Nicole and SMIRNOVA, Valeria. *Op. cit.* 2017, p. 1227.

<sup>111</sup> Public official, HATVP (FRPO1). Interview with author. October 27 2017.  
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### Box 3. Political cartoon illustrating the consultation of asset declarations in France



Source: Frédéric Deligne, published in ROUDEN, Céline. 'Transparence de la vie publique: le projet de loi définitivement voté par l'Assemblée nationale.' *La Croix*, September 16<sup>th</sup> 2013.

Interest declarations have followed a very different path, being included in the government's open government efforts, with improved data quality and reusability.<sup>112</sup> Even if the point is controversial,<sup>113</sup> parliamentarians and experts suggest that the utility of making asset declarations transparent is more debated than the necessity to make interest declarations available for public scrutiny, giving the nature of the control they require.<sup>114</sup> When the objective of interest declarations is to provide citizens with information about potential influences on parliamentarians' decisions and actions, that of asset declarations is to detect variations in wealth. The strong opposition to public access to asset declarations expressed during parliamentary debates, in defence of the respect of public officials' privacy, led to this hybrid solution that appears largely unsatisfactory according to Transparency International, the Council of Europe and the HATVP itself.<sup>115</sup>

In Britain, the register of members' interests is made available to the public on the House of Commons website in full. According to the latter, the register is maintained by the Parliamentary Commissioner for Standards and is updated fortnightly online when the House is sitting. The information is published in pdf format, which makes it more difficult to reuse than French declarations. Civil society groups and individuals advocate for translating the information in open

<sup>112</sup> WICKBERG, Sofia. *France Design Report 2018-2020*. Washington DC: Open Government Partnership. 2019; WICKBERG, Sofia. *France End-of-Term Report 2015-2017*. Washington DC: Open Government Partnership. 2018.

<sup>113</sup> HATVP. *Rapport d'activités 2017*. Paris, 2018, pp. 50-51; HATVP. *Rapport d'activités 2018*. Paris, 2019, pp. 39-40; Council of Europe GRECO. *Eval IV Rep (2013) 3E*. Strasbourg: Council of Europe. 2014.

<sup>114</sup> Assemblée Nationale. *Déb. parl. AN du 2 février 1988* and *Déb. parl. AN (CR) du 17 juin 2013, 1ère séance*, 2013; Member of ANTICOR (FRCSO5). Interview with author. October 11<sup>th</sup> 2017; Professor of public law (FREX1). Interview with author. December 20<sup>th</sup> 2017; BENETTI, Julie and ROBLOT-TROIZIER, Agnès. *De la commission « Jospin » à la loi « transparence »*. *Transparence et vie publique Neuvième Printemps du droit constitutionnel*. Paris: Dalloz, pp. 33-43.

<sup>115</sup> Staff member, Transparency International France (FRCSO3). Interview with author. November 7<sup>th</sup> 2017; HATVP. *Rapport d'activités*. Paris, 2016, p. 30; HATVP. *Rapport d'activités 2017*. Paris, 2018, pp. 50-51; HATVP. *Rapport d'activités 2018*. Paris, 2019, pp. 39-40; Council of Europe GRECO. *Eval IV Rep (2013) 3E*. Strasbourg: Council of Europe. 2014.

data format<sup>116</sup> and have even scraped in information and created alternative platforms on which in information is available in such machine-readable format.<sup>117</sup> In Sweden, the registration is processed through a data management system, currently operated through Lotus Notes, installed on the work laptop provided by to parliamentarians at the beginning of their mandate. The registration is done through a standard form developed by the parliamentary administration. The information contains in the register is kept by the parliamentary administration and is not proactively made public. The principle of public access to official documents however applies to the register and anyone can make a request for access to information to the office of the registrar. Parliamentary clerks are not willing to send the content of the register via electronic mail since an “email is like a postcard”.<sup>118</sup> The data is usually burned on a CD, which can then be sent or picked up at the premises. The administration does not keep official statistics about the requests it receives.<sup>119</sup> The Council of Europe’s 2013 evaluation of corruption prevention in parliaments provides the number of two requests per month, which does not suggest a great public interest in taking the necessary steps to access information about parliamentarians’ interests.<sup>120</sup>

These subsection presented the similarities and differences between conflict of interest regulation in the British, French and Swedish Parliaments. Conflicts of interests are regulated through increasingly similar instruments, with a progressive move towards transparency requirements, through the publication of interests, and the codification of ethical norms. Differences nevertheless remain, in the scope, formulation and in the details of the instruments (elements to declare, values and rules of the code, management of instruments). Conflict of interest regulation in Sweden is less intrusive than in Britain and in France, with a narrower understanding of conflict of interest and less information to disclose in the register. The Swedish Parliament is however stricter regarding the acceptance of gifts and has traditionally been rigorous in the control of parliamentarians’ expenses. France is a very interesting case to study regarding the regulation of conflicts of interest. It has indeed gone from an almost complete blindness to (or lack of interest in) conflicts of interest to the adoption of a relatively strict system, combining preventive and regulatory mechanisms.

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<sup>116</sup> House of Commons. Letter from Transparency International UK. Consultation on the Code of Conduct and the Guide to the Rules relating to the conduct of Members of Parliament of 21 January 2016, p. 44.

<sup>117</sup> See for instance, the website <https://www.membersinterests.org.uk/> developed by self-described husband and wife who work independently of party influence and without outside funding; or <https://www.theyworkforyou.com/> a website run by the UK charity mySociety.

<sup>118</sup> Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19<sup>th</sup> 2017.

<sup>119</sup> *Ibid.*

<sup>120</sup> Council of Europe GRECO. Eval IV Rep (2013) 1E. Strasbourg: Council of Europe. 2013, p. 22  
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## 1.2. Supervision and enforcement of conflict of interest regulation

Having compared existing instruments to prevent and regulate conflicts of interest in parliaments, this section turns to their implementation, and more specifically to the actors and/or institutions responsible for implementing these instruments.

### 1.2.1. From self-regulation to degrees of externalised regulation

The responsibility and prerogative of control and policy implementation are particularly interesting with regards to the regulation of parliamentarians' conduct and transparency requirements imposed on them. First because, in the case of parliamentary ethics, they are both policy-makers and policy targets, and, second, because the principle of separation of powers makes the control of this particular group quite different from other public officials. Indeed, the tradition of parliamentary self-regulation (understood as the right of parliaments to handle their own affairs and discipline their own members in non-criminal cases) was originally a safeguard of legislative autonomy against external interference with the affairs of the legislative branch of government. In respect of the principle of the separation of powers, the independence of parliamentarians, as the prime representatives of the people, needs to be protected both from the judicial power, usually through a certain level of immunity from prosecution, and especially from the executive power and the excessive involvement of the administration in the affairs of Parliament; the accountability of parliamentarians resting with the electorate.<sup>121</sup>

Since the 1990s, self-regulation in parliaments has however increasingly raised suspicion.<sup>122</sup> In order to boost public confidence in the capacity of parliaments to regulate the conduct of their members, countries started to move towards the formalisation of ethical norms and the introduction of elements of external control over individual parliamentarians. The United States was an early mover on the institutionalisation of ethics, with the establishment of the House of Representatives ethics committee as a standing committee in 1968. The British House of Commons followed closely, setting up a Select Committee on Members' Interests in 1975 – which later became the Committee on Standards. France, on the other hand was among the first countries to establish an administrative commission external to oversee the asset declaration of high-level public and political officials, with the creation of a Commission for the financial transparency of political

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<sup>121</sup> SAINT-MARTIN, Denis. Path Dependence and Self-Reinforcing Processes in The Regulation of Ethics in Politics: Toward a Framework for Comparative Analysis. *International Public Management Journal*, 2005, Vol. 8 n°2, pp. 135-152

<sup>122</sup> THOMPSON, Dennis F. *Ethics in Congress*. Washington, D.C.: Brookings, 1995.  
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life in 1988. By the end of the 20<sup>th</sup> century, there was an increasing rejection of the tradition of elected officials “marking their own homework”.<sup>123</sup>

For Denis Saint-Martin, “most systems of ethics regulation fall along a spectrum which has pure self-regulation at one end and wholly external regulation at the other, with some form of co-regulation in the middle”.<sup>124</sup> A 2002 report from the Committee on Standards in Public Life argues that “most systems are a hybrid, combining elements of both internal and external regulation”.<sup>125</sup> This spectrum serves as a heuristic tool making it easier to compare parliamentary ethics regulation, as illustrated by Figure 1.<sup>126</sup>

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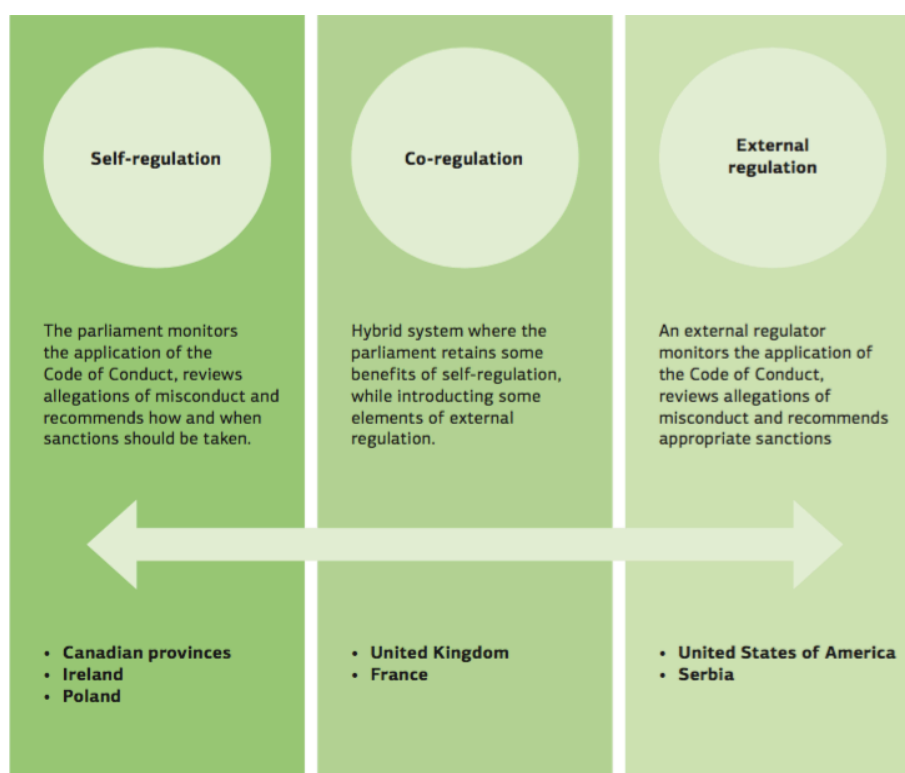
<sup>123</sup> Lord Bew, the chairman of the Committee on Standards in Public Life used this expression during the collection of oral evidence by the Standards Review Sub-Committee, as cited in Committee on Standards. The Standards System in the House of Commons Sixth Report of Session 2014–15. 2015, p. 27

<sup>124</sup> SAINT-MARTIN, Denis. *Op. cit.* 2005, p. 136

<sup>125</sup> House of Commons Committee on Standards in Public Life. *Standards of Conduct in the House of Commons*. Eighth Report Cm 5663. London, 2002, p. 10.

<sup>126</sup> It is worth noting that this heuristic tool is used mainly in settings where there is long-standing practice of thinking about parliamentary ethics along these lines, in the UK for instance, as well as within international institutions promoting parliamentary ethics reforms, such as the Organization for Security and Co-operation in Europe (OSCE) from which the figure below is taken. Interestingly, there is an ambiguity regarding what is meant by each category, and the use that actors make to the various categories as well as the meaning attributed to them fluctuates. The British system, for instance, is categorized as a case of co-regulation by the OSCE report while it is referred to as a case of self-regulation by MPs themselves. Professor Dawn Oliver, who also gave evidence to the CSPL, tried to resolve the confusion by arguing that “self-regulation was of two kinds: pure self-regulation, which does not involve any independent body; and co regulation which involves an independent element” (Committee on Standards in Public Life. *Standards of Conduct in the House of Commons*. Eighth Report Cm 5663. London, 2002, p. 12). Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

Figure 1. Spectrum of ethics regulation in parliaments



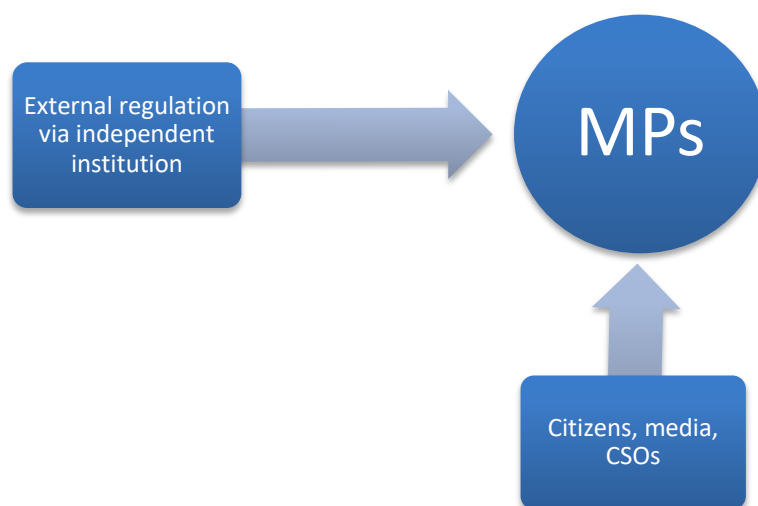
Source: adapted from OSCE. *Background Study: Professional and Ethical Standards for Parliamentarians*. Warsaw, 2012, p. 63.

The presence of transparency requirements and publicity of information adds a level of comparison, contrasting transparency-based elements, which rely on external actors such citizens themselves and intermediates (media and organised civil society) to monitor officials, and control-based elements, the various levels of which are illustrated in the above spectrum (Figure 1). These different loci of regulation echo different types of accountability that exist in contemporary political systems. While accountability is generally understood as the *a posteriori* duty to account for how one has conducted one's affairs (which is generally not relevant when it comes to conflict of interest regulation), there are similarities in how these forms of oversight are put in practice. There is some confusion as to the correct use of the terms, but the logic remains the same: parliamentarians are ultimately responsible to the electorate which has delegated its power onto them. Transparency requirements thus allow the general public and civil society to hold representatives to account, directly or indirectly (which is called horizontal or social accountability by scholars but vertical accountability by practitioners). Regulation can also be delegated to independent institutions tasked with receiving and controlling declarations (which is called diagonal accountability by scholars and horizontal accountability by practitioners).<sup>127</sup> Figure 2 illustrates the different forms of control

<sup>127</sup> BOVENS, Mark, SCHILLEMANS, Thomas, and GOODIN, Robert E. Public Accountability. In *The Oxford Handbook of Public Accountability*. Oxford University Press, 2014; Transparency and Accountability Initiative. How do Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

implied by these types of regulation. The sanctions that go with each form of control are quite different, since transparency requirements are associated with political sanctions and risks to officials' reputation, whilst institutional control often imply the existence of disciplinary measures, as we will see below.

Figure 2. Horizontal and vertical accountability



Systems favouring control attribute this responsibility to a parliamentary body, either composed of parliamentarians who are explicitly tasked with the maintenance of standards, the consideration of complaints and the monitoring of compliance, or made up of an independent person appointed to this function. Both exist in Britain, where the House of Commons has a Select Committee on Standards (which includes Lay members) and an independent Parliamentary Commissioner for Standards. In France control is exercised through an independent *déontologue* within the National Assembly. They can also sometimes establish an administrative body, outside of the Parliament, to assume parts of this control role, as France has done with the establishment of the High authority for the transparency of public life (HATVP).

Systems favouring transparency are not as reliant on the creation of official bodies in charge of controlling the content of the register. Rather they leave the oversight of compliance and conduct to the public by giving them access to information about the rules officials are required to follow, and about their outside engagements, activities, interests and assets. Conflict of interest regulation systems based on transparency rely on the existence of an informed (and interested) citizenry and engaged intermediaries (such as an organised civil society and independent media). As theorised by Jeremy Bentham, publicity should contribute to moralise politics through the

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we define key terms? Transparency and accountability glossary. 2017. Online, available at: <https://www.transparency-initiative.org/blog/1179/tai-definitions/> (accessed on April 8<sup>th</sup> 2020)  
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exposure of public officials to the public opinion tribunal.<sup>128</sup> Approaches favouring transparency rely heavily on the principal-agent model and assumes that there are “principled principles”<sup>129</sup> putting the responsibility on citizens to control their representatives and apply political sanctions.

Transparency and institutional control correspond to different instruments, such as public interest registers and codes of conduct, which require different levels of transparency and institutional control. What follows shows that Britain and France can be considered as examples of co-regulation, while Sweden would be best described as a system relying on self-regulation. While useful as a heuristic, a detailed analysis of each case shows that these categories group quite different realities, involving different actors, institutions and interactions among them.

### **1.2.2. The French National Assembly, towards an externalised regulation**

Separating interest and asset declarations is a relatively uncommon practice,<sup>130</sup> that makes France is a rather odd case compared to other countries. It allowed its policy-makers to maintain parallel systems of regulation and disclosure. France indeed started its journey towards to institutionalisation of parliamentary ethics with the establishment of an external body to control public officials’ (including parliamentarians) assets. The Commission for the financial transparency of political life (CTFVP) was created through Law n°88-226 on financial transparency of political life adopted in 1988 and authorised to control parliamentarians’ asset declarations by Law n°95-63 (on asset declarations and incompatibilities of members of parliament and of the constitutional court).<sup>131</sup> The CTFVP was constituted by a magistrate from the *Cour de cassation*, one from the *Conseil d’État* and one from the *Cour des comptes*, a troika that has since constructed itself as an ‘ethical magistracy’ (*magistrature déontologique*), as Antoine Vauchez and Jana Vargovcikova put it.<sup>132</sup> This

<sup>128</sup> BENTHAM, Jeremy. *Tactique des Assemblées législatives*. Paris and Geneva: J.J. Paschoud. 1816 ; BENTHAM, Jeremy. *Deontology, or The science of morality*. Longman, Rees, Orme, Browne, Green, and Longman, 1834; BENTHAM, Jeremy. 1999. Of publicity. In: M. James and C. Blamires, eds. *Political tactics*. Oxford: Clarendon Press, 1999, pp. 29–44.

<sup>129</sup> MARQUETTE, Heather and PEIFFER, Caryn. *Corruption and Collective Action*. Developmental Leadership Program (DLP) Research Paper 32, 2015, p. 1; MARQUETTE, Heather and PEIFFER, Caryn. Grappling with the “real politics” of systemic corruption: Theoretical debates versus “real-world” functions. *Governance*, Vol. 31, n°3, 2018, pp. 499-514; MARQUETTE, Heather and PEIFFER, Caryn. Thinking politically about corruption as problem-solving: A reply to Persson, Rothstein, and Teorell. *Governance*, Vol. 32, n°4, 2019, pp. 811-820.

<sup>130</sup> OECD. *Fighting Corruption in Eastern Europe and Central Asia Asset Declarations for Public Officials A Tool to Prevent Corruption: A Tool to Prevent Corruption*. Paris: OECD Publishing, 2011.

<sup>131</sup> The Organic Law n°9563 was adopted on January 19<sup>th</sup> 1995, after the publication of the parliamentary report on the clarification of the relationship between money and politics. This report summarised the work of the parliamentary working group set up by the President of the National Assembly, Philippe Séguin, which studied the state of the legislative and institutional framework, in France and abroad, of various aspect of corruption prevention, such as political financing, public procurement, parliamentary incompatibilities and asset declarations (Assemblée nationale. Groupe de travail sur la clarification des rapports entre la politique et l'argent, Président, présidé par Philippe Séguin. Paris, 1994).

<sup>132</sup> VAUCHEZ, Antoine and VARGOVCIKOVA, Jana. La Haute autorité pour la transparence de la vie publique et la régulation déontologique des « responsables publics ». In VAUCHEZ, Antoine (ed.) *Rapport final de recherche Un Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020*

external element has been reinforced, with the High Authority for Transparency in Public Life (HATVP) which replaced the CTFVP in 2014. In addition, an element of external control was introduced within the parliamentary institution, with the creation of the function of ethics commissioner (*déontologue*) of the National Assembly in 2011. While the responsibility for upholding high standards of conduct and resolving any potential conflict of interest rests with parliamentarians themselves, the implementation of the public interest register and the code of conduct is currently the shared responsibility of the ethics commissioner, the HATVP, the Bureau of the National Assembly and the Constitutional Court. As opposed to Britain and Sweden, the responsibility for the implementation of the code of conduct and the public interest register does not lie with the same institution. While the bureau of the Assembly maintains a role for overseeing both instruments, the former is the responsibility of the ethics commissioner and the public interest register is management by the High Authority for the Transparency of Public Life.

Sanctioning parliamentarians remains the prerogative of the Assembly. The main sanction provided for in the decision of the Bureau creating the code of conduct is public exposure of the breach – “an Anglo-Saxon style ‘name and shame’ practice”.<sup>133</sup> The integration of the Code in the Rules of Procedure of the Assembly provided for additional sanctions, through the articles 70 to 73 of the Rules of Procedure. A breach of the code could thus lead to a warning, a warning noted on the transcript, or censorship with or without temporary exclusion. All but the simple warning come with a withdrawal of a part of the monthly allowance, and the latter forbid all appearances on the premises and participation in parliamentary work for a period of fifteen session days.

The function of *déontologue* in the National assembly was created by the Bureau’s decision of April 6<sup>th</sup> 2011 which instituted the code of conduct. In accordance with the Assembly’s Rules of Procedure, the *déontologue* is an independent person appointed by the Bureau through a three-fifth majority, on a proposal from the President of the Assembly approved by at least one leader of an opposition group. The *déontologue* is appointed for the duration of a legislature and cannot be re-appointed.<sup>134</sup> They can be dismissed only in the case of incapacitation or dereliction of duty, on a decision by the Bureau by a three-fifth majority, on a proposal from the President of the Assembly with the approval of at least one president of an opposition group. The *déontologue* is *de jure*

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*champ de la régulation publique indépendante ? Acteurs, registres de justification et formes d'autorité politique des agences de régulation en France.* Numéro du rapport : 216.10.12.20. Paris, 2019, p. 33.

<sup>133</sup>Assemblée nationale. Groupe de travail sur la clarification des rapports entre la politique et l'argent, Président, présidé par Philippe Séguin. Paris, 1994, p. 26

<sup>134</sup> Ferdinand Mélin-Soucramanien, a former commissioner, suggested that desynchronising the mandate of the Commissioner from that of the legislature would reinforce the independence of the function, making it seem less like the Commissioner represents the current majority (MELIN-SOUCRAMANIEN Ferdinand. *La consolidation de la déontologie à l'Assemblée nationale.* Rapport annuel du déontologue. Paris: Assemblée nationale. November 30rd 2016).  
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independent, but their *de facto* independence is more debatable since they are remunerated by the Assembly's budget, their office is located on the Assembly's premises, they are appointed by the Assembly's Bureau and lack sufficient resources.<sup>135</sup> Their missions have diversified since the creation of the institution in 2011, towards a combination of an advisory and a control function. The advisory role has always been predominant,<sup>136</sup> and most *déontologues* described their role primarily as such.<sup>137</sup> In 2012, the first *déontologue* wrote that his mission was "to serve the national representation by protecting it from itself, from anti-parliamentarism, if not from prevailing populism".<sup>138</sup> The control function of the commissioner mainly concerns the supervision of the disclosure requirements (gifts and travels) and the proper use of expenses, in accordance with the Bureau's decision of November 27<sup>th</sup> 2017. The *déontologue* has the responsibility to detect and inform the parliamentarian and the Bureau in case of violation of the Code but does not have investigative or sanctioning powers.

The High Authority for Transparency in Public Life (HATVP) is an independent administrative agency responsible for strengthening exemplarity and promoting and guaranteeing integrity amongst French public officials. The institution is affiliated to the government for budget matters, but has financial autonomy. It is not accountable to the executive power but to the Parliament and the Supreme Audit Institution (*Cour des comptes*).<sup>139</sup> The HATVP is led by a collegial

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<sup>135</sup> Professor of public law (FREX1). Interview with author. December 20<sup>th</sup> 2017; Former ethics commissioner of the National Assembly (FREC1). Interview with author. December 6<sup>th</sup> 2017; MELIN-SOUCRAMANIEN Ferdinand. *La consolidation de la déontologie à l'Assemblée nationale*. Rapport annuel du déontologue. Paris: Assemblée nationale. November 30<sup>rd</sup> 2016.

<sup>136</sup> The Commissioner advises both the leadership of the Assembly on institutional matters and individual members on their personal situation. They provide the Bureau with recommendations on the prevention of conflicts of interest and submit an annual report, which is made public, detailing the conditions of supervision and enforcement of ethical rules in the Assembly and making suggestions on how the system could be improved. The Commission can also be consulted by individual members of the Assembly on their personal situation and risks to which they are exposed. These requests are confidential; the commissioner and the officials that assist them are indeed bound by professional secrecy. There are no mandatory ethical trainings for members of the Assembly but certain political groups organise trainings for their members. A former Commissioner indicated that the National assembly organised trainings for parliamentary assistants who should then relay the information to their parliamentarian.<sup>136</sup> In order to improve the pedagogical role of the Commissioner, Ferdinand Melin-Soucramanien developed a Guide for members of the Assembly to help them understand and navigate the existing rules and obligations, which was attached to his 2016 annual report (Former ethics commissioner of the National Assembly (FREC1). Interview with author. December 6<sup>th</sup> 2017; MELIN-SOUCRAMANIEN Ferdinand. *La consolidation de la déontologie à l'Assemblée nationale*. Rapport annuel du déontologue. Paris: Assemblée nationale. November 30<sup>rd</sup> 2016).

<sup>137</sup> Former Commissioner for Ethical Standards. Interview. December 6 2017 ; déontologue de l'Assemblée Nationale. *Rapport du déontologue au Bureau de l'Assemblée nationale*. 2012

<sup>138</sup> GICQUEL, Jean (déontologue de l'Assemblée Nationale). *Rapport du déontologue au Bureau de l'Assemblée nationale*. Paris: Assemblée nationale. 2012, p. 5.

<sup>139</sup> BUGE, Éric and CARON, Matthieu. Quatre années d'activité de la Haute autorité pour la transparence de la vie publique au service d'une démocratie plus exemplaire. *Revue française d'administration publique*, Vol. 2, n°162, 2017, p. 388.

body of nine members (the *Collège*),<sup>140</sup> who serve a non-renewable six-year mandate. The *Collège* is assisted by a secretariat that has grown significantly since the High Authority was created, starting off with six staff members in January 2014 to reach more than 40 by 2018.<sup>141</sup> The budget of the institution has progressively grown to allow it to fulfil its various mission.<sup>142</sup> The HATVP is assisted in its control role by a number of anti-corruption civil society organisations that have been granted the right to refer to the agency when they become aware of a situation likely to constitute a breach to the various legal obligations set out by law. Four civil society organisation are currently authorised to make referrals: Transparency International France since June 2014, Sherpa since December 2014, *Association pour une démocratie directe* since July 2015 and Anticor since January 2016.

The HATVP has four missions: controlling assets, preventing conflicts of interest, training and counselling, and promoting transparency. Like the *déontologue*, the HATVP has a dual role of controller and advisor, but its control function tends to exceed its role as advisor.<sup>143</sup> Initially perceived solely as a controller, the High Authority has made efforts to emphasise its advisory and pedagogical role. After being identified as the “new sheriff in town”, it started to insist on its counselling role to improve exchanges and dialogue with targeted officials.<sup>144</sup> The institution has become more professional in its role as advisor through the creation of a hotline with dedicated staff helping officials in their declarative obligations. It sees itself as being in charge of the diffusion and promotion of an ethical culture, through training, advice, knowledge production and advocacy.<sup>145</sup>

The control role is best understood by looking at the genesis of the institution, replacing an institution whose sole purpose was to control variation in officials’ wealth (the CTFVP). The High Authority is indeed responsible for the reception, at the beginning and end of a mandate, and verification of the asset declarations of 15,000 public officials, including parliamentarians. The Controls and Procedures Department of the HATVP ensures that the declarations are coherent and looks for significant omissions or unexplained variations of wealth. The objective of the High Authority with regards to asset declarations is ultimately to prevent any illicit enrichment on the part of the officials. The institution enjoys the support of the Public Finances General Directorate

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<sup>140</sup> The president, Jean-Louis Nadal until December 2019, is appointed by the President of the Republic, six of its members come from the highest administrative bodies (*Conseil d’Etat*, *Cour de cassation* and *Cour des comptes*) and the other two members are appointed by the speakers of both chambers of Parliament.

<sup>141</sup> Haute autorité pour la transparence de la vie publique (HATVP). *Rapport d’activités 2018*. Paris, 2019.

<sup>142</sup> Haute Autorité pour la transparence de la vie publique (HATVP). *Rapport d’activités*. Paris, 2016.

<sup>143</sup> Former ethics commissioner of the National Assembly (FREC1). Interview with author. December 6<sup>th</sup> 2017; Professor of public law (FREX2). Interview with author. February 28<sup>th</sup> 2018.

<sup>144</sup> Public official, High Authority for Transparency in Public Life (FRPO1). Interview with author. October 27<sup>th</sup> 2017.

<sup>145</sup> *Ibid.* ; Public officials, High Authority for Transparency in Public Life (FRPO2; FRPO3). Interview with author. November 30<sup>th</sup> 2017.



to obtain information on financial or material assets, company balance sheets, bank accounts etc., and to request information from other jurisdictions in accordance with bilateral agreements. If the declaration is incomplete, the *Collège* can decide to formulate an observation. If a breach is detected, the *Collège* can forward to case to the Office of the Public Prosecutor.<sup>146</sup> The High Authority has less power to act upon parliamentarians' conflicts of interest. The Department in charge of relationships with target audiences receives the declarations of interests and activities, and publishes them on its website. The Controls and Procedures Department checks the declarations for potential situations of conflict of interest and, in case such a situation is detected, the *Collège* can initiate a dialogue with the official to suggest solutions to resolve the conflict of interest. To safeguard the separation of powers, the High Authority cannot coerce parliamentarians into resolving their conflicts of interest, this power being attributed to the leadership of the Assembly and to the Constitutional Court.

France is a hybrid case, since it combines elements of the three categories. The Assembly and its leadership retain the power to sanction parliamentarians for violation of the code or to require them to resolve any conflict of interest in which they might find themselves or abandon an activity considered as incompatible with the parliamentary mandate – a prerogative shared with the Constitutional Court. As further developed in Chapter 9, France's tradition of controlling unexplained wealth variations through assets declarations facilitated the introduction of a full external elements of control in the regulation of conflicts of interest, even though the principle of separation of power prevents the HATVP from making direct injunctions on parliamentarians. The parliamentary ethics system can be said to be fragmented between the independent *déontologue* operating within the National Assembly and the external HATVP, which both claim to have control and advisory roles, and do not systematically communicate or collaborate, due to institutions duty of confidentiality.<sup>147</sup>

### **1.2.3. The UK House of Commons: from Members' honour to external eyes**

The British Parliament was an early mover towards the formalisation of parliamentary ethics, but the supervision of MPs' conduct traditionally relied on self-regulation. The “slow erosion of self-regulation”<sup>148</sup> started in the mid-1990s, with the creation of the Committee on Standards in Public Life (CSPL) by John Major's government, following the cash-for-questions scandal in 1994.

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<sup>146</sup> By July 2015, 7 cases had been forwarded to the Public Prosecutor and from July 2015 to mid-2016<sup>146</sup>, 12 more cases had been forwarded (Haute Autorité pour la transparence de la vie publique. *Rapport d'activités*. Paris, 2016).

<sup>147</sup> Professor of public law (FREX2). Interview with author. February 28<sup>th</sup> 2018; Public official, High Authority for Transparency in Public Life (FRPO1). Interview with author. October 27<sup>th</sup> 2017.

<sup>148</sup> HINE, David and PEELE, Gillian. *The regulation of standards in British public life. Doing the right thing?* Manchester University Press, 2016, p. 69

The CSPL has indeed been critical in building the United Kingdom's integrity infrastructure despite its initial vulnerable position as non-departmental organ under the Cabinet Office. As David Hine and Gillian Peele illustratively put it, "[the CSPL] carved out an unexpectedly robust niche for itself and (...) became a semi-permanent feature of the institutional landscape".<sup>149</sup>

The responsibility to uphold standards and comply with the rules established by the code lies with MPs themselves and the House holds the power to sanction MPs from violation of the rules. The British standards system has the particularity of having a formalised complaints system (illustrated in Annexe 6), that can be used by anyone, including MPs themselves, who wishes to report a violation of standards. The role of the complaints mechanism is not always understood by the public and, for the 2016-17 session, 90% of the complaints received by the Office of the Parliamentary Commissioner for Standards were out of its remit.<sup>150</sup> The complaints mechanism has regularly been used as a political tool, and complaints are often issued by MPs themselves reporting other MPs.<sup>151</sup> The House retains the right to discipline and sanction its members. It usually decides on the penalty that will apply to the member through consensus, on the recommendation of the Committee on Standards. Decisions on sanctions are generally not voted on because they are not considered as party political.<sup>152</sup> Available sanctions go from the repayment of the cost of misused facilities, a written apology to the House, an apology to the House by means of a point of order, an apology on the floor of the House by means of a personal statement, to the withholding of salary and suspension from service of the house for a specified number of days. An additional disciplinary tool was added in March 2015 when the Parliament passed the Recall of MPs Act, providing the House with the ability to trigger the conditions for a recall petition in the case of an MP being suspended for more than 10 sitting days.<sup>153</sup> Sanctions have only rarely been applied in the House, beyond requirements to repay and apologise. During the expenses scandal, the House made use of its disciplinary power more than usual, with four members suspended between 2005 and 2010.<sup>154</sup> When the field work was conducted, in 2017, a parliamentary clerk suggested that the rarity of suspensions of MPs made it unlikely that the Recall Act would be used frequently, although it is still too early to tell.<sup>155</sup>

While decisions regarding sanctions is still partly self-regulated through a standing committee composed of MPs, the House of Commons has adopted a number of policies that introduced a

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<sup>149</sup> *Ibid.* p. 52

<sup>150</sup> House of Commons Parliamentary Commissioner for Standards. Annual Report 2016–17. London, 2017, p. 5

<sup>151</sup> Professor of Anthropology, SOAS (UKEX2). Interview with author. November 15<sup>th</sup> 2017.

<sup>152</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20<sup>th</sup> 2017.

<sup>153</sup> Council of Europe GRECO. Greco RC4(2017)6. Strasbourg: Council of Europe, 2017, p. 6

<sup>154</sup> HM Government. Recall of MPs Draft Bill. London. 2011, p. 13.

<sup>155</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20<sup>th</sup> 2017.

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new level of external control in the enforcement of standards, through the creation of the function of the independent Parliamentary Commissioner for Standards in 1995 and the introduction of lay members in the composition of the Committee on Standards in 2012. The responsibility for the supervision and enforcement of standards in the British Parliament is however fragmented. Multiple bodies within and outside the House share the responsibility for the maintenance of high ethical standards, including the Committee on Standards, the Parliamentary Commissioner for Standards, the Independent Parliamentary Standards Authority, the Public Administration and Constitutional Affairs Committee, the Electoral Commission, the Register for Public Lobbyists as well as the leadership of the House.<sup>156</sup> Political party groups, especially the whips, are also (informally) part of this regulatory system. Not all these bodies will be described in this section, since they do not all play a central role in the implementation of the policies of interest here. Nevertheless, they contribute to the multiplication of institutions and the resulting confusion. “There are too many!”<sup>157</sup> joked a parliamentary clerk during an interview. The Lay members of the Committee on Standards identified this fragmentation as barrier to change, with the effect of “diluting responsibility, making it difficult to identify leadership”.<sup>158</sup>

The Committee on Standards is a Select Committee appointed by the House of Commons to make determinations and recommendations to the House on general matters of parliamentary ethics and on individual cases. Membership in the Committee on Standards is not a popular role among MPs who feel uncomfortable judging their colleagues<sup>159</sup> and who become a “sitting target” for the press.<sup>160</sup> The Committee on Standards has several functions:

- to oversee the work of the Parliamentary Commissioner for Standards;
- to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members’ Interests and any other registers of interest established by the House;
- to review from time to time the form and content of those registers;
- to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner;
- to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee’s attention by the Commissioner;

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<sup>156</sup> House of Commons Committee on Standards. Final Reflections of the first lay members at the end of their appointment period. London: House of Commons. 2017, p. 5

<sup>157</sup> Clerk of the House of Commons, interview, November 20 2017

<sup>158</sup> House of Commons Committee on Standards. Final Reflections of the first lay members at the end of their appointment period. London: House of Commons. 2017, p. 5

<sup>159</sup> House of Commons Committee on Standards. Final Reflections of the first lay members at the end of their appointment period. 2017, p. 8

<sup>160</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

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- and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.<sup>161</sup>

The introduction of lay members in one of the key organs of the parliamentary standards system in 2012 marked a departure from a traditionally self-regulatory system. Since 2016, the Committee on Standards is composed of fourteen members, seven MPs and seven lay members, following the endorsement by the House of the Sixth Report of Session 2014-15, which recommended that the Committee on Standards should have an equal number of MPs and lay members. The suggestion to include two lay members in the Committee first came from the Committee on Standards for Public Life in 2009. The decision was taken to appoint three lay members in 2010, as a result of the expenses scandal,<sup>162</sup> to ensure that “the workings of the House are as transparent as is humanly possible, so that the people outside have more confidence in us than they have had in the recent past”.<sup>163</sup> With respect to the decision to appoint three lay members instead of two as was originally planned, a parliamentary clerk said that this was “a rare occasion where the house went beyond what we expected”.<sup>164</sup>

Until 1995, complaints against MPs were directed to the Committee on Privileges or to the Committee on Members’ Interests if the complaint concerned the register. These two committees were merged in 1995 into the Committee on Standards and Privileges, following the cash-for-question scandal and the subsequent ethics reforms inspired by the propositional committee chaired by Lord Nolan.<sup>165</sup> Finally, the appointment of lay members in 2012 split the Committee on Standards and Privileges into two entities, the Committee on Standards and the Committee on Privileges, nevertheless composed of the same MPs and assisted by the same clerk.<sup>166</sup> The split was seen as necessary because privileges are considered the exclusive business of the House<sup>167</sup> and the presence of lay members on the Committee on Privileges thus risked being overturned by a court.<sup>168</sup>

The Committee on Standards oversees the work of the Parliamentary Commissioner for Standards and considers their memoranda on investigations, with the possibility to ask for further

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<sup>161</sup> This information is taken from the Parliament’s website, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/standards/role/> (accessed on January 15 2018)

<sup>162</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>163</sup> House of Commons. Hansard. House of Commons Debates. Volume No. 519 Part No. 83. December 2 2010; Committee on Standards. Reflections of the Lay Members of the Committee on Standards on their first year in post. London: House of Commons. 2014, p. 4.

<sup>164</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>165</sup> HINE, David and PEELE, Gillian. *The regulation of standards in British public life. Doing the right thing?* Manchester University Press, 2016, p. 90

<sup>166</sup> Parliamentary clerk, UK House of Commons (UKPC2). Interview with author. March 15 2018; Parliamentary clerk, UK House of Commons (UKPC3). Interview with author. November 20th 2017.

<sup>167</sup> House of Commons. Hansard. House of Commons Debates. Volume No. 519 Part No. 83. December 2 2010

<sup>168</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

information. The Committee on Standards hears or receives the views of the subject of the investigation. It prepares a report with its views for the House and for publication. If a major breach is found, the reports recommends a type of sanction to the House. The Committee on Standards traditionally operates by consensus but, if there are disagreements, decisions are taken by vote.<sup>169</sup> Until 2019, lay members did not have the right to vote but could append an opinion to the Committee's reports, which they themselves considered to be a significant power.<sup>170</sup> A parliamentary clerk having worked with the Committee indicated during an interview that if lay members were to append the report, it would "completely undercut" the rest of the report, giving them more influence than what might appear from an outside perspective.<sup>171</sup> On January 7<sup>th</sup> 2019, the House of Commons approved the Committee's Fifth Report and granted full voting rights to the seven lay members, without taking away their right to append the Committee's reports. This strengthened the external control element of the British parliamentary standards system.<sup>172</sup>

The first external oversight function that was introduced in the House of Commons was the Office of the Parliamentary Commissioner for Standards (PCS), established in 1995, following recommendations made by Lord Nolan's Committee on Standards in Public Life (CSPL). In its first report the CSPL argued for the need of a "significant independent element with a system which remains essentially self-regulating" and recommended that: "the House should appoint a person of independent standing, who should have a degree of tenure and not be a career member of the House of Commons staff, as Parliamentary Commissioner for Standards".<sup>173</sup> The House of Commons established the office of Parliamentary Commissioner for Standards through Standing Order No 150. The PCS is an independent officer of the House of Commons appointed by a Resolution of the House of Commons for a fixed term of five years. So far there have been six Commissioners including the current one who took office in January 2018. The Office of the PCS oversees the application of the Code of Conduct, including the registration of financial interests. For matters related to the Register of Members' Interests, the PCS is assisted by the Registrar. The Office of the PCS also deals with the investigation of alleged breaches of the code by MPs. The

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<sup>169</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017; House of Commons. How the Committee operates. September 3<sup>rd</sup> 2019. Online, available at: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/standards/news-parliament-2017/how-committee-operates-17-19/> (accessed on December 19<sup>th</sup> 2019).

<sup>170</sup> House of Commons Committee on Standards. Final Reflections of the first lay members at the end of their appointment period. 2017, p. 11

<sup>171</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>172</sup> House of Commons. Committee on Standards. Fifth Report of Session 2017–19. HC 1726. London, December 2018.

<sup>173</sup> Chairman Lord Nolan. Standards in Public Life. First Report of the Committee on Standards in Public Life. Volume 1: Report. Presented to the Parliament by the Prime Minister on May 1995, p. 9.

PCS receives complaints about MPs and is assisted in their task by a Complaints Manager. The key responsibilities of the Office of the PCS are the following:

- Overseeing the operation of the Register of Members' Financial Interests and the other Registers
- Providing confidential advice to individual MPs
- Advising the Committee on Standards about the interpretation of the Code of Conduct and Guide to the Rules relating to the Conduct of Members
- Monitoring the operation of the Code of Conduct and Guide to the Rules and, where appropriate, proposing changes to the Code to the Committee on Standards
- Providing guidance and training for MPs on matters of conduct, propriety and ethics
- Investigating allegations that MPs are in breach of the Code of Conduct and its associated rules
- Where appropriate, reporting her findings to the Committee on Standards, for the Committee to adjudicate and recommend any appropriate sanction
- Presenting an annual report to the House of Commons on the work of her office.<sup>174</sup>

The Office of the PCS has an advisory function, which is very important giving MPs' lack of knowledge of the frequently evolving rules.<sup>175</sup> It provides individual guidance to MPs and their staff and it is in charge of training and induction. The PCS and the Registrar organise regular workshop with MPs' staff in constituencies.<sup>176</sup> The role of the PCS has also evolved with regards to its control function. The PCS investigates cases of non-criminal breaches of the rules established by the code of conduct. British MPs do not enjoy immunity from prosecution, thus criminal matters are not handled by the House but by the Metropolitan Police. Initially the PCS had the mandate to investigate individual cases only when a complaint had been lodged.<sup>177</sup> Since 2011, they can launch an investigation on their own initiative, as the PCS has the duty "to investigate, if he thinks fit, specific matters which have come to his attention relating to the conduct of Members".<sup>178</sup> For minor breaches, the PCS can deal with the MP under inquiry directly, through the rectification procedure, either requesting a reimbursement if the breach concerned the misuse of Parliamentary material or asking the MP to apologise to the House orally or in writing.

The British system can be categorised as a system of co-regulation. The decision to sanction members ultimately lies with the House itself, and, while journalists play a significant role in

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<sup>174</sup> This information is taken from the Parliament's website, <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/parliamentary-commissioner-for-standards/> [accessed on January 15 2018]

<sup>175</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017; Council of Europe GRECO. Eval IV Rep (2012) 2E. Strasbourg, 2013, p. 23.

<sup>176</sup> House of Commons Parliamentary Commissioner for Standards. Annual Report 2016–17. London. 2017, p. 33.

<sup>177</sup> Committee on Standards in Public Life. Standards of Conduct in the House of Commons. Eighth Report Cm 5663. London. 2002, p. 18

<sup>178</sup> House of Commons. Standing Orders of the House of Commons Public Business 2016. HC 2015-2016, 2016, Standing Order 150(2).

detecting abuses,<sup>179</sup> MPs themselves guard the conduct of their opponents and use the standards system to weaken them. There are however an increasing number of institutions within Parliament with investigative powers and the possibility to push the House to sanction violations of rules, demonstrating the “slow erosion of self-regulation” in the House of Commons.<sup>180</sup>

#### **1.2.4. The Swedish *Riksdag*: a self-regulatory system based on trust and shame**

In Sweden, the regulation of conflicts of interest relies on parliamentarians’ sincerity and willingness to comply with the rules. It is emblematic of a system of self-regulation. Conflicts of interest regulation involves the collaboration of various actors within the Parliament: the central office, the political groups’ leadership and secretariats, and the leadership of the Parliament. The Speaker Presidium is ultimately responsible for the maintenance and implementation of the code together with the leaders of parties represented in Parliament. More specifically, the Presidium is in charge of anchoring the code in Parliament practice, of keeping the code alive and deciding on when it should be revised. Party group leaders have the responsibility of concrete implementation of the code, ensuring that it serves as guidance and support to parliamentarians in their daily work. The guide justifies the prominent role given to party group leaders by evoking the central position of party groups in the workings of the parliament.

The parliamentary administration is in charge of the practical management of the public interest register. Several departments within the administration share the responsibility for maintaining and running the instrument. The central office is in charge of informing parliamentarians of ethical rules and their obligations. Being responsible for the smooth running of the chamber, it ensures that breaches of ethical rules are handled upstream so that they do not have to come up on the agenda of the parliament. Indeed, if the parliamentarians fails to comply after having been reminded, the administration contacts the party group leader of the parliamentarian and/or the head of the party’s secretariat within the Parliament – “who have the same interest [as the administration] in seeing parliamentarians hand it in”.<sup>181</sup> The only and ultimate sanction for a non-compliant parliamentarians is an announcement by the Speaker in the Chamber that the parliamentarian has failed to register their interests. Parliamentarians usually respect their obligations – “no one opposes them”<sup>182</sup> – and non-compliance is often due to forgetfulness,

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<sup>179</sup> Journalist, The Daily Telegraph (UKJOUR1). Interview with author. March 13<sup>th</sup> 2018.

<sup>180</sup> HINE, David and PEELE, Gillian. *Op. cit.* 2016.

<sup>181</sup> Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19<sup>th</sup> 2017.

<sup>182</sup> *Ibid.*

according to parliamentary clerks.<sup>183</sup> It has yet never occurred that the Speaker had to single out a parliamentarian for not complying with their registration obligations.<sup>184</sup>

There is no formal enforcement mechanism to check whether a parliamentarian might be unduly influenced nor to verify if the information in the register is truthful. In the current system, it is impossible to gauge if parliamentarians are sincere in their declarations but it appears that the ‘name and shame’ system function rather well for the mere completion of the registration form.<sup>185</sup> Parliamentary clerks interviewed for this research considered that the parliamentary administration took its task of ensuring that parliamentarians comply with their obligations very seriously, mentioning that they “absolutely did not want [a calling out by the Speaker in the chamber] to happen” and that it would “not look good for the party and the parliamentarian”, “would be very embarrassing” and “would certainly not be enjoyable for the Speaker either”.<sup>186</sup> The role of the parliamentary administration being to support and facilitate the work of Parliament, it is clear that their function in handling conflict of interest is of a similar nature. The clerks interviewed admitted that that “[playing a control function] would be a strange role for the administration”.<sup>187</sup>

Sanctions are essentially reputational and the system could be said to rely on self-inflicted sanctions, as parliamentarians who are suspected of misconduct traditionally resign.<sup>188</sup> The code of conduct does not contain any provision on sanctions but an earlier draft version of the code contained a section on sanctions for breaching its rules.<sup>189</sup> The Council of Europe Group of States against Corruption, in its final evaluation of corruption prevention in the Swedish Parliament, regrets that “the possibility for the Speaker and his/her deputies to initiate investigations and for them to use sanctions, originally included in the draft, was not retained” and that “the supervision mechanism now in place (...) is weaker than in the draft presented to GRECO”.<sup>190</sup> According to interviewees, the Swedish system relies on the general public and the media to scrutinise elected officials.<sup>191</sup> The media has traditionally held a strong position and continue to be an important role in detecting corruption, through the presence of investigative journalists in most media outlets, and

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<sup>183</sup> *Ibid.*

<sup>184</sup> Council of Europe GRECO. Eval IV Rep (2013) 1E. Strasbourg: Council of Europe. 2013, p. 21; Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19<sup>th</sup> 2017.

<sup>185</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17<sup>th</sup> 2017.

<sup>186</sup> Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19<sup>th</sup> 2017.

<sup>187</sup> *Ibid.*

<sup>188</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17<sup>th</sup> 2017.

<sup>189</sup> Council of Europe GRECO. RC-IV (2015) 9E. Strasbourg, 2015, p. 3 ; Council of Europe GRECO. RC4(2017)21. Strasbourg, 2017, p. 5.

<sup>190</sup> Council of Europe GRECO. RC4(2017)21. Strasbourg, 2017, p. 5.

<sup>191</sup> Council of Europe GRECO. Eval IV Rep (2013) 1E. Strasbourg. 2014, p. 21; Member of the Swedish Parliament (SWMP1). Interview with author. May 17<sup>th</sup> 2017; Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19<sup>th</sup> 2017; Journalist, Dagens Nyheter (SWJOUR2). Phone interview with author. June 5<sup>th</sup> 2017.

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informing the public about the issue.<sup>192</sup> Journalists are constantly present in parliament and have access to most of the parliamentary premises – as a former parliamentarian said: “one could say that there is, in essence, constantly someone sitting around, looking for something (...) they are obviously looking for news”.<sup>193</sup> The parliamentary administration suggests that journalists are the most regular ‘patrons’ of the register,<sup>194</sup> although the absence of official statistics does not allow one to affirm this impression. The decreasing deference to political representatives is said to have increased curiosity in the latter’s behaviour and private life, forcing them to be more attentive.<sup>195</sup> Officials interviewed by the Council of Europe evaluators suggested that parliamentarians are rather reluctant today to accept gifts and advantages due to journalists’ interest and scrutiny.<sup>196</sup> Given the important role of the media in Sweden, the decreasing resources available to journalists is seen as a problem,<sup>197</sup> especially given the relatively low interest of the public for the existing instruments.<sup>198</sup>

The regulation of conflicts of interest in Sweden is based on trust in parliamentarians’ honesty and compliance, and on their fear of reputational loss. The system is one of self-regulation since it relies heavily on parliamentary clerks (who do not see their mission as involving any form of control of parliamentarians, that they are there to serve) and on political groups within the parliament, who need to regulate their members’ conduct to avoid embarrassment and the risk of subsequent political losses. While Sweden has not created any specific ‘ethics bureaucracy’, its parliamentary ethics system also relies on external actors (citizens, media and organised civil society) to scrutinise officials’ conduct and external influences.

This section has showed that, while Sweden remains a paragon of parliamentary self-regulation, Britain and France progressively introduced elements of external control to regulate parliamentarians’ conflicts of interest. The “slow erosion of self-regulation”<sup>199</sup> started in the mid-1990s, with the appointment of a Parliamentary Commissioner for Standards in 1995 and the introduction of lay members in the House of Commons Committee on Standards. A complex mix

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<sup>192</sup> ANDERSSON, Staffan. *Motståndskraft, oberoende, integritet – kan det svenska samhället stå emot korruption?* National Integrity System Assessment: Sweden. Berlin: Transparency International, 2011

<sup>193</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17th 2017.

<sup>194</sup> Council of Europe GRECO. Eval IV Rep (2013) 1E. Strasbourg, 2014, p. 21; Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19th 2017.

<sup>195</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17th 2017.

<sup>196</sup> Council of Europe GRECO. Eval IV Rep (2013) 1E. Strasbourg, 2014, p. 17

<sup>197</sup> ANDERSSON, Staffan. *Op. cit.* pp. 409-410

<sup>198</sup> Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19th 2017.

<sup>199</sup> HINE, David and PEELE, Gillian. *The regulation of standards in British public life. Doing the right thing?* Manchester University Press, 2016, p. 69

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of actors are involved in the regulation of conflicts of interest, as, in addition to the growing ‘standards bureaucracy’, MPs themselves participate in regulation by lodging complaints against one another, and the media plays an important role in keeping MPs to account. In France, the process of externalising control was taken one step further, with the establishment of an independent administrative agency. Swedish policy-makers on the contrary designed a system by which no external actors are formally involved in scrutinizing the behaviour and compliance of parliamentarians or the influences that might affect their actions and decisions. To ensure compliance, the model relies on threats to the reputation and credibility through a system of ‘naming and shaming’, with journalists scrutinizing parliamentarians and communicating information to the general public. Sweden is an illustration of a modern self-regulation system, placing great trust and responsibility in individual parliamentarians and their political groups to see to the application of ethical rules.

### 1.3. Convergence on paper, divergence in practice: a case of ‘divergent convergence’

Having dissected conflict of interest regulation in the British, French and Swedish Parliaments to identify their similarities and difference as they stand today, this section adds a diachronic dimension to the analysis to ask if these policies converged overtime. It is not enough for two countries to have a similar policy to observe a convergence. Indeed, policy convergence is the process of *becoming* more alike over time. The concept of convergence is ambiguous, “notoriously slippery” and not always defined precisely or used adequately.<sup>200</sup> Convergence has been used to mean a varieties of things, and here it is used to describe a dynamic process of alignment of public policies across countries, which can touch on various dimensions of a public policy.<sup>201</sup> Understanding the concept of convergence as multi-dimensional<sup>202</sup> means asking the question “what is being said to converge?”<sup>203</sup> The notion of trajectory is added to that of

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<sup>200</sup> HAY, Colin. Common Trajectories, Variable Paces, Divergent Outcomes? Models of European Capitalism under Conditions of Complex Economic Interdependence. *Review of International Political Economy*, Vol. 11, n° 2, 2004, p. 244; KNILL, Christoph. Introduction: Cross-national policy convergence: concepts, approaches and explanatory factors. *Journal of European Public Policy*, 2005, vol. 12, n°5, p. 764.

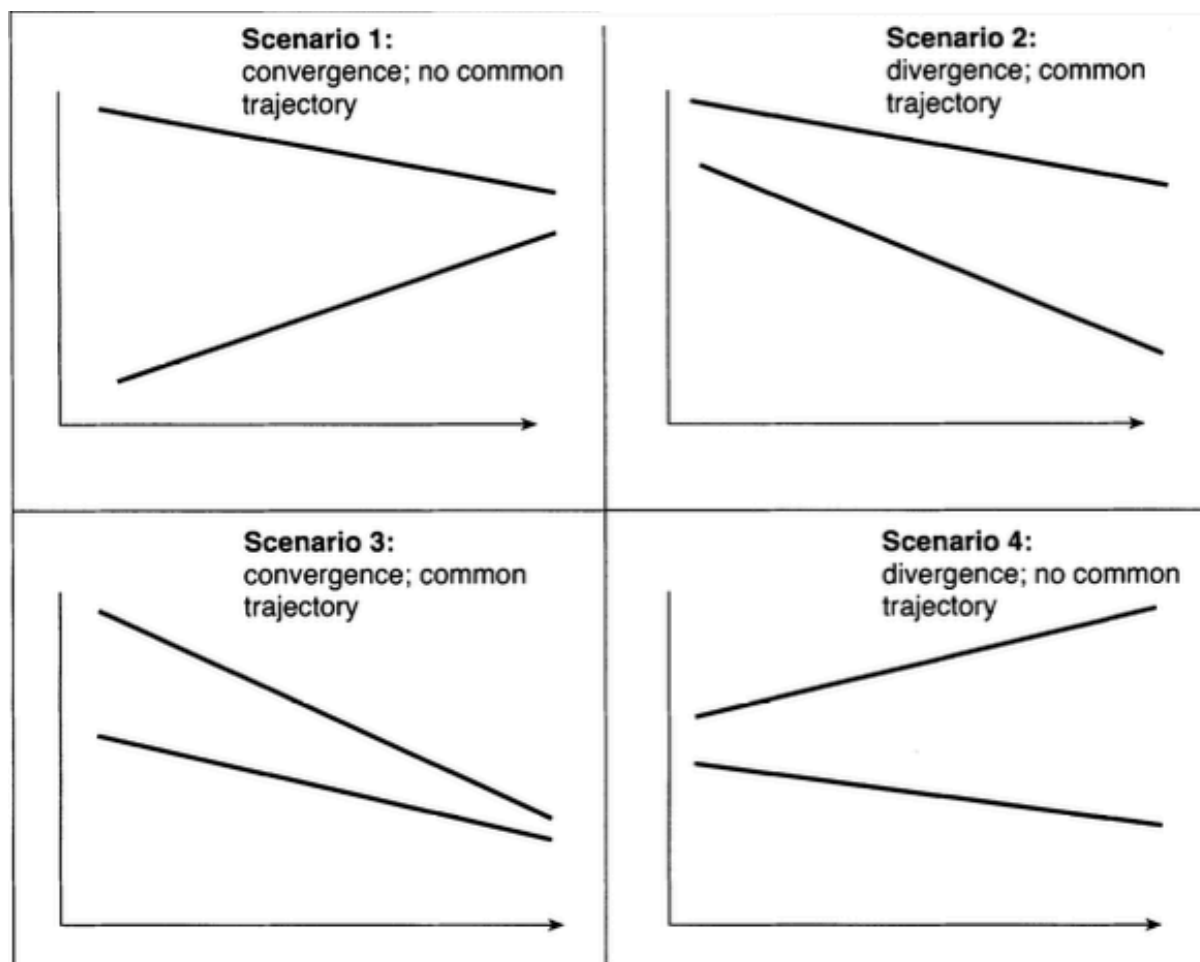
<sup>201</sup> HASSENTEUFEL, Patrick. Convergence. In BOUSSAGUET Laurie et al., *Dictionnaire des politiques publiques*. Presses de Sciences Po (P.F.N.S.P.), 2019, p. 177-185.

<sup>202</sup> As outlined in the introduction, this perspective sees policy in itself as a complex phenomenon and suggests that convergence mean at least one of seven things: (i) a cognitive convergence or convergence of policy goals and paradigm; (ii) a convergence of input; (iii) a convergence of policy content and norms; (iv) a convergence of policy instruments; (v) a convergence of institutions and actors; (vi) convergence of policy outcomes or effects related to the implementation of the policy; and lastly (vii) a convergence of policy style (BENNETT, Colin J. What is policy convergence and what causes it? *British Journal of Political Science*, Vol. 21, n°2, 1991, p. 218; HAY, Colin. *Op. cit.* 2004, p. 245; HASSENTEUFEL, Patrick. *Op. cit.* 2019).

<sup>203</sup> HAY, Colin. *Op. cit.* p. 245

convergence to allow for a fine-grained analysis.<sup>204</sup> Figure 3, borrowed from Colin Hay, is useful to illustrate the various scenarios one can observe when comparing policies across borders and over time.

Figure 3. Convergence, divergence and common trajectories



Source: HAY, Colin. Common Trajectories, Variable Paces, Divergent Outcomes ? Models of European Capitalism under Conditions of Complex Economic Interdependence. *Review of International Political Economy*, Vol. 11, n° 2, 2004, p. 245.

What follows establishes that Britain, France and Sweden are on a common trajectory towards an institutionalisation and an instrumentation of parliamentary ethics (1.3.1), that convergence can be observed when putting the focus on policy instruments(1.3.2), while one must conclude that the countries tend to grow dissimilar in terms of their implementation (1.3.3). The main conclusion of this (long) scene setting chapter is that conflict of interest regulation in Britain, France and Sweden is really a case of ‘divergent convergence’ (1.3.4).

<sup>204</sup> HAY, Colin. *Op. cit.* p. 231-262; BEZES, Philippe and PALIER, Bruno. Le concept de trajectoire de réformes. Comment retracer le processus de transformation des institutions. *Revue française de science politique*, Vol. 68, n°6, 2018, pp. 1083-1112.

### **1.3.1. Common trajectory towards the formalisation and instrumentation of parliamentary ethics**

As discussed earlier, one cannot say that the concern for the proper behaviour of elected representatives and for standards of conduct is a recent development. A good illustration of the traditional, tacit norms of parliamentary ethics is this phrase pronounced in 1971 by the leader of the House of Commons, William Whitelaw: “there is widespread support in the House for the view that it is right to rely on the general good sense of Members rather than on formalised rules”.<sup>205</sup> What is new however is the institutionalisation and instrumentation of parliamentary ethics, a trajectory that is shared by the three countries.

Britain, France and Sweden have all taken a turn towards the formalisation of parliamentary ethics, meaning that they have developed a framework making it possible to problematise and operationalise the issue of ethics in parliament. Formalisation is here understood as the process of giving tacit norms of behaviour an official, written form, and to progressively institutionalise the regulation of parliamentarians’ conduct, through (organised) self-regulation or a form of external regulation. As described in the previous section, France, Sweden and Britain have adopted similar policies to regulate their conflicts of interest. This shared movement from an informal regulation of behaviour, without public intervention outside of criminal matters, towards a regulated system implied that the three countries have embarked on a common trajectory towards the formalisation and institutionalisation of ethical norms in parliaments.

Public interest registers and codes of conduct are seen as policy instruments rather than policies in themselves. Pierre Lascoumes and Patrick Le Galès define instrumentation as “the set of problems posed by the choice and use of instruments (techniques, methods of operation, devices) that allow government policy to be made material and operational”.<sup>206</sup> As such, instrumentation contains a particular conception of regulation, which reflects the common trajectory of reform on which Britain, France and Sweden are embarked, towards the transformation of a classical topic of political philosophy into public problem to be governed by government *technology* in the form of policy instruments (this point is further explored in Chapter 4). Instrumentation of parliamentary ethics refers to the development of technical procedures in the “art of governing”,<sup>207</sup> reflecting broader evolutions of the State, from government to governance, from authority to incentivisation. The move towards the introduction of instruments

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<sup>205</sup> House of Commons. Hansard. HC Deb c1704. London, March 3<sup>rd</sup> 1971.

<sup>206</sup> LASCOUMES, Pierre and LE GALES, Patrick. Introduction: Understanding Public Policy through Its Instruments—From the Nature of Instruments to the Sociology of Public Policy Instrumentation. *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 20, n° 1, 2007, p. 4.

<sup>207</sup> LE GALES, Patrick. *Op. cit.* 2011.

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such as public interests registers and codes of conduct, with their technical devices: paper registers, software or gift repositories, are signs of this progressive instrumentation of parliamentary ethics. They provide a seeming neutrality, typical of instrumentation, through the *technicisation* of the policy field. While adopted partly to facilitate the detection of abuses, these instruments also seek to act on parliamentarians' conduct, creating incentives and risks, and making them *think* about interests that might influence them and gradually interiorise formalised rules.

Policy instruments are however never neutral objects, and technical or functionalist perspectives tend to hide the political aspects of policy instruments.<sup>208</sup> As we will see in the rest of the dissertation, these instruments carry representations about the problem at hand but also about the role of the State, about the relation between the branches of government as well as the nature of political representation, which correspond to the contexts in which they were initially developed. Recognizing that instrumentation of ethics is not politically neutral makes it all the more important to understand the common trajectory that these countries are embarked upon.

### **1.3.2. A convergence of instruments: a common move towards public interest registers and codes of conduct**

In addition to revealing the move towards a new form of regulation of behaviour, approaching the convergence of conflict of interest regulation through the analytic lens of policy instruments allows for a more detailed analysis of policy change identifying subtle forms of policy convergence,<sup>209</sup> since it makes the concrete *recipes* of policies visible.<sup>210</sup> Indeed, when existing studies conclude that countries' responses to pressure for more and stricter ethics regulations are significantly different,<sup>211</sup> our approach allows us to partly refute such a finding. Seeing instruments as constitutive of a policy, one can see that there is an instrumental convergence of conflict of interest regulation in Britain, France and Sweden, the three countries having adopted a public interest register and a code of conduct for their parliamentarians, as illustrated in Figure 4.

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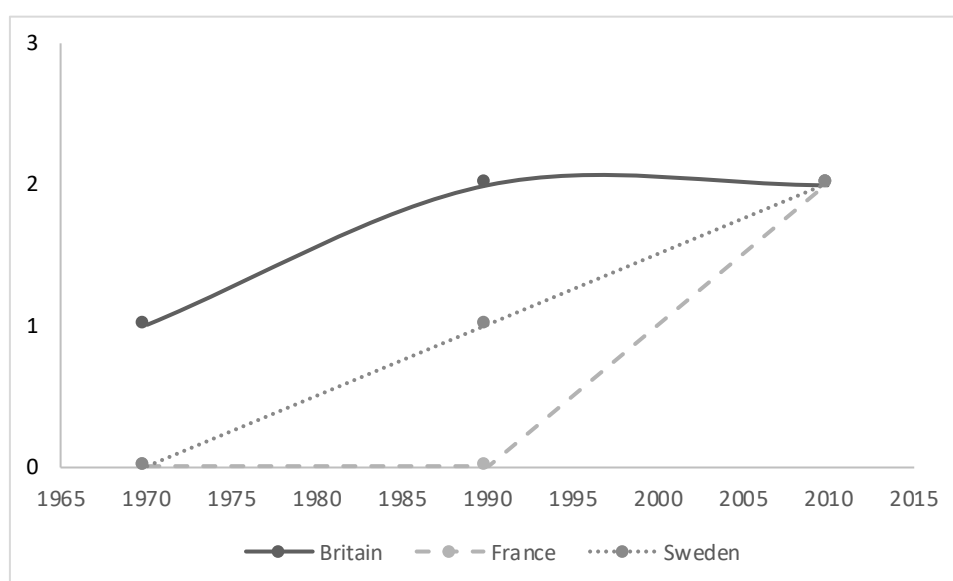
<sup>208</sup> LASCOUTES, Pierre and LE GALES, Patrick. *Op. cit.* 2005, p. 29.

<sup>209</sup> We use Colin J. Bennett's disaggregated view on policy convergence which distinguishes goals, content, instrument, outcomes and style (BENNETT, Colin J. What Is Policy Convergence and What Causes It? *British Journal of Political Science*, Vol. 21, n° 2, 1991, pp. 215-233).

<sup>210</sup> LASCOUTES, Pierre and LE GALES, Patrick. Introduction: L'action publique saisie par ses instruments. In LASCOUTES, Pierre (ed.) *Gouverner par les instruments*. Paris: Presses de Sciences Po. 2005, pp. 11-44.

<sup>211</sup> See for instance BOLLEYER, Nicole, SMIRNOVA, Valeria, DI MASCO, Fabrizio and NATALINI, Alessandro. Conflict of interest regulation in European parliament: Studying the evolution of complex regulatory regimes. *Regulation & Governance*, 2018.

Figure 4. Instrumental convergence of conflict of interest regulation



Source: the axis represents the number of instruments (among those analysed in this research) adopted to regulate conflict of interest. It does not provide indication as the type of instrument (register or code) as the objective is to illustrate the instrumental convergence, meaning the adoption of the same instruments to regulation conflicts of interest in parliament.

France originally conceived of responding to problems associated with parliamentary ethics principally through the lens of incompatibilities and *a posteriori* repression of abuse. Sweden, while having a long-standing transparency legislation, tackled the issue of conflicts of interest, or *jäv*, through recusal obligations during parliamentary work in committees and in the chamber. As detailed in the previous section, both countries integrated new instruments, previously adopted in Britain (in 1974 and 1995): public interest registers (Sweden in 1996 and France in 2013) and codes of conduct (France in 2011 and Sweden in 2017). Zooming in on the instruments that make up these countries' policies against conflicts of interest in parliament, it is clear that the policies converge towards the British policy approach, as Part One of the dissertation will show in more detail.

### **1.3.3. Divergence of implementation: from a common tradition of self-regulation to a variety of external control**

Despite the growing similarity of conflict of interest regulation in Britain, France and Sweden, with the adoption of the same instruments, the three cases differ on some fundamental points with respect to the implementation of these policies. While self-regulation was the original approach to parliamentary ethics, two of the three countries departed from it, creating new institutions to implement the new instruments.

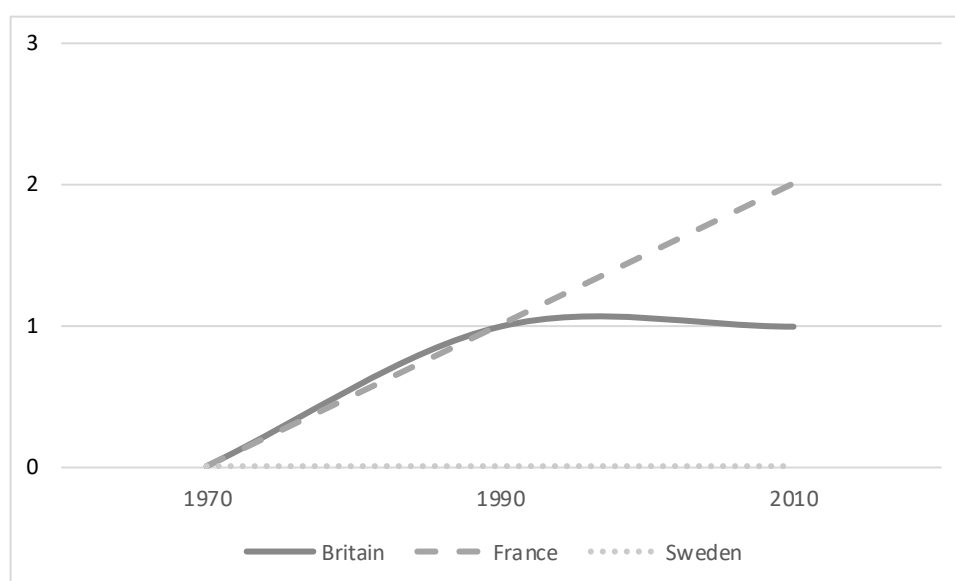
The conduct of parliamentarians has traditionally been controlled through self-regulation, with a strong narrative of accountability to the electorate and a belief in political sanctions. The regulatory systems introduced in the three Parliaments marks a move away from a fully informal control mechanism, but the countries followed different paths. Sweden has introduced rules but has retained a wholly self-regulatory system. The United Kingdom has progressively introduced external elements into its regulatory system, with an independent Commissioner in charge of investigations and lay members in its Select Committee of Standards. The sanctioning power however remains in the hands of the House. France has a more complex system, with a separation between oversight of the parliamentary code of conduct and that of interest registration. The former is overseen by a *déontologue* without investigative powers who reports to the chamber's Bureau,<sup>212</sup> whilst interest registration is managed by an independent administrative agency. France has made it an offense to fail to comply with declarative obligations, which is not the case in the other countries under examination where breaches of the ethical rules are sanctioned by internal disciplinary measures, if at all.

The actors, institutions and resources involved in the regulation of conflicts of interest differ significantly from one case to another. In France and in Britain, policy-makers created dedicated authorities for the oversight and management of parliamentary ethics. Whilst both the British House and the French National assembly have an independent ethics commissioner, their resources and prerogatives differ significantly. Moreover, the British commissioner is overseen and accompanied by a Select Committee, which is not the case for the French *déontologue* who only reports to the Bureau. French policy-makers chose to create an institution outside the Parliament to oversee officials' declarations. Sweden on the contrary heavily relies on the parliamentary administration of the practical implementation of the integrity system, and on party groups to ensure the compliance of parliamentarians, who might informally be pressed to resign. Political parties' role in Westminster would rather be to keep members from other parties in check by reporting their wrongdoings to the PCS. The Parliament's leadership plays an important role in France and in Sweden, whilst it is not as prominent in the House due partly to the presence of the Select Committee.

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<sup>212</sup> This has slightly changed on January 1 2018 since the ethics commissioner now has the prerogative to control MPs operational expenses.

Figure 5. Divergence in regulatory practices



Source: the axis represents the degree of externalisation of conflict of interest regulation, 0 corresponding to self-regulation, 1 to the introduction of an external element within parliament and 2 to the creation of an independent agency. The figure is schematised to illustrate that, while the three countries started with a system of self-regulation, Britain created an independent institution to regulate conflicts of interest (the PCS) and France created two (the CTFVP and the *déontologue*).

The introduction of instruments to regulate the conduct of parliamentarians did not originally modify the self-regulatory tradition of these parliaments, and, in the case of the Swedish *Riksdag*, has still not changed it. In Britain and France, policy-makers progressively introduced elements of external oversight into the regulation of their own conduct, albeit different ones. There is thus a divergence, in practice, in the implementation of conflict of interest regulation, as illustrated in Figure 5. This subsection shows that despite the common instruments of conflict of interest regulation, the way in which these integrity policies are managed has become increasingly different overtime.

### 1.3.4. A case of ‘divergent convergence’

Convergence is a complex and multi-dimensional concept and it is safe to assume that, despite being interdependent, not all dimensions of a policy will converge simultaneously. Patrick Hassenteufel writes that studying convergence requires scholars to distinguish between total convergence (on all dimensions), partial convergence (some dimensions) and limited convergence (one dimension).<sup>213</sup> Assuming that not all convergence concerns all dimensions at once suggests that the possibility of a non-convergence ought to be included in any comparative policy analysis. Two options are available here: absence of variation, meaning that policies neither become more

<sup>213</sup> HASSENTEUFEL, Patrick. *Op. cit.* 2019.  
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alike nor more dissimilar, and divergence. Divergence suggests that growing interdependence and interaction between states will not move states away from their historically rooted paths, resulting not in convergence but in constant and potentially increasing variations.<sup>214</sup> Against the all-too-common scholarly expectation of *either* convergence *or* divergence, David Levi-Faur and Jacint Jordana point out that policy diffusion (or transfer) may involve both convergence and divergence *at the same time*, suggesting a more refined analysis that includes the possibility that states might follow a similar trajectory in a given policy field whilst becoming more dissimilar, or, on the contrary, that they follow different trajectories while become more alike.<sup>215</sup> This chapter sought to convince the reader that conflicts of interest regulation in parliament is indeed a case of ‘*divergent convergence*’ in these European countries.

Observing the regulation of conflicts of interest in the British, French and Swedish Parliaments, one sees the convergence of the overall framework of conflict of interest regulation with the adoption of the same instruments. Despite originally approaching the issue of conflicts of interest differently (and with different terms), Britain through transparency requirements, France through incompatibility and ex-post sanction, and Sweden through recusal rules and intra-party discipline, they all gradually moved towards the former, with the adoption of public interest registers and towards the codification of ethical standards. Considering public interest registers and codes of conduct as instruments of conflict of interest regulation, this chapter demonstrates that it is a case of *instrumental* convergence.

This convergence of conflict of interest regulation is however limited if one looks at how policies are implemented, since the enforcement of the rules and oversight mechanisms do not grow similar but, on the contrary, create increasing differences between Britain, France and Sweden. While they all originally shared their self-regulatory tradition, Britain and France progressively departed from it, introducing (different) elements of external oversight. From an original state of similarity, the three countries regulating conflicts of interest and parliamentary ethics through parliamentary self-regulation, they grow increasingly dissimilar, with a “slow erosion of self-regulation”<sup>216</sup> in Britain and France.

Studying conflict of interest regulation as a multi-dimensional policy, this chapter finds that disaggregating the comparison allows on to see that convergence and divergence indeed happen at

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<sup>214</sup> BUSCH, Andreas. State regulation of the banking sector in the era of globalization: Divergence or convergence? In LEVI-FAUR David and VIGODA-GADOT Eran (ed.) *International public policy and management: Policy learning beyond regional, cultural and political boundaries*. New York: Marcel Dekker. 2004 ; LEVI-FAUR, David and JORDANA, Jacint. Regulatory Capitalism: Policy Irritants and Convergent Divergence. *Annals of the American Academy of Political and Social Science*, 2005, vol. 598, p. 191-197

<sup>215</sup> LEVI-FAUR, David and JORDANA Jacint. *Op. cit.* p. 194

<sup>216</sup> HINE, David and PEELE, Gillian. *Op. cit.* 2016, p. 69.  
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the same time. With the increasing similarity of instruments (public interest registers and codes of conduct), one can trace the instrumental convergence of this policy. Looking further down the policy cycle, one however sees that in practice it creates increasing differences in the actors and institutions who bear the responsibility for implementing the policy.

## Conclusion

This chapter has set out the puzzle that the dissertation seeks to resolve. Starting off with the idea to study a case of convergence of anti-corruption policy, a closer look made it clear that the story of the regulation of conflict of interest in parliaments was more complex than expected. Britain, France and Sweden have successively adopted the same policy instruments to regulate parliamentarians' conflicts of interest: public interest registers and codes of conduct. Public interest registers make information available (directly like in Britain and France or upon request like in Sweden) to the general public, the media, organised civil society and fellow parliamentarians about whom might influence parliamentarians' positions. Public interest registers also help oversight institutions (internal or external) to identify possible conflicts of interest or incompatibilities, and subsequently request parliamentarians to resolve them. Codes of conduct are a means to formalise and codify parliamentary standards and ethical norms, for the public and parliamentarians themselves to know what is expected of them and what is considered (un)acceptable. In the three countries, codes of conduct combine abstract principles and concrete rules, usually regarding gifts, hospitality and expenses.

The chapter has shown that, despite growing similarities in the instruments adopted, there are significant differences as to the actors and institutions in charge of regulating conflicts of interest. In all three countries, the ultimate responsibility for complying with the ethical values and rules lies with parliamentarians themselves. However, other actors play a supporting or controlling role, creating differences in the regulation of conflicts of interest between the cases. Sweden relies on a system of self-regulation, with the support of the parliamentary administration, while Britain and France have introduced (semi-)external elements to regulate conflicts of interest. This leads to the conclusion that conflict of interest regulation is a case of '*divergent* convergence', the instruments growing similar overtime, while its implementation actually creates growing differences in the practice of regulating parliamentarians' conflicts of interest.

This makes the story about anti-corruption policy-making more surprising and thus more interesting than that of the international diffusion of a *tested* and *approved* solution to a problem that has become of increasing concern to citizens and governments alike. Part One of the dissertation, that immediately follows, will put forth some elucidating elements of the convergence of conflict

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of interest regulation, developing a point mentioned in this chapter without being explored in details: the sequential adoption of these instruments in Britain, France and Sweden, making Britain a policy ‘pioneer’, shaping the policy trajectory that others would later follow.

# PART ONE

## Tracing the origin of policy ideas: Pioneers and brokers of conflict of interest regulation

## Introduction of Part One

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How did Britain, France and Sweden come to share the idea that parliamentarians' outside interests constituted a risk of political corruption and the belief that conflicts of interest can be regulated through public interest registers and codes of conduct? After having established that conflict of interest regulation should be understood as a case of 'divergent convergence' in Chapter 1, Part One of the dissertation seeks to answer the question about the actors and mechanisms that made the convergence of the anti-corruption policy possible across these three European countries.

Scholars of policy convergence have explained policy convergence as the consequence of the emulation of early adopters, the emergence of transnational communities, international actors' efforts to harmonise policy, the existence of regulatory competition, governments facing the same problem and solving it in parallel, or the imposition of reforms by powerful states or organisations.<sup>1</sup> The empirical observation and the choice to study anti-corruption policy through the angle of transnational comparison suggests that parallel problem-solving can only be a partial explanation of convergence, since it assumes that policy-makers are not aware of other countries' policy choices.<sup>2</sup> In the absence of competitive pressure and stark asymmetries of power between the three countries, actual imposition of policy and regulatory competition, as understood in the original framework, do not seem all that relevant (although both do play a role in rather nuanced forms as the dissertation will show).<sup>3</sup> This part of the dissertation explores the validity of these various factors of convergence, allowing for the possibility of multiple explanations combining them.

The questions posed by Dolowitz and Marsh in their framework to analyse policy transfer serve to guide the data collection and analysis of Chapters 2 and 3: "Who transfers policy? Why engage in policy transfer? From where are lessons drawn? What restricts or facilitates the policy

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<sup>1</sup> BENNETT, Colin J. What is policy convergence and what causes it? *British Journal of Political Science*, Vol. 21, n°2, 1991a, pp. 215-233; HOLZINGER, Katharina and KNILL, Christoph. Causes and conditions of cross-national policy convergence. *Journal of European Public Policy*, Vol. 12, n°5, 2005, pp. 775-796; HASSENTEUFEL, Patrick. Convergence. In BOUSSAGUET, Laurie (ed.) *Dictionnaire des politiques publiques 4<sup>e</sup> édition*. Paris: Presses de Sciences Po. 2014, pp. 180-188.

<sup>2</sup> HOLZINGER, Katharina and KNILL, Christoph. *Op. cit.* 2005, p. 786.

<sup>3</sup> While there is undoubtedly an element of *soft* coercion, in the form of a perceived necessity to comply with international standards (Chapter 8) or the use by international institutions of elements of name-and-shame tactics or passive-aggressive transfer (Chapter 5), the dynamics studied here cannot be equated with the coercive end of David Dolowitz and David Marsh's continuum (DOLOWITZ, David and MARSH, David. Who Learns What from Whom: A Review of the Policy Transfer Literature. *Political Studies*, Vol. 44, n° 2, 1996, p. 13).

transfer process?”<sup>4</sup> It is common for policy actors to transfer policy from one country to the other, the question then concerns the selection of countries to learn from. This brings the notion of emulation to the centre of the analysis. David Benson and Andrew Jordan note that policy actors tend to turn particularly to political systems that are “established innovators in a particular policy area”.<sup>5</sup> As explained in the introduction, the dissertation is based on a ‘follow the policy’ method, from their adoption in Britain, France and Sweden, through transnational networks and across jurisdictional spaces, all the way back to policy pioneers.<sup>6</sup> The sequence in which public interest registers and codes of conduct were adopted is thus important in itself but also to understand the impact on early definitions and theories of political corruption.<sup>7</sup>

Part One seeks to explain why the prior adoption of public interest registers and codes of conduct in the Anglosphere, understood as the “imagined community consisting of the United States of America, Canada, Australia, New Zealand and the United Kingdom”,<sup>8</sup> was a *necessary* condition – although not a *sufficient* one – for the same instruments to be adopted in France and Sweden. Hence, the three country cases analysed do not have the same status. Great Britain was also influenced by policy innovations elsewhere, but it is considered here as an early mover, while France and Sweden are later adopters. Part One sets out to demonstrate that time (sequential policy adoption) and politics (agency and influence within the international community) played a more important role in painting the Anglosphere as policy pioneers than policy success. International indicators and rankings, such as those described in Chapter 4, do not represent the Anglosphere (with the exception of New Zealand) as the “least corrupt” countries or those demonstrating the highest levels of public trust in government. Moreover, their elected officials were not rendered immune to misconduct or undue influence thanks to the preventive instruments they adopted.<sup>9</sup>

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<sup>4</sup> DOLOWITZ, David and MARSH, David. Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making. *Governance: An International Journal of Policy and Administration*, Vol. 13, n° 1, 2000, pp. 5–24; BENSON, David and JORDAN, Andrew. What Have We Learned from Policy Transfer Research? Dolowitz and Marsh Revisited. *Political Studies Review*, Vol. 9, n° 3, 2011, pp. 366–378.

<sup>5</sup> BENSON, David and JORDAN, Andrew. *Op. cit.* 2011, p. 371.

<sup>6</sup> PECK, Jamie and THEODORE, Nik. Follow the policy: a distended case approach. *Environment and Planning A*, Vol. 44, 2012, pp. 21–30.

<sup>7</sup> ABBOTT, Andrew and DEVINEY, Stanley. The Welfare State as Transnational Event: Evidence from Sequences of Policy Adoption. *Social Science History*, Vol. 16, n°2, 1992, pp. 245–274.

<sup>8</sup> WELLINGS, Ben and MYCOCK, Andrew. *The Anglosphere Continuity, Dissonance and Location*. Oxford: Oxford University Press, 2019.

<sup>9</sup> EVANS, Rob. Britain 'seen as more corrupt since MPs' expenses scandal' *The Guardian*, October 26<sup>th</sup> 2010; Transparency International. *Corruption in the Usa: The Difference a Year Makes*. 2017. Online, available at: [https://www.transparency.org/news/feature/corruption\\_in\\_the\\_usa\\_the\\_difference\\_a\\_year\\_makes](https://www.transparency.org/news/feature/corruption_in_the_usa_the_difference_a_year_makes) (accessed on February 27<sup>th</sup> 2020); GovTrack. Congressional Misconduct Database. N.d. Online, available at: <https://www.govtrack.us/misconduct> (accessed on February 27<sup>th</sup> 2020); SNAITH, Emma. 'Culture of impunity' among MPs over hospitality from corrupt regimes. *The Guardian*, July, 30<sup>th</sup> 2018; Council of Europe. *Anti-corruption*

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Applying a transnational lens to policy-making means looking at the interactions between state and non-state actors at the domestic and the international level to identify who was involved in the transfer of public interest registers and codes of conduct. Indeed, research has shown that it is necessary to look beyond government officials and political actors to understand policy transfer in practice. This leads us to the question “why engage in policy transfer?”<sup>10</sup> The chapters of Part One focus principally on the ‘exporting’ end of the process, identifying actors constructing countries as policy pioneers at the national and international level, while the reasons other countries choose to import policy will be dealt with in Part Three.

Chapter 2 explores the sequential adoption of policy instruments and provides evidence of transnational exchanges in the process of transferring ideas about how to regulate conflicts of interest. It is interested in the order of in which public interest registers and codes of conduct were adopted to understand how the path that other countries were to follow was initially traced. This chapter shows how countries in the Anglosphere became exemplars and built themselves as policy pioneers in the institutionalisation of political ethics, and how France and Sweden subsequently became ‘laggards’ in this domain. Chapter 3 on the other hand reveals the ambition of certain countries in the Anglosphere to become policy leaders who actively seek to push other countries to follow their lead.<sup>11</sup> It also moves beyond ‘methodological nationalism’<sup>12</sup> to acknowledge the role played by international and transnational actors in making policy ideas move across borders. Chapter 3 is interested in the domestic sources of international policy-making. It argues that international institutions and transnational actors (such as the OECD, the United Nations or Transparency International) became international policy brokers, with the support of policy pioneers and leaders, and played a particularly important role for the diffusion of these policy instruments.

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*group calls for better rules to manage revolving doors in U.S. Congress.* Strasbourg, 2019. Online, available at: <https://www.coe.int/en/web/portal/-/anti-corruption-group-calls-for-better-rules-to-manage-revolving-doors-in-u-s-congress> (accessed on February 27th 2020)

<sup>10</sup> DOLOWITZ, David and MARSH, David. *Op. cit.* 2000.

<sup>11</sup> LIEFFERINK, Duncan and WURZEL, Rüdiger K.W. Environmental leaders and pioneers: agents of change? *Journal of European Public Policy*, Vol.24, n° 7, 2017, pp. 951-968.

<sup>12</sup> STONE, Diane. Transfer agents and global networks in the ‘transnationalization’ of policy. *Journal of European Public Policy*, Vol. 11, n°3, 2004, p. 549

## Chapter 2. Emulating policy pioneers to regulate conflicts of interest

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If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

(James Madison, Federalist No. 51)

There are multiple processes that can lead to policy convergence and this chapter sets out to demonstrate that the convergence of conflict of interest regulation across European countries is, in part, the result of the emulation of innovators in the policy field, and not least of policy innovations in the United States of America. As the quote above suggests, the Framers of the American Constitution, of which James Madison was the main architect, enshrined their Hobbesian view of human nature in the very organisation of the new state. More than a century later, American legislators further translated this perspective into the first formal conflict of interest regulation that would inspire future policy-making across the globe.

Emulation is defined in the literature as the process in and through which governments mimic policies adopted by other governments.<sup>1</sup> It implies the “recognition of foreign exemplars and their incorporation into new or existing policies”.<sup>2</sup> According to Colin J. Bennett, one of the important characteristic of emulation, in contrast to policy diffusion for instance, is the “utilization of evidence about a programme or programmes from overseas and a drawing of lessons from that experience”, whereby a policy from another country serves as a blueprint to move an issue up the agenda.<sup>3</sup> Implicit in these definitions of policy emulation is the notion of temporality and the sequencing of events. Indeed, considering emulation as an explanatory factor of policy change makes policy actors’ decisions dependent on previous (similar) choices made elsewhere. This means

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<sup>1</sup> HOWLETT, Michael. Beyond Legalism? Policy Ideas, Implementation Styles and Emulation-Based Convergence in Canadian and U.S. Environmental Policy. *Journal of Public Policy*, Vol.20 n° 3, 2000, pp. 305-329.

<sup>2</sup> MITCHELL, Joshua and STEWART, La Shonda. Emulation, Learning, or Competition? Examining Inter-County Anti-Smoking Laws in the State of Missouri. *Public Administration Quarterly*, Vol.38, n° 3, 2014, p. 320.

<sup>3</sup> BENNETT, Colin J. What Is Policy Convergence and What Causes It? *British Journal of Political Science*, Vol. 21, n° 2, 1991a, p. 221.



that the ordering of policy adoption across countries matter, since early adopters trace a form of path that later adopters might follow.

Emulation inevitably raises the question posed by Dolowitz and Marsh's framework: "from where are lessons drawn?"<sup>4</sup> Policy actors do not typically consider all countries equally when looking for policy solutions to emulate. There is a proliferation of terms to describe such putative agents of change: early movers, first adopters, trend-setters, pioneers or leaders. Duncan Liefferink and Rüdiger Wurzel's analytical framework differentiating between "pioneers" and "leaders" is particularly helpful to structure the chapter's argument.<sup>5</sup> While Chapter 3 turns to policy leadership and governments' ambition to encourage others to follow their example, this chapter is interested in the position and influence of pioneers. Policy convergence in this perspective is a consequence of a form of regulatory conformism of governments following the path set by policy pioneers functioning as exemplars under conditions of uncertainty.<sup>6</sup> While pioneers can become leaders in a policy field, 'pioneership' itself results mainly from a country's position as early adopter, its reputation and influence on the international stage.<sup>7</sup>

Bennett emphasised that one should not infer from descriptive evidence of sequential adoption of the same policy in different contexts that late adopters used information from early adopters to develop their programme. Although it is intuitive to assume that the similar policies across borders mean that policy-makers in country B learned from country A, it is not sufficient to confirm that policy convergence resulted from emulation.<sup>8</sup> To do so requires the satisfaction of three conditions, according to Bennett: the identification of a clear exemplar; evidence of policy actors' awareness and utilisation of evidence from that exemplar; and similarity in the goals, content or instruments of public policy.<sup>9</sup> Looking at transfer in practice, here, means combining a micro-level approach of policy learning, understanding policy learning as "a process of 'puzzling' among individual policy actors dealing with ideas and uncertainty",<sup>10</sup> with a macro-level approach interested in the "sequences in which policy decisions are made in one or several institutional

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<sup>4</sup> DOLOWITZ, David and MARSH, David. *Op. cit.* 2000, p. 12.

<sup>5</sup> LIEFFERINK, Duncan and WURZEL, Rüdiger K.W. Environmental leaders and pioneers: agents of change? *Journal of European Public Policy*, Vol.24, n° 7, 2017, pp. 951-968.

<sup>6</sup> JÄNICKE, Martin. Trend-setters in environmental policy: the character and role of pioneer countries. *European Environment*, Vol.15, n° 2, 2005, p. 129-142.

<sup>7</sup> *Ibid.*; NYE, Joseph. *The Powers to Lead*. Oxford: Oxford University Press, 2008; LIEFFERINK, Duncan and WURZEL, Rüdiger K.W. *Op. cit.* 2017.

<sup>8</sup> BENNETT, Colin J. How States Utilize Foreign Evidence. *Journal of Public Policy*, Vol.11, n° 1, 1991b, p. 31-54.

<sup>9</sup> BENNETT, Colin J. *Op. cit.* 1991a, p. 223.

<sup>10</sup> *Ibid.* p. 162

systems (...) after similar decisions have been made in (...) other institutional systems”.<sup>11</sup> Using documentary and archival material, Section 2.1 follows public interest registers and codes of conduct back to their ‘place of birth’ by outlining a cross-national chronology of instrument adoption, to identify the pioneers of the policy field. Section 2.2. adds interview material to the data analysed to trace the journey of the instruments across national borders. It provides evidence of policy actors’ awareness about the experience of policy pioneers, explores the different sources of information they used to formulate national policies and seeks to draw conclusions about the nature of policy pioneers.

## 2.1. The Anglosphere as a source of policy pioneers

While the successive adoption of similar policies by different states is not sufficient to conclude that any conscious effort was made to transfer a given policy from country A to country B, tracing the chronology of policy adoption is nevertheless a necessary step to establish an order of adoption and identify the pioneers of a specific policy field. In this section, I study the adoption of policies to regulate parliamentarians’ conflicts of interest at two different levels: (i) the ideational dimension that requires a practice to have been formally problematised and defined as something that requires public intervention for policy change to occur. Indeed, for policy-makers to seek to regulate them, conflicts of interest need to be understood as a public problem in general, meaning that individual officials’ interests need to be seen as potential causes of corruption. Then, I look at (ii) the sequential adoption of policy instruments to operationalise policy ideas. The selection of countries is based on an exploratory study of secondary sources to identify the earliest policy efforts to regulate conflicts of interest and on the information provided by interviewees, which helped narrow the search. As the title suggests, the Anglosphere, understood as the “imagined community consisting of the United States of America, Canada, Australia, New Zealand and the United Kingdom”,<sup>12</sup> stands out as the policy pioneers of conflict of interest regulation. This section will focus especially on the early adoption of these instruments in countries of the Anglosphere. Chapter 7 provides a detailed account of the context and actors that made it possible to import these instruments in France and Sweden.

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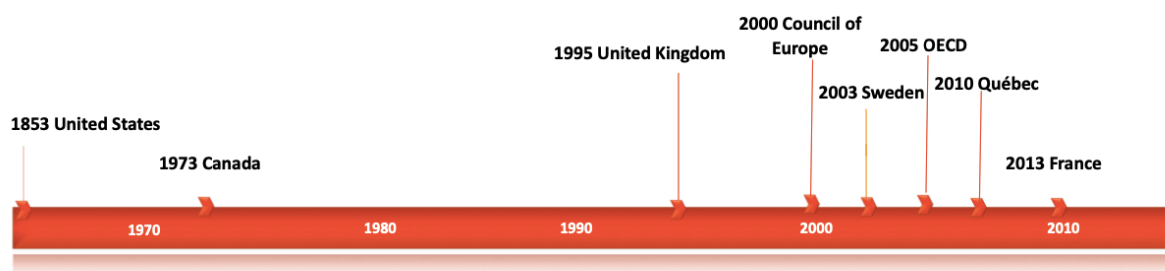
<sup>11</sup> *Ibid.*

<sup>12</sup> WELLINGS, Ben and MYCOCK, Andrew. *The Anglosphere Continuity, Dissonance and Location*. Oxford: Oxford University Press, 2019.

### 2.1.1. The emergence of conflict of interest in official texts: a journey from North America to Europe

Concerns for the integrity of political decision-making and the potential corrupting effects of private interests is nothing new. It was present in the minds of the American Framers, of the French revolutionaries and British parliamentary thinkers when designing political institutions.<sup>13</sup> What this research is interested in is one particular subset of such concerns that led to policy innovations to regulate parliamentarians' conflicts of interest. This section looks at the emergence of conflicts of interest as a problem for parliamentarians,<sup>14</sup> and more specifically at the emergence of the term 'conflict of interest' (and its translation in other languages) in official documents, as a sign of its politicisation (in Colin Hay's sense).<sup>15</sup> Figure 6 draws the timeline of the first time conflict of interest where officially defined in various countries.

Figure 6. First effort to define 'conflict of interest' in official documents



As the Figure 6 shows, the politicisation of conflict of interest (labelled as such) as a problem to regulate started in North America. The United States was the first country to formalise conflict of interest regulation. In 1853, the US Congress made it a criminal offense for government officials to act on behalf of individuals having a claim against the United States and to receive compensation intended to influence one's votes or decisions.<sup>16</sup> Efforts to define conflict of interest became a concern for legislators again a century later, with the adoption by congressional resolution of the Code of Ethics for Government Service in 1958, complemented by the Code of Official Conduct

<sup>13</sup> CAIN, Bruce E., GASH, Alison L., and OLESZEK, Mark J. Conflict-of-Interest Legislation in the United States: Origins, Evolution, and Inter-Branch Differences. In Christine TROST, and Alison L. GASH (eds.) *Conflict of Interest and Public Life: Cross-National Perspectives*. Cambridge: Cambridge University Press, 2008, pp. 101–124; PEELE, Gillian, and KAYE, Robert. Conflict of Interest in British Public Life. In Christine TROST, and Alison L. GASH (eds.) *Conflict of Interest and Public Life: Cross-National Perspectives*. Cambridge: Cambridge University Press, 2008, pp. 155–187; MENY, Yves. De la confusion des intérêts au conflit d'intérêts. *Pouvoirs*, Vol. 147, n° 4, 2013, pp. 5–15.

<sup>14</sup> Chapter 7 shows that the issue of conflicts of interest had emerged as a public problem in other sectors before reaching the political sphere, in France especially but not exclusively.

<sup>15</sup> HAY, Colin. *Why We Hate Politics*. Cambridge: Polity Press, 2007, pp. 79–80.

<sup>16</sup> CAIN, Bruce E., GASH, Alison L., and OLESZEK, Mark J. *Op. cit.* 2008, p.103.

in 1968, by law this time.<sup>17</sup> Only with the ethics reforms of the late 1980s, orchestrated by the U.S. Congress's House Bipartisan Task Force on Ethics, did the official definition of conflict of interest emphasise the corrupting potential of an official's private interests, the previous ones resembling the current definition of bribery, as shown in Table 4. The preoccupation with formally regulating conflicts of interest in Canada does not have historic roots as in the US. Canada's concern with conflict of interest regulation is said to have begun with the Green Paper "Members of Parliament and Conflict of Interest" tabled in the House of Commons in 1973.<sup>18</sup> Canadian legislators' did not share the same understanding of conflicts of interest as their American peers, and debates concerned what Andrew Stark calls 'publicly sourced conflicts of interest', referring to parliamentarians' dependence on the executive for government appointment which could compromise their independence of judgement. It is only in 2004, after decades of discussions, that code of conduct for parliamentarians was finally adopted with a definition of conflict of interest that is not that different from the American one.<sup>19</sup>

Efforts to formalise the definition of conflict of interest only emerged in Europe in the 1990s. Despite the long-standing tradition of parliamentarians declaring their interests during debates in the House, the term 'conflict of interest' was only formally defined in the 1990s with the wave of standards reforms that followed the creation of the Committee on Standards in Public Life (CSPL) in 1994. As Gillian Peele and Robert Kaye note, the debates in Britain have been conducted using broader terms than on the other side of the Atlantic, with discussions about standards of public life rather than conflicts of interest.<sup>20</sup> Conflict of interests, though central to the standards system, is rarely clearly defined, as suggested in Table 4. The understanding of what constitute a conflict of interest was introduced in the code of conduct for parliamentarians adopted by resolution of the House in 1995, through an article requiring MPs to avoid finding themselves in a situation in which their personal interest is in conflict with the public interest and to resolve it if it could not be avoided.

Elsewhere (including in France and Sweden) the term 'conflict of interest' first had a different meaning, referring to divergences of views and opinions between people, groups or

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<sup>17</sup> JENNINGS, Bruce. The Institutionalization of Ethics in the U.S. Senate. *The Hastings Center Report*, Vol. 11, n° 1, 1981, pp. 5-9; Congressional Research Service. *House Committee on Ethics: A Brief History*. Washington DC: CRS Report 98-15. 2019.

<sup>18</sup> STARK, Andrew. Conflict of Interest in Canada. In Christine TROST, and Alison L. GASH (eds.) *Conflict of Interest and Public Life: Cross-National Perspectives*. Cambridge: Cambridge University Press, 2008, pp. 125-154.

<sup>19</sup> *Ibid.*

<sup>20</sup> PEELE, Gillian, and KAYE, Robert. *Op. cit.* 2008.

countries.<sup>21</sup> The term progressively shifted meaning with the emergence of a concern to regulate the potential corrupting impact of private interests on public decisions. In Sweden, the use of the term conflict of interest (*intressekonflikt*) is relatively rare. Policy documents on the ethical reforms introduced in the early 1990s for ministers mention *intressekonflikt*,<sup>22</sup> but the concept is not widely used. The working group in charge of developing the code of conduct for Swedish parliamentarians alludes to this in its final report: “questions about conflicts of interest (*intressekonflikt* in the text), or *jäv* as it is called in the Swedish context, come up in all codes of conduct”.<sup>23</sup> The more common term designating conflicts of interest is indeed *jäv*. The text of the 2017 code of conduct is telling with regards to how Swedish legislators conceive of conflicts of interest and how best to regulate them. Its section on conflict of interest refers to the Rules of Parliament regarding provisions for recusal (Chapter 1), while the code also mentions that the obligation to register interests concerns people’s right to information regarding their representatives’ economic interests, whether or not they have an impact on their vote and decisions.<sup>24</sup> The code of conduct suggests that Swedish policy-makers considered that a parliamentarian finds her/himself in a conflict of interest, which is understood quite narrowly as shown in Chapter 1, s/he should abstain from taking part in a decision all together.

In France, the term ‘conflict of interest’, with the meaning we attribute to it today, only entered into public debate in the 2010s. Then, it “exploded in record time” according to a Public Law Professor interviewed for this study. The interviewee went on to suggest: “we did not talk about this at all ten years ago”.<sup>25</sup> The Senate working group on conflict of interest stated in its concluding report that the notion of conflict of interest “originating from Anglo-Saxon countries and linked to the ‘theory of appearance’ (...) is hardly compatible with French legal and philosophical tradition”<sup>26</sup> (a point that Chapter 9 will explore in more detail). The term ‘conflict of interest’ emerged in official documents in the early 2000s and concerned the civil service before it was extended to elected representatives. Before then, it mostly targeted professionals in the public

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<sup>21</sup> A search for the term “conflit(s) d’intérêt(s)” on the database Europresse from the 1970s to the 2010s shows a change of meaning around the millennial shift. A few occurrences of the term in its *new* meaning emerged in the 1990s, in the coverage of foreign news. In Sweden, the Wikipedia page for ‘intressekonflikt’ define the term as a situation in which two or more people have opposite interests on an issue (Wikipedia. *Intressekonflikt*. n.d. Online, available at: <https://sv.wikipedia.org/wiki/Intressekonflikt> [accessed on March 6th 2020])

<sup>22</sup> Regeringens skrivelse 1996/97:56. Intressekonflikter för statsråd. Stockholm, 28 November 1996.

<sup>23</sup> Sveriges riksdag. En uppförandekod för ledamöterna i Sveriges riksdag. Slutrapport. 2014, p. 10.

<sup>24</sup> Sveriges riksdag. En uppförandekod för ledamöterna i Sveriges riksdag. Stockholm. 2017, p. 13.

<sup>25</sup> Professor of Public Law. Interview with author. December 20<sup>th</sup> 2017.

<sup>26</sup> HYEST, Jean-Jacques, ANZIANI, Alain, BORVO COHEN-SEAT, Nicole, COLLOMBAT, Pierre-Yves, DÉTRAIGNE, Yves, ESCOFFIER, Anne-Marie and VIAL, Jean-Pierre. Rapport d’information fait au nom de la commission des lois (...) n°518. Paris: Sénat. 2011, p. 10.

health sector, as described in Chapter 7. Prior to the emergence of the term, the idea of conflict of interest existed in the incompatibility rules for political officials (Chapter 1). The term emerged with France's 'preventive turn' with regards to anti-corruption policy.

The *Service central de prévention de la corruption* (SCPC), the predecessor to the current anti-corruption agency (*Agence française Anticorruption*, AFA), first attempted to define conflict of interest in its 2004 annual report. For that purpose, the SCPC used the definitions proposed by the Council of Europe and the OECD for inspiration and extends them to "people employed by a public or a private entity".<sup>27</sup> The Sauvé Commission set up by President Sarkozy in 2010 to make proposals as to how to prevent conflicts of interest for public officials built on the work of the SCPC, the Council of Europe and the OECD to propose yet another new definition. The same year, the two chambers of parliament launched a similar reflection on conflict of interest prevention, which was the first time the term was applied to elected representatives in France. Conflicts of interest were legally defined for the first time in Law n°2013-907 on transparency in public life, where it included the possibility of an official having two public interests in conflict with one another. The term has since been redefined by a 2013 amendment to the Rules of the National Assembly and by Law n°2017-1339 on trust in public life. These continuous definitional efforts suggest that the idea of conflict of interest is relatively new to the French context and has not yet fully stabilised.

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<sup>27</sup> Service central de prévention de la corruption. *Rapport Pour l'année 2014 au Premier ministre et au Garde des sceaux*. Ministre de la Justice. Paris. 2004.

Table 4. Definitions of conflict of interest in official texts

USA	UK	Council of Europe	Sweden	Canada	OECD	Québec	France
<p><b>1864 Statute on conflict of interest</b> This statute prohibited a member of Congress or an employee of the United States from directly or indirectly receiv[ing] or agree[ing] to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission.</p>	<p><b>1995 Resolution of the House</b> Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, in favour of the public interest.</p>	<p><b>2000 Council of Europe Recommendation Rec(2000)10</b> Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties. The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto.</p>	<p><b>2003 Law 2003:180</b> No-one may be present [at the meeting of the Chamber or of a committee] when a matter is being deliberated which personally concerns him/herself or a close associate. Code of conduct (2017) adds "the MP's spouse, partner, children or siblings" between "herself" and "a close associate".</p>	<p><b>2004 Conflict of Interest Code for Members of the House of Commons (inspired by green paper 1973)</b> Members are held to standards that place the public interest ahead of their private interests (...)Members are expected to arrange their private affairs to that foreseeable real or apparent conflicts of interests may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest.</p>	<p><b>2005 Guidelines for Managing Conflict of Interest on the Public Service</b> Conflict between the public duty and private interests of public officials in which public officials have private-capacity interests which could improperly influence the performance of their official duties and responsibilities.</p>	<p><b>2010 bill n°48</b> A member must not place himself or herself in a situation where his or her private interests may impair independence of judgement in carrying out the duties of office.</p>	<p><b>2013 Law n°2013-907</b> Situation of interference between a public interest and private or public interests of a nature that may influence or appear to influence the independent, impartial and objective exercise of the function.</p>
<p><b>1968 Code of Official Conduct</b> A member, official or employee of the House shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.</p>							<p><b>2013 Rules of the National Assembly</b> Situation of interference a public interest and private or public interests of a nature that may influence or appear to influence the independent, impartial and objective exercise of the mandate.</p>
<p><b>1989 House Bipartisan Task Force on Ethics</b> A conflict of interest is generally defined as a situation in which an official's private financial interests conflict or appear to conflict with the public interest. Some conflicts of interest are inherent in a representative system of government, and are not in themselves necessarily improper or unethical (...) a conflict of interest becomes corruption when an official uses his position of influence to enhance his personal financial interests. Between these extremes are those ambiguous circumstances which may create a real or potential conflict of interest. The problem is identifying those instances in which an official allows his personal economic interests to impair his independence of judgment in the conduct of his public duties</p>							<p><b>2017 Law n°2017-1339</b> Conflict between a public interest and private interests in which parliamentarians may find themselves</p>

Table 4 gives an overview of the definitions of conflict of interest provided in official documents in selected countries and international institutions. One easily sees the continuity between these conceptions of conflict of interest, with a few notable differences. The North American definition explicitly state the importance for officials not to appear as having any conflicts of interest. The Council of Europe definition as well as the first definition inscribed in French law borrows this aspect from the North American exemplar. The British and Canadian definitions are similar in their formulation of the need for members to resolve any conflict that may arise in favour of the public interest. France here resembles the US in that legislators sought to fix the definition of conflict of interest in law, with the addition of the possibility of a conflict arising between two public interests. This is partly explained by the French conception of political representation (Chapter 9) and by a parallel debate concerning the accumulation of elective mandates,<sup>1</sup> which could justify that it was taken out of the 2017 definition. The Swedish definition however stands out as it is not a definition to the same extent as the others, but rather a rule on recusal. The Swedish definition of conflict of interest is not clearly spelled out in any official document. Having looked at the emergence of the term conflict of interest in official discourse and at subsequent efforts to formulate a general definition, the section now moves to the sequential adoption of specific preventive instruments: public interest registers and codes of conduct.

### **2.1.2. Regulating conflicts of interest with the disclosure of private interests**

Different approaches have been developed to prevent and regulate conflicts of interest, such as bans on certain activities, obligations for officials to recuse themselves from decisions in which they have an interest or the separation of an official from her/his assets (blind trusts).<sup>2</sup> This dissertation (and section) is interested in a policy instrument that gained popularity in the second half of the 20<sup>th</sup> century, alternatively called a public interest register (UK and Sweden), interests declarations (France) or financial disclosure system (US). The idea of preventing conflicts of interest to compromise the integrity of decision-making through officeholders publicly declaring their interests in the matter being discussed is born in the UK. Members of Parliament have traditionally been expected to declare relevant (pecuniary) interests, when working in the House or within a committee, to ensure that the public as well as other MPs are aware of such elements that

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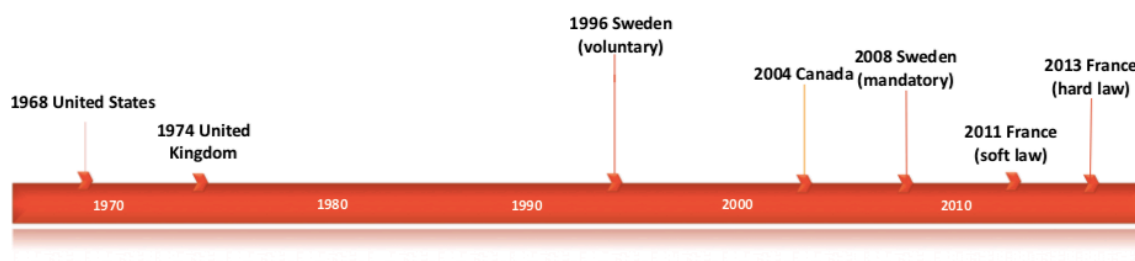
<sup>1</sup> LOI organique n° 2014-125 du 14 février 2014 interdisant le cumul de fonctions exécutives locales avec le mandat de député ou de sénateur. JORF n°0040 du 16 février 2014 p. 2703.

<sup>2</sup> HINE, David. Conclusion: Conflict-of-Interest Regulation in Its Institutional Context. In Christine TROST, and Alison L. GASH (eds.) *Conflict of Interest and Public Life: Cross-National Perspectives*. Cambridge: Cambridge University Press, 2008, pp. 213–36.



could be thought to be relevant to the matter being discussed.<sup>3</sup> The logic behind interest declarations was initially that MPs themselves or the public at large could question the decision of an MP in a conflict of interest and potentially sanction them politically.<sup>4</sup>

Figure 7. Adoption of public interest registers in selected advanced democracies



While Britain has had a long-standing tradition of *ad hoc* oral declarations of interests, the United States was the first country to introduce an obligation for parliamentarians to register their interests publicly and in writing. The US House of Representatives introduced its financial disclosure system in 1968, together with its Code of Official Conduct described below. The Watergate scandal led to substantial reforms of the campaign finance system and conflict of interest regulation, further detailed in next section. With regards solely to financial disclosure, the repercussions of the scandal pushed legislators to make it public in 1977. Conflict of interest regulation is unsurprisingly related to elected officials' financial situation (as explored all along the dissertation and particularly in Chapter 9). Bruce Jennings argues that American legislators accepted this increased insight into their private interests in order to make the salary increase they gave themselves the same year acceptable to the public. This pay raise is also tied with the stricter limits on outside income which were also part of the 1977 reform.<sup>5</sup> The disclosure obligations were included in the 1978 Ethics in Government Act which extended financial disclosure requirements to the three branches of the federal government and created the Office of Government Ethics (OGE),<sup>6</sup> which later played a significant role in making public ethics a global concern (Chapter 3).

<sup>3</sup> GAY, Oonagh. Aspects of Nolan - Members' Financial Interests. Research Paper 95/62. House of Commons Library. 1995, p. 4

<sup>4</sup> JENNINGS, Bruce. The Institutionalization of Ethics in the U.S. Senate. *The Hastings Center Report*, Vol. 11, n° 1, 1981, p. 5.

<sup>5</sup> BAKER, Richard Allan. The History of Congressional Ethics. In JENNINGS, Bruce, CALLAHAN, Daniel and CALLAHAN, Sydney. *Representation and Responsibility: Exploring Legislative Ethics*. New York, London: Plenum Press, 1985, p. 26.

<sup>6</sup> JENNINGS, Bruce. The Institutionalization of Ethics in the U.S. Senate. *The Hastings Center Report*, Vol. 11, n° 1, 1981, pp. 5-9; Congressional Research Service. *House Committee on Ethics: A Brief History*. Washington DC: CRS Report 98-15. 2019.

The informal British practice of orally declaring interests was formalised in 1974, with the introduction of Register of Interests overseen by a Select Committee on Members' Interests. The informal tradition of oral declarations started to be criticised by outside observers after the Second World War, including by the American journalist Andrew Roth.<sup>7</sup> In 1967, the Liberal Party introduced a voluntary public register for its own MPs.<sup>8</sup> The issue was raised in the House following the revelations that a Labour MP, Gordon Bagier, had accepted a payment from a public relations firm working for the Greek government in 1968.<sup>9</sup> The Strauss Committee was set up in May 1969 to consider the practices of the House regarding members' declaration of interests, which were considered rather vague and unclear. The bankruptcy and arrest, in 1973, of the architect John Poulson, who had used his connections in government for the benefit of his company, brought the issue of the interest register back on the agenda. The Poulson Affair led to the establishment of a series of committee (the Redcliffe Maud Committee, the Royal Committee chaired by Lord Salmon and a parliamentary select committee) and pushed the House of Commons to set up the register of Member's interests in 1974.<sup>10</sup> The tradition of oral declarations continues to exist in parallel to the obligation to register interests in writing, which created confusion for MPs who are not always clear about the purpose and rules related to declaration and registration.<sup>11</sup>

It took two decades for the idea of regulating conflicts of interest through interest declaration and registration to reach other advanced democracies. In 1996, the Swedish *Riksdag* introduced a register for members' economic interests. The idea of making office-holders disclose information about their interests and assets had been debated since the late 1970s, with political officials from the Swedish Liberal party (*Folkpartiet*) using the American reforms of the 1970s as an exemplar when proposing the introduction of such obligations<sup>12</sup> (more details in Chapter 7). Inspiration indeed largely came from the US and Britain, through peer-to-peer information exchange and Swedish parliamentarians learning about foreign practices in the international conferences organised by the US government and the OECD during in the mid-1990s (more details in section

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<sup>7</sup> FINER, Samuel Edwards. *Anonymous empire : a study of the lobby in Great Britain*. London: Pall Mall Press. 1958; RICHARDS, Peter Godefrey. *Honourable members : a study of the British Backbencher*. London: Faber & Faber. 1959; ROTH, Andrew. *The Business Background of MPs*. London: Parliamentary Profile Services Ltd. 1959.

<sup>8</sup> GAY, Oonagh. Aspects of Nolan - Members' Financial Interests. Research Paper 95/62. House of Commons Library. 1995.

<sup>9</sup> *The Telegraph*. Gordon Bagier Obituary. April 17 2012. Online, available at: <http://www.telegraph.co.uk/news/obituaries/politics-obituaries/9209979/Gordon-Bagier.html> (accessed on February 6 2018)

<sup>10</sup> HINE, David and PEELE, Gillian. *The Regulation of Standards in British Public Life: Doing the Right Thing?* Manchester: Manchester University Press, 2016, p. 37.

<sup>11</sup> Parliamentary clerk 1, House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>12</sup> Sveriges riksdag. Motion 1976/77:1007 av herr Gahrton och fru Bernström om en utredning rörande höginkomst- och maktthavargruppernas levnadsförhållanden. 25 January 1977.

2.2 and Chapter 3). In 1996, the registration of interests was done on a voluntary basis. It became mandatory in 2008.<sup>13</sup> The instrument reached France approximately at the same time as registration became mandatory in Sweden. By then, French officeholders were already required to declare their private assets (to detect any illicit enrichment) since 1988 to the leadership of the chamber and later to an administrative agency (but not to the public). A series of scandals (detailed in Chapter 7) encouraged policy-makers to introduce an obligation for parliamentarians to publicly declare their interests in 2011, as part of the rules of the new code of conduct for the National Assembly. From the original soft law approach, transparency requirements were turned into hard law within two years, with the adoption of the 2013 laws on transparency in public life (n° 2013-906 and n° 2013-907).

While the US and Britain formalised the idea that conflicts of interest could be regulated through public information in the 1970s, it took two to three decades for the idea to reach other European countries. As the following chapters show, the diffusion of this approach to conflict of interest regulation is largely the result of the emergence of a global anti-corruption community in the 1990s. The two Anglo-American pioneers adopted public interest registers only a few years apart. Three decades however separate their respective introductions of a code of conduct for members of parliament. Indeed, while the obligation to disclose interests always ends up included in the code of conduct, some countries introduced these obligations at the same time (like the US, Germany or France), while others introduced interest registers long before they formalised ethical rules in a code (like Britain and Sweden).

### **2.1.3. Codifying ethical norms to regulate conflicts of interest**

Codes of conduct go beyond the mere obligation to declare interests. The purpose of codes of conduct is usually presented as a means to clarify ethical norms and what can be expected of officials, for themselves and for the public, to facilitate accountability. Codes of conduct are a way to establish ‘soft’ rules for the target population, in addition to existing constitutional or ordinary laws.<sup>14</sup> Codes of conduct, or codes of ethics as they can be called, can contain a codification of ethical principles to uphold, rules regarding gifts, invitations and travels (bans and/or declarations), recusal rules, bans on certain activities and rules regarding the use of confidential information, with variations across countries. The adoption of a code of conduct often serves as an opportunity to (partially) externalise the regulation of individual conduct to an independent institution, although

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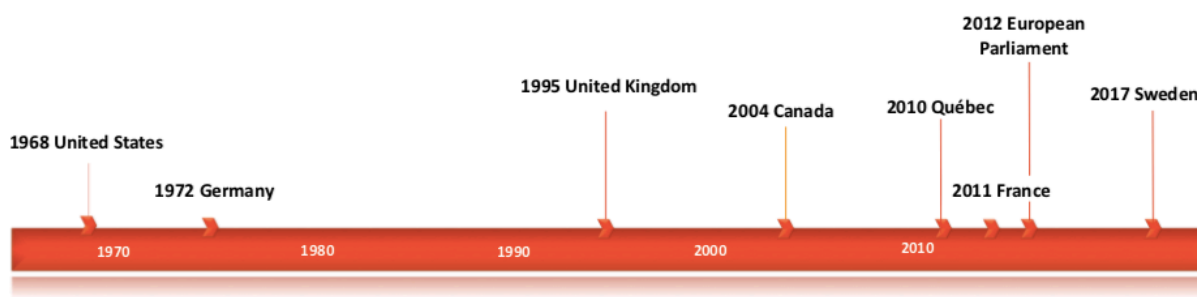
<sup>13</sup> Sveriges riksdag. Lag (1996:810) om registrering av riksdagsledamöters åtaganden och ekonomiska intressen. Stockholm, 2008.

<sup>14</sup> OSCE. Background Study: Professional and Ethics Standards for Parliamentarians. Warsaw: OSCE. 2012, p. 34.

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self-regulation continues to play a role in the regulation of parliamentarians' conduct (Chapter 1). Figure 8 provides a timeline of the adoption of a code of conduct in selected parliaments.

Figure 8. Adoption of a code of conduct for parliamentarians in selected parliaments



Source: OSCE. *Background Study: Professional and Ethics Standards for Parliamentarians*. Warsaw: OSCE. 2012, pp. 32-33.

The United States is, once again, a front-runner in the formalisation of ethical rules. The long-standing anxiety regarding power-holders' motivations together with a concern for virtue and morality in politics are foundational of the American political system,<sup>15</sup> as James Madison notes in the Federalist Papers: "The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess (...) most virtue to pursue the common good of the society and (...) to take the most effectual precautions for keeping them virtuous".<sup>16</sup> While the Congress dealt with members' misconduct on an *ad hoc* basis, the idea that ethical rules needed to be formalised and institutionalised emerged in the 1950s, promoted by political figures such as Senator Paul H. Douglas who published a book on Ethics in Government in 1951.<sup>17</sup> After allegations of misconduct involving the presidential chief of staff Sharman Adams, the US Congress adopted a Code of Ethics for Government Service by resolution in 1958 after numerous bills regarding ethics had failed to be approved by the two chambers. The movement towards the institutionalisation of ethical norms was accelerated in the 1960s by further scandals involving for instance Bobby Baker (aide to the Senate majority leader Lyndon Johnson), Rep. Adam Clayton Powell, and Sen. Thomas Dodd, and led to the adoption of the House of Representatives own formal code of ethics overseen by an ethics committee. Debates about pay raise for members of Congress combined with further scandals in the 1970s, and most notably the 1974 Watergate scandal, brought the issue of ethics reform back to the political agenda. The election of a new cohort of Democratic representatives

<sup>15</sup> JENNINGS, Bruce. *Op. cit.* 1981.

<sup>16</sup> MADISON, James. Federalist No. 57, The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation. *The Federalist Papers*. 1788, cited in Congressional Research Service. *Op. cit.* 2019, p. 1.

<sup>17</sup> DOUGLAS, Paul H. *Ethics in Government*. Harvard University Press. 1951; BAKER, Richard. The History of Congressional Ethics. In JENNINGS, Bruce and CALLAHAN, Daniel (eds.) *Representation and Responsibility: Exploring Legislative Ethics*. New York: Plenum Press. 1985.

interested in ethics reform, the ‘Watergate babies’, contributed to make the United States a pioneer in the formalisation of ethics for government with the adoption of the 1978 Ethics in Government Act.<sup>18</sup> This law created the Office of Government Ethics (OGE), whose officials contributed to put public ethics on the international agenda (Chapter 3).

The 1970s saw ethics reforms emerge in other countries too. The Strauss Committee, mentioned above, suggested the introduction of a code of conduct in the UK Parliament in 1969,<sup>19</sup> but the idea was only turned into policy 25 years later, as explained below. Germany was the first European country to adopt a code of conduct for its elected representatives in 1972. Canada sought to develop rules preventing conflicts of interest and misconduct during that decade, with the federal government issuing a green paper entitled “Members of Parliament and Conflict of Interest” in 1973, mentioned above. In their article arguing against the adoption of written code of conduct for MPs, Michael M. Atkinson and Maureen Mancuso note that “the mid-1970s began the period of a ‘code of conduct’ approach to public sector conflict of interest in Canada”.<sup>20</sup> Based on this green paper, a series of bills providing for the introduction of stronger conflict of interest regulations and of a code of conduct were presented to MPs in the following three decades but failed to find sufficient support. Rules were however strengthened for officials in the executive branch with the adoption of a non-statutory Conflict of Interest and Post Employment Code for Public Officeholders in 1985 and the creation of the Office of the Federal Ethics Counsellor in 1994, which was filled by career bureaucrat Howard Wilson, who would later come to play a role in shaping international public ethics standards in the OECD (Chapter 4). The issue of a code of conduct for MPs came back on the agenda in the early 2000s, after a number of scandals involving Ministers.<sup>21</sup> Prime Minister Jean Chrétien announced an eight-point plan of action on government ethics in 2002 and a parliamentary ethics initiative was tabled in both chambers the same year, which included provisions on a code of conduct for parliamentarians and creation of the position of Ethics Commissioner. The latter was established in 2003 and the House of Commons adopted the Conflict of Interest Code for its members in 2004.<sup>22</sup> Québec was the last province of Canada to adopt a code of conduct for its parliamentary assembly. Denis Saint-Martin argues that the late

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<sup>18</sup> JENNINGS, Bruce. Op. cit. 1981; GILMAN, Stuart. The Management of Ethics and Conduct in the Public Sector. The United States Federal Government. Paris: OECD. 1995; Congressional Research Service. Op. cit. 2019.

<sup>19</sup> GAY, Oonagh. Op. cit. p. 2

<sup>20</sup> ATKINSON, Michael M. and MANCUSO, Maureen. Do We Need a Code of Conduct for Politicians? The Search for an Elite Political Culture of Corruption in Canada. *Canadian Journal of Political Science / Revue canadienne de science politique*, Vol.18, n° 3, 1985, p. 459.

<sup>21</sup> STARK, Andrew. Conflict of Interest in Canada. In TROST, Christine and GASH, Alison L. *Conflict of Interest and Public Life Cross-National Perspectives*. Cambridge University Press. 2008, pp. 125-154.

<sup>22</sup> BOSCH, Marc and GAGNON, André. Chapter 4 The House of Commons and Its Members. In *House of Commons Procedure and Practice Third Edition*. Ottawa: House of Commons. 2017.

conversion of Québec to the ethical soft law is due to its civil law tradition which differs from the rest of the country.<sup>23</sup> Québec's initiative attracted the interest of French officials as shown in Section 2.2 and the French National assembly adopted its code of conduct only a year after the Assembly of Québec.

Parliamentary codes of conduct only spread further in the 1990s and Britain served as a platform for further dissemination of this policy instrument.<sup>24</sup> The idea of a code of conduct for MPs was first proposed by the Strauss Committee appointed in 1969 to consider the rules and practice on the House on the declaration of Members' interests, which concluded that "a code of conduct comprising these two resolutions [on the declaration of interests and on paid advocacy] is the most effective way of regulating the Parliamentary activities of Members where these may overlap with their personal financial interests".<sup>25</sup> The idea only materialised in the 1990s, however, after the 'cash-for-questions' scandal that prompted Prime Minister John Major to set up the Committee on Standards in Public Life (known as the Nolan Committee after its first chairman) in 1994. Gillian Peele and Robert Kaye consider this increased concern for conflicts of interest in politics as an "ironic footnote to the Thatcher years [that] celebrated wealth creation as a result of (...) deregulation", changed the structure of the state and replaced "older norms" with a "more pragmatic mentality".<sup>26</sup> The UK House of Commons finally adopted its code of conduct in 1995 and created two institutions to oversee MPs' conduct: the Committee on Standards and Privileges and the Parliamentary Commissioner for Standards (PCS). The Nolan principles and the code of conduct of the UK House of Commons served as an inspiration for many reform-minded officials in Europe and within international institutions, as Section 2.2 shows.<sup>27</sup>

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<sup>23</sup> SAINT-MARTIN, Denis. Chapitre 22. L'analyse institutionnelle comparée de l'éthique parlementaire. In ROZENBERG, Olivier and THIERS, Eric. *Traité d'études parlementaires*. Brussels: Bruylant, 2018.

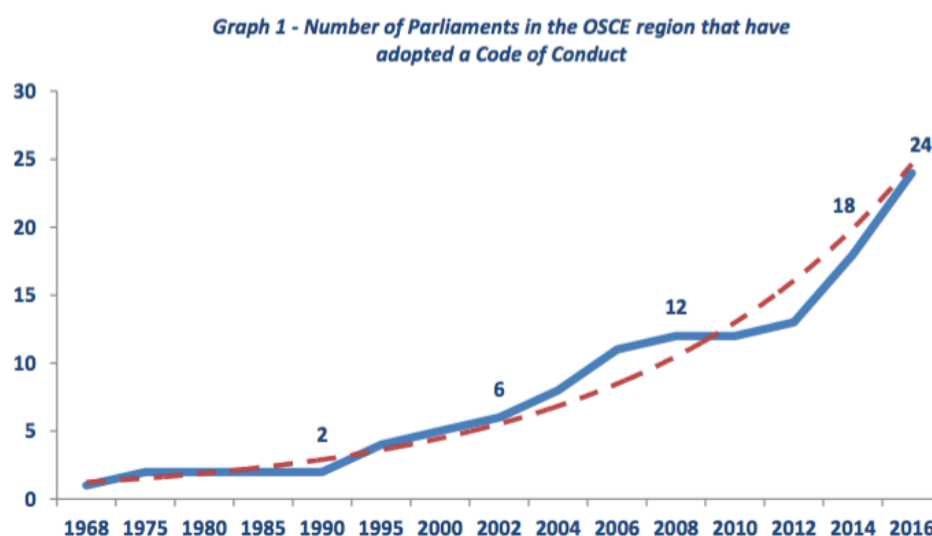
<sup>24</sup> DAVID-BARRETT, Elizabeth. Nolan's Legacy: Regulating Parliamentary Conduct in Democratising Europe. *Parliamentary Affairs*, Vol.68, n° 3, 2015, pp. 514-532.

<sup>25</sup> Strauss Report, paragraph 17, cited by GAY, Oonagh. Aspects of Nolan - Members' Financial Interests. Research Paper 95/62. House of Commons Library. 1995, p. 4

<sup>26</sup> PEELE, Gillian, and KAYE, Robert. *Op. cit.* 2008, p. 157.

<sup>27</sup> DAVID-BARRETT, Elizabeth. *Op. cit.* 2015

Figure 9. Number of parliaments having adopted a code of conduct



Source: LEONE, Jacopo. Codes of conduct for national parliaments and their role in promoting integrity: an assessment. Paper presented during the 2017 OECD Global Anti-Corruption and Integrity Forum. 2017, p. 12.

Preventing conflicts of interest through the codification of ethics really gained popularity in the 2010s, as Figure 9 shows. France and Sweden are both part of the group of countries that adopted codes of conduct for their parliamentarians relatively late. France adopted its code in 2011, together with the obligation for parliamentarians to declare their interests, and created the institution of the *déontologue* to oversee its implementation, all at once. In Sweden, the possibility of adopting such an instrument had been discussed at several occasions during the 1990s, but the Swedish *Riksdag* had to wait two more decades before a code of conduct was introduced. In contrast to the other countries mentioned here, Sweden did not create a dedicated institution to handle the implementation of the code and oversee the conduct of parliamentarians. The history of the import and adaptation of this instrument in France and Sweden is the subject of Chapter 7, which provides much more details about the context of policy adoption.

From this chronological picture and sequential analysis, countries of the Anglosphere appear as pioneers of conflict of interest regulation. While Britain has had a long-standing practice of declaring interests during speeches and debates, the United States was the first to adopt instruments to regulate conflicts of interest, often through hard law which reinforced the image of a formalised system. Tracing the process of reform in these pioneer states shows that this policy field largely evolved under the pressure of political scandals. The subsequent adoption of similar instruments

to regulate conflicts of interest and the influence of pioneers on the international policy field suggests that events such as Watergate, the Poulson case or the ‘cash-for-questions’ scandal had policy consequences way beyond national borders.

## **2.2. Identifying policy pioneers and lessons to draw from**

Having established the sequential adoption of public interest registers and codes of conduct, this section turns to the mechanisms of transfer. It is particularly interested in evidence of policy actors’ awareness of existing practices elsewhere, to justify the argument that the convergence of conflict of interest regulation is (partly) the result of emulation of pioneers. Policy-makers’ learning from foreign practices is not monolithic.<sup>28</sup> The empirical material collected in the framework of this research shows that domestic actors, seeking solutions to the (emerging) problem of conflicts of interest, looked across borders to find inspiration from their peers. They sought information about existing practices through “scanning programmes in effect elsewhere”,<sup>29</sup> establishing contacts with peers abroad and using their networks (pre-existing or created for this very purpose). Tracing the mobility of policy ideas between institutions and actors, this section draws on interviews with actors and documentary analysis to understand how (and where from) policy actors sought information on what to do about conflicts of interest.

### **2.2.1. Learning from policy pioneers in the Anglosphere**

As detailed in Section 2.1, the United States, Great Britain and Canada were pioneers of conflict of interest regulation. Besides being early movers in terms of adoption public interest registers and codes of conduct to regulate conflicts of interest, the Anglosphere served as an exemplar for policy actors in France and Sweden.<sup>30</sup> The US also served as a source of information for policy actors in Britain, notably for the Nolan Committee. Indeed, while the British Parliament had had a long-standing tradition of informal practices to regulate conflicts of interest, the US Congress was the first to institutionalise the practice of declaring interests in writing and to codify

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<sup>28</sup> DUNLOP, Claire A. and RADAELLI, Claudio M. *Op. cit.* 2013

<sup>29</sup> ROSE, Richard. What is Lesson-Drawing? *Journal of Public Policy*, 1991, Vol. 11, n° 1, p. 3

<sup>30</sup> Assemblée Nationale. Rapport fait au nom de la commission des lois (...) sur le projet de loi organique n°1214 (...) Document n°1216, annexe du procès-verbal de la séance du 2 février 1988; Assemblée nationale. Groupe de travail sur la prévention des conflits d’intérêts. Compte rendu n° 1. December 9 2010, and Compte rendu n° 2. January 13 2011; Commission de réflexion pour la prévention des conflits d’intérêts dans la vie publique (Commission Sauvé). Pour une nouvelle déontologie de la vie publique. Rapport remis au Président de la République le 26 janvier 2011; Sveriges riksdag. En uppförandekod för ledamöterna i Sveriges riksdag. Slutrapport. 2014; Member of the Swedish Parliament (SWMP1). Interview with aithor. May 17<sup>th</sup> 2017; Parliamentary clerks 1 and 2, Swedish Parliament (SWPC1, SWPC2). Interview with author. May 19<sup>th</sup> 2017; Public official 1, HATVP (FRPO1). Interview with author. October 27<sup>th</sup> 2017.



ethical norms. The Nolan Report indicates that the committee turned to the US to gather information and learn from their ‘arrangement’:

To consider what lessons might be learned from experiences overseas, we have obtained information (both written and in talks with knowledgeable visitors) about arrangements existing or under consideration in a number of European Union and Commonwealth countries and the United States. We found closer analogies where the constitutional framework was based on the Westminster model. While we noted a tendency in recent years to underpin rules of conduct with statute law, we also noted a current of opinion in Canada and elsewhere that there are advantages in having a more flexible non-statutory basis for Codes of Conduct. We concluded that it was appropriate to United Kingdom circumstances to tailor our recommendations closely to our largely non-statutory mechanisms.<sup>31</sup>

Nowhere is the influence of the American and British examples as apparent as in Sweden. Most of the bills tabled in parliament between the 1970s and the 1990s concerning political ethics mention explicitly the American policy innovations and the need to follow the example of countries in the Anglosphere having institutionalised the promotion of public ethics (Chapter 7). Emulating the Anglosphere with regards to ethics reforms is presented by Barbro Westerholm, a Liberal MP, as a way to be part of an emerging global movement:

We need [an ethics forum] not least because many other countries have created entities responsible for keep the debate on ethics alive. In the USA, there is an office attached to the Justice department. In Canada, there is also an equivalent. In England, there is an institution concerned with ethics in government. The same exists in Australia, New Zealand, South Africa and Latvia. In the new democracies, forums for this debate are growing. It would be a pity if we could not participate in these international collaborations on trust-building actions that are currently emerging.<sup>32</sup>

A former Swedish parliamentarian, who was very involved in raising the question of ethics in the Swedish Parliament, clearly and openly recognises that the inspiration for the ethics reforms of the Swedish Parliament came from the US Congress and the UK Parliament:

I was invited under this period, from 1988 until 1999, to the OECD and the seminars about corruption. This is how I learn about what was done in England, Lord Nolan’s principles and so on. We formed an international group but there were no funds to sustain it and meet as we wanted. And Clinton was also into this idea of seminars (...) The inspiration came from Clinton’s regime and from Lord Nolan in England (...) Clinton arranged a big seminar in which I took part and where we discussed ethics codes for the public service. There, we did not make such a big difference between politicians and people working with the civil

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<sup>31</sup> Chairman Lord Nolan. Standards in Public Life. First Report of the Committee on Standards in Public Life. Volume 1 : Report. Presented to the Parliament by the Prime Minister on May 1995. p. 17

<sup>32</sup> Sveriges riksdag. Riksdagens protokoll 1995/96:97, May 22 1996. Stockholm, 1996, p. 9

service. We understood public service in a wide perspective (...) And then there was this international group, that I was part of, which organised a couple of seminars that I went to, in France, where we discussed these issues.<sup>33</sup>

In France, the US, Britain and Italy, served as exemplars already in the late 1980s, when French policy-makers were starting to build an institutional infrastructure to prevent political corruption. When adopting Law n°1988-227 on financial transparency, policy-makers were not concerned with conflicts of interest but sought to regulate political finance and prevent illicit enrichment through an obligation for officials to declare their private assets, a policy innovation seen as the predecessor of France's public interest register adopted in 2013 (Chapter 9). The report produced by the National Assembly's Law commission to inform the debate about asset declaration shows that parliamentary clerks preparing the comparative study found very few foreign examples:

We note that very few countries have institutionalised the declaration of politicians' assets, although in some of them it is a routine practice in the absence of any mandatory requirement (...) In general terms, most Western parliamentary democracy do not have a legislation on politicians' wealth (...) To the best of our knowledge, two countries, the United States and Italy, are an exception to the rule. It is worth noting that, in Great Britain, members of the House of Commons need to submit a declaration of the interests and positions they hold in companies to their assembly. This information is filed in a public register.<sup>34</sup>

When the problem of conflicts of interest was put on the agenda, policy actors suggested that neither the notion of conflict of interest nor the idea of regulating ethics through transparency requirement were traditionally a part of the French political and administrative culture,<sup>35</sup> and that they need to be translated from their "Anglo-Saxon origin".<sup>36</sup> When asked about foreign sources of inspiration, policy actors identified Great Britain quite systematically, and the US to a lesser extent. A parliamentary clerk who had been closely involved in the development of the Assembly's system of conflict of interest prevention said the following:

From what I remember, we went to see how things were done in Québec and in the United Kingdom (...) We made a little comparative study, we had notes on

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<sup>33</sup> Former member of the Swedish Parliament (SWMP2). Phone interview with the author. May 23<sup>rd</sup> 2018. Author's own translation.

<sup>34</sup> MAZEAUD, Pierre (rapporteur). Rapport fait au nom de la commission des lois constitutionnelles, de législation, du suffrage universel, du Règlement et d'administration générale sur le projet de loi organique (n°1214) modifiant la loi 62-1292 du novembre 1962 relative à l'élection du Président de la République au suffrage universel et le code électoral. Déposé le 2 février 1988. Paris : Assemblée nationale. Author's own translation.

<sup>35</sup> HATVP. Rapport d'activité 2016. Paris: HATVP, 2017, p. 5; BUGÉ, Éric and CARON, Matthieu. Témoignage Quatre années d'activité de la haute autorité pour la transparence de la vie publique au service d'une démocratie plus exemplaire. *Revue française d'administration publique*, Vol. 2, n° 162, 2017, p. 386.

<sup>36</sup> BUGÉ, Éric and CARON, Matthieu. *Op. cit.* 2017, p. 386.

each country. We decided that what was most interesting were the British and Canadian systems (...) We went to the European Parliament. We were also inspired by the European Parliament, only that they have a committee, like in the Senate, a committee of MEPs. We met the president of the committee then, a Swede, Erika Vikström, and the members of the committee. With Noëlle Lenoir [a former *déontologue*], we went to London, where we met Katherine Hudson, the Parliamentary Ethics Commissioner (...) We also met people at IPSA [Independent Parliamentary Standards Authority].<sup>37</sup>

French officials indeed continued to seek information from countries in the Anglosphere during the implementation phase. To establish their ‘*benchmark*’ (in English in the interview) on disclosure systems, officials from the HATVP for instance travelled to Britain, EU institutions, Canada (Québec) and the United States:

For the first report, we went to London and Brussels (...) [in London] we met the Electoral Commission, the parliamentary commissioners and commissions of the two chambers and their super anti-corruption thing... the Serious Fraud Office (...) We wanted to go see another model that looked interesting, which is the Quebecois model. We did that a little later. And we wanted to go to the United-States, which we also did a little later. But with our first deadline that was impossible. London and Brussels were practical. Brussels was for the European institutions.<sup>38</sup>

This suggests that countries in the Anglosphere which adopted instruments to regulate conflicts of interest early contributed to frame policy-making in other countries where the issue was raised later. The US and Britain especially became pioneers by the mere fact of being ahead of others in the institutionalisation of conflict of interest regulation. Policy-makers in France and Sweden, searching for policy ideas to solve a problem characterised by great uncertainty, turned to the countries that had already developed policy solutions. The emulation of policy instruments from the Anglosphere was thus partly an unintentional result of pioneers internal action.<sup>39</sup> But only partly, since some of these countries sought to become leaders in the policy field. As suggested by the quote extracted from an interview with a former Swedish parliamentarian, in the 1990s most of the meetings they were invited to were organised at the initiative of the American government. The Clinton administration indeed had the ambition of raising the issue of public ethics on the international agenda, and did so through seminars and conferences organised by its Office of Government Ethics, but also with the help of intergovernmental organisations such as the Organisation for Economic Cooperation and Development (OECD). Chapter 3 will explain in

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<sup>37</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7th 2018. Author’s own translation.

<sup>38</sup> Public official 1, HATVP (FRPO1). Interview with author. October 27th 2017. Author’s own translation.

<sup>39</sup> LIEFFERINK, Duncan and WURZEL, Rüdiger K.W. *Op. cit.* 2017, p. 954.

more details how some pioneers progressively became policy ‘leaders’ who actively sought to promote their model.

Interestingly, pioneer countries in the policy field draw their influence on the policy field and on policy-making in other countries from them recognizing that they have a problem with corruption that needed to be addressed with new policy. Section 2.1 showed that most innovations in the Anglosphere were the result of political reactions following scandals. It is thus an odd form of authority that characterises policy pioneers in the field of anti-corruption policy. Indeed, international indicators usually rank other countries, like Sweden for instance, as ‘least corrupt’. It is nevertheless early adopters in the Anglosphere that inspired policy actors at the domestic level in France and Sweden, and at the international level (Chapter 3). A Swedish policy-maker summarised this argument well, when pointing to the historical differences in the perception of (un)acceptable behaviour on the part of elected representatives:

In Sweden, if you would get some bottles of whiskey it would really undermine our ideals, but not if you had sex outside your marriage. In England it was the other way around, sexual affairs would upset people but not a case of whiskey. It is clear that there is a national bias as to what is acceptable or not.

This quote highlights the different national interpretations of ethics in politics, suggesting that Britain had traditionally been more concerned with sexual morals than with political ethics and corruption, and that the former thus needed to be formally regulated. The parliamentarian suggests that in Sweden, the concern for money’s influence on political decision-making was largely internalised by political actors and that, therefore, what needed to be regulated in Britain only needed to be formalised in Sweden, since the imported instruments would only reinforce already existing norms in Sweden.

While Swedish policy actors openly recognise that Britain and the US especially served as models for the way in which they were to formalise ethics through policy instruments, the material collected through interviews and archived documents suggests that Canada, part of the Anglosphere, and the region of Québec, which is francophone and has a civil law system, served as a necessary intermediary for public interest registers and codes of conduct to reach France.

### **2.2.2. Canada and the region of Québec as transfer intermediaries**

Policy documents and actors’ discourse point to the fact that Canada, and the province of Québec in particular, played an important role in facilitating the transfer of public ethics policy to

France.<sup>40</sup> Contrary to the adoption of the asset declaration system in 1988, learning practices in the 2010s systematically looked to Canada and/or Québec for information. Officials in charge of formulating and implementing instruments to prevent conflicts of interest in France all mention Canada and Québec when asked which countries they had learned from in terms of conflict of interest regulation. A former *déontologue* of the National Assembly for instance said the following:

Our main source was comparative law, foreign practices that seemed to work well, the practices of the Canadian Parliament or the Assembly of Quebec. I made good contacts there. And, more importantly, they started before us, with an efficient system, which was our main source of inspiration.<sup>41</sup>

Similarly, a parliamentary clerk having been closely involved in the development of the Assembly's system of conflict of interest prevention also mentioned Canada and Québec:

From what I remember, we went to see how things were done in Québec and in the United Kingdom (...) We made a little comparative study, we had notes on each country. We decided that what was most interesting were the British and Canadian systems (...) With Ferdinand Mélin-Soucramanien, we went to Québec. He went there twice (...) The first time was in the framework of the meeting of all Canadian ethics commissioners under the steering of the ethics commissioner of the federal Parliament.<sup>42</sup>

Beyond policy actors working with the National Assembly, officials from the HATVP also pointed to Canada and Québec as sources of information and inspiration to implement and improve the French system of conflict of interest regulation: "we wanted to go see another model that looked interesting, which is the Quebecois model".<sup>43</sup> Canada is presented by agents of this administration as a North American exemplar that seems more accessible than the USA. In the following quote, the interviewee indeed mentions Canada before trying to 'directly' contact their American counterparts:

We established contacts with our Canadian counterparts, where our missions are distributed to various commissioners. The structure of the country makes that we have counterparts at the infra level, not just at the federal level. We also directly looked for contacts, in the United States, at the Office of Government

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<sup>40</sup> Commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique (Commission Sauvé). Pour une nouvelle déontologie de la vie publique. Rapport remis au Président de la République le 26 janvier 2011, pp. 12-13.

<sup>41</sup> Former ethics commissioner, National Assembly (FREC1). Interview with author. December 6th 2017. Author's own translation.

<sup>42</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7th 2018. Author's own translation.

<sup>43</sup> Public official 1, HATVP (FRPO1). Interview with author. October 27th 2017. Author's own translation.

Ethics, since they also have different types of office: one for the executive and one for Congress.<sup>44</sup>

Canada and the francophone region of Québec served as a translation platform, making the American approach to conflict of interest regulation understandable and acceptable for the French speaking world. When thinking about policy in terms of translation, language obviously plays an important role. With its bilingual nature, Canada and Québec in particular bridged the Anglosphere with the francophone world. As Denis Saint-Martin notes, “the adoption of a code of conduct in the Canadian Parliament in 2005, followed by Quebec in 2010 and France in 2011, paves the way for the development of a francophone branch of the study of parliamentary ethics”.<sup>45</sup> Indeed, Ferdinand Mélin-Soucramanien, a former French *déontologue* and the ethics commissioner of the Assembly of Québec tried to set up a network of French-speaking ethics commissioners with the ambition to translate existing ethics instruments and practices within the French-speaking world:

This network would firstly serve to collect information about francophone countries to draw an inventory (...) of existing rules (...) Second, it would help to multiply exchanges and sharing of experiences to identify the most relevant rules to prevent conflicts of interest and establish relevant ethics rules to the benefit of parliamentarians.<sup>46</sup>

The Canadian system of conflict of interest regulation is a hybrid system of the American and British systems. Québec, having itself studied the examples of “legislative bodies in Canada, the United Kingdom, Australia and New Zealand”,<sup>47</sup> appears as the next step in the process of translating the Anglo-American approach to conflict of interest regulation into the French context. While exchanges with Canadian and Quebecois counterparts contributed to familiarise French officials with the North American approach, it did not lead to a cut-and-paste exercise. A French parliamentary clerk who assisted the National Assembly’s working group on the prevention of conflicts of interest explained that, while they were inspired by the Quebecois example of the

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<sup>44</sup> Public official 2 and 3, HATVP (FRPO2 and FRPO3). Interview with author. November 30<sup>th</sup> 2017. Author’s own translation.

<sup>45</sup> SAINT-MARTIN, Denis. Chapitre 22 – L’analyse institutionnelle comparée de l’éthique parlementaire. In ROZENBERG, Olivier and THIERS, Eric. *Traité d’études parlementaires*. Brussels: Bruylant. 2018, p. 702

<sup>46</sup> MELIN-SOUCRAMANIEN Ferdinand. La consolidation de la déontologie à l’Assemblée nationale. Rapport public annuel sur la mise en œuvre du Code de déontologie remis au Président et au Bureau de l’Assemblée nationale par Ferdinand Mélin-Soucramanien, déontologue de l’Assemblée nationale, en application de l’article 80-3 du Règlement. Assemblée Nationale. November 30<sup>th</sup> 2016, p. 81-82. Author’s own translation from French.

<sup>47</sup> CHAGNON, Jacques. An Ethical Framework for Members of the National Assembly of Québec. *The Parliamentarian*, 2014: Issue One, p. 32. Available online at: [http://www.cpahq.org/cpahq/Main/Annual\\_Conference/Cameroon/Ethical\\_Framework\\_Quebec.aspx](http://www.cpahq.org/cpahq/Main/Annual_Conference/Cameroon/Ethical_Framework_Quebec.aspx) (accessed on 15<sup>th</sup> October 2018)

Ethics commissioner, they departed from that approach in the choice both of words and of institutional structure:

There were no other options [than the term '*déontologue*'] (...) at the time we were inspired by Ernst and Young's wording. The person we met from EY was very good and we thought [*déontologue*] was not bad because ethics refers to... well you know. We could not really see an *éthicien*, or a *commissaire d'éthique*, now I remember, a *commissaire à l'éthique* like in Quebec. The word *commissaire*... that was not what we wanted. [*déontologue*] was being used, as I told you, big law firms use it but it is not known, not identified (...) The idea of the working group from the *déontologue* was not to be a cop, but then... Ferdinand Mélin-Soucramanien was interested in the Quebecois example where the *commissaire à l'éthique* can rely on a former *commissaire* for investigations etc. but that was not the idea. It is not the HATVP, which has well not investigative powers but that can turn to... The idea was to create a moral authority and to make MPs understand that if they did not declare, that was not good. It is morally wrong, but it was not about checking if the pen they held was a gift or not. Then it harshened with the sanctions that were introduced in the internal rules, everything crystallised (...) The idea at the start (...) was to create an institution within the National Assembly that was exterior, which is the difficult part, but whom MPs could go to with questions about ethics.<sup>48</sup>

The clerk's exegesis on why the Quebecois model was not copied in the end sheds light on the translation work done by French officials to combine the North American approach of establishing obligations and bans with the softer British model. It is reasonable to think that Canada and Québec did not only serve to help French officials in their efforts to transfer conflict of interest regulation, make them understandable and translate them into French, but also to put a symbolic distance between France and the Anglosphere. The initial reactions to the emergence of the anti-corruption agenda in France, with accusation of the French branch of Transparency International being the "Trojan horse" of the Americans and CIA's "penpal",<sup>49</sup> suggests that the US could be perceived as being too culturally different to serve as a model. Using Canada as a pioneer from which to learn would thus also serve the purpose of legitimizing policy transfer.

### **2.2.3. Birds of the same feather flock together**

A common trait among the responses of the actors interviewed is the reliance on routine and existing contacts and networks to learn about policy solutions adopted elsewhere. Policy actors seeking ideas about how to (better) regulate conflicts of interest tend to turn to existing regional or

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<sup>48</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7th 2018. Author's own translation from French.

<sup>49</sup> *Le Canard enchaîné*, 27 January 1999 and 3 November 1999; *Le Monde diplomatique*, April 2000, cited by CŒURDRAY, Murielle. Le double jeu de l'import-export symbolique. La construction internationale d'un nouveau discours sur la corruption. *Actes de la recherche en sciences sociales*, Vol. 1, n°151-152, pp. 81.

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cultural networks to find information and share experiences. In Sweden, the Nordic countries are generally one of the primary source of inspiration. In Britain, officials frequently make use of the existing networks and communication means with the British Isles and Commonwealth countries. In France, the empirical material collected does not indicate a similarly clear group of countries that policy-makers turn to. Public officials working within the institutions dedicated to the promotion of public ethics, described in Chapter 1, have however sought to establish connections with countries sharing a similar institutional setting or linguistic base.

For a member of the Swedish Parliament interviewed in the framework of this study, for instance, looking at Nordic countries for inspiration was an *obvious* practice:

Yes it is [a normal practice]. Sometimes they are more advances and sometimes they are behind. But I can say that these are all small countries up North, we have old traditions and have belonged together in the past. Finland was a part of Sweden, so when they left Sweden... Well, Sweden was split. And Norway was also a part of Sweden (...) I think [that they are similar politically] The vision is the same. So of course it is easier. We are probably less similar to Denmark. It was a very long time ago that Denmark was a part of Sweden. But Norway and Finland... Also, it is easy for us to understand Norwegian. We cannot deal with Finnish, but everyone speaks English. But Danish is difficult...<sup>50</sup>

Similarly, the parliamentary clerk assisting the working group on codes of conduct considered it to be *logical* to first turn to Nordic countries:

When you are building a system, you try to find the options to choose from, like a catalogue (...) You think from a theoretical universe or you look at other countries. Then it is always the North that is the first logical thing, since the system is so similar.<sup>51</sup>

Similarly, a British parliamentary clerk explained their preference for exchanging with Commonwealth Parliaments by mentioning institutional similarity, shared history and past relations, noting that the similarity of legal and parliamentary systems particularly facilitates learning from foreign experiences as it makes it easier to ‘read-across’ institutions:

We tend to be particularly informed about fellow Commonwealth Parliaments because they follow a structure that is close to our own (...) I am very conscious of the Commonwealth, because of the Common law tradition in Commonwealth jurisdictions and the Westminster model. All the Commonwealth parliaments keep abreast of privileges developments going on. This is rather separate from standards but that is a network that we would find quite easy to access advice (...) There is always a trade-off there. The broader you are trying to go to find out what other people in other countries do, the

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<sup>50</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17th 2017. Author’s translation.

<sup>51</sup> Parliamentary clerk, Swedish Parliament (SWPC1). Phone interview with author. May 30th 2017.



longer and more complicated it gets (...) And they can be tricky, as an academic you will be familiar with this, because the broader you go, the more likely you will be running into the danger of comparing like with love. If Westminster wants to find out how Dublin does things or Edinburgh does things, that is fairly straightforward because we very close, very good contact (...) but also because the systems are very similar so there is a high degree of read-across. If you start going to the Brazilian Parliament or whatever, frankly I am not an expert on the Brazilian Parliament, so there is danger that you are dealing with situations that concerns the internal political dynamics and the constitutional and legal assumptions that are so different from our own that it can actually be of limited usefulness.<sup>52</sup>

The public policy literature has emphasised the importance of compatibility of existing institutions with the imported policy to explain the success or failure of policy transfer.<sup>53</sup> Interview material indicates that in the case of conflict of interest regulation, policy actors were quite aware of the importance of institutional similarity when searching for inspiration for new policy solutions. As mentioned, French officials interviewed did not identify a group of culturally or institutionally similar countries as clearly as their British or Swedish counterparts. One polity that nevertheless seemed to have attracted the attention of policy actors looking for policy models in Québec, as demonstrated in Section 2.2.2. Once new institutions were established to regulate conflicts of interest, French officials sought to build network with countries with similar institutional and legal systems. A French official from the HATVP affirmed the institution's ambition to set up such a thematic network:

We created our own international network last year, with institutions that were similar to ours, meaning independent agencies dealing with the issue of public officials' integrity. It met last year in December and will meet again soon in December. The idea is to put together an informal thing to exchange about good practices among practitioners.<sup>54</sup>

The focus on 'independent agencies dealing with the issue of public officials' integrity' for future collaboration emphasises the difference established in Chapter 1 between the *type* of regulation of conflicts of interest put in place in the three countries, France seeking to establish formal relations with other countries having externalised the regulation of ethical issues (at least for parts of the public sector). It also suggests that France, having been a 'laggard' in this field, sought to build its image as a policy 'leader' soon after having gone through a wave of reforms in

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<sup>52</sup> *Ibid.*

<sup>53</sup> DOLOWITZ, David P. and MARSH, DAVID. Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making. *Governance: An International Journal of Policy and Administration*. Vol. 13, n° 1, 2000, p. 17; HULME, Rob. Policy transfer and the internationalisation of social policy. *Social policy & society*, Vol. 4, n°4, 2005, pp. 417-425; STONE, Diane. Transfer and Translation of Policy. *Policy Studies*, Vol. 33, n°5, 2012, pp. 483-499.

<sup>54</sup> Public official 1, HATVP. Interview with author. October 27 2017. Author's own translation.

the 2010s, making it a relatively ‘good student’ as far as international standards go. The institution of the *déontologue* within the National Assembly’s shares (at least used to share) this ambition to establish a network for mutual learning, built not around institutional similarity but the use of a common language:

The ambition to go beyond a strictly national perspective led the Ethics Commissioner of the National Assembly and the Ethics Commissioner of the Assembly of Quebec to suggest setting up, as soon as possible, a francophone network of parliamentary ethics commissioners, which would serve as a forum for exchanging views and sharing good practices. This network still needs to be officially set up, but it could be built under the aegis of the International Organisation of Francophonie (OIF) (...) This network would firstly serve to collect information about francophone countries to draw an inventory (...) of existing rules (...) Second, it would help to multiply exchanges and sharing of experiences to identify the most relevant rules to prevent conflicts of interest and establish relevant ethics rules to the benefit of parliamentarians.<sup>55</sup>

These quotes suggest that the institutional, cultural and linguistic proximity (of Nordic countries for Sweden, Commonwealth countries for Britain, francophone countries or countries with a civil law tradition for France) contributes to facilitate personal and institutional exchanges among the group and thus leads to more opportunities for policy learning within each community. The use of common-sense terms by interviewees to justify exchanging with peers in countries seen as sharing the same history or cultural traits suggests that routine rather than policy success determines the sources of inspiration.

They also show that policy actors easily turn to polities with whom they share similar institutions. It appears that, in the mind of interviewees, policies are more easily translated from countries with a similar institutional context. This echoes Dolowitz and Marsh’s observation that institutional and ideological similarities were necessary conditions for cross-border policy transfer.<sup>56</sup> Institutional similarity seems important to policy actors for two reasons. Firstly, as mentioned, it matters because it makes policies more transferrable, since they would find a familiar ground in the host country. Secondly, it matters because policy actors might not be familiar with other political systems and thus tend to turn to existing practices that are more easily understandable to them.

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<sup>55</sup> MELIN-SOUCRAMANIEN Ferdinand. La consolidation de la déontologie à l’Assemblée nationale. Rapport public annuel sur la mise en œuvre du Code de déontologie remis au Président et au Bureau de l’Assemblée nationale par Ferdinand Mélin-Soucramanien, déontologue de l’Assemblée nationale, en application de l’article 80-3 du Règlement. Assemblée Nationale. November 30th 2016, p. 81-82. Author’s own translation from French.

<sup>56</sup> DOLOWITZ, David and MARSH, David. Who Learns What from Whom: a Review of the Policy Transfer Literature. *Political Studies*, Vol. XLIV, 1996, p. 353.

While this chapter argues that the diffusion of public interests registers and codes of conduct as instruments to regulate conflicts of interest are the result of the emulation of policy pioneers in the Anglosphere, this subsection makes a leap in the argumentation to show that the choice of exemplars *also* contributes to explain the continuous differences between the three cases, policy-makers exchanging with their peers in countries whose ethics regulation systems are relatively similar to their own. It also hints at the fact that France has progressively shifted its status from laggard to prospective leader, investing resources in building international networks and playing an increasingly significant role in the international policy community, echoing Liefferink and Wurzel argument that “over the years leaders and pioneers come and go”.<sup>57</sup>

#### **2.2.4. Turning to international institutions**

The emergence of corruption on the agenda of several international institutions, leading to a *transnationalisation* of the anti-corruption field described further in Chapter 3, created a new channel to circulate policy ideas across borders. Most policy actors interviewed indicated that they used international institutions’ reports and recommendations to inform their work and justify their policy preferences. Many signalled that the policies implemented within EU institutions also served as an exemplar. Policy actors looked at EU as a model in itself, as illustrated by some of the quotes taken from French interviewees in previous sections. They however also turn to the European Union to access information or contacts in other European states. A British parliamentary clerk mentioned the use of the European Centre for Parliamentary Research and Documentation (ECPRD) as “a useful *clearing house* for passing on requests for information from one parliament to all the others”.<sup>58</sup> Or as another British parliamentary clerk put it:

Basically, there is a mechanism whereby the Member-States can call upon the other EU member-states to supply information, and some part of the mechanisms in Brussels would play a coordinating role (...) I remember thinking ‘that is a useful mechanism too’ as long as the UK is in the EU. One thing that will not presumably be available to us after Brexit.<sup>59</sup>

Many international institutions provide ‘useful mechanisms’ for reform-minded officials to access information about foreign practices and international standards. In France, international institutions were particularly useful for actors seeking to define conflict of interest. Administrative reports as well as interviewees mention the OECD and GRECO as a source of information

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<sup>57</sup> LIEFFERINK, Duncan and WURZEL, Rüdiger K.W. *Op. cit.* 2017, p. 955.

<sup>58</sup> Parliamentary clerk, UK House of Commons (UKPC4). Email exchange. November 21st 2017. After meeting for an interview in Westminster, we exchanged emails about parts of the interview that I wanted additional information on.

<sup>59</sup> Parliamentary clerk, UK House of Commons (UKPC3). Interview with author. November 20th 2017.

regarding the definition of conflict of interest: “From what I remember, we went to see how things were done in Québec and in the United Kingdom. And we looked at what the OECD was doing on the definition of a conflict of interest”.<sup>60</sup> The Sauvé commission who produced the first administrative report in France regarding conflicts of interest in the public sector, turned towards international institutions to develop an ‘operational definition’:

It is in line with these principles that the Commission formulated an operational definition of conflicts of interest, inspired inter alia by the definitions proposed by international institutions that worked on the topic (...) Attempts to define the notion of “conflicts of interest” only emerged recently, within international organisations (OECD or Council of Europe) or in countries that have adopted legislation to prevent conflicts of interest (like Canada).<sup>61</sup>

Public officials looked directly at the definitions proposed by international institutions, but civil society organisations also served to translate international definition into the national context. Transparency International (TI), presented in detail in Chapter 3, contributed to transfer the Council of Europe’s definition of conflict of interest in France.<sup>62</sup> This is an illustration of the two-way translation of policy ideas that this dissertation is interested in: international institutions translating the American definition of conflict of interest into an international definition, and an transnational non-state actors (TI) with local branches translating it further into another national context.

In Sweden, external pressure from international institutions even served to open the window for the parliament to adopt a code of conduct.<sup>63</sup> A Swedish parliamentary clerk responsible for assisting and advising the parliamentary working group on the code of conduct said that he used the work of the Organisation for Security and Cooperation in Europe (OSCE) to get a rapid idea of existing codes of conduct:

There isn’t much written about codes of conduct and the OSCE had a report for which they had hired a British expert who was very talented and whom I met in Warsaw. But there was nothing systematic, so it was more about searching for clever ideas (...) When you are building a system, you try to find the options to

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<sup>60</sup> Parliamentary clerk, National Assembly (FRPC1). Interview. May 7th 2018. Author’s own translation.

<sup>61</sup> Commission de réflexion pour la prévention des conflits d’intérêts dans la vie publique (Commission Sauvé). Pour une nouvelle déontologie de la vie publique. Rapport remis au Président de la République le 26 janvier 2011, pp. 12-13. Author’s own translation.

<sup>62</sup> Assemblée nationale. Compte rendu n°1 Groupe de travail sur la prévention des conflits d’intérêts. Paris, December 9th 2010.

<sup>63</sup> The mechanisms of international pressure are explained in Chapter 5 and the full policy process in Sweden in Chapter 7.

choose from, like a catalogue. Should I buy this or that. You shop around. You think from a theoretical universe or you look at other countries.<sup>64</sup>

The working group's report also emphasises the importance of the OSCE as a platform to learn about existing practices: "there were numerous meetings with experts on codes of conduct at the OSCE (...) The working group also found information on codes of conduct during conferences, including in Warsaw [where the OSCE office on human rights is located]".<sup>65</sup>

French parliamentary clerks and officials from the HATVP indicate that written material produced by the Organisation for Economic Cooperation and Development (OECD) and the Council of Europe's group of states against corruption (GRECO) helped them identify the national practices worth exploring further.<sup>66</sup> An official of the HATVP said the following when asked about the use of international resources to inform the work of the institution:

We systematically use international sources. Even for the annual report. When we make proposals, we always try to illustrate them with international examples. It is a culture that we are attached to here and that comes from the fact that the general secretary is attached to this and so am I. We always try, with our limited means, a little *benchmark* [in English in original] of what exists elsewhere (...) We use reports from the OECD, GRECO, from NGOs [mostly Transparency International].<sup>67</sup>

The role of international institutions in legitimizing public interest registers and codes of conduct and thereby facilitating their international diffusion is the subject of the next four chapters, which will provide information about important international actors and the mechanisms they use to formulate global anti-corruption policy and, more specifically, about how they contributed to construct models of regulation developed in the US and Great Britain as international standards.

This section had provided evidence of the international sources of domestic policy-making in actors' own discourse and written productions. It has found that policy-makers and bureaucrats sought ideas on how to formulate conflict of interest regulation by scanning policies elsewhere, using desk research, in-country visits, bilateral and multilateral exchanges. Time pressure and the uncertainty of the policy field made them look principally at policy solutions developed by policy pioneers in the Anglosphere and by countries in their existing networks. Because of their early institutionalisation of conflicts of interest regulation, Britain and the United States enjoyed the aura

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<sup>64</sup> Parliamentary clerk, Swedish Parliament (SWPC1). Phone interview. May 30<sup>th</sup> 2017. Author's own translation.

<sup>65</sup> Sveriges riksdag. Slutrapport från Arbetsgruppen för Uppförandekod. Stockholm, September 22d 2014.

<sup>66</sup> Public official 1, HATVP (FRPO1). Interview with author. October 27<sup>th</sup> 2017; HATVP official (FRPO2). Interview. November 30<sup>th</sup> 2017; Parliamentary clerk 1, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018.

<sup>67</sup> Public official 1, HATVP (FRPO1). Interview with author. October 27<sup>th</sup> 2017. Author's own translation.

of pioneers in the policy field, resulting in their policy approach to conflicts of interest being emulated by others. While conflict of interest regulation converged in France, Sweden and Britain, it is not a case of perfect convergence (Chapter 1). Policy actors' sources of policy inspiration places the three countries in what could be seen as different clusters where countries seem to converge regarding regulatory practices (self-regulation in Nordic countries, co-regulation in the Anglosphere and more external regulation in the French network).

## Conclusion

In beginning to examine the convergence of conflict of interest regulation in Europe, this chapter has sought to answer the Dolowitz and Marsh's question: "from where are lessons drawn?"<sup>68</sup> Expecting that the convergence of this particular anti-corruption policy was the result of later adopters emulating the policy approach developed by identified policy pioneers, it followed public interest registers and codes of conduct as they were successively adopted in different countries and searched for evidence of policy actors' awareness and utilisation of evidence from policy pioneers. Section 2.1 demonstrated that the United States and the Britain were early movers in the regulation of conflicts of interest. Conflicts of interests also emerged early in Canada, which constitutes a form of hybrid system, having translated aspects of the American approach into a Westminster-style system.

It took two decades for the problem to reach the political agenda of other European countries and there was still a great degree of uncertainty about what the problem was and what could be done about it. Policy-makers in France and Sweden turned to early adopters in the Anglosphere for inspiration, contributing to their image as policy pioneers. Yet one should not assume that policy learning is necessarily deep or complex,<sup>69</sup> especially since policy-makers often need to act within a short timeframe, which limits their capacity to collect information about the problem and policy options. Convergence however appears as the result of a form of regulatory conformism of governments following the path(s) set by policy pioneers functioning as exemplars under conditions of uncertainty.<sup>70</sup> Efforts made by policy-makers in 'laggard' states to learn from the experience of pioneers create the impression of a transnational path dependence of policy ideas about how to regulate conflicts of interest, as the dissertation further explores in following chapters.

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<sup>68</sup> DOLOWITZ, David and MARSH, David. *Op. cit.* 2000, p. 12.

<sup>69</sup> DUNLOP, Claire A. and RADAELLI, Claudio M. Systematising Policy Learning: From Monolith to Dimensions. *Political Studies*, 2013, Vol. 61, pp. 599-619.

<sup>70</sup> JÄNICKE, Martin. Trend-setters in environmental policy: the character and role of pioneer countries. *European Environment*, Vol.15, n° 2, 2005, p. 129-142.

Pioneer states, being the only available models for policy-makers in search of inspiration and ideas, played an important role in shaping the path that other countries would later be following.

The constitutive suspicion of officeholders in the United States created a fertile ground for the notion of conflict of interest to take hold and for policy-makers to institutionalise control mechanisms early on. While the same suspicion certainly existed in Britain and the rest of the Anglosphere, it was especially the expectation, in Westminster-style systems, that MPs should have other sources of revenue that resulted in the practice of orally declaring relevant interests, which was later formalised through registers and codes (Chapter 9 discusses this specificity at greater length). Combining a suspicion intrinsic to the political culture with the fact that many ethics reforms were the result of political scandals, we can conclude that pioneers in the area of anti-corruption enjoy a rather odd form of authority, born out of the recognition that they had a problem of political corruption that needed to be addressed through policy intervention. The emulation of policy instruments invented in such context can itself appear odd. As the dissertation further argues, the transfer of anti-corruption instruments, seen as vehicles of meaning and representation, might very well contribute to the spread of pioneers' Hobbesian view of human nature and suspicion regarding political actors' motives. This chapter has shown, on the one hand, that the emulation of public interest registers and codes of conduct is partly the unintentional consequence of policy-makers reacting to domestic scandals. On the other, it is also the result of pioneers progressively turning into policy leaders who actively seek to promote their policy approach to conflicts of interest abroad and in international forums. The diffusion of this approach to conflict of interest regulation is largely the result of the emergence of a global anti-corruption community legitimizing the policy choices of the Anglosphere, as Chapter 3 will further explain.

### Chapter 3. Constructing the Anglosphere as policy leaders and international institutions as policy brokers

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I think it is taking an idea you have heard about or information from some place and trying to see if it fits to solve the problem somewhere else (...) It is this idea of isomorphism (...) I mean I think that is what we try to do, we are a vehicle of doing that.<sup>71</sup>

(Employee of Transparency International Secretariat, Berlin. Interview with author. March 2d 2017)

While the prior adoption of public interest registers and codes of conduct in Britain, the United States and Canada was a *necessary* condition for the same instruments to be adopted in France and Sweden, it is not a *sufficient* condition, as this chapter sets out to show. If countries in the Anglosphere became pioneers of conflict of interest regulation, other actors emerged, who served as ‘vehicles of isomorphism’, as the interviewee quoted above puts it, who take an idea from some place and try to see if it ‘fits elsewhere’. This chapter leaves the domestic level to focus on what happened within the sphere of international policy-making, exploring two parallel and related phenomena. Firstly, it will show that some policy pioneers progressively turned into policy leaders, meaning that they actively sought to push other polities to adopt similar policies.<sup>72</sup> Secondly, as a consequence of policy leaders pushing corruption up the international agenda, international policy brokers started to emerge, acting as intermediaries between states promoting their approach to preventing corruption and states seeking – or being pressured into seeking – solutions to the problem. Considering these two developments in parallel, this chapter is interested in the domestic sources of international policy-making.

The dissertation suggests that the convergence of conflict of interest regulation is a result of the emulation of early adopters tracing the path for policy-making elsewhere combined with the emergence of a dedicated transnational policy community. Using Dolowitz and Marsh’s framework to analyse policy transfer,<sup>73</sup> Chapter 2 asked ‘from where lessons/ideas are drawn?’. It shows that

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<sup>71</sup> Employee, Transparency International’s Secretariat (TIS1). Interview with author. March 2d 2017.

<sup>72</sup> LIEFFERINK, Duncan and WURZEL, Rüdiger K.W. Environmental leaders and pioneers: agents of change? *Journal of European Public Policy*, Vol.24, n° 7, 2017, pp. 951-968.

<sup>73</sup> DOLOWITZ, David and MARSH, David. Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making. *Governance: An International Journal of Policy and Administration*, Vol. 13, n° 1, 2000, pp. 5–24; BENSON, Sofia Wickberg – « *Global instruments, local practices* » - Thèse IEP de Paris – 2020



what has now become common anti-corruption instruments were initially designed in the United States and Britain. Building on these findings, this chapter moves on to ask ‘who transfers policy? Why engage in policy transfer? What restricts or facilitates the policy transfer process?’ It focusses on the ‘exporting’ end of the transfer process – the reasons other countries choose to import policy will be dealt with in Part Three. Literature on policy transfer has identified many possible transfer agents: national administrative and political actors, pressure groups, experts, international institutions, non-governmental organisations, transnational corporations, transnational advocacy networks, philanthropic institutions, think tanks or epistemic communities.<sup>74</sup> Actors on the exporting end might engage in transfer activities to promote their policy choices to others (international institutions), to legitimise their work and existence (non-state actors, epistemic community) or to shape the international agenda according to their preferences (national policy actors).<sup>75</sup> This chapter is not concerned with identifying elements that constrain transfer (this is the topic of Part Three). It rather studies political developments that facilitate the international transfer of anti-corruption policy, such as the multiplication of transfer actors and the construction of anti-corruption as a transnational policy field.

This chapter identifies the actors that came to promote political corruption and that became, in effect, international brokers for public interest registers and codes of conduct. Part Two of the dissertation will present the mechanisms through which they did this, while this chapter focusses on the nature of these actors and the factors that lead them to get involved in anti-corruption work. Beyond their isolated policy activities, it looks at the interactions between them which resulted in the emergence of a transnational anti-corruption community. Lastly, it demonstrates that policy pioneers contributed to create this transnational community and influenced the way in which international institutions formulated the problem and policy solutions.

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David and JORDAN, Andrew. What Have We Learned from Policy Transfer Research? Dolowitz and Marsh Revisited. *Political Studies Review*, Vol. 9, n° 3, 2011, pp. 366–378.

<sup>74</sup> DOLOWITZ, David and MARSH, David. *Op. cit.* 2000; STONE, Diane. Non-governmental Policy Transfer: The Strategies of Independent Policy Institutes’, *Governance*, Vol. 13, n° 1, 2000, pp. 45–62; STONE, Diane. Transfer Agents and Global Networks in the “Transnationalization” of Policy. *Journal of European Public Policy*, Vol.11, n° 3, 2004, pp. 545–66; DUNLOP, Claire. Policy Transfer as Learning: Capturing Variation in What Decision-Makers Learn from Epistemic Communities. *Policy Studies*, Vol.30, n° 3, 2009, pp. 289–311; EVANS, Mark. Policy Transfer in Critical Perspective’, *Policy Studies*, Vol. 30, n°3, 2009, pp. 243–68; STONE, Diane. Private Philanthropy or Policy Transfer? The Transnational Norms of the Open Society Institute. *Policy & Politics*, Vol.38, n°2, 2010, pp. 269–87; BENSON, David and JORDAN, Andrew. *Op. cit.* 2011.

<sup>75</sup> EVANS, Mark. *Op. cit.* 2009; STONE, Diane. *Op. cit.* 2010; BENSON, David and JORDAN, Andrew. *Op. cit.* 2011; LIEFFERINK, Duncan and WURZEL, Rüdiger K.W. *Op. cit.* 2017.

### 3.1. Emergence of international policy brokers

The dissertation sets out to demonstrate that international institutions, understood as intergovernmental organisations and transnational non-state actors, played a pivotal role in the process of transferring public interest registers and codes of conduct between states. International policy brokers, in this case, not only contributed to transfer policies across borders, they also helped to put the issue of corruption on the global agenda. Before presenting the channels and mechanisms that they used to legitimise and diffuse these anti-corruption instruments, an important first step is to present who they are and how they became interested in the problem of corruption.

The topic of corruption has attracted an unusually high number of intergovernmental organisations, compared to other policy areas,<sup>76</sup> and the number of non-state actors involved in anti-corruption policy work is also growing. To illustrate the emergence of international policy brokers in this field, this section will use the example of the Organisation for Economic Co-operation and Development (OECD), an intergovernmental organisation which was particularly important in promoting conflict of interest regulation as a solution to corruption, and Transparency International, the first transnational non-state actor concentrating solely on the issue of corruption. These organisations are not representative of all policy brokers in this field. Transparency International is indeed in a unique position as a specialised transnational civil society movement present in over 100 countries. The OECD is quite a particular intergovernmental organisation, often described as being a ‘club of the rich’,<sup>77</sup> where ‘like-mindedness’ (broadly shared democratic values) is an accession criteria<sup>78</sup>, thus limiting fundamental conflicts regarding problem definition. These particularities, highlighting their available resources and the relative freedom they enjoy regarding policy innovation, certainly contributed to their influence on this specific area of anti-corruption policy-work. Other policy brokers (and their particular roles) are presented in the following chapters.

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<sup>76</sup> *Ibid.* p. 628.

<sup>77</sup> CLIFTON, Judith and DIAZ-FUENTES, Daniel. From ‘Club of the Rich’ to ‘Globalisation à la carte’? Evaluating Reform at the OECD. *Global Policy*, Vol. 2, 2011, pp. 300-311; PAL, Leslie Alexander. *Frontiers of Governance: The OECD and Global Public Management Reform*. Basingstoke: Palgrave Macmillan, 2012.

<sup>78</sup> OECD. *A Strategy for Enlargement and Outreach*. Report by the Chair of the Heads of Delegation Working Group on the Enlargement Strategy and Outreach, Ambassador Seichiro Noboru. Paris: OECD Publishing, 2004; OECD. *The OECD Organisation for Economic Co-operation and Development*. Paris: OECD Publishing, 2008.

### **3.1.1. Intergovernmental organisations becoming policy brokers, the example of the OECD**

Since the 1990s, many intergovernmental organisations (IOs) have become involved in anti-corruption policy work. Corruption was put on the agenda of most development banks,<sup>79</sup> international and regional organisations. In their study of the interactions among IOs in this field, Nathaniel Gest and Alexandru Grigorescu identify 17 intergovernmental organisations involved in anti-corruption work in 2010.<sup>80</sup> Grigorescu puts the number to 40 in a publication dated 2016.<sup>81</sup> Table 5 displays a non-exhaustive list of IOs who have gotten involved in anti-corruption work over the last three decades.

Table 5. Main IOs involved in anti-corruption work

<b>International organisations</b>	<b>Regional organisations</b>
International Monetary Fund (IMF)	Asian Development Bank (ADB)
Interpol	African Development Bank (AfDB)
International Trade Chamber (ITC)	Asia-Pacific Economic Cooperation (APEC)
Organization for Economic Co-operation and Development (OECD)	Black Sea Trade and Development Bank (BSTDB)
United Nations Commission on International Trade Law (UNCITRAL)	Caribbean Free Trade Association (CARICOM)
United Nations Conference on Trade and Development (UNCTAD)	Council of Europe (CoE)
United Nations Development Programme (UNDP)	Common Market for Eastern and Southern Africa (COMESA)
United Nations Educational, Scientific and Cultural Organization (UNESCO)	Commonwealth
United Nations Office on Drugs and Crime (UNODC)	Economic Community of West African States (ECOWAS)
World Bank	European Bank for Reconstruction and Development (EBRD)
World Trade Organization (WTO)	European Investment Bank (EIB)
	European Union (EU)
	Inter-American Development Bank (IADB)
	MERCOSUR
	Organization of American States (OAS)

<sup>79</sup> Chapter 4 returns to the emergence of corruption as a development problem.

<sup>80</sup> GEST, Nathaniel and GRIGORESCU, Alexandru. Interactions among intergovernmental organizations in the anti-corruption realm. *Review of International Organizations*, Vol. 5, 2010, pp. 53-72.

<sup>81</sup> GRIGORESCU, Alexandru. IGO Relations in the Anti-corruption Realm and in Promoting Integrity in Public Procurement. In KOOPS, Joachim and BIERMANN, Rafael. *Palgrave Handbook of Inter-Organizational Relations in World Politics*. London: Palgrave MacMillan, 2016.

Organization for Security and Co-operation in Europe (OSCE)
Southern African Development Community (SADC)

Source: adapted from GRIGORESCU, Alexandru. IGO Relations in the Anti-corruption Realm and in Promoting Integrity in Public Procurement. In KOOPS, Joachim and BIERMANN, Rafael. *Palgrave Handbook of Inter-Organizational Relations in World Politics*. London: Palgrave MacMillan, 2016, p. 637.

Some adopted international conventions against corruption to facilitate international cooperation and harmonise national legislation in the area (more in Chapter 5). When using international law as a means of governance and seeking to monitor states' compliance, IOs rely largely on the delegated authority they receive from member states, which is the basis of their legal authority.<sup>82</sup> IOs' legitimacy to influence policy processes is then dependent on the acceptance of legitimization claims by those subject to this influence and particularly by powerful member-states. In this field, the support of successive US governments, followed by other states of the Anglosphere, is central to understand how IOs became brokers of anti-corruption policy, as section 3.3 explains. IOs' membership thus matters since organisations with a near universal membership are mandated by almost all the countries in the world to undertake their activities, which should also somehow reflect their views. Regional organisations' membership of countries share more political and economic similarities. IOs of all types seek recognition of their legitimacy beyond their members: among other IOs, non-member states whom they seek to influence and prominent not-state actors in their policy field. Table 6 provides additional details (membership and thematic focus) about some IOs that are important brokers of financial disclosure systems and codes of conduct.

Table 6. Intergovernmental policy brokers

Name <sup>83</sup>	Members	Specialisation
United Nations	193	Generalist
UN Office on Drugs and Crime	193	Crime prevention
World Bank	189 <sup>84</sup>	Development and poverty
OECD	36	Economic progress and trade

<sup>82</sup> SKOGSTAD, Grace. Global Public Policy and the Constitution of Political Authority. In STONE, Diane and MOLONEY, Kim. *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.

<sup>83</sup> These organisations were selected because they published reports and policy documents on anti-corruption that include codes of conduct and disclosure systems, include France, Sweden and/or the UK, or civil society organisations withing these countries, among their members, and/or have seen their publications used to produce the monitoring mechanisms described in Chapter 5.

<sup>84</sup> The World Bank Group is constituted by five different organisations. The StAR initiative that has produced the publications studied here is a collaboration between the United National Office on Drugs and Crime (UNODC) and the World Bank Group. I chose the International Bank for Reconstruction and Development to indicate the membership of the World Bank Group.

OSCE	57	Security
Council of Europe (GRECO)	49 <sup>85</sup>	Human rights and democracy (corruption)
European Union	28	Generalist
G20	20	Financial stability

Source: Author's compilation, based on the organisations' official websites.

IOs involved in anti-corruption policy work also developed dedicated programmes and produced reports and policy tools (Chapter 6). Indeed, beyond the authority delegated by their members, IOs dispose of other sources of power that they derive from their thematic expertise, capacity to mobilise information and moral authority, and use for spreading policy ideas and influence the preferences of domestic actors.<sup>86</sup> As the dissertation sets out to demonstrate, IOs' capacity to shape the cognitive framework for domestic policy-making has played a particularly important role in facilitating the transfer of instruments to regulate conflicts of interest.<sup>87</sup> International secretariats and international civil servants then come to play an important part in the legitimisation work of IOs, autonomously from their member-states.<sup>88</sup>

The capacity to bring stability to a decision-making processes is another source of bureaucratic power that international secretariats enjoy, which is particularly relevant to complex global problems like corruption that are characterised by a high degree of uncertainty.<sup>89</sup> Stability can be achieved through routines and standardised procedures as well as through particular individuals.<sup>90</sup> In this field, a few international civil servants have been active within their respective IOs since corruption was raised as a global problem.<sup>91</sup> János Bertók (OECD Head of the Public Sector Integrity Division), Dimitri Vlassis (former Chief of the Corruption and Economic Crime Branch of UNODC's Division of Treaty Affairs) and Gianluca Esposito (Head of Action against Crime Department of the CoE's GRECO) are some prominent examples of the continuity that exists within the leadership of relevant IO secretariats. In addition to creating stability, this

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<sup>85</sup> The Council of Europe's Group of States against Corruption (GRECO) is composed of the members of the Council of Europe plus Belarus and the United States of America.

<sup>86</sup> MATHIASON, John. *Invisible Governance: International Secretariats in Global Politics*. Bloomfield: Kumarian Press, 2007; GRAHAM, Erin, SHIPAN, Charles and VOLDEN, Craig. The Diffusion of Policy Diffusion Research in Political Science. *British Journal of Political Science*, Vol. 43, 2012, pp. 673-701; PIIPARINEN, Touko. Secretariats. In KATZ COGAN, Jacob, HURD, Ian and JONSTONE, Ian. *The Oxford Handbook of International Organizations*. Oxford University Press, 2016; SKOGSTAD, Grace. *Op. cit.* 2019.

<sup>87</sup> GEST, Nathaniel and GRIGORESCU, Alexandru. *Op. cit.* 2010, p. 68.

<sup>88</sup> BARNETT, Michael and FINNEMORE, Martha. *Op. cit.* 2004; KISHORE, Pallavi. A comparative Analysis of Secretariats Created under Select Treaty Regimes. *International Lawyer*, vol. 45, n°4, 2009, p. 1051, cited by PIIPARINEN, Touko. Secretariats. In KATZ COGAN, Jacob, HURD, Ian and JONSTONE, Ian. *The Oxford Handbook of International Organizations*. Oxford University Press, 2016.

<sup>89</sup> PIIPARINEN, Touko. *Op. cit.* 2016.

<sup>90</sup> KNILL, Christopher and BAUER, Michael W. Policy-making by international public administrations: concepts, causes and consequences. *Journal of European Public Policy*, Vol. 23, n°7, 2016, pp. 949-959.

<sup>91</sup> On corruption as a global problem, see Chapter 4.

continuity of actors strengthens the legitimacy of international institutions through their accumulated experience and expertise.<sup>92</sup> Thanks to their political and cognitive authority, IOs contribute to keep corruption on the global agenda and to influence domestic actors policy preferences by constructing the problem of corruption globally and making ‘good practice’ solutions available.

The case of the OECD will serve to illustrate how international institutions can gain authority over an issue and build themselves into international policy brokers.<sup>93</sup> This IO was pivotal in putting corruption on the international agenda, as an early mover at the international level and an architect because of the transnational anti-corruption community. It also contributed to raise awareness about conflicts of interest and provide governments with targeted technical solutions. As Chapter 7 will show, the OECD’s work on conflicts of interest was particularly influential on raising the issue on the political agenda in France. The work of the OECD on conflicts of interest came out of its efforts to develop a convention against foreign bribery (meaning providing or offering a benefit to a foreign public official for the purpose of obtaining or retaining business or a business advantage which is not legitimately due) in the 1990s, which led to the construction of a broader agenda including public ethics/integrity. This was at the initiative of the US administration who wanted other countries to follow its lead and criminalise foreign bribery (like the US had done with the 1977 Foreign Corrupt Practices Act – FCPA). The US government went “venue-shopping”<sup>94</sup> to raise the issue of corruption on the international agenda. It turned to the OECD (and the OAS) after the UN failed to reach an international agreement on the criminalisation of foreign bribery.<sup>95</sup> As discussed in more detail in Section 3.3, the United States was instrumental in putting corruption on the organisation’s agenda, and was later supplanted by the United Kingdom, who was particularly supportive of the organisation’s public ethics/integrity

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<sup>92</sup> PIIPARINEN, Touko. Secretariats. *Op. cit.* 2016; MATHIASON, John. *Op. cit.* 2007; BARNETT, Michael and FINNEMORE, Martha. *Op. cit.* 2004.

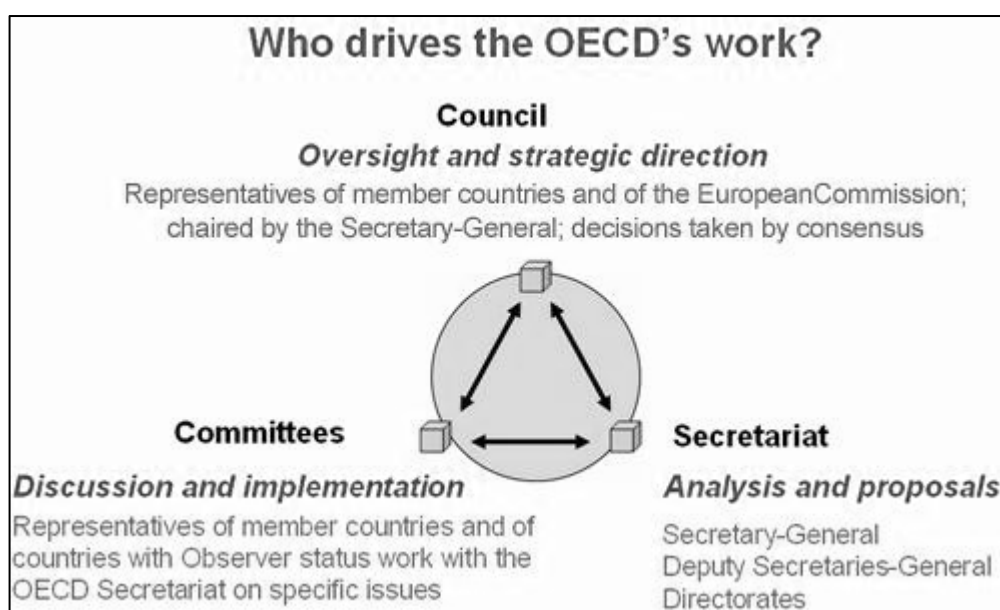
<sup>93</sup> As previously mentioned, the OECD is not representative of all Ios but is a particularly interesting example due to its influence on the policy community.

<sup>94</sup> DE BIÈVRE, Dirk, POLETTI, Arlo, and THOMANN, Lars. To Enforce Or Not to Enforce? Judicialization, Venue Shopping, and Global Regulatory Harmonization. *Regulation & Governance*, Vol. 8, n° 3, 2014, pp. 269-286; COLEMAN, Katharina P. Locating norm diplomacy: Venue change in international norm negotiations. *European Journal of International Relations*, 2011, Vol. 19, n°1, p. 163-186.

<sup>95</sup> MCCOY, Jennifer. The Emergence of a Global Anti-corruption Norm. *International Politics*, Vol. 38, 2001, pp. 65–90; JAKOBI, Anja P. Global Anti-Corruption Norms. In *Common Goods and Evils? The Formation of Global Crime Governance*. Oxford University Press, 2013; ROSE, Cecily. International Anti-Corruption Norms Their Creation and Influence on Domestic Legal Systems. Oxford University Press, 2015, pp. 63-65; KATZAROVA, Elitza. The Social Construction of Global Corruption From Utopia to Neoliberalism. London: Palgrave Macmillan, 2019.

work. This moment, according to Leslie Pal, opened a “discursive space” for raising related issues on the international agenda.<sup>96</sup>

Figure 10. The OECD’s governance structure



Source: OECD. Who does what. Online, available at:

<http://www.oecd.org/about/whodoeswhat/> (accessed on December 6<sup>th</sup> 2018)

The construction of the OECD as an international broker of anti-corruption instruments is the result of a combination of political pressure from influential member-states<sup>97</sup> and the international secretariat’s own initiatives.<sup>98</sup> As Figure 10 shows, member-states provide the strategic direction of the organisation and are responsible for the initial agenda-setting. The following paragraphs focus on the role of the secretariat in turning the OECD into an anti-corruption policy broker. The organisation itself highlights the secretariat’s role in providing analysis and making proposals, showing that it is more than a mere ‘artefact’ and assistant of member-states.<sup>99</sup> Angel

<sup>96</sup> PAL, Leslie Alexander. *Frontiers of Governance: The OECD and Global Public Management Reform*. Basingstoke: Palgrave Macmillan. 2012, pp. 138-139.

<sup>97</sup> On the intergovernmental side, the Working Group of Senior Integrity Officials (SPIO) assists the Public Governance Committee (GOV) in promoting the design and implementation of public integrity policies. It is supported by the Public Sector Integrity Division of the OECD secretariat. When it was set up in 2002, the Working Group of Senior Integrity Officials was called the Expert Group on Conflict of Interest, which shows both the centrality of the notion of conflict of interest in the OECD’s work on corruption in the public sector and the broadening scope of work of the Public Governance Committee and Directorate.

<sup>98</sup> The OECD divides its anti-corruption work into two separate bodies: the Working Group on Bribery in International Business Transactions and the Working Group of Senior Public Integrity Officials within the Public Governance Committee. These two working groups correspond to the two directions in which the anti-corruption work of the organisation developed, the former with a focus on criminalisation and law enforcement and the latter with a focus on preventive policy.

<sup>99</sup> PAL, Leslie A. Standard Setting and International Peer Review: The OECD as a Transnational Policy Actor. In In STONE, Diane and MOLONEY, Kim. *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.

Gurría, the Secretary-General (SG) of the OECD since 2006, presents the international secretariat and its civil servants as one of the organisation's main sources of policy ideas:

One of them of course is the Secretariat including myself, because we're always talking to ministers, to prime ministers, to presidents (...) We're always trying to reach out... The idea is to get back the results, what are they worried about, what can we do for you, what is important for you, how can we do it (...) You know, these things. We get them from them. So I am a source. My deputies are a source. The directors are a source...<sup>100</sup>

Public ethics emerged on the OECD agenda through the Centres for Government (CoG),<sup>101</sup> a network within the Public Management Committee (PUMA), aimed at bringing together the most senior administrative officials in governments.<sup>102</sup> The 1995 meeting of CoG hosted in Copenhagen was indeed about "Maintaining Ethics in the Public Service: The Role of the Centre".<sup>103</sup> János Bertók associates the emergence of the topic of public ethics to the (negative) effects of new public management reforms that were starting to appear and the growing demand to add "ethics" to "efficiency" and "effectiveness", to form the "3 Es"<sup>104</sup>. The CoG meeting was quickly followed by the 1995 OECD Symposium on Corruption and Good Governance hosted by the OECD in Paris, with the financial support of the United Kingdom's Overseas Development Administration, Japan, Switzerland and the United States.<sup>105</sup> The successive Secretary-Generals and their Directors were pivotal in developing the organisation's public governance agenda from its initial technical assistance to the regions of Europe that "were behind" in terms of economic development and potentially "[vulnerable] to communists".<sup>106</sup> They played a central role in adapting the organisation's goal and methods to a changing environment, shaping (good) public governance, including public ethics/integrity,<sup>107</sup> as a necessity for social and economic development.<sup>108</sup>

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<sup>100</sup> PAL, Leslie A. *Frontiers of Governance. The OECD and Global Public Management Reform*. London: Palgrave Macmillan, 2012, p. 1

<sup>101</sup> OECD Officials 2 and 3 (OECD2 and OECD3). Phone interview with author. May 23<sup>rd</sup> 2018.

<sup>102</sup> For instance, those leading cabinet or Prime Minister's offices, or who serve the head of government, cabinet secretaries and secretaries-general of governments.

<sup>103</sup> PAL, Leslie A. *Op. cit.* 2012, p. 180

<sup>104</sup> OECD Official 2 (OECD2). Phone interview with author. 23 May 2018.

<sup>105</sup> OECD. *OECD Symposium on Corruption and Good Governance*. OCDE/GD(96)129. Paris: OECD, 1996

<sup>106</sup> PAL, Leslie A. *Op. cit.* 2012, p. 35.

<sup>107</sup> The OECD Public Governance agenda currently includes, *inter alia*, work on public procurement, open government, budgeting, public management, infrastructure governance, risk governance, illicit trade, and anti-corruption and integrity in the public sector.

<sup>108</sup> The Public Governance Committee (GOV) descends from the OECD's technical assistance and cooperation (TECO) to the "less developed" countries in Europe in the late 1950s and early 1960s (Italy, Greece, Turkey, Yugoslavia, Spain, Iceland and Portugal), in view to support their economic development and protect Europe from the vulnerabilities to communism. In the 1970s, TECO started to move away from technical assistance to focus on public management reform, in part through the initiative of the SG's office to save the TECO service in a time when the OECD was moving away from technical assistance by extending its activities to all the member-States of the OECD. The turn to public administration was sealed under the mandate of Jean-Claude Paye, by the creating of



The OECD's Secretary-General Report to Ministers in 2018 notes that "the Directorate for Public Governance (GOV) provides data, analysis and good practice to help countries improve public policy making and strengthen trust in government".<sup>109</sup> The OECD is a non-coercive policy forum, whose influence is largely based on its ability to facilitate exchanges, organise meetings and produce data. This affords its secretariat a significant influence in making sense of the problem and formulating policy solutions, once an issue has been raised on its agenda, making international civil servants central actor of policy transfer. The Public Sector Integrity Division (PSI) is in charge of knowledge generation and policy exchange regarding corruption prevention and public integrity, collecting and analysing data, producing and disseminating reports and good practices. The PSI was set up in 1997 and functioned as a unit composed of 6 to 12 staff members until it became a division in 2012, with a staff of approximately 40 employees<sup>110</sup>, demonstrating a growing interest for the topic within the organisation and an increased capacity of the secretariat to influence the agenda.

Although member states give shape to the general orientation of the organisation's work and need to approve most publications, international civil servants are the ones producing the organisation's reports and background documents, which serve as a basis for international negotiations. They are the ones who collect the data, from member states and experts, who select sources, decide on the information that will be highlighted and make sense of collected information.<sup>111</sup> Interviews conducted with members of the PSI division confirm that secretariat staff, recruited on the basis of their expertise and network, are not only executors of members states will, but initiators of policy ideas.<sup>112</sup> Interactions with PSI staff members and observations

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Public Management (PUMA) Committee, supported by the Public Management Service, to replace TECO, in 1989. PUMA was the illustration of the OECD's belief in the importance of public sector reform to improve economic performance and served as a cog in the diffusion of New Public Management (NPM) ideas and policies across the region. The collapse of the Soviet Union made public sector reform a topic of collaboration between the OECD and the European Union, through the SIGMA initiative (Support for Improvement in Governance and Management), which played a significant role in bring corruption prevention on the agenda of both organisations. PUMA proposed the Principles for Managing Ethics in the Public Service to the OECD council, which led to the adoption of the Recommendation of the Council on Improving Ethical Conduct in the Public Service in 1998. Donald Johnston took over the mandate of SG, after Jean-Claude Paye's mandate ended in 1996, with an ambition to adapt the OECD to a post-Cold War world, including through the outreach to non-members and the shift towards a focus on knowledge creation and dissemination. It is in this context that the Public Governance Committee and its supporting Directorate, including the Public Sector Integrity Division, were created in 2002 with a clear mandate to promote a public integrity agenda.

<sup>109</sup> OECD. Secretary-General Report to Ministers 2018. Paris: OECD, 2018, p. 96

<sup>110</sup> OECD Official. Email communication, 18 December 2018.

<sup>111</sup> My contribution to drafting background documents for the 2015 OECD Anti-Corruption and Integrity Forum gave me an insight into the role of the secretariat in identifying information, examples and practices to be distributed as OECD documentation.

<sup>112</sup> OECD official 1 (OECD1). Interview with author. April 3<sup>rd</sup> 2017; OECD officials 2 and 3 (OECD2; OECD3). Phone interview with author. May 23<sup>rd</sup> 2018.

of their work planning the OECD Anti-Corruption and Integrity Forum 2019 suggest that they get new policy ideas from the team members themselves, the people they meet and events they participate in. A PSI official indicated that despite the OECD system being very formalised, they usually got governments to approve their suggestions.<sup>113</sup>

The OECD's work on anti-corruption and public integrity has been supported since its inception in 1997 by the current Head of Division and Acting Director of the Public Governance Directorate, János Bertók, who has had a remarkable influence on the policy agenda. His professional socialisation in the public sector of a transitioning Hungary, undergoing significant public sector reforms with the moderns agenda promoted *inter alia* by the European Union, made him an good candidate for the public sector reform division of the OECD.

Box 4. János Bertók, Head of the Public Sector Integrity Division (OECD)

János Bertók is a Hungarian national who has been leading the OECD's activities promoting integrity and preventing corruption in the public sector since 1997. He joined the OECD as the Public Integrity Unit was created within the Public Management Service. In 2003, he became the Deputy Head of the Public Sector Reform Division within the newly set up Public Governance and Territorial Development Directorate, to later become the acting Head of Division. When the Public Integrity Unit was morphed into a Division of its own, János Bertók was chosen to lead it. He is the Acting Director of the Public Governance Directorate since February 2020. The OECD's work on public integrity has been strongly influenced by János Bertók's ideas. An online biography states that "he designed the OECD Guidelines for Managing Conflict of Interest in the Public Service that provide the first comprehensive international benchmark (...) He also developed a set of management principles that was adopted in the 'Recommendation on Improving Ethical Conduct in the Public Service' by the OECD Council in 1998. He is the author of several books and flagship reports such as 'Trust in Government: Ethics Measures in OECD Countries' (2000) that reviews the implementation of the 1998 Recommendation, and 'Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences' (2003)"<sup>114</sup>. Before joining the OECD, János Bertók was a senior civil servant in the Prime Minister's Office in Hungary in charge of the modernisation of public administration and worked as a special advisor to the Secretary of State within the Ministry of Interior. His work focused on creating new legal and institutional frameworks for the civil service in the transition period. He obtained his PhD from the Institute of Legal and Administrative Sciences of the Hungarian Academy of Sciences in 1990, as the country was transitioning from communism.

The power of the secretariat lies in its permanence, in its expertise and in its ability to make proposals to the decision-making bodies and to carve out new functions outside of those set out

<sup>113</sup> OECD Official 4 (OECD4). Excerpt from a workshop discussion. Paris: Sciences Po, 16 November 2018.

<sup>114</sup> BERTÓK, János. Short online CV. IV Forum Global de Combate a Corrupcao, 2005. Online, available at: <http://www.cgu.gov.br/sobre/institucional/eventos/anos-anteriores/2005/iv-forum-global-de-combate-a-corrupcao-1/arquivos/janosbertok.pdf> (accessed on December 18th 2018)

by the establishing treaty. The Secretary-General as well as his high-level staff play a particularly important role in expanding and changing the secretariat's functions and missions.<sup>115</sup> János Bertók's work within the PSI division since 1997 is an example of the how the continuity and stability in leadership can contribute to the influence of an international secretariat. In turn, it strengthens the division's authority vis-à-vis member-states through the experience accumulated and networks built by long-standing officials. This continuity and institutional memory contribute to the legitimacy and influence of the OECD within the anti-corruption community.

The Public Sector Integrity Division has been a driver of the public ethics agenda and has, through its knowledge and outreach work, made the OECD an important source of information for domestic policy-makers, as the previous chapter suggests. It has been a cog in the creation of a dedicated policy community, building connections with other actors within or outside the governmental sphere, collaboration with the European Union on the Sigma project, with the Asian Development Bank on a common Anti-Corruption Initiative for Asia-Pacific, with the World Bank, the OSCE, the Council of Europe and the UNDP on the Anti-Corruption Network for Eastern Europe and Central Asia or with the G20 on its anti-corruption work. Due to the expertise accumulated within its secretariat, the OECD is indeed in great 'demand' by other IOs working on anti-corruption<sup>116</sup> and, as we will see below, has worked to promote itself as a central actor of the emerging policy community creating a discursive space to design policy solutions to a problem it also contributed to define.

### **3.1.2. Emergence of specialised transnational non-state actors**

While intergovernmental organisations are obvious international policy brokers due to their mediating position, their authority and their financial and human resources, transnational non-state actors also played a critical role in the cross-national transfer of financial disclosure systems and codes of conduct. Since Margaret Keck and Kathryn Sikkink's seminal work on transnational advocacy networks,<sup>117</sup> there is a growing consensus among political scientists that transnational non-state actors (non-governmental organisations, professional networks, philanthropic foundations, think tanks etc.) make a difference in world politics, notably through the creation of international norms and policy ideas. They also have an increasing impact on domestic policies,

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<sup>115</sup> PAL, Leslie A. *Op. cit.* 2012

<sup>116</sup> GEST, Nathaniel and GRIGORESCU, Alexandru. *Op. cit.* 2010, p. 68.

<sup>117</sup> KECK, Margaret E. and SIKKINK, Kathryn. *Activists beyond Borders: Advocacy Networks in International Politics*. Cornell University Press, 1998; KECK, Margaret E. and SIKKINK, Kathryn. 'Transnational advocacy networks in international and regional politics. *International Social Science Journal*. Vol. 51, n°159, 1999, pp. 89-101

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through the diffusion of these global norms to domestic politics.<sup>118</sup> Transparency International (TI), a coalition of over 100 national civil society organisations involved in anti-corruption work, is worth mentioning for its role as an international broker of anti-corruption policy. TI has sought to establish its legitimacy through claims of representing an international “common good” and used expertise and outreach to spread its preferred policy ideas.<sup>119</sup> TI has had an undeniable impact on making corruption a global problem, to the point of being considered as a founder of the transnational policy field. In the words of Wang and Rosenau, Transparency International has been an “important agent of change” for the dramatic rise in salience of corruption.<sup>120</sup>

TI was founded in 1993 in Berlin by the former World Bank country director for Kenya, Peter Eigen, together with a number of people having held (or then holding) positions of political power, including Kamal Hossein, a former Minister of Bangladesh; John Githongo, then head of a Kenyan accountancy firm who later became Permanent Secretary for Ethics and Governance in the office of the President of Kenya; Frank Vogl, a former information Director at the World Bank; Hansjörg Elshorst, the former managing director of the German development agency Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ); Fritz Heimann, from General Electric; and Michael Hershman, a US-based intelligence and security specialist.

#### Box 5. Peter Eigen, founder of Transparency International

Born in 1938 in Augsburg, Germany, Peter Eigen is a lawyer by training and received his PhD in Law from the University of Frankfurt. He pursued his legal studies at the University of Kansas where he became interested in development issues in Latin America.<sup>121</sup> In 1967, he started to work for the World Bank (WB) and took a sabbatical in the early 1970s to work in Botswana and Namibia where he provided legal and technical assistance to the governments under the sponsorship of the Ford Foundation, to strengthen their institutional framework for future mining investment.<sup>122</sup> In 1983, he returns to Latin America for the World Bank and works with states to restructure their debt, a situation that he considers to be a result of the collusion between foreign investors and local officials.<sup>123</sup> From 1988 to 1991, he was the WB Director of the Regional Mission for Eastern Africa of the World Bank. In 1990, WB staff in Africa met for a strategic meeting in Swaziland, where Peter Eigen suggested that the Bank should start to consider corruption. The idea was met with enthusiasm by the local teams but

<sup>118</sup> RISSE, Thomas. Transnational Actors and World Politics. In CARLSNEAS, Walter, RISSE, Thomas and SIMMONS Beth A. *Handbook of International Relations*. London: SAGE Publications, 2002, p. 263-264.

<sup>119</sup> RISSE, Thomas. Chapter 13 Transnational Actors and World Politics. In CARLSNEAS, Walter, RISSE, Thomas and SIMMONS, Beth A. *Handbook of International Relations*. London: SAGE Publications, 2002.

<sup>120</sup> WANG, Hongying and ROSENAU, James N. *Op. cit.* 2001, p. 31; SAMPSON Steven. The anti-corruption industry: from movement to institution. *Global Crime*, Vol. 11, n°2, 2010, p. 273-274.

<sup>121</sup> CŒURDRAY, Murielle. Le double jeu de l'import-export symbolique. *Actes de la recherche en sciences sociales*, Vol. 151-152, n° 1, 2004, p. 85.

<sup>122</sup> Transparency International. Peter Eigen Short Bio. Berlin, 2011. Online, available at: [https://www.transparency.org/files/content/ourorganisation/ShortBio\\_PeterEigen\\_EN.pdf](https://www.transparency.org/files/content/ourorganisation/ShortBio_PeterEigen_EN.pdf) (accessed on March 10th 2020).

<sup>123</sup> CŒURDRAY, Murielle. *Op. cit.* 2004, p.85.

rejected by the headquarters because of the organisation's non-political mandate.<sup>124</sup> This led to his early retirement from the WB and his ambition to start an organisation solely focussed on corruption, for which he initially received financial support from the German technical assistance agency (GTZ). When Transparency International was launched in May 1993, in Berlin, Peter Eigen had managed to attract the attention of many donor agencies, including the WB (which nevertheless did not support TI financially), government officials from the Global South and representatives of multinational corporations (MNCs).<sup>125</sup> Peter Eigen remained the chairman of TI until 2005 when he started chairing its Advisory Council. He joined the Carnegie Endowment for International Peace in 2001 and has taught in Harvard University, Johns Hopkins University, the College of Europe and the FU Berlin. He is a founder, together with Tony Blair and others, of the Extractive Industries Transparency Initiative (EITI), an international initiative of governments, NGOs and companies to provide transparency in contracts and cash flows in the extractives industry.

In an article published in 1996, Peter Eigen presents the TI approach as threefold. Firstly, he describes its strategy as coalition-based and non-confrontational, presenting it as “sharply contrasting” from Amnesty International’s strategy of casting blame and exposing villains.<sup>126</sup> He says elsewhere that this collaborative approach justifies the choice of the name of the organisation, which was considered “too tame for some of the participants” at the founding meeting.<sup>127</sup> Secondly, its work is based on its national chapters who should tailor anti-corruption programmes to their society and avoid investigating individual cases of corruption not to undermine coalition-building. Thirdly, he describes TI’s approach as striving for incremental change, rather than sweeping programmes of reform.<sup>128</sup>

The organisation’s strategy made it an ideal, non-threatening partner for governments, international organisations and private companies seeking to raise corruption on the global agenda. The organisation has followed the path set by its founders. Despite the launch of an anti-impunity campaign in 2014<sup>129</sup> and the presence of more confrontational organisations within the TI movement,<sup>130</sup> the organisation never became a “placard-wielding NGO” and continues to “work

<sup>124</sup> EIGEN, Peter. Combatting Corruption Around the World. *Journal of Democracy*, Vol. 7, n°1, 1996, pp. 158-168; MARQUETTE, Heather. *Corruption, politics and development: the role of the World Bank*. Basingstoke : Palgrave Macmillan, 2003, p. 74.

<sup>125</sup> MARQUETTE, Heather. *Op. cit.* 2004, pp. 74-75.

<sup>126</sup> EIGEN, Peter. Combatting Corruption Around the World. *Journal of Democracy*, Vol. 7, n°1, 1996, pp. 158-168.

<sup>127</sup> EIGEN, Peter. International Corruption: Organized Civil Society for Better Global Governance. *Social Research*, Vol. 80, n°4, 2013, pp. 1287-1308.

<sup>128</sup> EIGEN, Peter. *Op. cit.* 1996.

<sup>129</sup> See the ‘Unmask the corrupt’ campaign’s official website for more information, at <http://unmaskthecorrupt.org> (accessed on October 24<sup>th</sup> 2019).

<sup>130</sup> The movement is composed of national chapters that have different sizes, repertoires and memberships, some being expert organisations providing knowledge to policy-makers and enjoying stable human and financial resources – like TI UK, while others are grass-roots movements composed of volunteers and activists, such as TI Germany. Some national chapters have chosen to go against the non-confrontational philosophy of the organization, like TI France who sued a number the presidents of Equatorial Guinea, Congo-Brazzaville and Gabon for embezzling public funds in their respective country and hiding them in France.

with organisations from the inside, with a strong focus on technical solutions to corruption problems”.<sup>131</sup> Scholars have highlighted the influence of TI on the global agenda, pointing to its communication strategy, its alignment with powerful actors, in the public and private sectors, notably with American policy-makers and US-based multinational corporations, and the acceptability within international organisations of the norms and values it promotes.<sup>132</sup>

The organisation combines the benefits of existing in the form of a network of local civil society organisations, bringing an image of public legitimacy to its activities locally, and the advantages of being a professional organisation able to build coalitions with influential actors and attract highly educated individuals. Transparency International has historically engaged in building coalitions. As Sampson reminds us: “TI’s general strategy remains that of founder Peter Eigen: to ‘build coalitions’ with the broadest range of international policy actors so as to stay on the inside”.<sup>133</sup> Indeed, the credentials and network of its founders contributed to immediately establish TI as a legitimate interlocutor for international organisations, governments and multinational companies, as illustrated in this quote from an article written by TI’s first chairman Peter Eigen for the *Journal of Democracy* in 1996:

Tangible support has come from private firms (...) NGOs, universities, the media, development organizations, governments and individuals around the world. With its strong base of technical and human resources, TI is poised to expand its program of shaping anticorruption strategies.<sup>134</sup>

Though it describes itself as a global coalition or movement<sup>135</sup>, Transparency International has been a highly professionalised civil society organisation since its foundation. My own experience working for TI’s secretariat and the interviews undertaken in the framework of this research show that individuals working within the international secretariat are educated in leading universities, such as SOAS, Oxford University, Cambridge University, LSE or the Hertie School of Governance, and largely master the professional language of policy analysis (casually using terms

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<sup>131</sup> NORAD. Evaluation of Transparency International. Report 8/2010, p. 7.

<sup>132</sup> Including the annual publication of the Corruption Perceptions Index (CPI, further studied in Chapter 4) that contributed to make the organisation visible. WANG, Hongying and ROSENAU, James N. Transparency International and Corruption as an Issue of Global Governance. *Global Governance*, Vol. 7, n°1, 2001, pp. 25-49; RISSE, Thomas. *Op. cit.* 2002; GUTTERMAN, Ellen. The legitimacy of transnational NGOs: lessons from the experience of Transparency International in Germany and France. *Review of International Studies*, Vol. 40, 2014, pp. 391-418.

<sup>133</sup> SAMPSON, Steven. The anticorruption landscape in Southeast Europe. In DE SOUSA, Luís, LARMOUR, Peter and HINDESS, Barry. *Governments, NGOs and Anti-corruption: The New Integrity Warriors*. London: Routledge, 2008, p. 177

<sup>134</sup> EIGEN, Peter. Combatting Corruption Around the World. *Journal of Democracy*, Vol. 7, n°1, 1996, p. 166

<sup>135</sup> Transparency International. What is Transparency International? Online, available at: <https://www.transparency.org/about> (accessed on December 3rd 2018); DE SOUSA, Luís. *Op. cit.* 2008; SAMPSON, Steven. *Op. cit.* 2010.

such as isomorphism, policy adoption, news cycle theory, policy arenas or policy agendas). TI has played a pivotal role in professionalising civil society organisations involved in the ‘fight against corruption’, starting with its own network of chapters. An employee from the TI secretariat, explaining that capacity building was an important part of their function, described it follows:

My main thing is to help chapters become more professional organisations. You know Transparency International, the chapters go from only volunteers-based to only-professional small NGO and especially in Europe we go from this extreme to another (...) It is really fine to have only volunteers, this is not a criticism, but at the moment corruption is pretty big in Europe. Thus it needs NGOs with very good people and management teams really able to respond to the challenges that corruption is putting, so I am trying to support the chapters not only on fund raising but also on understanding how they can become more professional. So it goes from strategy development, identifying the priorities, fundraising and also advocacy, and especially that they do not forget that they are not on their own, but they work inside the movement.<sup>136</sup>

The professionalisation of non-profit non-state actors has been documented since the 1990s, with the literature arguing that the more civil society groups professionalise, the more influence they exert.<sup>137</sup> Sabine Saurugger argues that a civil society organisation’s financial support can help assess its level of professionalisation, suggesting that “organizations that rely heavily on public funds may not require grassroots membership” and that stable public funding allows for the development of life careers within civil society organisations.<sup>138</sup> TI can thus be considered a highly professionalised organisation, heavily dependent on public and corporate funding – government agencies, multilateral institutions, foundations and trusts as well as corporate donors representing 95% of the international secretariat’s income in 2017<sup>139</sup> – with a staff of 135 employees on average in 2017.<sup>140</sup> As an employee of the TI secretariat plainly put it, while explaining their take on the functional value of transparency:

Again this is not TI, this is me thinking about the work that I have done. Because of the professionalisation of civil society. You know (...) I do not think it is necessarily something different from professionalisation of any other profession. At some point in time in a period far far away, perhaps somebody said taking care of people who are sick would be something and they started to build this kind of work (...) But to the degree to which the transparency agenda has become professionalised, you know the folks from our end think of ways in

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<sup>136</sup> Employee, Transparency International’s Secretariat (TIS2). Interview with author. March 1st 2017.

<sup>137</sup> SAURUGGER, Sabine. Chapter 5 The professionalization of the EU’s civil society. A conceptual framework. In Van DETH, Jan and MALONEY, William A. (eds.) *New Participatory Dimensions in Civil Society*. London: Routledge, 2012, p. 79

<sup>138</sup> SAURUGGER, Sabine. *Op. cit.* 2012, p. 81

<sup>139</sup> Transparency International. Transparency International E.V. Financial Statements for the year ended 31 December 2017. Berlin, 2018, p. 37.

<sup>140</sup> *Ibid.* p. 42.

which we can justify and keep this work going because we believe in it of course but also because it is our livelihood...<sup>141</sup>

This suggests, as critics have done in the past,<sup>142</sup> that international institutions involved in anti-corruption work, including TI, have an interest in maintaining the issue on the agenda to guarantee the organisation's survival and to maintain the livelihood of its professional staff. If professionalising a policy field is a way to ensure its survival, then TI has undoubtedly contributed to it, with the creation, for instance, of summer schools which have trained over 1100 people since 2010,<sup>143</sup> with lecturers from many different governmental bodies, IOs, NGOs and think tanks.<sup>144</sup> While TI's international secretariat recruits highly educated individuals, they are often not experts on (anti-)corruption. The organisation thus plays a key role in socialising (young) professionals to its perspective of corruption and ways to solve it (to which Chapter 4 will return), notably through its induction programme.<sup>145</sup> A quick search for the term "anti-corruption" on the professional social network LinkedIn gives over 70,000 hits of self-proclaimed anti-corruption experts or specialists, which reinforces the idea that it is a field that has become professionalised and has become its own career path.

The organisation built its political authority through its influential founding members and their network(s). To this, a cognitive authority was rapidly added thanks to the knowledge produced by the organisation and its investment in research. This gave it an image of expertise at a moment when knowledge about corruption was limited (see Figure 14 for the number of articles about corruption published between 1990 and 2010). All of this contributed to build the organisation's reputation and facilitated its access to resources, doubling its budget between 1995 and 1997.<sup>146</sup> Figure 11 shows that the organisation's budget grew also tenfold between 2000 and 2010, going

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<sup>141</sup> Employee, Transparency International's Secretariat (TIS1). Interview with author. March 2d 2017.

<sup>142</sup> De SOUSA, Luís, LARMOUR, Peter and HINDESS, Barry. *Governments, NGOs and Anti-corruption: The New Integrity Warriors*. London: Routledge, 2008; SAMPSON Steven. The anti-corruption industry: from movement to institution. *Global Crime*, Vol. 11, n°2, 2010, pp. 261–278; WEDEL, Janine R. Rethinking Corruption in an Age of Ambiguity. *The Annual Review of Law and Social Science*. Vol. 8, 2012, pp. 453–498.

<sup>143</sup> Transparency International. School on Integrity FAQ. n.d. Online, available at: <https://transparencyschool.org/faq/> (accessed on October 25<sup>th</sup> 2019).

<sup>144</sup> World Bank Institute, OECD, OSCE Office for Democratic Institutions and Human Rights (ODIHR), Global Witness, Amnesty International, U4, The Behavioural Insight Team, HUMBOLDT-VIADRINA Governance Platform, Center for Government Excellence at Johns Hopkins University, Global Investigative Journalism Network, Open Contracting Partnership, Corruption Watch, Integrity Action, MySociety, Sunlight Foundation, Global Advice and various Transparency International chapters and other organizations (Transparency International. School on Integrity. n.d. <https://transparencyschool.org/lecturers/>)

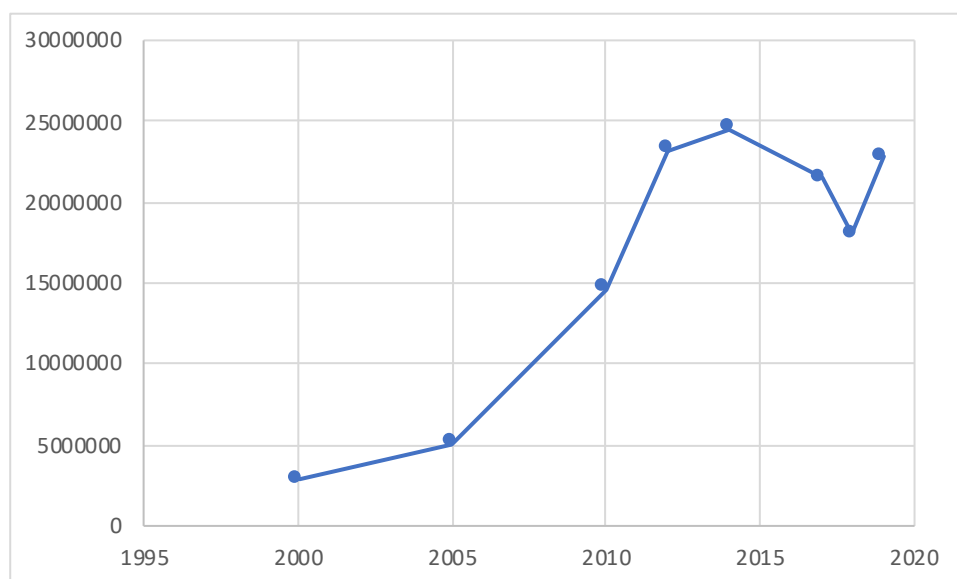
<sup>145</sup> During my time at TI-S, I took part in the mandatory induction programme but also contributed to re-shape it, in my role as assistant to the Group Director for Knowledge and Research.

<sup>146</sup> WANG, Hongying and ROSENAU, James N. *Op. cit.* 2001, p. 34 ; POPE, Jeremy (ed.) *Combating corruption: are lasting solutions emerging?* Annual Report. Berlin: Transparency International, 1998



from approximately €2,8 million to €23 million in 2012 (Section 3.3 provides details about funders).<sup>147</sup>

Figure 11. Transparency International's budget 2000-2019



Source: Adapted from Transparency International's financial statements. Online, available at: [https://www.transparency.org/whoweare/accountability/audited\\_financial\\_reports\\_with\\_independent\\_auditors\\_report/2](https://www.transparency.org/whoweare/accountability/audited_financial_reports_with_independent_auditors_report/2) (accessed on March 10th 2020)

From its original focus on the criminalisation of foreign bribery (that it shared with the US administration), Transparency International quickly expanded to develop its 'holistic approach' to corruption. With its National Integrity Blueprint (NIB) published in 1996, the organisation moved towards providing technical advice on how to prevent and tackle corruption at the *domestic* level. Jeremy Pope, the father of the NIB describes it as a guide for countries that wish to develop anti-corruption legislation and institutions.<sup>148</sup> This suggests that, from its early days, Transparency International's ambition was to become an international policy broker, providing, in its founder's words, "quasi-checklists for diagnosing the strengths and weaknesses of a country's integrity system"<sup>149</sup> and "the best available models (...) drawing from the experience of countries around the world", including instruments such as interest registers and codes of conduct.<sup>150</sup>

<sup>147</sup> The dip in budget around 2015 is largely a result of national governments not renewing their funding of the organisation to the same extent as previously, following the global financial crisis. DfID had been one of the core funders of TI and its decision to reduce funding of the organisation caused budgetary problems in the mid-2010s, which led to a reduction of human resources.

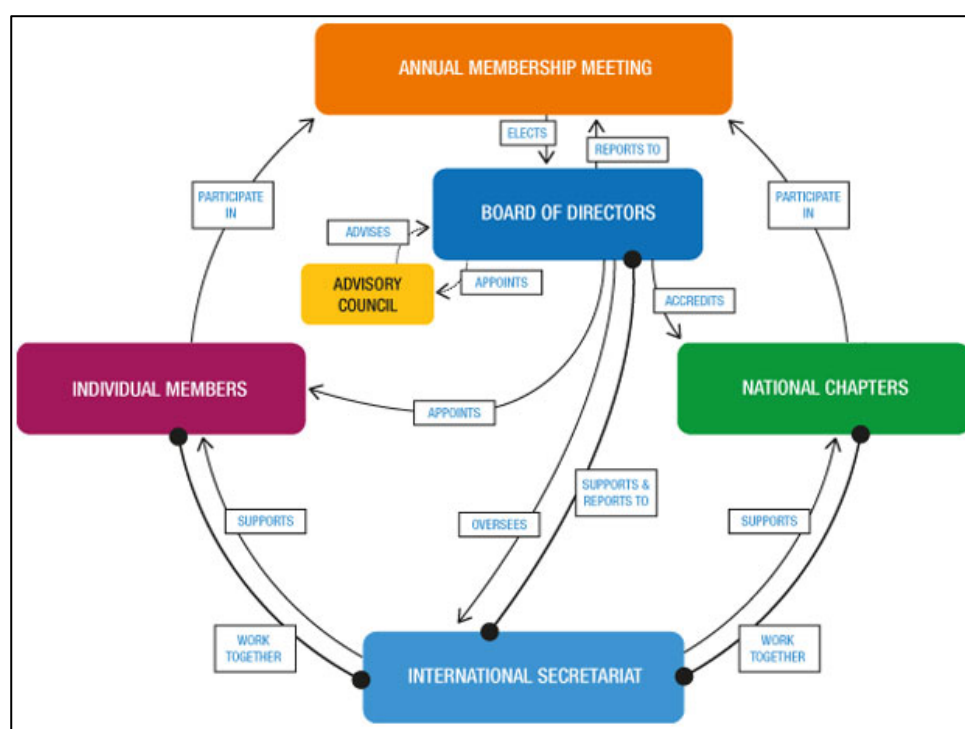
<sup>148</sup> POPE, Jeremy (ed.) *Op. cit.* 1998, p. 164.

<sup>149</sup> EIGEN, Peter. *Op. cit.* 2013.

<sup>150</sup> EIGEN, Peter. *Op. cit.* 1996.

The proceeding paragraphs have sought to show how TI built its legitimacy in the nascent policy field and how its influence grew increasingly as more and more IOs and states became interested in corruption. The following demonstrates that in addition to its cognitive authority, Transparency International's governance structure has contributed to making the organisation an international policy broker, facilitating cross-national exchanges, generating international norms (from local practices) and transferring them into domestic politics. Figure 12 shows that it combines an international level in charge of developing the organisation's global discourse and advocacy (constituted of the international secretariat, the board of directors and individual members) and a local level, with national chapters undertaking policy work at domestic level, using the "TI franchise".<sup>151</sup>

Figure 12. Transparency International's governance structure



Source: Transparency International. *Governance*. Organisation's official website, available at: <https://www.transparency.org/whoweare/accountability/governance/1> (accessed on November 29<sup>th</sup> 2018)

National chapters are independent organisations involved in anti-corruption work at the domestic level who apply to become part of Transparency International. Some of these local organisations existed prior to the foundation of Transparency International and some were established to become national chapters of TI.<sup>152</sup> This difference is visible in the names of national

<sup>151</sup> De SOUSA, Luis. The institutionalisation and franchising of TI. In De SOUSA, Luís, LARMOUR, Peter and HINDESS, Barry. *Governments, NGOs and Anti-corruption: The New Integrity Warriors*. London: Routledge, 2008, p. 190

<sup>152</sup> De SOUSA, Luis. *Op. cit.* 2008.

chapters, some being clearly identified to TI (like Transparency International France, Transparency International UK etc.) while others do not make their affiliation to TI apparent in their name (like Poder Ciudadano in Argentina or Pro Etica in Perú). Organisations need to go through an accreditation process to become TI national chapters to ensure that they comply with the standards set by the organisation. They go through a review process every three years. Being part of the global coalition can benefit local organisations in many ways, providing reputational and financial resources. An employee of TI France said that being part of the TI network gave them “access to local, national and international advocacy platforms”, which matters because having connections with intergovernmental organisations, such as the OECD, is an important part of their legitimisation.<sup>153</sup>

The secretariat also helps national chapters to find funding opportunities. It developed “a new role in coordinating multi-country programmes which involve different chapters”<sup>154</sup> to overcome the difficulty of national chapters in high-income countries to attract funding, most anti-corruption activities being funded through development assistance. Thanks to its structure, the organisation is well-positioned to diffuse norms transnationally, as it constitutes a bridge between a global discourse and local politics - “global reach, local knowledge” in the words of the organisation.<sup>155</sup> The organisation’s international secretariat serves as a support unit for National chapters, through various roles identified by the Norwegian Agency for Development Cooperation (NORAD)’s evaluation of the organisation: “knowledge sharing, issue based research, diagnostic tools, studies and research, exchange of information, training and technical support”.<sup>156</sup> Such programmes facilitate the diffusion of international norms, standards and instruments, which is at the core of Transparency International’s function, as illustrated by this quote from a staff member of TI’s international secretariat asked about the use of international comparisons:

Comparisons... well... yeah, I guess, but it is not like you compare one thing with the other. It is not like A vs B (...) again I think it is taking an idea you have heard about or information from some place and try and see if it fits to solve the problem somewhere else. And the same thing, you find a problem in some place and see if it applies somewhere else. It kind of helps you figure out what to do about it. So it is not necessarily comparing A to B, but it is taking information from one place and seeing if you can apply it in some other. It is this idea of

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<sup>153</sup> Former general delegate, Transparency International France (FRCS3). Interview with author. November 7<sup>th</sup> 2017. Author’s own translation.

<sup>154</sup> NORAD. *Op. cit.* p. 27

<sup>155</sup> Transparency International. Overview. Official website, available at: <https://www.transparency.org/whoware/organisation> (accessed on November 30<sup>th</sup> 2018)

<sup>156</sup> NORAD. Evaluation of Transparency International. Report 8/2010 – Evaluation. Online, available at: [https://www.transparency.org/files/content/ouraccountability/NORAD\\_evaluation\\_TI\\_2010\\_v2.pdf](https://www.transparency.org/files/content/ouraccountability/NORAD_evaluation_TI_2010_v2.pdf) (accessed on November 30<sup>th</sup> 2018)

isomorphism... Is that the name of it? (...) I mean I think that is the way, what we try to do, we are a vehicle of doing that. I would not know if TI would agree with that, but that is what I think that we are doing. We are taking ideas about solutions on anti-corruption and try to spread them around in terms of policy adoption. I would say that we are very aware, and we also try not to apply the exact same solution somewhere else. We are aware that context matters. However, you know that is why a lot of times we work based on principles and guidelines with possibility of adaptation. Then again, the knowledge of how you actually adapt it or if it makes sense to adapt it, comes from the link between the global discourse and the local realities.<sup>157</sup>

This interview excerpt suggests that individuals working within the international secretariat are well-aware of their role in the diffusion of anti-corruption policies through their position as “agents of isomorphism”.<sup>158</sup> The interviewee describes the practice of using knowledge and expertise about policies already implemented in early-adopting countries to “solve” similar “problems” abroad. They however also demonstrate an awareness of the importance of domestic politics and local context, requiring a certain adaptability. This is reflected in the discourse of most transfer agents in the field, arguing that there is no ‘one-size-fits-all’ solution against corruption.<sup>159</sup> The institutional structure of TI is reflected in the interviewee’s analysis of the organisation’s function as a vehicle of ideas when they say that the work of the international secretariat remains at a largely abstract level, with a global discourse, principles and guidelines to be adapted to local realities.

Through its efforts to put corruption on the global agenda, TI positioned itself as a source of “technical expertise and epistemic authority” at a time of great uncertainty about what should be done to reduce transnational corruption. Its non-confrontational strategy and institutional structure were clear assets to strengthen its legitimacy both at the global and domestic level.<sup>160</sup> The influence of TI and its role as a policy broker partly derives from its ability to define corruption as a global problem (Chapter 4) and construct toolkits to solve the problem by gathering national practices, such as public interest registers and codes of conduct, from its international network (Chapter 6).

<sup>157</sup> Employee, Transparency International’s Secretariat (TI1). Interview with author. March 2d 2017.

<sup>158</sup> *Ibid.* The interviewee did not use the exact sentence « agents of isomorphism”. The expression was constructed by the author from the interview transcript.

<sup>159</sup> EIGEN, Peter. *Op. cit.* 1996; UNODC. *The Global Programme Against Corruption UN Anti-Corruption Toolkit* 2d edition. Vienna, 2004; OECD. *Inventory of OECD Integrity and Anti-Corruption Related Data*. CleanGovBiz Initiative. n.d.

<sup>160</sup> Although the legitimacy of Transparency International is not equivalent in all polities – see GUTTERMAN, Ellen. *Op. cit.* 2014.

The 1990s and 2000s saw the emergence of numerous international policy brokers dedicated to promoting solutions to the problem of corruption, two of which were presented in this section. Many of these brokers are powerful actors of world politics by themselves (especially IOs) but their authority on the subject was strengthened by their collaboration and exchanges within what has become a transnational policy community against corruption that the following section presents.

### 3.2. A transnational policy community fighting corruption

More than the emergence of isolated international policy brokers, the dissertation argue that it is their collaboration and exchanges that allowed the spread of anti-corruption instruments, for it created a form of anti-corruption paradigm and shaped the cognitive environment for international and national policy-making. Steven Sampson refers to it as anti-corruption industry, but also, more poetically, as an “anti-corruption landscape (...) with its summits, enclaves and nodes where intermediaries can steer resources”.<sup>161</sup> International organisations involved in anti-corruption work even established an International Group on Anti-Corruption Coordination (IGAC) in 2003, at the United Nations’ initiative, to generate “better exchange of existing anti-corruption work done by the participating agencies [and] closer cooperation as regards best practices and lessons learned”.<sup>162</sup> The international institutions identified above coalesced in what Diane Stone labelled a ‘transnational policy community’ (TPC), understood as “cohesive and bounded groups of professionals from different countries who diffuse shared ideas and practices globally”.<sup>163</sup> It is transnational because it breaks the boundaries of traditional policy-making and includes actors whose professional identity might to relate to any given state. TPCs matter for

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<sup>161</sup> SAMPSON, Steven. Corruption and anti-corruption in Southeast Europe Landscapes and sites. In DE SOUSA, Luís, Peter LARMOUR, and Barry HINDESS. *Governments, NGOs and anti-corruption: the new integrity warriors*. London, New York, NY: Routledge, 2009, p. 171.

<sup>162</sup> Before the IGAC ceased to exist in 2011, participating organisations included: the United Nations Office on Drugs and Crime (UNODC), the United Nations Department of Economic and Social Affairs (DESA); the United Nations Office for Internal Oversight Services (OIOS); the United Nations Development Programme (UNDP); the United Nations Department of Public Information (DPI); the United Nations Educational, Scientific and Cultural Organization (IIEP-UNESCO); the Council of Europe; the European Commission; the Organization for Economic Co-operation and Development in Europe (OECD); the World Customs Organization (WCO); the European Anti-Fraud Office; Interpol; the World Bank; the European Bank for Reconstruction and Development (EBRD); and Transparency International (TI) (United Nations. *UNODC Strengthens Cooperation Among International Organizations to Fight Corruption*. Press Release SOC/CP/265, 2003. Online, available at: <https://www.un.org/press/en/2003/soccp265.doc.htm> Union of International Associations. *Open Yearbook*. 2011. Online, available at: <https://uia.org/s/or/en/1100010959> (accessed on October 26th 2019)

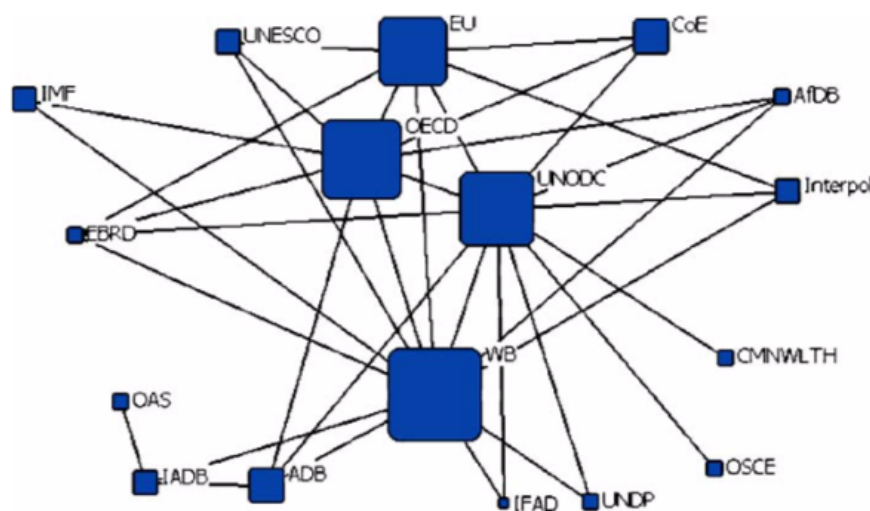
<sup>163</sup> STONE, Diane. Global Public Policy, Transnational Policy Communities, and Their Networks. *Policy Studies Journal*, Vol. 36, no 1, 2008, pp. 30-31.

international policy-making because they provide knowledge and contribute to shape the understanding of an issue and promote associated policy solutions.<sup>164</sup>

### **3.2.1. Exchanges and collaborations among international institutions**

International institutions involved in anti-corruption activities do not work in isolation. As this section will show, they frequently exchange information and collaborate on respective or common programmes. Their common interest in corruption indeed brought public and private institutions, with different overall agendas, to work together and to progressively form a transnational policy community dedicated to the ‘fight against corruption’. Figure 13, taken from Gest and Grigorescu’s work, illustrates the collaborations ties between IOs involved in anti-corruption work as they stood in 2010.

Figure 13. Formal and informal collaborations between IOs involved in anti-corruption work



Source: GEST, Nathaniel and GRIGORESCU, Alexandru. Interactions among intergovernmental organizations in the anti-corruption realm. *Review of International Organizations*, Vol. 5, 2010, pp. 53-72.

Interviews conducted for this research point in the same direction, with actors identifying links with many other organisations working on anti-corruption initiatives of various types. This is exemplified by the following excerpt from an interview with an official from the Council of Europe Group of States Against Corruption (GRECO) secretariat here asked about the organisation’s network:

<sup>164</sup> STONE, Diane. *Knowledge Actors and Transnational Governance The Public-Private Policy Nexus in the Global Agora*. London: Palgrave MacMillan. 2013; GAUS, Alexander. Transnational Policy Communities and Regulatory Networks as Global Administration. In In STONE, Diane and MOLONEY, Kim. *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.

We obviously have links with our sister/brother monitoring body in other organisations. These include the other anti-corruption monitoring bodies at the UNODC (UNCAC secretariat), the OECD - both the Working Group on Bribery and the Public Sector Integrity Group - and the OAS (the US the country we in GRECO overlap with the OAS). We also cooperate with the OSCE/ODIHR which has no monitoring role, but which works on these issues and with which we cooperate on substance (e.g., on political party funding). We also consult with the EU which is not a member of GRECO, but it can now participate in the GRECO meetings as observers.<sup>165</sup>

Similarly, an official from the OECD PSI division said that they were in touch with many other international organisations working on corruption: “we are in contact with many others, with TI, UNODC - actually tomorrow I will be travelling to UNODC, with the World Bank. Yes so there is... we talk to each other!” Another OECD official presented the inter-organisation cooperation as a form of division of labour between organisations with different missions and memberships collaborating to develop and push a message. In addition to identifying mutual learning as a rationale for collaborating, the excerpt below offers a strategic explanation to the OECD’s work with others, highlighting the benefits of developing a common message at the level of IOs for the strength of their advocacy “trickling down” to member-states:

To come back to the issue of education, in the past, we engaged with a number of UN agencies with a broader membership... they are representing more of the developing world and we are bringing the OECD perspective, and we are talking about issues of education, talking to people who are working in places where the education system is not [aligned with needs] (...) and we are talking about places where the education works quite well, and we see what are the ways to share good practices and share what we have learned and help each other out at the international level so that it can trickle down. So I think that is just one example where we are cooperating with the other IOs to bring this message forward.<sup>166</sup>

The official from the GRECO secretariat quoted above presented a similar perspective on the need to collaborate with different organisations to gain from their particular position and mandate. While previously presenting their collaboration with other intergovernmental organisations, the quote below exposes their view on their relationship with Transparency International. They identify two main reasons why it is worthwhile for them to maintain ties with an NGO: their perceived expertise and their status which allows them to say certain things to governments that intergovernmental bodies cannot do:

We work with NGOs during on-site visits but we do not have NGOs participating in our meetings because our Statute does not allow that yet, not even as observers. We have regular contacts with Transparency International

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<sup>165</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017.

<sup>166</sup> OECD official 3 (OECD3). Phone interview with author. May 23<sup>rd</sup> 2018.

(TI) but it does not participate in our meetings. We sometimes invite TI to make statements or express views on certain topics. We have invited TI to the launch of the 5th evaluation round and the President of TI came but this was an ad hoc invitation. Cooperation with NGOs is valuable for a number of reasons: they are experts on corruption-related matters; they are also freer to say things in a manner that governmental bodies cannot always do. It is a different point of view and that is something that we value.<sup>167</sup>

Transparency International indeed plays a significant role in upholding the community, through its status as a professionalised civil society organisation. It provides a form of legitimacy to the international public bodies in a policy field in which public actors might want to seek to externalise solutions to ensure that they are seen as credible. The active role of TI within the international anti-corruption community thus provides a form of civil society approval to the activities of IOs. The OECD's monitoring of state-parties implementation of its anti-bribery convention provides an anecdotal illustration of TI's legitimising role. The OECD indeed indicates on its website that its "rigorous peer-review monitoring system" has been called "the 'gold standard' of monitoring by Transparency International".<sup>168</sup> Employees of TI also describe the relationship between organisations as a division of tasks between entities who 'find their niche' in a broader 'policy world':

The different organisations find a niche (...) in terms of the specific policy agenda they are looking at and then they feed on each other to achieve their mission, right (...) You can see how there are specific knots (...) one that I can think of is funding, so some donors come and say connect these different agendas and look at these, right. Other knots would be the OGP [Open Government Partnership] or others that bring forums together about knowledge or what not. Or some academic institutions. So those knots bring us together and then what happens is that there is a sharing of resources whether financial or knowledge or agenda or opportunities or whatever, and that becomes formal or informal partnerships to achieve something in particular. So, I think that is how it feeds into this core thing. Sometimes it works better than others, whether there is high competition or not, personalities and all these things but overall we created this kind of world and this little world (...) feeds of each other whether people know about it or not (...) One uses the standards of somebody else and turns them into scorecards ...<sup>169</sup>

This excerpt reflects previous statements that organisations collaborate for strategic reasons. These include the need for funding that brings them together around an issue or the need to access knowledge produced by another organisation. It also echoes the argument that organisations

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<sup>167</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017.

<sup>168</sup> OECD. Country monitoring of the OECD Anti-Bribery Convention. n.d. Online, available at: <https://www.oecd.org/daf/anti-bribery/countrymonitoringoftheoecdanti-briberyconvention.htm> (accessed on October 25<sup>th</sup> 2019).

<sup>169</sup> Employee, Transparency International's Secretariat (TIS1). Interview with author. March 2d 2017.



involved in anti-corruption work seem to function as a community, or at least that they think of themselves as such. They present the community as a “little world” that exists outside its individual members, where resources are shared towards attaining individual and common goals, and mention that the work of the different organisations “feed into the core thing”, suggesting that there is a common goal that the various organisations strive towards. The end of this excerpt, with the mention of “standards” and “scorecards”, illustrates the tension identified by anthropologists having studied international organisations between the normative idealistic goals of an organisation – here a policy community – to do good – here bring about “a world free of corruption”, and its mechanistic technical dimension, seeking to attain the set goal through controls, audits and “scorecards”, to which Chapter 6 will return.<sup>170</sup>

This section has sought to demonstrate that international institutions involved in anti-corruption work not only collaborate regularly but also have a discourse on the function of each institutions within the policy community. There is indeed a form of division of labour among them, due to their different overall agenda, membership and status. The ties between IOs and INGOs in this field create a form of transnational public–private partnerships (TPPPs), understood as “a hybrid type of governance, in which non-state actors co-govern along with state actors for the provision of collective goods”.<sup>171</sup> The public-private nature of the community contributes to strengthen the ability of the community to play the role of policy broker as it facilitates the spread of policy ideas at multiple levels and within other policy communities.

### **3.2.2: Building a community and a sense of identity**

International institutions involved in anti-corruption work maintain close ties with each other and collaborate frequently across sectors. They see themselves as a community, which suggests that their collaboration goes beyond strategic purposes. Their repeated interactions created a sense of shared policy identity that is discernible in the discourse of actors within what can be called a ‘transnational policy community’.<sup>172</sup>

An employee of TP’s secretariat describes the relationship between international institutions in this field through the angle of identity. Several time in the interview, the notion of “community” was used to describe the interviewee’s sense of belonging: “when I say us I talk about the open

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<sup>170</sup> MÜLLER, Birgit. *Op. cit.* 2013, p. 2; LARSEN, Peter Bille. The Politics of Technicality Guidance Culture in Environmental Governance and the International Sphere. In MÜLLER, Birgit. *Op. cit.* 2013, pp. 75-100.

<sup>171</sup> SCHÄFERHOFF, Marco, CAMPE, Sabine and KAAAN, Christopher. Transnational Public-Private Partnerships in International Relations: Making Sense of Concepts, Research Frameworks, and Results. *International Studies Review*, Vol.11, n° 3, 2009, p. 451-474; STONE, Diane. *Making global policy*. Cambridge: Cambridge University Press, 2020.

<sup>172</sup> STONE, Diane. *Op. cit.* 2020, p. 54.

government community not just ‘TI’ or ‘I am not saying TI, I am saying the community’. The NGO employee differentiates between insiders and outsiders, which suggests TI is an insider, and talks about existing bonds within the community:

So there is an inside and an outside, and stronger or weaker bonds of work but they all help each other to make things happen. Whether or not they move together, and make stronger the bonds and the community to push for certain things, the higher the probability that this idea becomes more mainstream. So the more folks you have in OGP [Open Government partnership] either because... I had a weird thought... they believe in it or whether they say, ‘I am a CSO and I need some funding, OGP is a good place to do it’ and eventually you get brainwashed into the transparency religion. You know that is one more person that does that. And when enough people start believing about something as a general rule then you know things become more difficult to deny or ignore.<sup>173</sup>

The interviewee insists on the members’ shared core beliefs and suggests that there their common conception of (anti-)corruption is the result of collaboration and exchanges overtime with other organisations involved in anti-corruption work. The notion of belief is core to understand what binds members together, which, in the words of this interviewee, goes beyond practical needs. With terms such as the “transparency religion” that one progressively gets “brainwashed” into, they hint to the fact that collaborations are not only strategic but that they lead to shared beliefs and a shared sense of identity, confirming the argument of constructivist institutionalists that ideas are embedded in institutional settings and that, in turn, ideas mediate the way one perceives one’s interests.<sup>174</sup> Steven Sampson analysed the identity-building dimension of anti-corruption “industry” and discourse, saying that “those who are part of the industry, those who articulate the discourse of ‘anti-corruptionism’, call it a ‘movement’”.<sup>175</sup> This is also reflected in a previous quote, when an official from the GRECO secretariat uses the expression “our sister/brother monitoring bodies”.<sup>176</sup>

The sense of community is notable in actors’ discourse, but, beyond words, many connections exists between individuals in the community. Many people working within these organisations indeed know each other personally, having worked together on a specific project, having met at one of the thematic event organised within the policy community, or having

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<sup>173</sup> *Ibid.*

<sup>174</sup> HAY, Colin. Ideas and the Construction of Interests. In BÉLAND, Daniel, and COX, Robert Henry (ed.) *Ideas and Politics in Social Science Research*. Oxford University Press. 2010; HAY, Colin. The Interdependence of Intra- and Inter-Subjectivity in Constructivist Institutionalism. *Critical Review*, Vol. 29, n°2, 2017, pp. 235-247.

<sup>175</sup> SAMPSON Steven. The anti-corruption industry: from movement to institution. *Global Crime*, Vol. 11, n°2, 2010, p. 276

<sup>176</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017.

previously been colleagues.<sup>177</sup> There is a circulation of staff between organisations involved in anti-corruption work, with a number of IO officials having worked for TI, either in the Secretariat, in a national chapter or as a consultant.<sup>178</sup> For instance, 11,346 profiles on LinkedIn indicate that they work or have worked for Transparency International. Former staff members of the Transparency International secretariat have also founded new civil society organisations working on anti-corruption and good governance. The first staff members of Transparency International, Jeremy Pope and Fredrik Galtung, for instance moved on to found another NGO – Tiri, renamed Integrity Action – which provides advice national governments and international organisations.<sup>179</sup> Similarly, former staff members of the secretariat have founded The B Team (corporate social responsibility), the Civil Forum for Asset Recovery (CIFAR) or Your Public Value (corporate resilience and accountability). Following the people demonstrates the fact that anti-corruption has increasingly become a successful career path and makes TI's efforts to train its staff members (and other young professionals) through induction programmes and summer schools, providing them with thematic knowledge and specific theoretical perspective on the problem, all the more significant.

Recurrent events, such as the International Anti-Corruption Conference (IACC) and the OECD Global Anti-Corruption and Integrity Forum (referred to as the Integrity Forum) are a useful venue to study the dynamics and interactions, as they represent defined moments in which policy-relevant actors meet, at the initiative of organisations who which to play the role of a *knot* or *hub* within the community. Bruno Jobert's concept of 'forum', understood as a venue where policy ideas and representations are produced,<sup>180</sup> according to specific rules and the (aligned or opposing) interests of participating actors, is a helpful heuristic tool to study these events. Many international institutions organised regular international events on the topic of corruption. The UN in Vienna hosts regular intergovernmental conferences for the states-parties of the UN Convention Against Corruption, in which authorised civil society organisations take part (Chapter 5). The Council of Europe similarly organises events for the members of the Group of States Against

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<sup>177</sup> My participation in various meetings (OECD Integrity Forums, OGP summits) and my experience having work for Transparency International's secretariat allowed me to witness the personal acquaintance of the individuals working for these organisations who often call each other by their first name.

<sup>178</sup> A network analysis would have allowed for a thorough analysis of the circulation of individuals, but I only dispose of anecdotal evidence from my experience and observation of anti-corruption professionals in the last eight years. In December 2018, at least four employees and two international experts of OGP had previously worked for Transparency International and the same holds true for many national researchers, of which I am an example. Similarly, three staff members of the OECD's PSI have worked as consultants for Transparency International.

<sup>179</sup> About Fredrik Galtung. Personal website. Online, available at: <https://www.fredrikgaltung.com/about> (accessed on December 21st 2018)

<sup>180</sup> JOBERT, Bruno (dir.) *Le Tournant néolibéral en Europe. Idées et recettes dans les pratiques gouvernementales*. Paris, L'Harmattan, 1994; FOUILLEUX, Eve and JOBERT, Bruno. Le cheminement des controverses dans la globalisation néo-libérale. *Gouvernement et action publique*, Vol.6, n° 3, 2017, pp. 9-36.

Corruption. The OECD opted, in 2013, for hosting an annual event that would be more open to actors outside governments, as presented in Box 6.

#### Box 6. The OECD Global Anti-Corruption and Integrity Forum

Since 2013, the OECD holds an annual Global Anti-Corruption and Integrity Forum where country officials and representatives from international organisations, business, trade, civil society and academia, “on an equal footing”<sup>181</sup> to exchange and discuss best practices in implementing integrity and anti-corruption, and to “[shape] and [influence] the global debate”.<sup>182</sup> The Integrity Forum is a part of the OECD Integrity Week which combines high-level political meetings with public events like the Forum. It aims to display recent integrity and anti-corruption initiatives, both from the OECD and from its partner organisations, and discuss how to reinforce coherence and coordination in the fight against corruption.

In 2017, the OECD developed the concept of “knowledge partners” to attract academic institutions, civil society organisations, foundations, international organisations and government agencies and provide them with opportunities to enhance their profile, present new approaches, services and initiatives and to engage with high-level global stakeholders (more on these partnerships in Chapter 6).<sup>183</sup> It went from having ten knowledge partners in 2017 to 30 in 2020. The OECD describes the Integrity Forum as “the premium annual public event on integrity and anti-corruption worldwide”.<sup>184</sup> From being called the Forum on Integrity in 2013 and 2014, to the OECD Integrity Forum in 2015 and 2016, it became the OECD Global Anti-Corruption & Integrity Forum in 2017 reflecting the evolution from the original ambition to push the organisation’s integrity agenda to its combination with the organisation’s anti-corruption work and its ambition to link this agenda to its work on trade and inclusive growth, as is reflected also to the successive themes:

2013: Improving Integrity in Practice

2014: Improving Co-ordination and Co-operation in Areas of Research, Policy and Programming

2015: Curbing Corruption - Investing in Growth

2016: Fighting the Hidden Tariff: Global Trade without Corruption

2017: Taking Integrity to Higher Standards

2018: Planet Integrity - Building a Fairer Society

2019: Tech for Trust

2020: Public, private and beyond

A testament to its role within the policy community, TI became the secretariat of the first large international policy event dedicated to the issue of corruption, the International Anti-Corruption Conference (IACC), which is organised once every two years in collaboration with a host government. Box 7 provides additional information about this event series.

#### Box 7. The International Anti-Corruption Conference (IACC)

The International Anti-Corruption Conference (IACC) is a series of biannual conferences which originates from a first meeting at the Hong Kong ICAC in 1981 between government

<sup>181</sup> OECD Officials 2 and 3 (OECD2 and OECD3). Phone interview with author. 23 May 2018.

<sup>182</sup> *Ibid.*

<sup>183</sup> The Interdisciplinary Corruption Research Network (ICRN) that I co-founded was selected as one of the OECD Integrity Forum’s knowledge partners in 2018.

<sup>184</sup> OECD. Become a Partner of the OECD Global Anti-Corruption & Integrity Forum. n.d. Online, available at: <https://www.oecd.org/corruption/integrity-forum/partnerships/partnership-brochure-integrity-forum-2020-v3.pdf> (accessed on October 24th 2019)

and international agencies concerned with prevention and investigation of corruption, to improve liaison and facilitate the flow of information. The first conference was hosted by the Inspector General of the District of Columbia, USA, and attracted some 20 agencies from 13 countries. During the following years the IACC gained importance and attracted a wider spectrum of organisations and individuals, with the private sector organisations and civil society featuring more prominently. In Beijing in 1995, representatives of the former host organisations came together to establish the IACC Council (an advisory body to the future host organisations) in order to provide the Conference with more continuity and sustainability, as the previous conferences had been organised on an ad-hoc basis. With this in mind the IACC Council invited TI to serve the Council as its Secretariat thus giving the Conference an institutional home. TI accepted this additional task being convinced that it can support to turn this series of leading international anti-corruption events into not just another conference but into a high-quality and professional international forum for experts. The 8<sup>th</sup> IACC organised in Lima in 1997 was the first step into this direction and is a symbol of the transnationalisation of the policy field.<sup>185</sup>

The IACC presents itself as involving “the entire spectrum of stakeholders in its effort to combat corruption and fraud throughout the world” and as “the premier global forum for the networking and cross-fertilisation that are indispensable for effective advocacy and action, on a global and national level”.<sup>186</sup> Despite the NGO Transparency International serving as a secretariat, the IACC is not an activists conference. It is co-organised with the host government and hosts high-level speakers from governments and international organisations. The themes of the successive IACCs, selected by the IACC Council, reflect the evolution of the transnational policy community, from its construction in the late 1990s and early 2000s toward a thematic focus on law enforcement, sustainability, trust, citizens, impunity, justice, and development and security. Underlying topic of the conference series are transparency and the need to strengthen collaboration between stakeholders:

1997 (Peru): The State And Civil Society In The Fight Against Corruption  
 1999 (Durban): Global Integrity: 2000 and Beyond — Developing Anti-Corruption Strategies in a Changing World  
 2001 (Prague): Together Against Corruption: Designing Strategies, Assessing Impact, Reforming Corrupt Institutions  
 2003 (Seoul): Different Cultures, Common Values  
 2006 (Guatemala City): Towards a Fairer World. Why Is Corruption Still Blocking the Way?  
 2008 (Athens): Global Transparency: Fighting corruption for a sustainable future  
 2010 (Bangkok): Restoring Trust: Global Action for Transparency  
 2012 (Brasilia): Mobilising People: Connecting Agents of Change  
 2015 (Putrajaya): Ending Impunity: People, Integrity, Action  
 2016 (Panama City): Time for Justice: Equity, Security, Trust  
 2018 (Copenhagen): Together for Development, Peace and Security: Now is the Time to Act  
 2020 (Seoul): Truth, Trust and Transparency

These events both represent temporal landmarks that structure the collaboration of members of the community, giving visibility to the community as a whole as well as providing information about the themes that interest the policy community at different points in time. The IACC for instance moved from a focus on policy strategies in the late 1990s to a growing focus on citizen mobilisation and a coupling of corruption to other global problems such as security or post-

<sup>185</sup> 8th IACC. The State and Civil Society in the Fight Against Corruption. 7-11 September 1997, Lima, Peru. Online, available at <http://www.8iacc.org/> (accessed on December 17th 2018)

<sup>186</sup> International Anti-Corruption Conference. History. Official Website, available at: <https://iaccseries.org/about/previous-iaccs/> (accessed on October 24th 2019).

truth. The OECD Integrity Forum initially focussed on raising and defining the issue of integrity and shifted the lens to the importance of integrity for economic growth, and most recently sought to couple the agenda to the digital revolution and its blurring effects on the public and private spheres. The diversification of academic experts invited to share their insights is parallel to the diversification of themes addressed in the successive forums. This diversification demonstrates both that policy community rapidly sought to reach beyond its initial sphere to deal with issues of human rights, climate change, gender equality, digitalisation, development and growth.

The lists of participants to these events are not made available by the organisers but the lists of speakers suggest that both forums could be described as professional forums, communities of experts and forums of policy communities,<sup>187</sup> since they bring together government officials and experts from international organisations, civil society and academia. While the IACC features more speakers from civil society organisations, it remains a “high-quality and professional international forum for experts” aimed at “networking and cross-fertilisation (...) for effective advocacy and action”, with sponsorship from governments.<sup>188</sup>

The IACC is always closed by a common declaration from the “delegates from civil society, governments, multilateral agencies, and the private sector” who represent the “anti-corruption movement”,<sup>189</sup> suggesting that the forum is one where consensus is sought rather than confrontation. Documents produced by the IACC and the OECD Integrity Forum both use the vocabulary of ‘movement’ and ‘community’, suggesting that these forums also serve as a regular demonstration of belonging to the same community and as a reinforcement of the sense of identity. In his opening speech of the 2017 Integrity Forum, Angel Gurría, Secretary-General of the OECD, said that “the enemy is always updating and upgrading its weapons”,<sup>190</sup> using a rhetoric of us versus

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<sup>187</sup> JOBERT, Bruno. Le retour du politique. In JOBERT, Bruno (ed.) *Le Tournant néolibéral en Europe*. Paris: L'Harmattan. 1994, pp. 9-20; JOBERT, Bruno. Représentations sociales, controverses et débats dans la conduite des politiques publiques. *Revue française de science politique*, Vol. 42, n°2, 1992, pp. 219-234; FOUILLEUX, Ève. Entre production et institutionnalisation des idées : la réforme de la politique agricole commune. *Revue française de science politique*, Vol. 50, n°2, 2000, pp. 277-305; BOUSSAGUET, Laurie. Forums. In BOUSSAGUET, Laurie (ed.) *Dictionnaire des politiques publiques. 4e édition précédée d'un nouvel avant-propos*. Paris: Presses de Sciences Po. 2014, pp. 283-289.

<sup>188</sup> In addition to the host government, the 2020 IACC website indicates that it will be financed by the Danish Ministry of Foreign Affairs, the German Ministry for Economic Cooperation and Development, the German Development Agency, the UNDP and the US Department of State (<https://iaccseries.org/about/partners/>, accessed on October 24<sup>th</sup> 2019).

<sup>189</sup> IACC. The Copenhagen Declaration – Stand Together for Peace, Security and Development. 2018. Online, available at: <https://iaccseries.org/blog/the-copenhagen-declaration-stand-together-for-peace-security-and-development/> (accessed on October 24<sup>th</sup> 2019).

<sup>190</sup> GURRIA, Angel. Opening remarks. Global Anti-Corruption & Integrity Forum. March 2017. OECD Web TV (24'), available at: [https://oecdwebtv-solution.com/3634/en/integrity\\_forum\\_2017.html](https://oecdwebtv-solution.com/3634/en/integrity_forum_2017.html) (accessed on September 12<sup>th</sup> 2019)

them, and thus implying that whomever was present in the room was assumed to be part of “us”. While this is an interesting dimension of anti-corruption work per se, it also has an impact on how members of the community conceive of corruption and what to do about it.

### **3.2.3. ‘Nuances but not opposites’: building a consensus**

The interactions of international institutions and actors working within them through programme collaboration, more informal exchanges and participation in thematic events contribute to building a consensus on what corruption is, what should be labelled corruption and what are the best and acceptable solutions to the problem. As mentioned in Section 3.1, over forty intergovernmental organisations have gotten involved in anti-corruption work, with different overall agendas, some focussing on development issues, human rights or security. Despite their different thematic focus and membership, they all advocate for similar policy solutions<sup>191</sup> and have a similar discourse on corruption, as Part Two further details. Here, we focus on their discourse on the consensus that exists among them regarding corruption, its causes and policy solutions.

In addition to their actual policy recommendations, interviewees themselves recognised that they share core beliefs on corruption despite having different overall agendas. As seen above, most members of the anti-corruption community work within organisations that are not exclusively dedicated to the issue of corruption. While they approach the topic from different angles (as a problem of development, democratisation, security etc.), they try to ensure that their activities and message complement each other’s, and often end up promoting the same policy instruments. Members of the policy community are well aware of these differences and factor it in their collaboration, as this GRECO official explains:

At least we have a similar starting point, but the angle is different. The OECD is very much focused on foreign bribery in international business transactions, while GRECO focuses on public sector integrity. The UN has a much broader membership and so the evaluation context is very different. International anti-corruption monitoring bodies closely cooperate with each other to make sure we follow to the extent possible a consistent approach and don’t overburden states.<sup>192</sup>

The interviewee presents the UN, the OECD and the Council of Europe as looking at the same problem from different points of view. The Council of Europe official explains that they nevertheless share a common understanding of the problem and construct their shared policy

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<sup>191</sup> LOHAUS, Mathis. *Towards a Global Consensus Against Corruption International Agreements as Products of Diffusion and Signals of Commitment*, 1st Edition. Abingdon, New York: Routledge, 2019.

<sup>192</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017.

beliefs through exchanges and collaboration to make sure that they do not provide conflicting recommendations. The interviewee argues that they share their initial conception of corruption but that they treat it differently, according to their respective expertise, which leads to a complementary and not contrary policy approach.

An official working for the OECD confirms the existence of a consensus among international institutions about what causes corruption and what to do about it:

I would say basically yes. I would say if you listen to the experts on different panels, of course some are... I think this even more something that is sometimes an individual thing than an organisational thing. If you look at the texts of the organisations, they tend to be very broad and some are perhaps emphasizing the impunity aspect and the role of enforcement, others favour the preventive thing. But I would say that nobody says that this is the only thing we could do: just enforce and not prevent, or prevent but not enforce. So I think there is a common agreement of what should, could be done... The reason, well... it is not easy to do!<sup>193</sup>

The interviewee suggests that the conception of corruption might be more individual than organisational. Yet they do not point to any actual conflicts, suggesting that everyone agrees that both law enforcement and prevention are necessary elements of a successful anti-corruption strategy. Notably, the OECD official mentions that the external communication of these organisations uses vague and broad terms, which creates an impression of consensus and blurs any differences that could exist between their respective approaches. This suggests that the members of the policy community value the appearance of consensus among them and make a strategic use of ambiguity.<sup>194</sup>

Beyond international institutions themselves, the policy community includes academics. While the former share the same perspective on corruption prevention, there are critical voices within the academic community. Some scholars argue that more fundamental institutional reforms are necessary to reduce corruption in a society, and that the fundamental theory of change of the anti-corruption regime is flawed.<sup>195</sup> Others criticise the anti-corruption agenda for being a more

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<sup>193</sup> OECD Official 1 (OECD1). Interview with author. April 3<sup>rd</sup> 2017.

<sup>194</sup> BEST, Jacqueline. Ambiguity and Uncertainty in International Organizations: A History of Debating IMF Conditionality. *International Studies Quarterly*, Vol. 56, 2012, pp. 674-688.

<sup>195</sup> MUNGIU-PIPPIDI, Alina. Corruption: Diagnosis and Treatment. *Journal of Democracy*, Vol. 17, n°3, 2006, pp. 86-99; DIAMOND, Larry. A Quarter-Century of Promoting Democracy. *Journal of Democracy*, Vol. 18, n°4, 2007, pp. 118-120; ROTHSTEIN, Bo. Anti-corruption: The Indirect 'big Bang' Approach. *Review of International Political Economy*, Vol. 18, n° 2, 2011, pp. 228-250; ROTHSTEIN Bo. *The Quality of Government: Corruption, Social Trust, and Inequality in International Perspective*. University of Chicago Press. 2011; HOLMBERG Sören, and ROTHSTEIN Bo. *Good Government: The Relevance of Political Science*. U.K; Northampton, Mass: Edward Elgar, Cheltenham. 2012; PERSSON, Anna, ROTHSTEIN, Bo and TEORELL, Jan. Why Anticorruption Reforms Fail – Systematic Corruption as a Collective Action Problem. *Governance*, Vol. 26, n°3, 2013, pp. 449-471; MUNGIU-PIPPIDI Alina.

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political agenda than it presents itself to be, using the problem of corruption to impose a liberal agenda on transitioning and developing states.<sup>196</sup> The participation of academics in these forums is particularly interesting as it reflects the broadening of the policy community's reach and its ability to integrate and minimise criticism.

In 1997, two academic experts (an economist and a criminologist), who had been actively involved in the policy community in its early days, figured among the high-level speakers of the IACC,<sup>197</sup> but the IACC rapidly opened its doors to academic experts from field other than economics and criminology.<sup>198</sup> In 1999, more than 20 academic experts featured on the conference programme, some of which had developed a rather critical and sceptical perspective on the mainstream anti-corruption regime.<sup>199</sup> Similarly, the OECD's initial outreach to academics was limited to economists having spearheaded research on the economics of corruption (Chapter 4). With the launch of the Integrity Forum series, the OECD invited a growing number of academic experts and civil society organisations, including some with an approach to corruption not fully aligned with the OECD's. Alina Mungiu-Pippidi, a Professor at the Hertie School of Governance, has for instance been invited to speak at the forum almost every year since the event was first organised. Her research provides a historical perspective on the issue of corruption and good governance, paying attention to informal norms and socialisation.<sup>200</sup> Throughout the years, organisers have sought to give academic experts a prominent place in the event, in order to bring

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*The Quest for Good Governance: How Societies Develop Control of Corruption*. Cambridge University Press. 2015; MARQUETTE, Heather and PEIFFER, Caryn. Grappling with the “real politics” of systemic corruption: Theoretical debates versus “real-world” functions. *Governance*, Vol. 31, n°3, 2018, pp. 499-514;

<sup>196</sup> KRASTEV, Ivan. *Shifting Obsessions: Three Essays on the Politics of Anticorruption*. New York: Central European University Press. 2004; BUKOVANSKY, Mlada. The hollowness of anti-corruption discourse. *Review of International Political Economy*, Vol. 13, n°2, 2006; DE SOUSA, Luís, LARMOUR, Peter and HINDESS, Barry. *Governments, NGOs and Anti-corruption: The New Integrity Warriors*. London: Routledge, 2008; GEBEL, Anja C. Human nature and morality in the anti-corruption discourse of Transparency International. *Public Administration and Development*, Vol. 32, 2012, pp.109-128; WEDEL, Janine R. Rethinking Corruption in an Age of Ambiguity. *The Annual Review of Law and Social Science*. 2012; KATZAROVA, Elitza. *The Social Construction of Global Corruption From Utopia to Neoliberalism*. London: Palgrave Macmillan. 2019.

<sup>197</sup> Namely Johann Graf Lambsdorff, a professor of economic theory who designed TI's Corruption Perceptions Index, and Nikos Passas, then associate professor in criminology at Temple University. Nikos Passas has since been actively involved in the policy community, working closely with the UNODC to draft a legislative guide to the UNCAC and developing courses for the International Anti-Corruption Academy. As indicated on Nikos Passas' LinkedIn page, available at: <https://www.linkedin.com/in/passas/> (accessed on December 21st 2018)

<sup>198</sup> Chapter 4 provides additional information on the main disciplines within which corruption has been studied.

<sup>199</sup> These included a number of political scientists such as Leslie Holmes from the University of Melbourne, Alan Doig from the Liverpool Business School, Peter Larmour from the Australian National University and Robert Williams from the University of Durham, all of which were to mark the intellectual work on corruption. In the most recent edition of the IACC held in Copenhagen in 2018, Steven Sampson, a social anthropologist having published a number of critical pieces on the “anti-corruption industry”, also figured among the speakers.

<sup>200</sup> MUNGIU-PIPIDI, Alina. *The quest for good governance: how societies develop control of corruption*. Cambridge: Cambridge University Press, 2016.

new ideas and knowledge to the table, through the ResearchEdge paper competition and the knowledge partnership programme.<sup>201</sup>

The policy community's flexible boundaries permitted the integration of critical views, although this criticism remains relative. Indeed, this outreach to experts can be qualified as a selective inclusiveness, given that scholars invited to take part in the forums still share the core belief of international institutions in the preventive power of transparency, accountability and public participation. The flexible boundaries of the community and its portrayal as a space of open dialogue and debate allow it to integrate new actors, limiting the risk of being challenged from the outside. Even when framing the forums as moving beyond technical approaches to corruption to adopt a more confrontational one, as is the case for instance of the 2015 IACC titled "Ending Impunity: People, Integrity, Action", the overall policy message remains ambiguous with regards to the culprits, ignores potential deeper causes of corruption, (such as wealth inequality) and largely technical, promoting policy instruments to 'end impunity' (such as travel restrictions or the end of golden visas).<sup>202</sup> The policy community progressively adjusted its policy programme according to emerging knowledge, without fundamentally challenging its cognitive frame.

This subsection has aimed to show that international organisations involved in anti-corruption work perceive themselves as sharing a common understanding of corruption and as working together towards the same goal. Through their collaboration, practices and discourse, they built a policy community that divides labour among members and goes beyond the traditional boundaries of policy-making to include non-state actors operating at the transnational level. The existence of a transnational policy community composed of influential organisations with different mandates and memberships sharing core beliefs narrows down the conflictual space and makes international anti-corruption work largely paradigmatic. There are indeed no apparent conflicts in the policy community, since organisations see it as in their interest to collaborate with each other. Latent competition among international organisations could be seen to concern leadership and resources rather than problem definition.<sup>203</sup> This community has progressively grown, through members' efforts to reach out to new audiences, socialising them to a shared conception of corruption and anti-corruption work. In doing so, it even managed to integrate – and mollify – critical views. By paying attention to, and taking in, outside criticism, international institutions

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<sup>201</sup> It is still too early to gauge whether this influenced the policy agenda in anyway, but the increasing involvement of behavioural economists in the organisation's policy work on public integrity and corruption prevention has certainly contributed to the organisation's turn towards 'behavioural insights', as further explored in Chapter 4.

<sup>202</sup> IACC. The Putrajaya Declaration: Zero Tolerance for Impunity. 16<sup>th</sup> IACC 2015. Online, available at: <http://16iacc.org/> (accessed on October 25<sup>th</sup> 2019).

<sup>203</sup> SAMPSON, Steven. *Op. cit.* 2009.

involved in anti-corruption work have become increasingly concerned with evaluating their work (Chapter 6). This has contributed to defuse outside criticism (from academia principally) by giving it a voice *inside* policy forums. The seeming unity of the policy community and the knowledge it produces contributes to legitimise the policy solutions it prescribed as consensually-agreed ‘good practices’. The selection of policy solutions to promote are however partly the result of unequal power distribution within the community and advocacy of policy pioneers who sought to convince others to emulate their model.<sup>204</sup>

### 3.3. A platform for Anglo-American policy diffusion

The policy solutions promoted by the transnational policy community are not only the result of common problem-solving efforts. Looking specifically at the solutions promoted to regulate conflicts of interest, the dissertation argues that the international institutions functioned as brokers between states promoting their approach to preventing conflicts of interest and states seeking – or being pressured into seeking – solutions to corruption. While the convergence of conflict of interest regulation was partly the result of the emulation of policy pioneers as Chapter 2 demonstrates, international institutions were key intermediaries in the transfer process.<sup>205</sup> Countries of the Anglosphere, with the United States at the forefront, were not only pioneers of the institutionalisation of conflict of interest regulation, they progressively became policy leaders seeking to export their policy model.<sup>206</sup> This section argues that the transnational policy community served as a transfer platform for policy instruments developed within the Anglosphere, as a result of their governments’ political and diplomatic efforts to shape the international agenda, their financial support to international institutions, and, more indirectly, through the experts placed in international institutions who contributed to shape the agenda.

#### 3.3.1. Influence through summitry and international negotiations

While policy pioneers enjoy a form of unintentional cognitive influence on a policy field (inspiring laggards and international institutions without necessarily seeking to do so), policy leadership requires a form of external ambition.<sup>207</sup> Such leadership is not disconnected from more

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<sup>204</sup> HOLZINGER, Katharina and KNILL, Christoph. Causes and conditions of cross-national policy convergence. *Journal of European Public Policy*, Vol. 12, n°5, 2005, pp. 775-796.

<sup>205</sup> STONE, Diane. Transfer and Translation of Policy. *Policy Studies*, Vol. 33, n°5, 2012, pp. 483-499; EVANS, Mark. International Policy Transfer: Between the Global and Sovereign and between the Global and Local. In STONE, Diane and MOLONEY, Kim. *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press. 2019.

<sup>206</sup> LIEFFERINK, Duncan and WURZEL, Rüdiger K.W. *Op. cit.* 2017.

<sup>207</sup> *Ibid.*

structural forms of power.<sup>208</sup> Some early movers in the anti-corruption field progressively changed into policy leaders thanks to their influential position in world politics and their diplomatic skills, which allowed them to put corruption on the agenda of international institutions. Governments in the Anglosphere, and more prominently successive US governments, sought to influence the emerging international norms and policy recommendations through an active participation in international negotiations and through creating the opportunities for further international policy-making. Chapter 5 provides more details about national governments' input into the international negotiations regarding public interest registers and codes of conduct. This section focusses on broader initiatives taken by national governments to shape the global anti-corruption agenda.

Existing research has shown the central role played by American governments, especially since the Clinton presidency (until the end of Barack Obama's), in raising the problem of corruption on the international agenda, through exerting pressure over existing international institutions and creating new policy forums. The United States has heavily contributed to raising corruption as an important issue within the Organization of American States (OAS), the OECD and the UN in the 1990s.<sup>209</sup> More recently, President Barack Obama's administration sought to make corruption re-emerge on the global agendas, through two initiatives. Firstly, it proposed a comprehensive anti-corruption plan that was adopted by the Group of 20 (G20) in 2010,<sup>210</sup> putting this high-level policy forum on the list of international institutions involved in anti-corruption work. This initiative led to the creation of a G20 Anti-Corruption Working Group and a series of annual action plans with commitments on asset recovery, asset disclosure and conflicts of interest.<sup>211</sup> Through the close ties between the G20 and the OECD, it also indirectly resulted in the launch of the OECD CleanGovBiz initiative in 2011 which aimed at making the OECD's approach more comprehensive and its tools more accessible by drawing together all the instruments that the organisation defines as relating to corruption and thus bridging the work of the different directorates of the organisation.<sup>212</sup> Secondly, President Obama launched the Open Government Partnership (OGP) in 2011, together with seven other governments (Brazil, Indonesia, Mexico,

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<sup>208</sup> NYE, Joseph. *The Powers to Lead*. Oxford: Oxford University Press, 2008.

<sup>209</sup> KATZAROVA, Elitza. Op. cit. 2019; ROSE, Cecily. *International Anti-Corruption Norms Their Creation and Influence on Domestic Legal Systems*. Oxford University Press, 2015; HOUGH, Dan. *Corruption, Anti-Corruption and Governance*. London: Palgrave Macmillan. 2013.

<sup>210</sup> G20 Toronto. The G-20 Toronto Summit Declaration. June 26-27 2010.

<sup>211</sup> Bundesministerium der Justiz und für Verbraucherschutz. The G20 Anti-Corruption Working Group (ACWG). n.d. Online, available at: [http://bmjv.de/DE/Themen/G20/G20\\_node.html](http://bmjv.de/DE/Themen/G20/G20_node.html) (accessed on October 28th 2019).

<sup>212</sup> OECD. Strategic Orientations by the Secretary-General. Meeting of the Council at Ministerial Level, 27-28 May 2010. C/MIN(2010)1; BOUCHER, Richard. CleanGovBiz: A new push against corruption. OECD Observer. n.d. Online, available at: [http://oecdobserver.org/news/fullstory.php/aid/3770/CleanGovBiz:\\_A\\_new\\_push\\_against\\_corruption.html](http://oecdobserver.org/news/fullstory.php/aid/3770/CleanGovBiz:_A_new_push_against_corruption.html) (accessed on October 28th 2019).

Norway, Philippines, South Africa, United Kingdom) and with the help of a London-based collective of donors (Ford, Omidyar, Hewlett, Open Society, Hivos and DFID) and NGOs (International Budget Partnership and Revenue Watch Institute).<sup>213</sup> The OGP is a multilateral public-private initiative to promote transparency and accountability through national and local action plans developed with and monitored by civil society.

States who seek to influence the global agenda can do so by organising international summits or conferences. As briefly mentioned in Chapter 2, in addition to lobbying international institutions, the Clinton administration sought to put public ethics on the agenda by an organising events at its own initiative. In 1994, the U.S. Office of Government Ethics and the U.S. Information Agency organised an International Conference on Ethics in Government in Washington, DC in which 100 participants from more than 50 countries took part.<sup>214</sup> Following the 1994 conference, the Office of Government Ethics together with other US agencies increasingly got involved in the “world anticorruption efforts”, and in 1998, the country hosted Vice President Gore’s Global Forum on Fighting Corruption, which this time attracted 500 delegates from 89 countries, international institutions and NGOs, with support from the World Bank.<sup>215</sup> More recently, the British government organised the Anti-Corruption Summit in London, bringing together representatives from 43 countries, seven international organisations (including the OECD, the United Nations and the World Bank), businesses, philanthropic foundations and civil society organisations.<sup>216</sup> Prime Minister David Cameron’s declared ambition for the summit was for “the whole world [to] work together to strengthen all the tools that we have to take on corruption. To put fighting corruption at the heart of our international institutions”.<sup>217</sup> The summit was the occasion for countries to make collective and individual pledges to “tackle corruption” at

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<sup>213</sup> CHAVEROU, Eric. Comment est né l'OGP, le Partenariat pour un gouvernement ouvert. *France culture*, December 7<sup>th</sup> 2016.

<sup>214</sup> GILMAN, Stuart C. and LEWIS, Carol W. Public Service Ethics: A Global Dialogue. *Public Administration Review*, Vol. 56, n°6, 1996, pp. 517-524.

<sup>215</sup> GILMAN, Stuart C. An Idea Whose Time Has Come: The International Experience of the US Office of Government Ethics in Developing Anticorruption Systems. *Public Integrity*, Vol 2, n°2, 2000, pp. 135-155.

<sup>216</sup> UK Government. Final Attendance List: Anti-Corruption Summit. 12 May 2016, <http://bit.ly/1XWjMeo> (accessed on October 28th 2019).

<sup>217</sup> Cabinet Office UK Government. Tackling Corruption: PM speech in Singapore. Prime Minister’s Speech. Transcription available online, at <https://www.gov.uk/government/speeches/tacklingcorruption-pm-speech-in-singapore> (accessed on October 28th 2019).

the domestic and international level.<sup>218</sup> Transparency International UK developed a tool to track countries implementation of these commitments.<sup>219</sup>

Lastly, this subsection sheds light on the influence the US government has had on an international institution that the country joined after corruption had been put on the agenda, through the case of the Council of Europe's Group of States Against Corruption (GRECO). The United States is indeed part of GRECO since 2000 and remains its only non-European member. The country has not ratified the CoE's convention against corruption but, by requesting accession to this anti-corruption body, it agrees to uphold its Twenty Guiding Principles for the Fight Against Corruption and to submit to all evaluation rounds.<sup>220</sup> What is of interest here is that, by acceding to GRECO, states are invited to take part in decisions regarding the themes of the evaluation rounds as well as in the definition of the guidelines that will determine the evaluation itself. An interviewee from the GRECO secretariat indicated that the US delegation was proactive during the negotiation to define the scope and the criteria of the fourth evaluation round (on the prevention of corruption in respect of members of parliament, judges and prosecutors). The American delegation had invited Jane Lay, Deputy Director of the US Office of Government Ethics as a scientific expert,<sup>221</sup> who has, according to the interviewee, a "remarkable experience" and "intervened on almost all points raised". The interviewee indicated that the American delegation traditionally sought to influence the outcome of discussions.<sup>222</sup>

Britain also sought to build its leadership in this policy area by taking part in international negotiations and policy events to present their policy approach to corruption prevention. A British official indicated having taken part in a number of international events to present the British standards system:

Yes, we did [work with other countries]. The OSCE went out and did a lot of training, there is a list of parliamentary visits (...) I am not even sure, the committee may just have travelled (...) putting itself out, I am a bit vague. I did meet [other officials] (...) in a thing called GRECO, a Council of Europe body, and of course we are very involved in the work of GRECO. So I appeared in a

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<sup>218</sup> UK Government. *Anti-Corruption Summit: country statements*. London, 2016. Online, available at: <https://www.gov.uk/government/publications/anti-corruption-summit-country-statements> (accessed on March 13th 2020).

<sup>219</sup> Transparency International UK. *UK Anti-Corruption Pledge Tracker*. N.d. Online, available at: <https://ukanticorruptionpledgetracker.org/statements> (accessed on March 13th 2020).

<sup>220</sup> These principles and the peer review mechanism are further detailed in Chapter 6.

<sup>221</sup> GRECO. Final Activity Report of the Working Party on the preparation of the Fourth Evaluation Round (WP-Eval IV). WP-Eval IV (2011) 2E Final. Strasbourg, 1 April 2011.

<sup>222</sup> GRECO official, Council of Europe (CoE2). Interview with author. June 26<sup>th</sup> 2018.

GRECO plenary to talk about the system in the UK and I explained our system.<sup>223</sup>

The resources that governments are ready to dedicate to support international policy-making facilitates the selection of their policy practices as examples for other countries to emulate. Through their initiatives to organise international events, create new forums and lobby international institutions from within, British and American governments have helped put corruption on the global agenda, define it along their own problem definition and keep it on the radar of international institutions. Through joining existing anti-corruption bodies and submitting to their rules, the American government especially managed to influence international standards and tools, using diplomatic skills and expertise. The structural power of policy leaders does not however relate only to political power and diplomatic influence. Next section turns to how national governments from the Anglosphere influenced the global agenda through providing financial support to international institutions.

### **3.3.2. Funding institutions to shape the global agenda**

International institutions require financial resources to operate and the means by which they are funded shape their activities, relations to member-states and policy agenda.<sup>224</sup> While international institutions enjoy a certain level of autonomy vis-à-vis member-states,<sup>225</sup> the latter are “still bestowed with the power of the purse” and use financing channels to maintain control over international institutions.<sup>226</sup> Through financial support, and more specifically voluntary contributions, donors can influence the activities of international institutions and promote their policy priorities within the international arena.<sup>227</sup> As this section shows, the public and private actors from the Anglosphere are among the most important contributors to international institutions involved in anti-corruption work, both through permanent and voluntary additional contributions. It is difficult to demonstrate decisively that the financial support provided by these states has allowed them a direct influence over the policy message of international institutions. But

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<sup>223</sup> Parliamentary clerk, UK House of Commons (UKPC2). Interview with author. March 15<sup>th</sup> 2018.

<sup>224</sup> KATZ COGAN, Jacob. Financing and Budgets. In KATZ COGAN, Jacob, HURD Ian, and JOHNSTONE Ian. *The Oxford handbook of international organizations*. Oxford: Oxford University Press, 2016.

<sup>225</sup> BARNETT, Michael and FINNEMORE, Martha. *Op. cit.* 2004; PIIPARINEN, Touko. Secretariats. In KATZ COGAN, Jacob, HURD, Ian and JOHNSTONE, Ian. *The Oxford Handbook of International Organizations*. Oxford University Press, 2016; MATHIASON, John. *Op. cit.* 2007

<sup>226</sup> INGADOTTIR, Thordis. Financing international institutions. In KLABBERS, Jan and WELLENDahl, Asa. *Research Handbook on the Law of International Organizations*. Edward Elgar. 2011, p. 108.

<sup>227</sup> KATZ COGAN, Jacob. *Op. cit.* 2016.

we can easily think that through funding certain activities they have contributed to put and maintain the issues of corruption and public ethics (aligned with their policy preferences) on the agenda.<sup>228</sup>

Intergovernmental organisations (IOs) do not publish detailed information about the financial resources they receive from member-states. This is especially true for earmarked voluntary contributions, since IOs' financial statements do not always provide information on the programmes that governments decide to support. Some information is however available, suggesting that the United States has been the most significant financial supporters of international institutions' anti-corruption work since the early 2000s. Table 7 presents national contributions to some of the IOs involved in anti-corruption policy work. Except for the CoE GRECO, the numbers correspond to funding provided to the overall budget of the organisations, which is dedicated to many other issues than corruption (for instance crime and drug trafficking for the UNODC, economic growth, trade or social-fiscal policy for the OECD). The United States, unsurprisingly given its investment in building a liberal rules-based world order,<sup>229</sup> appears as the main national donor of IOs having put corruption on their agenda. National governments do not invest their resources equally in all these organisations, France contributing more to the OECD than to the UNODC for instance while the opposite is true for Sweden. Germany and Japan have also been significant contributors to IOs' budgets.

Table 7. National contributions to IOs' budget (percentage of total budget)

	USA	UK	Canada	EU	Sweden	France	Germany	Japan	Rest of world
UNODC (2007)	8	7	2	11	9	2	2	1	59
UNODC (2010)	5	3	9	8	7	2	6	2	58
UNODC (2017)	20	1	0	18	3	1	5	7	46
OECD (2005)	25	7	3	/	1	6	9	22	27
OECD (2009)	25	8	4	/	1	7	9	14	32
OECD (2019)	20	5	3	/	2	5	7	9	49
CoE GRECO (2020)	13	13	/	/	1	13	13	/	46

Source: adapted from the organisations' annual reports.

More specifically on the issue of corruption, the CoE GRECO has five principal contributors (France, Germany, Italy, the United Kingdom and the United States) who, together, covered more than 50% of the costs of the IOs' activities.<sup>230</sup> As noted in the previous section, the fact that the US, a non-member of the Council of Europe, takes part in the GRECO's review

<sup>228</sup> *Ibid.*; ALESANI, Daniele. Evolving Funding Patterns of Global Programmes and Their Impacts on Governance and Operations. In Stone, Diane and MOLONEY, Kim (eds.) *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.

<sup>229</sup> NYE, Joseph S. The rise and fall of American hegemony from Wilson to Trump. *International Affairs*, Vol. 95, n° 1, 2019, pp. 63–80.

<sup>230</sup> Council of Europe. Programme and Budget 2018-2019. Ministers' Deputies CM Documents. 1300 (Budget) Meeting, 21-23 November 2017. CM(2018) 1-rev 2. 2018, p. 184.



mechanism and funds almost a quarter of its budget suggests that it aims to maintain the issue on the organisation's agenda. At the OECD, the issue emerged on the agenda in 1995, with the OECD Symposium on Corruption and Good Governance. This event, which was organised in parallel of the organisation's work on criminalising foreign bribery at the initiative of the United States, was made possible through the financial support received from the governments of the United States, the United Kingdom, Japan and Switzerland.<sup>231</sup> While little information is available on the funding of the Public Sector Integrity Division within the OECD, the organisation indicates that its yearly Global Anti-Corruption and Integrity Forum is largely funded by the British government, in addition to its regular contribution to the organisation.<sup>232</sup>

The same argument holds for professionalised civil society organisations that rely on public funds and the patronage of philanthropic foundations.<sup>233</sup> Although research suggests that the relationship between resource dependence and NGO political activity is complex,<sup>234</sup> scholars argue that donors can discipline the activities of civil society organisations, especially when they are heavily bureaucratised and employ a large staff. Government funding dampens NGOs' political activity, leading some NGOs to refuse public funds to maintain their autonomy and image as retaining a critical distance.<sup>235</sup> NGO funding also provides information about governments', international organisations' and foundations' political priorities. Looking at who funds transnational actors involved in anti-corruption work gives an idea of the public and private actors who seek to put and maintain corruption on the global agenda. As mentioned above, there is a form of division of labour between international institutions working on corruption, and international organisations, governments and philanthropic foundations can fund transnational civil society organisations to perform tasks that they cannot carry out themselves.<sup>236</sup>

Table 8 provides an overview of Transparency International's main donors between 1999 and 2018. It shows that, in addition to the seed funding received by the German administration (see Section 3.1), American government agencies and foundations were instrumental in launching

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<sup>231</sup> OECD. OECD Symposium on Corruption and Good Governance. OCDE/GD(96)129. Paris: OECD, 1996

<sup>232</sup> OECD. Global Anti-Corruption and Integrity Forum 2019. Online, available at: <http://oecd.org/corruption/integrity-forum/partnerships> (accessed on October 25th 2019)

<sup>233</sup> DAVIES, Thomas Richard. *NGOs: a new history of transnational civil society*. New York: Oxford University Press, 2015.

<sup>234</sup> BLOODGOOD, Elizabeth and TREMBLAY-BOIRE, Joannie. Does government funding depoliticize non-governmental organizations? Examining evidence from Europe. *European Political Science Review*, Vol. 9, n°3, 2017, pp. 401-424.

<sup>235</sup> *Ibid.*; STROUP, Sarah S. *Borders among Activists: International NGOs in the United States, Britain and France*. Cornell University Press, 2012; O'BRIEN, Robert, GOETZ, Anne Marie, SCHOLTE, Jan Art and WILLIAMS, Mark. *Contesting Global Governance. Multilateral Economic Institutions and Global Social Movements*. Cambridge University Press, 2000.

<sup>236</sup> RISSE, Thomas. *Op. cit.* 2002.

the organisation in the 1990s. The Ford Foundation, with which TI's founder worked prior to establishing the NGO, supported the development of the organisation's 'holistic approach' to corruption prevention through its funding of the TI Source Book in 1995.<sup>237</sup> The American support to the civil society organisation led critics to suggest that TI had a hidden agenda and sought to help American companies involved in international trade. In France, the *Canard enchaîné* called TI the "Trojan horse" of the Americans and the *Monde diplomatique* labelled it the CIA's "penpal".<sup>238</sup> Without echoing such criticisms, I argue that supporting an emerging civil society group whose discourse on corruption was aligned with that of the Clinton government was part of the American strategy to put corruption on the global agenda.<sup>239</sup>

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<sup>237</sup> POPE, Jeremy. TI Source Book Confronting Corruption: The Elements Of A National Integrity System. Berlin: Transparency International. 2000, p. viii.

<sup>238</sup> *Le Canard enchaîné*, 27 January 1999 and 3 November 1999; *Le Monde diplomatique*, April 2000, cited by CŒURDRAY, Murielle. Le double jeu de l'import-export symbolique. La construction internationale d'un nouveau discours sur la corruption. *Actes de la recherche en sciences sociales*, Vol. 1, n°151-152, pp. 81.

<sup>239</sup> KATZAROVA, Elitza. The Social Construction of Global Corruption From Utopia to Neoliberalism. London: Palgrave Macmillan, 2019.

Table 8. Main donors of Transparency International between 1999 and 2018

1999 (in DM) Total: 5M DM	2005 <sup>240</sup> Total: 5M €	2010 Total: 15M €	2015 Total: 25M €	2018 Total: 18M €
Open Society Institute, Hungary 1.493.738 US Agency for International Development (USAID) 765.758 MacArthur Foundation, USA 716.404 Volkart Foundation 672.383 World Bank 462.622 Ford Foundation, USA 248.321 Dutch Government 238.995 Canadian International Development Agency (CIDA) 173.111 Ministry of foreign affairs Finland (FINIDA) 164.375 Swedish International Development Authority (SIDA) 158.700 Danish International Development Agency (DANIDA) 111.921 EU PHARE Democracy Programme 163.363 Department for International Development (DFID) UK 100.780 AVINA Group, Switzerland 96.568	European Commission 1.019.245 Ministry of Foreign Affairs (NL) 750.000 CIDA 561,892 FINIDA 531.910 DFID 449,014 DANIDA 423.980 Ministry for Economic Cooperation and Development Germany (BMZ) 412.424 SIDA 340.524 Norwegian Agency for Intl Development (NORAD) 315.897 Australian Agency for Intl Development (AusAID) 297.868 Foreign and Commonwealth Office UK (FCO) 273.556 Swiss Agency for Intl Development (SDC) 269.074 OSI Development Foundation Switzerland 160.037 Irish AID 150.545	DFID 3.473.302 European Commission 1.628.682 Bill Melina Gates Foundation 1.587.468 FINIDA 1.123.629 Ministry of Foreign Affairs (NL) 1.091.702 AusAID 841.218 NORAD 786.246 BMZ 697.455 SIDA 826.842 TIDES Foundation US 537.596 USAID 519.846 DANIDA 479.719 CIDA 485.826 Irish Aid 400.000 Ernst and Young LLP 400.000 Foreign Office Germany 358.192 OSI Devlt Foundation 354.046 SDC 350.930 William and Flora Hewlett Foundation 270.196 National Anti-Corruption Commission Thailand 258.141	DFID 1.984.098 European Commission 1.575.556 German gov agencies 481.769 William and Flora Hewlett Foundation 425.481 Siemens AG 400.506 Ernst and Young LLP 350,000 Foundation Open Society Institute 247.310 Stichting Adessium 247.310	European Commission 2.211.145 Department of Foreign Affairs, Trade and Dvlpt Canada 2.262.972 BHP Foundation 1.558.468 Ministry of Foreign Affairs (NL) 1.465.000 SIDA 1.217.975 Department of Foreign Affairs, Trade Australia 601.545 SDC 214.826 Irish Aid 344.452 Open Society Foundation 194.346 Stichting Adessium 166.647 USAID 160.640 Ernst and Young LLP 158.314 Ford Foundation 153.956

Source: The information is taken from Transparency International's annual audited financial statements from selected years. All financial statements are available on the organisation's website, at : [https://www.transparency.org/whowere/accountability/audited\\_financial\\_reports\\_with\\_independent\\_auditors\\_report/2](https://www.transparency.org/whowere/accountability/audited_financial_reports_with_independent_auditors_report/2) (accessed on October 25<sup>th</sup> 2019)

<sup>240</sup> From 2005, the table only records donations over 150,000€.

Other states were also interested in putting the issue of corruption on the global agenda. The presence among donors of so many development agencies from Northern Europe reflects the changing post-cold war discourse of international aid towards a concern for efficiency and a worry about waste.<sup>241</sup> The British development agency (DFID) and the European Commission rapidly became the main funders of the organisation, until DFID withdrew its multi-year funding after 2015 (Table 8). The same development actors regularly sponsored the IACC, with the US Office of Government Ethics also support the event in the 1990s.<sup>242</sup> The fact that philanthropic foundations (Ford, Hewlett, Open Society, Gates or MacArthur) feature among TI's main donors (Table 8) suggest that they perceived anti-corruption work as fitting their own political agenda of liberalisation towards development and transition states.<sup>243</sup> Philanthropic foundations have indeed helped shape the arenas of global policy, in many domains such as public health, education, human rights and public governance (including corruption prevention), through influencing politics at the local and global level,<sup>244</sup> including through financially supporting civil society advocacy groups like TI.

In addition to funding IOs and INGOs promoting anti-corruption policy, countries of the Anglosphere helped set up other types of professional organisations dedicated to the issue of corruption, such as the Global Organization of Parliamentarians Against Corruption (GOPAC). The organisation was officially launched in 2002 during a conference hosted by the Parliament of Canada, with financial support from the Canadian government and the World Bank Institute. The organisation's secretariat has been in Ottawa and has received financial support from the Canadian government ever since. The GOPAC hosts a task force on parliamentary ethics that develops "policy positions on parliamentary conduct, provide tools and training materials, and promote ethics and conduct regimes aimed at building greater public trust in parliamentarians".<sup>245</sup> The organisation has published a number of documents that translates international anti-corruption norms for the broader public sector to the parliamentary institution more specifically, and that seek

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<sup>241</sup> MUSAMI, Owa. Revisiting the Paris Declaration Agenda - an inclusive, realistic orientation for aid effectiveness. *Development in Practice*, Vol.21, n° 7, 2011, pp. 987-998; QUIBRIA, M. *Foreign Aid and Corruption: Anti-Corruption Strategies Need Greater Alignment with the Objective of Aid Effectiveness*. IDEAS Working Paper Series from RePEc, 2017.

<sup>242</sup> International Anti-Corruption Conference. *Previous IACCs*. n.d. Online, available at: <https://iaccseries.org/about/previous-iaccs/> (accessed on March 10<sup>th</sup> 2020)

<sup>243</sup> STONE, Diane. Private Philanthropy or Policy Transfer? The Transnational Norms of The Open Society Institute. *Policy and Politics*, Vol.38, n°2, 2010, pp. 269-287.

<sup>244</sup> JUNG, Tobias and HARROW, Jenny. Providing Foundations: Philanthropy, Global Policy, and Administration. In DIANE, Stone and MOLONEY, Kim (eds.) *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.

<sup>245</sup> GOPAC. Parliamentary Ethics and Conduct. n.d. Online, available at: <http://gopacnetwork.org/programs/parliamentary-ethics-conduct/> (accessed on October 28<sup>th</sup> 2019).

to clarify the meaning of conflict of interest for parliamentarians.<sup>246</sup> Since 2011, its main sponsor has been the government of Kuwait, in addition to which the organisation receives support from DFID, the Inter-American Development Bank, Transparency International, UNDP or the World Bank Institute. One of these publications later served as a resource for the development of the Council of Europe standards for prevention of corruption in parliaments and thus merits attention. The *GOPAC Handbook on Parliamentary Ethics and Conduct A Guide for Parliamentarians* published in 2009 was commissioned by the Westminster Foundation for Democracy, a UK public body dedicated to supporting democracy around the world, including developing new, improved standards for parliamentary performance.

Looking at the financial and material support to the transnational anti-corruption community, one sees that the United Kingdom and the United States feature among its main sponsors, together with the European Union and Northern European countries. Although it is hard to establish a direct causal link between governments' financial support and their influence on policy recommendations, we can reasonably think that, by funding international institutions involved in anti-corruption policy work, these governments have contributed to put and maintain corruption on the international agenda, which has allowed them not to lose control over issue definition. The last subsection looks at the indirect influence that the Anglosphere has had on the global anti-corruption agenda through the presence of national experts and officials within international institutions involved in anti-corruption work.

### **3.3.3. Influence through expertise, the role of policy intermediaries**

The transnational policy community became a diffusion platform for policies developed in countries of the Anglosphere also through the influence of policy intermediaries.<sup>247</sup> While the previous subsections argued that American and British governments proactively sought to influence the anti-corruption regime through diplomatic negotiations, global summitry and financial support to international institutions, this one looks at a more indirect form of policy influence that is not necessarily intentional, namely through policy intermediaries, understood as actors situated in between different worlds and able to act as mediators thanks to their mastery of

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<sup>246</sup> For instance, the GOPAC published the following papers *inter alia*: The Role of Parliaments in Holding Government to Account and Controlling Corruption; Parliamentary Ethics and Accountability; A Code of Conduct for Parliament; Preventing a Tragedy of the Commons. Position Paper. Vol. 1, n°4, 2014.

<sup>247</sup> Chapter 7 will show that policy intermediaries played a significant role in transferring conflict of interest registers and codes of conduct into domestic politics as well.

the languages and norms of the different worlds to which they belong.<sup>248</sup> The conception of corruption and conflict of interest developed in the Anglosphere influenced the international anti-corruption agenda in a more indirect fashion, through the cognitive framework that officials and experts working within international institutions brought with them from their country of origin and/or training. A 2010 review of the UNODC warns against the geographical imbalance of consultants hired by the organisations, the report indicating that more than 50% of the consultants' pool came from the United Kingdom, Australia, the United States and Canada which worries reviewers in terms of loss of diversity of expertise and experience.<sup>249</sup> What is of interest here is actors' ideational background and their embeddedness in a specific cultural and institutional context.<sup>250</sup> Where actors come from indeed matters, since their "background ideational abilities" inform their understanding of the problem.<sup>251</sup> The following paragraphs identify some of the actors that intellectually shaped the transnational anti-corruption community and contributed to create a fertile ground for the international promotion of anti-corruption instruments inspired by policy pioneers.

Transparency International was established on the premise that corruption could be prevented by creating the right incentives for self-interested actors, making corruption a "high risk" and "low return" undertaking.<sup>252</sup> The World Bank experience of several founders certainly contributed to embed this economic view of corruption as a problem of incentives in the cognitive matrix of the organisation. This cost-benefit perspective on corruption was formalised by Transparency International's 1996 Source Book, which became the basis of the organisation's prevention approach to corruption. It indeed defined the organisation's 'holistic approach' to anti-corruption, requiring reforms in all public institutions and a framework permitting the involvement of the private sector and civil society in reducing the opportunities of corruption, lowering benefits and raising costs.<sup>253</sup> The Source Book was prepared with funding from the Ford Foundation by the

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<sup>248</sup> NAY, Olivier and SMITH, Andy (eds.) *Le gouvernement du compromis: courtiers et généralistes dans l'action politique*. Paris: Economica, 2002.

<sup>249</sup> ZHANG, Yishan, FALL, Louis Papa and INOMATA, Tadanori. *Review of Management and Administration in the United Nations Office on Drugs and Crime (UNODC)*. Geneva: Joint Inspection Unit United Nations. JIU/REP/2010/10.

<sup>250</sup> HAY, Colin. *Interpreting Interpretivism Interpreting Interpretations: the new Hermeneutics of Public Administration*. *Public Administration* Vol. 89, n° 1, 2011; HAY, Colin. *Constructivist Institutionalism*. In BINDER, Sarah A., RHODES, R. A. W. and ROCKMAN, Bert A. *The Oxford Handbook of Political Institutions*. Oxford University Press, 2008, pp. 64-65.

<sup>251</sup> SCHMIDT, Vivien A. *Taking ideas and discourse seriously: explaining change through discursive institutionalism as the fourth 'new institutionalism'*. *European Political Science Review*, Vol.2, no 1, 2010, pp. 1-25.

<sup>252</sup> POPE, Jeremy. *TI Source Book Confronting Corruption: The Elements Of A National Integrity System*. Berlin: Transparency International, 2000, p. vii

<sup>253</sup> *Ibid.*

organisation's founding managing director Jeremy Pope, whose personal and professional background contributed to shape the cognitive basis of the transnational coalition.

#### Box 8. Jeremy Pope, the intellectual father of Transparency International

Jeremy Pope was born in 1938 in New Zealand. Before joining the founders of Transparency International, this civil rights and environmental lawyer from New Zealand joined the Commonwealth Secretariat in 1976 as assistant director of the legal division and editor of the Commonwealth Law Bulletin and became director of the division in 1980, contributing to the creation of its Human Rights Unit. He was said to hold the values of the Commonwealth dearly and to co-founded a number of associations that bring together lawyers from different sectors of the profession to enhance the values of their shared common law traditions.<sup>254</sup> He was the first Managing Director of Transparency International. The obituaries published after he passed away in 2012 describe him as “one of the intellectual fathers of Transparency International [who helped] Transparency International develop pioneering ways to define and fight corruption” or “one of the pillars, greatest innovators and forces for good in the international integrity and anti-corruption movement”.<sup>255</sup> He was the father of Transparency International's Source Book which was to influence the way in which the organisation developed its future policy recommendations. His intellectual and professional background was an intellectual pillar of the civil society coalition, as one of his colleagues at Transparency International New Zealand noted, “he was the one with the knowledge of our national institutions, how they should work, and what happened when they didn't. All through he remained a person of total integrity.”<sup>256</sup>

Developing the Source Book, Jeremy Pope received the help of Susan Rose Ackerman, an American economist and a legal scholar from Yale who contributed to put corruption on the academic map, having published books on the economics of corruption since the 1970s.<sup>257</sup> While the Source Book seeks geographic diversity and presents multiple case studies, many of the illustrations are drawn from the countries from the Anglosphere and Commonwealth.<sup>258</sup> Jeremy Pope for instance, visited Queensland, Australia, which had recently undertaken a series of ethics and integrity reforms, and used it as an inspiration for the Source Book. Or as Charles Sampford, from the Griffith University, claims, “he proclaimed that this was the way to fight corruption and

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<sup>254</sup> NZEREM, Richard. Jeremy Pope, ONZM (1938-2012). *Commonwealth Law Bulletin*, Vol. 38, n°4, 2012, pp. 765-769.

<sup>255</sup> ERCAS. In Memoriam: Jeremy Pope. n.d. Online, available at: <https://www.againstcorruption.eu/articles/in-memoriam-jeremy-pope/> (accessed on October 28th 2019); NZEREM, Richard. Jeremy Pope, ONZM (1938-2012). *Commonwealth Law Bulletin*, Vol. 38, n°4, 2012, pp. 765-769.

<sup>256</sup> Transparency International New Zealand. Press Release: TI-NZ mourns the passing of Jeremy Pope, New Zealand humanist, author, co-founder of Transparency International and Human Rights Commissioner. Wellington, 2012. Online, available at: <https://www.transparency.org.nz/docs/2012/Press%20Release%20Jeremy%20Pope.pdf> (accessed on March 15<sup>th</sup> 2020)

<sup>257</sup> POPE, Jeremy. *Op. cit.* 2000, p. viii; Yale Law School. Susan Rose-Ackerman. Our Faculty. n.d. Online, available at: <https://law.yale.edu/susan-rose-ackerman> (accessed on October 30th 2019).

<sup>258</sup> POPE, Jeremy. *Op. cit.* 2000.

coined the term ‘national integrity system’<sup>259</sup>. The intellectual roots of the authoring team are anchored in an Anglo-liberal perspective of the public sector and this original perspective has inspired Transparency International’s work ever since. Anja Gebel shows, in a 2012 article, that this economic view of corruption is still very present in the way employees of the TI secretariat think about corruption and integrity.<sup>260</sup>

Similarly, the OECD’s work on corruption prevention and public ethics was inspired by international civil servants and experts coming from countries in the Anglosphere. We saw earlier that the organisation’s work on corruption, and particularly its attention to the prevention and public ethics, comes out of the Committee and Directorate that had earlier been in charge of the promotion of public sector reforms inspired by new public management (NPM). Public ethics was indeed identified as a solution to the negative unintended consequences of NPM reforms. In his doctoral research, Thomas Scapin links the import of a managerial framing of ethics to Anglo-American ‘policy entrepreneurs’ working for the OECD secretariat or within national delegations.<sup>261</sup> He identifies three international civil servants, Sally Washington from New Zealand, Elia Armstrong from Canada and Alexandra Mills from Australia, who contributed to shape the OECD’s public ethics work in the 1990s. An American representative, Stuart Gilman, who at the time works for the US Office of Government Ethics (OGE), played a significant role as chairman of the OECD expert group on public ethics. He was instrumental in making the US OGE look outside national borders and get involved in “world anticorruption efforts”.<sup>262</sup> Beyond his activities at the OECD, he participated in the 8<sup>th</sup> IACC in 1997 (presented in Section 3.2), a stepping stone for the internationalisation of the policy field, sponsored by the US OGE. Stuart Gilman was replaced in 2000 by Howard Wilson, the first Ethics Counsellor to the Government of Canada in charge of administering the Conflict of Interest Code for Public Office Holders and the Lobbyists Registration Act, mentioned in Chapter 2.<sup>263</sup> Howard Wilson contributed to the development of

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<sup>259</sup> SAMPFORD, Charles. From Deep North to International Governance Exemplar. *Griffith Law Review*, Vol. 18, n°3, 2009, p. 563.

<sup>260</sup> GEBEL, Anja. Human Nature and Morality in the Anti-corruption Discourse of Transparency International. *Public Administration and Development*, Vol. 32, 2012, pp. 109-128.

<sup>261</sup> SCAPIN, Thomas. La circulation transnationale de l'éthique publique. Socio-histoire d'un répertoire océanien du bon gouvernement et de ses réceptions au Québec et en France (années 1990-années 2010). Doctoral dissertation, Sciences Po Lyon, defended on December 11th 2019.

<sup>262</sup> GILMAN, Stuart C. *Op. cit.* 2000, pp. 136.

<sup>263</sup> Stuart Gilman moved on to become the Head of the UN Global Programme against Corruption in 2005, the Deputy Director of the UN/World Bank Stolen Asset Recovery (StAR) Initiative in 2009 and Senior Anticorruption Advisor to the UNDP in 2013.



the 2003 OECD Guidelines for Managing Conflict of Interest in the Public Service.<sup>264</sup> The UK government participated more sporadically in the OECD's activities, but Lord Nolan, chairman of the Committee on Standards in Public Life, was invited to the organisations events and gave the keynote speech during the 1997 Symposium on Ethics in the Public Sector.<sup>265</sup> Given the similarity between the OECD's recommendations and the existing policies in Britain, Canada and the US, one can safely assume that the active involvement of these policy intermediaries, having previously administered ethics regulations in their country of origin, influenced the development of the OECD public ethics recommendations.

Invited experts and academics also contributed to diffusing the Anglo-American perspective on corruption in international institutions. The 1995 International Symposium on Corruption and Good Governance held at the OECD featured TT's Peter Eigen, Professor Robert Klitgaard, professor of economics at the University of Natal (South Africa) and Bertrand de Speville, a British Commissioner of Hong Kong's Independent Commission Against Corruption, among the few speakers. Robert Klitgaard, the father of the influential 'corruption formula'<sup>266</sup>, provided a "checklist for policy making regarding corruption", which included the need to increase the effective penalties for corruption, limit monopoly, adopt disclosure systems, clarify official discretion and enhance accountability and transparency.<sup>267</sup> Bertrand de Speville presented the experience of Hong Kong (who pioneered the creation of Anti-Corruption Commissions) which had recently adopted guidelines on conflict of interest and made it mandatory for legislators to register their interests for public scrutiny. Like Peter Eigen and Robert Klitgaard, Bertrand de Speville was active in many existing international institutions and forums. He for instance became an advisor to the Council of Europe's Multidisciplinary Group on Corruption in 1997 and figured among the speakers of the 8<sup>th</sup> IACC in Lima. The anti-corruption community has been shaped by a number of policy intermediaries, navigating different world, from national governments to international institutions and academia, and sharing a personal or professional socialisation in the Anglo-American political world. Their intermediary position makes them ideal policy brokers, who contributed to shape the ideational background of the policy community and thus facilitate the

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<sup>264</sup> City of Toronto. Howard R. Wilson. n.d. Online, available at: [https://www.toronto.ca/ext/digital\\_comm/inquiry/inquiry\\_site/gg/bio\\_pdf/Wilson\\_Howard\\_bio.pdf](https://www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/gg/bio_pdf/Wilson_Howard_bio.pdf) (accessed on October 30th 2019).

<sup>265</sup> OECD. Creating an effective ethics infrastructure. *Focus Public Management Gazette*, N°7, December 1997.

<sup>266</sup> Corruption = Monopoly + Discretion – Accountability. Robert Klitgaard's corruption formula operationalises the principal-agent theory of corruption, which will be presented in more detail in Chapter 4.

<sup>267</sup> OECD. OECD Symposium on Corruption and Good Governance. OCDE/GD(96)129. Paris: OECD, 1996, pp. 37-54

international circulation of policy ideas developed in the Anglosphere that fit these common representations.<sup>268</sup>

Using their position on the international stage and their political and economic resources, countries of the Anglosphere, the United States most prominently, progressively became policy leaders in a policy field that they contributed to shape. Through their efforts to raise corruption to the attention of the international community and shape the anti-corruption agenda, they turned international institutions into policy brokers and the transnational policy community into a transfer platform for their conception of corruption and conflicts of interest. Reflecting previous research on the American influence on other global agendas (democratisation, human rights, economic regulation or industrial policy), this section provided details on the strategies deployed by American government agencies (and their counterparts in other Anglo-American countries) to fashion the global anti-corruption agenda along the lines of their policy preferences.<sup>269</sup> While other governments (in Northern Europe or Japan) also supported international institutions putting corruption on the agenda, they had less of an influence on shaping their policy agenda (at least with regards to conflict of interest regulation). The involvement of intermediaries as experts in the policy community contributed to define corruption as a problem of opportunity costs and shape the cognitive framework for future policy-making along the path set by pioneers in the Anglosphere.

## Conclusion

Since the 1990s, over 40 international institutions have been involved in anti-corruption policy work. Some of them have become international policy brokers facilitating the transfer of anti-corruption instruments between pioneers and laggards. In addition to intergovernmental organisations putting the issue of corruption on their agenda as a result of powerful governments' pressure and the perception of the failure of previous policy programmes (public administration

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<sup>268</sup> NAY, Olivier and SMITH, Andy. Les intermédiaires en politique. Médiation et jeux d'institution. In NAY, Olivier and SMITH, Andy (ed.) *Le gouvernement du compromis. Courtiers et généralistes dans l'action publique*. Paris: Economica. 2002, pp. 1-21; DEZALAY, Yves and GARTH, Bryant G. *La mondialisation des guerres de palais. La restructuration du pouvoir d'État en Amérique Latine. Entre notables du droit et « Chicago Boys »*. Paris: Éditions du Seuil. 2002; HASSENTEUFEL Patrick,. Chapitre 8 - Les acteurs intermédiaires des politiques publiques. In HASSENTEUFEL Patrick (ed). *Sociologie politique: l'action publique*. Paris, Armand Colin, « U ». 2011, pp. 213-242; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. Convergence, transferts et traduction. Les apports de la comparaison transnationale. *Gouvernement et Action Publique*, Vol. 3, n° 3, 2013, pp. 380-383.

<sup>269</sup> DJELIC, Marie-Laure. Exporting the American Model The Postwar Transformation of European Business. Oxford, New York: Oxford University Press, 1998 ; DEZALAY, Yves and GARTH, Bryant G. The Internationalization of Palace Wars Lawyers, Economists, and the Contest to Transform Latin American States. Chicago: University of Chicago Press, 2002; GUILHOT, Nicolas. The Democracy Makers : Human Rights and International Order. New York: Columbia University Press, 2005 ; ANDREAS, Peter and NADELMANN, Ethan Policing the Globe: Criminalization and Crime Control in International Relations. Oxford University Press, 2006.

reform for instance), former officials from international institutions and government officials established transnational non-state actors to deal exclusively with the issue of corruption (Transparency International being the prime example). These international institutions based their legitimacy in the emerging policy field on the political authority delegated by national governments (not least from the Anglosphere) and other international actors (such as the World Bank or the European Union). Their legitimacy is however also largely based on the cognitive authority they acquired through building expertise on a 'new' global problem at a time where little was known about it (this is further explored in Part Two).

Many of these ideational and policy brokers were thus powerful actors of world politics in and of themselves. But their authority on the topic of corruption was strengthened by their collaboration and exchanges within what rapidly became a transnational policy community, which goes beyond the traditional boundaries of policy-making and include non-state actors operating at the transnational level. International institutions involved in anti-corruption work perceive themselves as being part of a community that shares a common understanding of corruption and the same policy goals. Rich of the diversity of its members (in terms of status and thematic and geographical focus), the policy community engages in a form of division of labour. Through the work of the policy community and the support of policy pioneers, anti-corruption was constructed as a policy field, which can be considered as being largely paradigmatic. Debates exists within the community, but differences are presented as relating more to the organisations' different overall agendas than to a fundamental opposition of view on the problem or its solutions.<sup>270</sup>

While emulation of policy pioneers is a key factor explaining the convergence of conflict of interest regulation in Britain, France and Sweden, the mediating role of international organisations and transnational actors is an essential dimension of cross-national transfer of these particular policy instruments. The existence of a transnational policy community composed of influential organisations with different mandates and memberships, who share core beliefs, narrowed down the conflictual space within the anti-corruption field and facilitated the international diffusion of the policy solutions that they collectively promote. Policy ideas about how to regulate conflicts of interest are however not the result of collective problem-solving. Using their position of 'established innovators'<sup>271</sup> in the field of conflict of interest regulation as well as their political and economic resources, countries in the Anglosphere, led by the United States, contributed to build international brokers of their policy preferences, having internalised their worldview and diffusing

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<sup>270</sup> Part Two will provide more elements to support this last point.

<sup>271</sup> BENSON, David and JORDAN, Andrew. *Op. cit.* 2011, p. 371.

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it autonomously. This contributed to shape the context for policy-making elsewhere and define the range of possibilities available to domestic actors.<sup>272</sup> These countries' status as early movers provided them with a cognitive advantage to influence international institutions in search of solutions to a problem they recently 'discovered'. This is an illustration of how the combination of ideational and institutional factors (contributing to a transnational alignment of values and problem definition) and the interaction between international and national politics (whereby structural power and cognitive authority determine policy preferences) facilitate the diffusion of a particular policy idea.<sup>273</sup>

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<sup>272</sup> HAY, Colin. *Political Analysis A Critical Introduction*. Basingstoke: Palgrave MacMillan, 2002, p. 185.

<sup>273</sup> BELAND, Daniel. *How Ideas and Institutions Shape the Politics of Public Policy*. Elements in Public Policy. Cambridge: Cambridge University Press, 2019, p. 28.

## Conclusion to Part One

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Britain, France and Sweden came to share the idea that parliamentarians' private interests constituted a risk of political corruption and that conflicts of interest should be regulated with public interest registers and codes of conduct due to (i) the emulation of policy pioneers in the Anglosphere and (ii) the emergence of a transnational anti-corruption community seeking to shape the cognitive framework of policy-making in the field. Conflicts of interests are an old concern within the British Parliament, where MPs have, conventionally, orally declared interests that might interfere with their judgement, and where standards have been formally regulated since the 1970s. With the growing international concern for corruption, Britain became a policy pioneer of conflict of interest regulation, together with the United States and Canada who also imposed transparency requirements and ethics regulations on their elected officials early on. The authority of these policy pioneers is rather odd given that it stems from the (early) recognition of them having a problem to solve. They indeed adopted innovative conflict of interest regulations as a reaction to problems made visible by scandals. This approach to regulating conflicts of interest is rooted in the Anglo-liberal tradition and spread across jurisdictions through the initiatives of policy actors in both importing and exporting countries, and, with more long-lasting effects, through the emergence of international policy brokers.

Countries in the Anglosphere built an image of policy pioneers thanks to the aura of innovation that came to surround them. Indeed, if lessons are to be drawn, early movers are well placed to present their policy model to policy-makers elsewhere in search of solutions to a similarly defined problem. The temporal sequencing turned them into policy pioneers with a considerable impact on the cross-border understanding of political corruption and on the emerging international policy field.<sup>274</sup> They were turned into policy leaders (the United States first, followed by Britain and the rest of the Anglosphere) through their active efforts to push others to adopt their policy instruments and their support to the nascent policy community. Regulatory competition pushed the United States to raise the issue of corruption on the agenda of international institutions and seek legislative harmonisation, due to the unfair competition imposed on American companies following the adoption of the Foreign Corrupt Practices Act (FCPA) prohibiting bribe-payment to foreign officials. In contrast to pessimistic assumptions regarding other policy fields, regulatory

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<sup>274</sup> ABBOTT, Andrew and DEVINEY, Stanley. The Welfare State as Transnational Event: Evidence from Sequences of Policy Adoption. *Social Science History*, Vol. 16, n°2, 1992, pp. 245-274.

competition, though not a direct causal mechanism for the convergence of conflict of interest regulation, lead to a ‘race to the top’ in terms of anti-corruption policy. ‘Pioneers’ influence on the broader anti-corruption agenda, regarding conflict of interest regulation for instance, indeed had little to do with regulatory competition, but might be a continuation of this initial policy leadership. Being early movers can indeed be an incentive to shape the international policy agenda according to the one’s own policy choices to make sure that one already complies with international standards.

Policy pioneers indeed endeavoured to shape the global anti-corruption agenda. Their governments turned bodies like the OECD, the United Nations, the Council of Europe and other intergovernmental organisations, as well as transnational civil society coalitions such as Transparency International, into policy brokers promoting their preferred approaches to the problem. The influence of the Anglosphere, and the United States in particular, on global policy agenda setting, gave them leverage to raise the issue on the international agenda and to shape the policy field from inception through political and diplomatic means. They also dedicated resources, often from their development aid budget, to this objective. Echoing Yves Dezalay and Bryant G. Garth’s conclusions regarding the international diffusion of the American model of the rule-of-law, countries are not equal when it comes to promoting their policy approach, and policy transfer often reflects the existing power balance in world politics.<sup>275</sup> More subtly, in a period of uncertainty regarding the problem, the experience of being early adopters of such instruments provided them with a cognitive advantage to influence international institutions in search of solutions to a problem they recently raised on their agenda. Indeed, international institutions getting involved in anti-corruption work needed to be seen to be relevant and able to provide governments with policy solutions to build their political authority (to which Part Two will return).

Although policy-makers continue to learn through peer-to-peer exchanges, international policy brokers constructed the ‘fight against corruption’ as a transnational policy field, giving the policy stream a form of permanence that some have referred to as a dedicated industry.<sup>276</sup> International institutions became influential “ideas brokers”<sup>277</sup> and “transfer entrepreneurs”<sup>278</sup> in isolation. Through their involvement in “the diffusion of ideas, standards and policy practice”<sup>279</sup>,

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<sup>275</sup> DEZALAY, Yves and GARTH, Bryant G. (eds.) *Global Prescription: The Production, Exportation, and Importation of a New Legal Orthodoxy*. Ann Arbor: University of Michigan Press, 2002.

<sup>276</sup> SAMPSON, Steven. The anti-corruption industry: from movement to institution. *Global Crime*, Vol. 11, n°2, 2010, pp. 261-278.

<sup>277</sup> SMITH, James A. *The idea brokers: Think Tanks and the Rise of the New Policy Elite*. New York: The Free Press, 1993.

<sup>278</sup> NAY, Olivier. How do policy ideas spread among international administrations? Policy entrepreneurs and bureaucratic influence in the UN response to AIDS. *Journal of Public Policy*, Vol.32, no 1, 2012, pp. 53-76.

<sup>279</sup> STONE, Diane. *Op. cit.* 2013, p. 31

they became drivers of anti-corruption policy, and turned public interest registers and codes of conduct into *anti-corruption* policies. Their authority on the subject was strengthened by their collaboration and exchanges within what has become a transnational policy community, actively producing and circulating knowledge, ideas and instruments, and working as a ‘public-private partnership’<sup>280</sup> of international civil servants, civil society activists and (academic) experts. This contributed to align their discourse and policy recommendations. Despite slight differences in specific recommendations,<sup>281</sup> the emergence of a dedicated transnational policy community contributed to create an anti-corruption paradigm, members sharing core beliefs about the problem and the possibility to govern it. The transnational anti-corruption community is fundamentally political as it reflects particular representations about what constitutes corruption, which signals how states and politics *should* function, that are neither neutral nor universal. While other countries, such as France, now seek to influence the global anti-corruption agenda, international institutions largely served as diffusion platform for Anglo-liberal policies initially.

At a more theoretical level, the findings outlined above suggest that, in an interconnected and interdependent world in which international institutions and transnational actors’ influence over policy-making is growing, existing frameworks explaining policy convergence, and transnational actors’ role more specifically, might need to be slightly reconsidered. The fact that anti-corruption policy converged across countries due to the emulation of policy pioneers and the emergence of a dedicated transnational policy community, which served to further diffuse the Anglo-liberal conception of conflicts of interest shows that the line between the mechanisms of convergence is thin, and increasingly so. This dissertation reflects recent work highlighting the importance of transnational actors’ mediating role, spreading policy ideas they uploaded from certain countries (from powerful pioneers, in this case) and integrated in their blueprints.<sup>282</sup> While their influence on domestic policy-making is reinforced by their ability to shape domestic actors’ policy preferences,<sup>283</sup> these two chapters demonstrated that the same works in reverse.

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<sup>280</sup> FAVAREL-GARRIGUES, Gilles. *Op. cit.* 2009, p. 279.

<sup>281</sup> LOHAUS, Mathis. *Towards a Global Consensus Against Corruption International Agreements as Products of Diffusion and Signals of Commitment*, 1st Edition. Abingdon, New York: Routledge, 2019.

<sup>282</sup> GRAHAM, Erin R., SHIPAN, Charles R., and VOLDEN, Craig. The Diffusion of Policy Diffusion Research in Political Science. *British Journal of Political Science*, Vol.43, 2012, pp. 673–701; SKOGSTAD, Grace. Global Public Policy and the Constitution of Political Authority. In DIANE, Stone and MOLONEY, Kim (eds.) *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019; DELCOUR, Laura and TULMETS, Elsa. *Policy Transfer and Norm Circulation: Towards an Interdisciplinary and Comparative Approach*. New York: Routledge, 2019.

<sup>283</sup> HAY, Colin. *Op. cit.* 2002, p. 185; ORENSTEIN, Mitchell A. *Privatizing Pensions The Transnational Campaign for Social Security Reform*. Princeton: Princeton University Press, 2008 ; BROOME, André and SEABROOKE, Leonard. Shaping Policy Curves: Cognitive Authority in Transnational Capacity Building. *Public Administration*, Vol.93, 2015, 956-972; SKOGSTAD, Grace. *Op. cit.* 2019.

Transnational actors indeed internalise the worldview and policy preferences of ‘established innovators’<sup>284</sup> and/or powerful states that they then diffuse autonomously, thus shaping the context for policy-making elsewhere, defining the range of possibilities available to other domestic actors.<sup>285</sup> Students of policy convergence might thus seek to move beyond ‘methodological nationalism’, without falling to the other extreme of the hyper-globalisation thesis.<sup>286</sup> Finding the right balance requires one to choose analytical approaches that take into account the fact that state-centred policy-making is being complemented by new transnational spaces (in which the limits between what is domestic and what is global are increasingly blurred<sup>287</sup>), while paying attention to the role of actors at various levels of governance and operating in-between.

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<sup>284</sup> BENSON, David and JORDAN, Andrew. *Op. cit.* 2011, p. 371.

<sup>285</sup> HAY, Colin. *Political Analysis A Critical Introduction*. Basingstoke: Palgrave MacMillan, 2002, p. 185.

<sup>286</sup> HAY, Colin. Common Trajectories, Variable Paces, Divergent Outcomes? Models of European Capitalism under Conditions of Complex Economic Interdependence. *Review of International Political Economy*, Vol. 11, n° 2, 2004, pp. 231-262; STONE, Diane. Transfer and Translation of Policy. *Policy Studies*, Vol. 33, n° 6, 2012, pp. 483-499; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. Convergence, transferts et traduction. Les apports de la comparaison transnationale. *Gouvernement et Action Publique*, Vol. 3, n° 3, 2013, pp. 377-393.

<sup>287</sup> DIANE, Stone and MOLONEY, Kim (eds.) *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.





## PART TWO

### Managing corruption risks: The construction of a global prescriptive framework

## Introduction of Part Two

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Policy ideas do not miraculously emerge as solutions to *real* problems that exist *out there*. They are (often) the result of political efforts to define public problems and couple them to policy solutions promoted by influential actors. This part of the dissertation is interested in how policy instruments developed to regulate conflicts of interest, standards (UK) or ethics (US) were coupled to the emerging problem of global corruption (as construed by international policy-makers and opinion formers) and subsequently introduced into the prescriptive framework developed by international institutions to manage this ‘new’ risk. Part One showed how the United States and Great Britain (and the rest of the Anglosphere to a lesser extent) constructed themselves as policy pioneers and leaders in the field of conflict of interest regulation. It argued that the convergence of conflict of interest regulation across country cases was the result of the emulation of these pioneers, through peer-to-peer exchanges between public officials and, above all, through the uptake of these instruments by international institutions acting as policy brokers. This Part focusses more closely on the latter to identify the mechanisms and actors that turned instruments of domestic ethics policies into tools of the global prescriptive framework against corruption. Chapter 4 is interested in the construction of corruption as a global problem and in its conception as a risk, which encapsulates the notion of conflict of interest. Chapter 5 studies the redefinition of public interest registers and codes of conduct as international standards through the formulation of international legal instruments against corruption. It is also interested in the construction of monitoring mechanisms as an instrument of policy harmonisation. Finally, Chapter 6 analyses how international institutions use knowledge production and a scientific-technical rhetoric to build their cognitive authority and render their preferred policy solutions ‘technically feasible’.<sup>1</sup>

The three chapters grouped in this part of the dissertation seek to answer two questions. The first one is: How did international institutions construct their competence to prescribe norms and instruments to regulate the conduct of domestic political actors? International institutions involved in anti-corruption work had to build their political authority to influence the formulation of policy against corruption and to monitor sovereign states’ efforts to tackle the problem. Chapter 3 demonstrated that their political authority in the policy field was derived from the support of influential states (such as the United States and Great Britain). The following chapters turn to the

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<sup>1</sup> KINGDON, John W. *Agendas, Alternatives, and Public Policies*. Essex: Pearson 2d edition, 2014.

authority they constructed beyond the political power delegated by their member-states, and the channels through which they convinced more reluctant states that corruption was a legitimate problem to be raised on the global agenda.<sup>2</sup> This authority, I argue, largely stemmed from the ability of intergovernmental organisations and transnational non-state actors to frame corruption as a global problem within the terms of a universal definition and in which it was seen to be caused by common factors regardless of jurisdictions. This part of the thesis is thus particularly interested in how international institutions constructed a form of ‘cognitive authority’ in the field of corruption prevention.

The second question is: What happens to domestic policies when they are translated into international standards? Policies are not born out of thin air, they are grounded in specific political cultures. Nor do they “float freely” across borders, as Thomas Risse puts it.<sup>3</sup> They are rather selected, transformed and legitimised by relevant actors within the transnational policy community, who need to make sure that the policy solutions they promote appear as compatible with different political systems. After having sought to define the practices to be labelled ‘corrupt’ through the adoption of international conventions, the international anti-corruption community took a preventive turn, motivated by the belief that “corruption can be prosecuted after the fact, but first and foremost, it requires prevention”.<sup>4</sup> In interaction, they constructed a global prescriptive framework to *manage* corruption risks. As the following chapters show, international institutions progressively moved their focus from corruption to its causes (and, indeed, the causes of its causes). In the process, they developed ‘upstream interventions’ to be translated into policy by member-states. As we will see, defining corruption as a global problem does not only mean fighting transnational corruption that requires international cooperation but also harmonising national and local policies, through peer-pressure and naming and shaming techniques, but also through efforts to shape the cognitive framework which defines the range of policy possibilities for future policy-making.

The following chapters focus empirically on documents produced by international institutions involved in anti-corruption work, academic literature that informed the transnational community, information provided by employees of INGOs and international civil servants during

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<sup>2</sup> SKOGSTAD, Grace. Global Public Policy and the Constitution of Political Authority. In DIANE, Stone and MOLONEY, Kim (eds.) *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.

<sup>3</sup> RISSE-KAPPEN, Thomas. Ideas do not float freely: transnational coalitions, domestic structures, and the end of the cold war. *International Organization*, Vol.48, n° 2, 1994, pp. 185-214.

<sup>4</sup> United Nations Office on Drugs and Crime. Convention highlights. N.d. Online, available at: <https://www.unodc.org/unodc/en/corruption/convention-highlights.html> (accessed on February 25th 2020).

interviews, as well as the author's observations during international policy events and her experience within the permanent representation of France to the UN in Vienne, the secretariats of the UNODC and Transparency International.<sup>5</sup> The chapters that make up this part of the dissertation argue that public interest registers (also referred to as financial disclosure systems) and codes of conduct were diffused internationally as anti-*corruption* instruments, making it necessary to understand how corruption was constructed as a *global* public problem (Chapter 4) requiring *global* solutions (Chapters 5 and 6). It finds that international institutions influenced domestic policy-making by shaping the context in which it occurs, through providing a global definition of corruption, developing international norms and a global framework for managing corruption risks.

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<sup>5</sup> I provide a reflexive consideration of my potentially complex ambiguous position as a researcher and an active 'expert' within the international anti-corruption community in the introduction. The information gathered during my previous professional experience was not collected systematically and for the purpose of research, which poses questions of research ethics. However, to use what appears to be a quote from the American author of sci-fi romance novels Cynthia Woolf, "what has been seen cannot be unseen, what has been learned cannot be unknown" (*Centruri Dawn*, self-edited, 2014), this experience thus unintentionally informs the analysis.

## Chapter 4. Corruption as a global and governable problem

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There are as many different definitions of corruption as there are manifestations of the problem itself. These definitions vary according to cultural, legal or other factors. Even within these definitions, there is no consensus about what specific acts should be included or excluded.

(OECD, Corruption A Glossary of International Criminal Standards, Paris: OECD Publications, 2007, p. 19)

Part One suggested that the transfer of public interest registers and codes of conduct was facilitated by the emergence of a transnational anti-corruption community in which international policy brokers sought to connect policy ideas borrowed from (selected) early movers with national governments (pressured to be) looking for solutions to the problem of corruption. How did these instruments come to be coupled to the global problem of corruption? The following three chapters will provide answers to this question. This chapter specifically looks at how corruption became defined as a problem to which instruments, such as interest registers and codes of conduct, were seen as solutions. Corruption is notoriously hard to define, as the above excerpt from an OECD report suggests, especially in international circles where countries with different political systems coexist, which might not share the same conception of corruption. The process of defining it is thus fundamentally political – arguably a condition of responding to it in a concerted fashion.

Corruption, like any public problem, did not just appear ‘out there’ for policy-makers to solve. For a situation to attract the public’s, and ultimately government’s, attention, a situation needs to be presented as problematic and thus needing a public intervention.<sup>1</sup> Actors usually start by attaching a label to a situation, identifying it as problematic. Labelling hence resolves the interpretive ambiguity of a situation by categorising it as a problem (or not as the case may be).<sup>2</sup>

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<sup>1</sup> GUSFIELD, Joseph R. *The culture of public problems: drinking-driving and symbolic order*. Chicago: Chicago University Press, 1981; KINGDON, John W. *Agendas, alternatives and public policies*. Boston: Little Brown. 1984; BAUMGARTNER, Frank R. and JONES, Bryan D. *Agendas and instability in American politics*. Chicago, IL: University of Chicago Press, 1993; ROCHEFORT, David A. and COBB, Roger W. *The politics of problem definition: Shaping the policy agenda*. Lawrence, KS: University of Kansas Press, 1994; SCHÖN, Donald A. and REIN, Martin. *Frame Reflection: Toward the Resolution of Intractable Policy Controversies*. New York: Basic Books, 1994; STONE Deborah A. *Policy paradox: the art of political decision making*. New York: W.W. Norton & Co, 2012.

<sup>2</sup> BECKER, Howard Saul. *Outsiders: studies in the sociology of deviance*. New York, London: The Free Press of Glencoe, 1963; FELSTINER, William, ABEL, Richard and SARAT, Austin. *Emergence and Transformation of Disputes:*

Attributing the label ‘conflict of interest’ to situations in which political actors most probably often find themselves (as they might also have another profession, and they most certainly have connections to different sectors of society as citizens) calls for public intervention, as the previous chapters showed. Moreover, labelling such situations ‘corrupt’ (the product of ‘corruption’), or at least suggesting that a situation somehow relates to corruption makes it appear all the more dramatic and hence tends to politicise it. Indeed, while corruption has had many meanings through time, one can reasonably argue that the term has always had a negative connotation.<sup>3</sup> This chapter is thus interested in how public officials’ private interests came to be associated with corruption.

To do so, we need to understand what is meant by ‘corruption’. Today corruption is often defined as the ‘abuse of public (or entrusted) power for private gain’,<sup>4</sup> but, while the term is not new, this definition of the problem certainly is. Part of the process of defining a situation as a public problem is to agree on (or impose) a definition of the concept that then serves as a label to identify manifestations of the problem in the world ‘out there’. Concepts indeed help us understand and organise the social world in order to analyse it (academia) or govern it (politics).<sup>5</sup> In the international division of anti-corruption labour presented in Chapter 3, some transnational actors, Transparency International (TI) and the World Bank, took on the task of defining corruption for the whole of humanity, as this chapter sets out to show (Section 4.1). Doing so, they not only set the frame through which we (should) understand the problem and attribute the label ‘corrupt’, they also contribute to make the problem *global*, which facilitates the subsequent transfer of solutions, as the next two chapters will explain. The purpose of defining a situation as a public problem is indeed not only to make it visible and intelligible, but also to make it *governable*. While corruption was long understood as an intractable problem belonging to the realm of fate,<sup>6</sup> international institutions

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Naming, Blaming, Claiming, *The Law & Society Review*, Vol. 15, n° 3–4, 1980, pp. 631–654; ZITOUN, Philippe. *The political process of policymaking: a pragmatic approach to public policy*. Basingstoke, GB: Palgrave Macmillan, 2014

<sup>3</sup> BUCHAN, Bruce and HILL Lisa. *An Intellectual History of Political Corruption*. Basingstoke: Palgrave Macmillan UK, 2014; ROTHSTEIN, Bo and VARRAICH, Aiysha. *Making Sense of Corruption*. Cambridge University Press, 2017; KROEZE, Ronald, VITÓRIA, André and GELTNER, Guy. *Anticorruption in history: from antiquity to the modern era*. Oxford University Press, 2018; HUSS, Oksana. Corruption, Crisis, and Change: Use and Misuse of an Empty Signifier. In Erica RESENDE, Dovilė BUDRYTĖ and Didem BUHARI-GULMEZ (eds.) *Crisis and Change in Post-Cold War Global Politics*. Basingstoke: Palgrave Macmillan, 2018.

<sup>4</sup> World Bank. *Helping Countries Combat Corruption The Role of the World Bank*. Poverty Reduction and Economic Management. Washington DC: World Bank, 1997; Transparency International. *How Do You Define Corruption?* n.d. Online, available at: <https://www.transparency.org/what-is-corruption#define> (accessed on March 5<sup>th</sup> 2020).

<sup>5</sup> NAY, Olivier. International Organisations and the Production of Hegemonic Knowledge: how the World Bank and the OECD helped invent the Fragile State Concept. *Third World Quarterly*, Vol. 35, n°2, 2014, pp. 210-231.

<sup>6</sup> GAMBLE, Andrew. *Politics and Fate*. Cambridge: Polity Press, 2000; HAY, Colin. *Why We Hate Politics*. Cambridge: Polity Press, 2007, pp. 79-80; BUCHAN, Bruce and HILL Lisa. *Op. cit.* 2014; KROEZE, Ronald, VITÓRIA, André and GELTNER, Guy. *Op. cit.* 2018.

seeking to promote certain policy solutions sought to identify the *facts* of a situation<sup>7</sup> (groups to blame, potential causes etc.) on which to build policy interventions and justify their preferences (Section 4.2).

## 4.1. Defining corruption as a global problem

To make a problem visible and to make policy-makers act upon it, it needs to be identified, labelled and defined. To make international institutions act upon a problem and coordinate solutions, it also needs to be understood as a *global* (or at least international) problem that extends beyond any single state, justifying international efforts to solve it.<sup>8</sup> Such international efforts in turn require a shared understanding of the problem across borders. Using policy documents, academic work and legal archives, this section (concisely) traces the history of corruption as a concept towards its definition as an individual abuse of (public) office. It looks at the definitional battle that led to the ‘normalisation’ of this understanding of corruption through the production of expertise and knowledge outputs.<sup>9</sup> The section demonstrates that, despite efforts to define corruption as a global problem, the boundaries of the concept are not stable over time and space.

### 4.1.1. A short history of an old concept

Today, corruption is often presented as a universal phenomenon that has existed through time and space.<sup>10</sup> This does not mean that the concept has had a stable meaning over time. Corruption is here understood as a social and historical construct, which has not had a stable meaning over time and in different contexts. Its meaning has fluctuated between being understood as the nature of certain individuals or organisations that *are* corrupt and being seen as the influence of external factors *that* corrupt someone or something that was good or pure in its original state. Similarly, a question that is found throughout history relates to corruption being understood as a condition – being corrupt – or as a practice – acting corruptly. Bruce Buchan and Lisa Hill show that corruption has gone from referring to the broadly understood condition of things departing from an original state to describe economic crime and the misconduct of public officials, specifying

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<sup>7</sup> SCHÖN, Donald A. and REIN, Martin. *Op. cit.* 1994.

<sup>8</sup> STONE, Diane and LADI, Stella. Global Public Policy And Transnational Administration. *Public Administration*, Vol.93, n° 4, 2015, pp. 839-855.

<sup>9</sup> NAY, Olivier. *Op. cit.* 2014.

<sup>10</sup> ALATAS, Hussein S. The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption. Singapore: D. Moore Press, 1968; MENDILOW, Jonathan and PHÉLIPPEAU, Eric. Political corruption in a world in transition. Wilmington, Delaware: Vernon Press, 2019; Council of Europe. About GRECO. Online, available at: <https://www.coe.int/en/web/greco/about-greco> (accessed on July 3rd 2018); KNIGHTS, Mark. Explaining Away Corruption In Pre-Modern Britain. *Social Philosophy and Policy*, Vol.35, n° 2, 2018, pp. 94-117.



that there is no fixed temporal demarcation as these conceptions have always coexisted.<sup>11</sup> There is no clear trajectory of the concept of corruption.<sup>12</sup> So, for the sake of simplicity, this chapter offers a schematised (necessarily simplified) picture of the history of the term corruption until its current definition as the ‘abuse of public (or entrusted) power for private gain’,<sup>13</sup> using Frederic Schaffer’s locating method to elucidate concepts.<sup>14</sup>

‘Corruption’ comes from the Latin *corruption/corruptere* – to destroy or ruin – and was later used in Old French. The *Centre national des ressources textuelles et lexicales* (CNRTL) traces its use back to the 12<sup>th</sup> century, attributing different meanings to the term: “alteration from what is sane, honest in the soul”, “alteration of a fact, a story” and later, in the 14<sup>th</sup> century “action of diverting someone from their duty with money or favours”.<sup>15</sup> The Oxford English Dictionary (OED) traces the use of the term in Old English to the 14<sup>th</sup> century and also attributes various definitions to the term corruption: giving it a physical definition (“the destruction or spoiling of anything, especially by disintegration or by decomposition with its attendant unwholesomeness”) as well as a moral one (“moral deterioration or decay; the perversion of anything from an original state of purity”).<sup>16</sup> Scholars tend to agree on the religious influence on the term, Ro Rothstein and Aiysha Varraich tracing its roots in both Christian and Muslim faiths.<sup>17</sup> Maryvonne Génaux notes that the Latin *corruptio* and ‘corruption’ are “biblical words whose function is central in the Holy Book if one remembers that they are meant to express man’s mortality in front of God’s eternity and *incorruptio*”.<sup>18</sup> In King James Bible the 1st Corinthians 15:50 reads “Now this I say, brethren, that flesh and blood cannot inherit the kingdom of God; neither doth corruption inherit incorruption”.<sup>19</sup> Carl Friedrich

<sup>11</sup> BUCHAN, Bruce and HILL, Lisa. *An Intellectual History of Political Corruption*. Basingstoke: Palgrave Macmillan UK, 2014.

<sup>12</sup> KROEZE, Ronald, VITÓRIA, André and GELTNER, Guy. *Anticorruption in history: from antiquity to the modern era*. Oxford University Press, 2018, p. 5.

<sup>13</sup> World Bank. *Helping Countries Combat Corruption The Role of the World Bank*. Poverty Reduction and Economic Management. Washington DC: World Bank, 1997; Transparency International. *How Do You Define Corruption?* n.d. Online, available at: <https://www.transparency.org/what-is-corruption#define> (accessed on March 5<sup>th</sup> 2020).

<sup>14</sup> SCHAFFER, Frederic Charles. *Elucidating social science concepts: an interpretivist guide*. New York, NY: Routledge, Taylor & Francis Group, 2016.

<sup>15</sup> Centre national des ressources textuelles et lexicales. *Corruption*. n.d. Online, available at <https://www.cnrtl.fr/definition/corruption> (accessed on March 5<sup>th</sup> 2020). Author’s own translation.

<sup>16</sup> Oxford English Dictionary Online. Oxford University Press, 2017.

<sup>17</sup> FRIEDRICH, Carl. *The Pathology of Politics: Violence, Betrayal, Corruption, Secrecy and Propaganda*. New York: Harper and Row, 1972; GENAUX, Maryvonne. Social sciences and the evolving concept of corruption. *Crime, Law and Social Change*, 2004, Vol 42 n°13, p. 20; ROTHSTEIN, Bo and VARRAICH, Aiysha. *Making Sense of Corruption*. Cambridge University Press, 2017.

<sup>18</sup> GENAUX, Maryvonne. *Op. cit.* 2004, p. 20.

<sup>19</sup> *The Holy Bible: King James Version*. Dallas, TX: Brown Books Publishing, 2004.

What is common to all these definitions is the notion of change, of departure from an original or pure state, be it a physical, a moral or a social state. Corruption itself is not the sin but the diffusion of the capacity for sin. Scholars having explored the origins of the concept suggest that this idea of change and degeneration comes from the Aristotelian opposition of permanence (*aphthorā*) and change (*phthorā*), found in his treatise *Peri geneseōs kai phthoras* translated to the Latin *De generatione et corruptione*.<sup>20</sup> This treatise is part of Aristotle's work on physics and specifically on the generation, alteration and dissolution of things in nature, which will later be applied to the study of politics in his theory on constitutional change, corruption thus being understood as 'system decay'. Looking at Classical, Medieval and Early Modern political thought, Buchan and Hill identify two discourses that have been used to make sense of corruption. The first, which relates directly to this notion of change, is what they label 'degenerative conception', associated with moral, spiritual but also political decay. They refer to the second one, being narrower and contemporary, as the 'social-scientific conception of corruption', which defines a specific form of abuse of power. The two interpretations have existed in parallel for centuries, with the degenerative conception remaining dominant until the end of the 18<sup>th</sup> century, when the conception of corruption as deviant behaviour took over.

The narrowing of the meaning of corruption illustrates the growing influence of a legal conception of corruption. According to Génaux, corruption had a legal existence in Roman law and *ius commune* and was associated with the criminality of certain agents of public power, namely those exercising justice, as apparent in Sylla's law, the  *Coutumes de Beauvaisis* from 1246 and a series of European treatises of penal doctrine from the 16<sup>th</sup> century, all referring specifically to the corruption of judges.<sup>21</sup> Historians situate the triumph of the more technical meaning of corruption and the emergence of political uses of the term in the late 18<sup>th</sup> century.<sup>22</sup> Corruption, no longer understood as system decay, becomes specifically used to describe the subversion of public office, as we can see in OED quotations from the 19<sup>th</sup> century that broadens the focus from judges to practices in parliaments or elections.<sup>23</sup> The French criminal code of 1810 established the offense

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<sup>20</sup> *Ibid.*

<sup>21</sup> GENAUX, Maryvonne. Les mots de la corruption: la déviance publique dans les dictionnaires d'Ancien Régime. *Histoire, économie et société*, 2002, Vol 21 n°4, p 513-530.

<sup>22</sup> MONIER, Frédéric. La corruption, fille de la modernité politique? *Revue internationale et stratégique*, 2016, Vol 1 n°101, p 63-75 ; KROEZE, Ronald, VITÓRIA, André and GELTNER, Guy. *Op. cit.* 2018.

<sup>23</sup> OED Online. Oxford University Press, 2017

of bribery of public officials using the term *corruption*.<sup>24</sup> Indeed, as mentioned previously, *corruption* in French legal language equates to the English *bribery*.<sup>25</sup>

Political corruption, ‘the daughter of political modernity’,<sup>26</sup> is closely tied to the philosophy of the Enlightenment, the development of Weberian bureaucracies, separation of the public and private spheres and interests, and the emergence of democratic regimes. The conception of corruption as individual abuse of power is often associated with the shift in political ideology in Britain and the emergence of the philosophy of David Hume, Adam Smith and Jeremy Bentham, which separated corruption from the notion of virtue to attach it to the idea of interests.<sup>27</sup> Until the late 18<sup>th</sup> century, the amalgamation of public and private interests makes the contemporary definition of corruption incongruous. Yves Mény explains this by emphasizing both the absolute superiority of the interest of the State in pre-revolutionary France and the confusion of public and private interests consequential to the purchase of public offices and charges with the aim to financially benefit from them, as Richelieu supposedly said “It is normal that ministers watch over their wealth while they watch over that of the State”.<sup>28</sup> With the development of liberal political thought, the public-private distinction created the basis on which an understanding of the possibility of conflicting public and private interests could develop. The development of modern belief systems, drawing a clearer distinction between the public and private spheres and the separation of powers, contributed to re-defining corruption as the misuse of public power for private gain.<sup>29</sup> As Carl Friedrich puts it: “by the second half of the nineteenth century, what had been considered ‘normal behaviour’ had become corruption”.<sup>30</sup>

With the narrowing of the concept to refer to the labelling of individual deviant behaviour, allegations of political corruption became increasingly used in political competition to undermine the credibility of one’s opponents. Combined with an increasingly mediatised public sphere and

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<sup>24</sup> The 1791 criminal code that it replaces only referred to “concussion”.

<sup>25</sup> Interestingly, in French, “corruption” also refers to the sexual abuse of youth, reflecting the original polysemy.

<sup>26</sup> MONIER, Frédéric. *Op. cit.* 2016.

<sup>27</sup> HIRSCHMAN, Albert O. *The Passions and the Interests Political Arguments for Capitalism before its Triumph*. Princeton: Princeton University Press, 1997; BUCHAN, Bruce and HILL Lisa. *Op. cit.* 2014; BOCCON-GIBOD, Thomas. De la corruption des régimes à la confusion des intérêts : pour une histoire politique de la corruption. *Revue française d’administration publique*, forthcoming.

<sup>28</sup> MENY, Yves. De la confusion des intérêts au conflit d’intérêts. *Pouvoirs*, 2013, n°147, p 5-15 ; HIRSCH, Martin. *Pour en finir : avec les conflits d’intérêt*. Paris: Stock. 2010. Author’s own translation from French.

<sup>29</sup> KROEZE, Ronald. The Rediscovery of Corruption in Western Democracies, In MENDILOU, Jonathan and PELEG, Ilan. *Corruption and governmental legitimacy: a twenty-first century perspective*. Lexington Books. 2016.

<sup>30</sup> FRIEDRICH, Carl J. Corruption Concepts in Historical Perspective. In HEIDENHEIMER, Arnold J. and JOHNSTON, Michael. *Political corruption: concepts & contexts*. 3rd ed. New Brunswick, NJ: Transaction Publishers, 2002, p. 22.

critical public opinion,<sup>31</sup> the end of the 19<sup>th</sup> century saw the emergence of waves of scandals in Europe and America. Critical groups from both sides of the political spectrum, using corruption as a political weapon, bridged the technical and degenerative conceptions of corruption in their discourse, making the abuses of some the symptom of the moral decay of the system. As Paul Jankowski writes, in early 20<sup>th</sup> century France, ‘*corruption*’ served to describe any regime that did not find public favour; “the myth of corruption [serving] to crystallise other free-floating fears and resentments”.<sup>32</sup> The 19<sup>th</sup> century created a confusion between an increasingly formalised conception of corruption in law and a broader lay definition reflecting the belief in system decay that is still, to some extent, a reality today.<sup>33</sup> However, as Albert O. Hirschman notes, from the late 18<sup>th</sup> century, ‘corruption’, while still referring to the deterioration in the quality of government, became increasingly likened with bribery, until “the monetary meaning drove the nonmonetary one out almost completely” (much like ‘fortune’ according to the author).<sup>34</sup> After the Second World War, the topic of corruption went through a period of relative disregard, with many European countries preoccupied with reconstruction and with the memory of the fascist discourse on corruption still ripe.<sup>35</sup> Corruption re-emerged as a topic of political and academic interest in the late 20<sup>th</sup> century, when it acquired its contemporary meaning of ‘abuse of public (or entrusted) power for private gain’,<sup>36</sup> and progressively became defined as a global public problem.<sup>37</sup>

#### **4.1.2. Defining a global problem and defining corruption globally**

From being a problem internal to (certain) political systems, corruption progressively became reconceived as a global public problem in the second half of the 20<sup>th</sup> century.<sup>38</sup> This meant firstly that practices labelled ‘corrupt’ (and hence as instances of ‘corruption’) evolved to become

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<sup>31</sup> HABERMAS, Jürgen. *The Structural Transformation of the Public Sphere: An Inquiry into a category of Bourgeois Society*. Cambridge: Polity Press, 1989.

<sup>32</sup> JANKOWSKI, Paul. *Op. cit.* 2008, p. 83.

<sup>33</sup> PHILP, Mark. The definition of political corruption In HEYWOOD, Paul (ed.). *Routledge Handbook of Political Corruption*. Oxford: Routledge, 2015.

<sup>34</sup> HIRSCHMAN, Albert O. *Op. cit.* 1997, p. 40.

<sup>35</sup> Professor of History, Technische Universität Darmstadt (INTEX1). Interview, with author. November 17<sup>th</sup> 2016.

<sup>36</sup> World Bank. *Helping Countries Combat Corruption The Role of the World Bank*. Poverty Reduction and Economic Management. Washington DC: World Bank, 1997; Transparency International. *How Do You Define Corruption?* n.d. Online, available at: <https://www.transparency.org/what-is-corruption#define> (accessed on March 5<sup>th</sup> 2020).

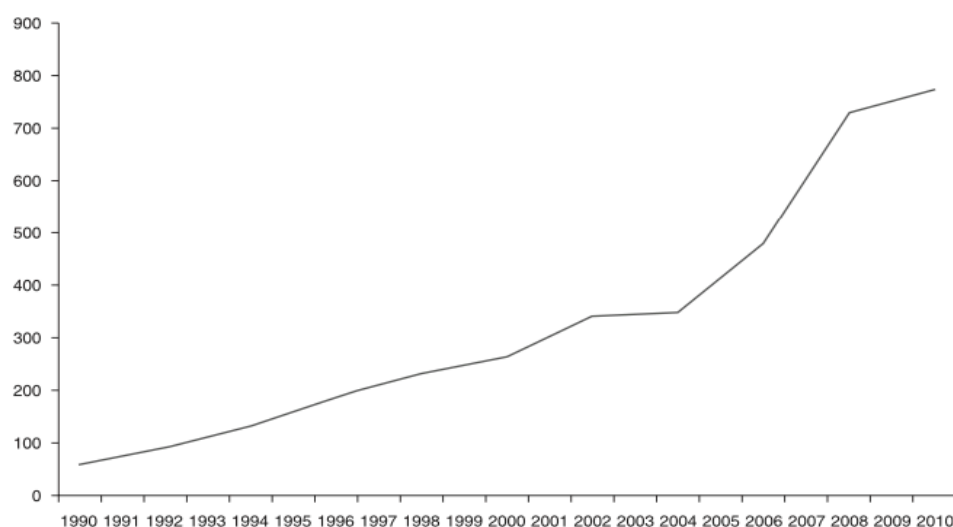
<sup>37</sup> WILLIAMS, Robert. *The Politics of Corruption 1, Explaining corruption*. Cheltenham: Edward Elgar Pub, 2000.

<sup>38</sup> Abbott, Kenneth. Rule-making in the WTO: Lessons from the case of bribery and corruption, *Journal of International Economic Law*, Vol.4 n° 2, 2001, pp. 275-296; HEYWOOD Paul (ed.) *Routledge Handbook of Political Corruption*. Abingdon: New York: Routledge, 2015; ROUX, Adrien. *Op. cit.* 2016; KATZAROVA, Elitza. From global problems to international norms: what does the social construction of a global corruption problem tell us about the emergence of an international anti-corruption norm. *Crime, Law and Social Change*, Vol. 70, 2018, pp. 299–313.

‘trans-boundary problems’ resulting from facilitated cross-border movements of people, goods and financial flows (a point to which we return in Chapter 5).<sup>39</sup> Secondly, it meant that academics and policy actors started to conceive of corruption as a problem that existed in all countries in the world and that should be understood in a similar manner. Academics, most prominently economists, played a crucial role in this construction of corruption as a global problem.

Since the 1990s, corruption has attracted ever growing attention from academics, as Figure 14 illustrates.

Figure 14. Number of articles on ‘corruption’ published between 1990 and 2010



Source: ISI Web of Knowledge, taken from HEYWOOD Paul. *Routledge Handbook of Political Corruption*. Abingdon: New York: Routledge, 2015, p. 2.

Gunnar Myrdal wrote in 1968 that the term “corruption [was] almost taboo as a research topic”,<sup>40</sup> a situation Rothstein and Varraich explain by a sensitivity not to appear imperialist in a period of decolonisation where corruption was still largely seen as a ‘Third World’ problem. Before the ‘corruption eruption’ in the 1990s,<sup>41</sup> corruption research was closely associated with development studies and thus largely understood as a pathology of ‘underdevelopment’. Academic

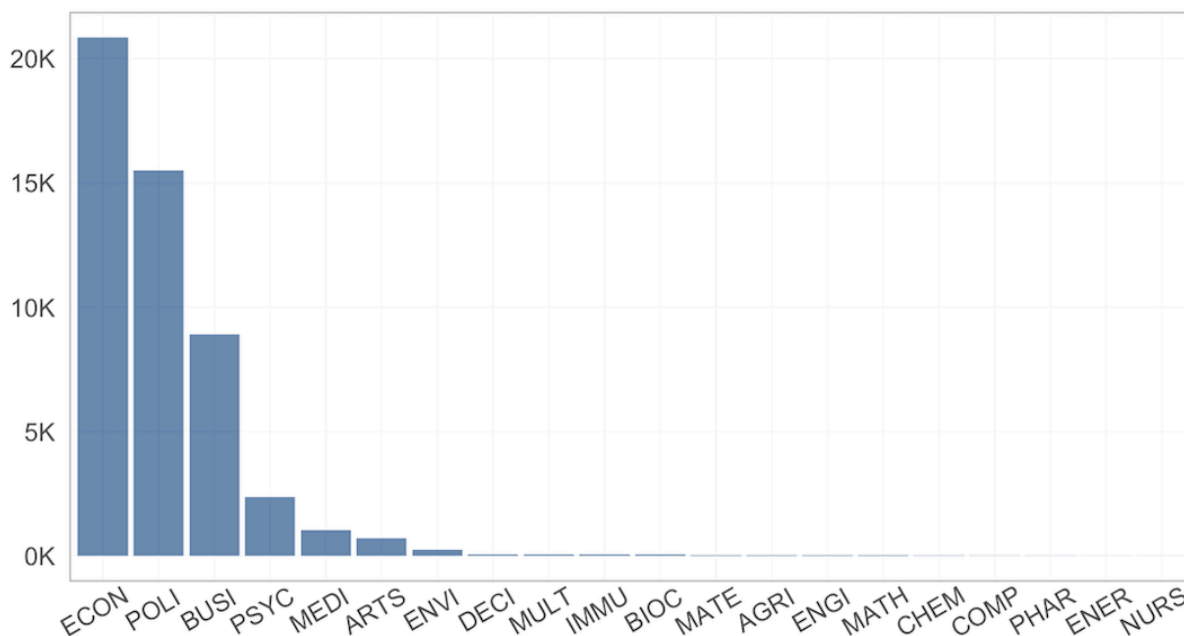
<sup>39</sup> SOROOS, Marvin S. A Theoretical Framework for Global Policy Studies. *International Political Science Review*, Vol.11, n° 3, 1990, pp. 309-322; NAIM, Moisés. The Corruption Eruption. *The Brown Journal of World Affairs*, Vol. 2, n° 2, 1995, pp. 245-261; GLYNN, Patrick, KOBRIN, Stephen J. and NAIM, Moisés. The Globalization of Corruption. In ELLIOTT Kimberly Ann. *Corruption and the Global Economy*. Institute of International Economics, Washington, D.C., 1997; ROSE-ACKERMAN, Susan. *Corruption and government: causes, consequences, and reform*. Cambridge: Cambridge University Press, 1999; WANG, Hongying, and ROSENAU, James N. Transparency International and Corruption as an Issue of Global Governance. *Global Governance*, Vol. 7, n° 1, 2001, pp. 25-49.

<sup>40</sup> MYRDAL, Gunnar. *Asian Drama: An Inquiry into the Poverty of Nations*. New York: Twentieth Century Fund. 1968, p. 937, cited in ROTHSTEIN, Bo and VARRAICH, Aiysha. *Making Sense of Corruption*. Cambridge University Press. 2017, p. 10.

<sup>41</sup> NAIM, Moisés. The Corruption Eruption. *The Brown Journal of World Affairs*, Vol. 2, n° 2, 1995, pp. 245-261.

research into corruption was then largely dominated by economists, which remain the most prolific discipline in terms of corruption research, as Figure 15 shows.

Figure 15. Number of journal articles on corruption per academic discipline (1968-2018)



Source: GAWTHORPE, Steven using STEPHENSON, Matthew. Anticorruption Bibliography. *The Global Anticorruption Blog*, 2019.

These researchers sought to develop general theories of corruption and understand the causes and consequences of corruption.<sup>42</sup> The failure of the modernisation approach to development generated a debate between scholars who argued that corruption could grease the wheel of the economy and compensate institutional shortcomings,<sup>43</sup> those who thought corruption sands the wheel and hinders development<sup>44</sup> and those who maintained that corruption would fade

<sup>42</sup>AZFAR, Omar, LEE, Young, and SWAMY, Anand. The Causes and Consequences of Corruption. *The Annals of the American Academy of Political and Social Science*, Vol. 573, n° 1, 2001, pp. 42-56; ROSE-ACKERMAN, Susan. *Corruption and Government: Causes, Consequences, and Reform*. Cambridge University Press. 1999; TANZI, Vito. *Op. cit.* 1998.

<sup>43</sup>HUNTINGTON, Samuel P. *Political order in changing societies*. New Haven: Yale University Press. 1968; LEYS, Colin. What is the problem about corruption? *Journal of Modern African Studies*, Vol. 3, 1965, pp. 215–230; LEFF, Nathaniel H. Economic development through bureaucratic corruption. *American Behavioral Scientist*, Vol 8, 1964, pp. 8–14.

<sup>44</sup>MÉON, Pierre-Guillaume and SEKKAT, Khalid. Does Corruption Grease Or Sand the Wheels of Growth? *Public Choice* Vol. 122, n°1-2, 2005, pp. 69-97; KAUFMANN, Daniel. and WEU, Shang-Jin. *Does 'grease money' speed up the wheels of commerce?* International Monetary Fund Policy Working Paper, WP/00/64. 2000; MAURO, Paolo. Corruption and the Composition of Government Expenditure. *Journal of public economics*, Vol. 69, n°2, 1998, pp. 263-79; BRUNETTI, Aymo and WEDER, Beatrice. Investment and Institutional Uncertainty: A Comparative Study of Different Uncertainty Measures. *Weltwirtschaftliches Archiv*, Vol. 134, n°3, 1998, pp. 513-33.

away once countries become richer and proper institutions are in place.<sup>45</sup> The end of the Cold War turned more scholars to the topic of corruption; a result of the disappearance of the Soviet Union as a security threat and the subsequent metamorphosis of the development field.<sup>46</sup> Despite corruption research being overwhelmingly focussed on developing and transition countries in its early days, a scholarship on corruption in the Global North developed, from seminal American research,<sup>47</sup> as the issue emerged on the political agenda of European countries. The *mani pulite* operations in Italy in the early 1990s (further described in Chapter 5) sparked the interest of European scholars, around Donatella della Porta and Yves Mény, who organised an international conference in Poitiers in 1993 on *Corruption in pluralist systems*, interested to see if similar practices could be identified elsewhere in Europe. Academic research was then increasingly considering corruption as a problem that existed in all countries, but also as a problem that was global in a sense that it spills across borders.<sup>48</sup>

If corruption was to be studied as a cross-border phenomenon, it needed to be defined in a manner that allowed for international comparison. This created discussions and disagreements among different disciplines. The conceptual debate within academia over the last decades, summarised in Table 9, has opposed scholars who argue that it should only be used to describe the violation of legal norms or formal rules of a given public office, others for whom corruption is defined by the damage done to the public interest or to the distribution of public goods, and social constructivists who base the definition of corruption on people's perception. The narrow view of corruption as violation of formal norms has largely won the battle both within academia. One of the reasons for opting for the 'public office' approach is its 'operational' dimension, making it simpler to turn into quantitative indicators (Section 4.1.3).

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<sup>45</sup> KHAN, Mushtaq H. Corruption, Governance and Economic Development. In JOMO, K.S. and FINE, Ben (eds). *The New Development Economics*. New Delhi: Tulika Press and London: Zed Press. 2004.

<sup>46</sup> EIGEN, Peter. Combatting Corruption Around the World. *Journal of Democracy*, Vol. 7, n°1, 1996, pp. 158-168; MARQUETTE, Heather. *Corruption, politics and development: the role of the World Bank*. Basingstoke: Palgrave Macmillan, 2003.

<sup>47</sup> STEFFENS, Lincoln. *The Shame of the Cities*. New York: P. Smith. 1904; FORD, Henry J. Municipal corruption. *Political Science Quarterly*, Vol. 19, n°4, 1904, pp. 673-686; BELL, Daniel. Crime as an American Way of Life. *Antioch Review*, Vol. 13, n°2, 1953, pp. 131-154; HEIDENHEIMER, Arnold J. (ed.) *Political Corruption: Readings in Comparative Analysis*. New Brunswick: Transactions Books. 1970; GARDINER, John A and OLSON, David J. *Theft of the City: Readings on Corruption in Urban America*. Bloomington: Indiana University Press. 1974; PETERS, John G. and WELCH, Susan. The Effects of Charges of Corruption on Voting Behavior in Congressional Elections. *American Political Science Review*, Vol. 74, 1980, pp. 697-709; JOHNSTON, Michael. Right and Wrong in American Politics: Popular Conceptions of Corruption. *Polity*, Vol. 18, n°3, 1986, pp. 367-391.

<sup>48</sup> ELLIOTT Kimberly Ann. *Corruption and the Global Economy*. Institute of International Economics, Washington, D.C., 1997.

Table 9. Scholarly definitions of corruption

Focus	Legal	Public office	Public interest	Public goods	Public opinion
Definition	Corruption encompasses all transgression of the legal norms categorised as corruption.	“Corruption is behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence.” <sup>49</sup>	“[T]he pattern of corruption may therefore be said to exist whenever a power holder who is charged with doing certain things, that is a responsible functionary or office holder, is by monetary or other rewards, such as the expectation of a job in the future, induced to take actions which favour whoever provides the reward and thereby damage the group or organization to which the functionary belongs, more specifically the government.” <sup>50</sup>	Corruption can be said to occur “when [the] principle for the management and distribution of public goods is broken by those entrusted with the responsibility for handling the public goods” <sup>51</sup>	“The corruptness of political acts is determined by the interaction between the judgment of a particular act by the public and by political elites or public officials.” <sup>52</sup>
Promoters	/	Joseph Nye, Susan Rose-Ackerman	Carl Friedrich, Arnold Rogow, Harold Lasswell	Bo Rothstein	Arnold Heidenheimer, John Gardiner
Date	/	1967	1972	2013	1970

<sup>49</sup> NYE, Joseph. Corruption and Political Development: A Cost-Benefit Analysis. *The American Political Science Review*, Vol. 61, n° 2, 1967, p. 419.

<sup>50</sup> FRIEDRICH, Carl. *The Pathology of Politics: Violence, Betrayal, Corruption, Secrecy and Propaganda*. New York: Harper and Row, 1972.

<sup>51</sup> ROTHSTEIN, Bo and VARRAICH, Aiysha. *Op. cit.* 2017, p. 53.

<sup>52</sup> PETERS, John G. and WELCH, Susan. Political Corruption in America: A Search for Definitions and a Theory, or If Political Corruption Is in the Mainstream of American Politics Why Is it Not in the Mainstream of American Politics Research? *The American Political Science Review*, Vol. 72, n° 3, 1978, p. 975.



International institutions involved in anti-corruption work rapidly took on this ‘public office’ definition of corruption, as it appeared less politically charged, made corruption measurable and identifiable as a problem to solve by global policy-making.<sup>53</sup> Treating corruption as a non-political issue was particularly important for the World Bank. This is made clear by its former Director James Wolfensohn under whose leadership corruption was raised on the World Bank’s agenda:

When I got to the Bank, the General Counsel (...) said the one thing you cannot do is to talk about the ‘c’ word (...) under the charter of the Bank you are not allowed to talk about politics and corruption is politics (...) You can talk about anything else (...) but for God’s sakes don’t talk about the ‘c’ word because you will get fired. Your shareholders won’t like it (...) I took this for about two years until I recognized that there was no way to deal with the issue of equity and poverty and development without tackling the question of corruption. So, I came out in my Annual Meeting speech, I said corruption is a cancer and it is not political but it is social and it is economic and, therefore, I am allowed to talk about it. And if you politicians think that it is political, that is your problem. I think it is social and economic. Therefore I can talk about it.<sup>54</sup>

The World Bank and (TI) contributed to ‘normalise’ the ‘public office’ definition of corruption in the emerging transnational policy community.<sup>55</sup> As Mlada Bukovansky noted, until these transnational actors “articulated corruption as a global issue (...) the societal norms in which the definition of corruption was anchored were largely national or sub-national, not global”.<sup>56</sup> The World Bank and TI’s definitions of corruption, respectively the “abuse of public office for private gain” and the “abuse of entrusted power for private gain”, are undoubtedly the most widely used definitions of corruption. A comparison of these definitions with the academic approaches presented in Table 9 shows that these are indeed simplified versions of Joseph Nye’s ‘public office’ definition. In a policy document that came to be widely influential in the anti-corruption world, published a year after James Wolfensohn’s famous “cancer of corruption” speech, the World Bank presents its conception of corruption and details the origins of its definition in a footnote:<sup>57</sup>

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<sup>53</sup> WEDEL, Janine R. Rethinking Corruption in an Age of Ambiguity. *The Annual Review of Law and Social Science*. 2012; BUKOVANSKY, Mlada. The hollowness of anti-corruption discourse. *Review of International Political Economy*, Vol. 13, n°2, 2006; GEBEL, Anja C. Human nature and morality in the anti-corruption discourse of Transparency International. *Public Administration and Development*, Vol. 32, 2012, pp.109-128.

<sup>54</sup> WOLFENSOHN, James D. *NGO Meeting with Mr. Wolfensohn*. Prague, Czech Republic, 22 September 2000, cited by MARQUETTE, Heather. *Corruption, politics and development: the role of the World Bank*. Basingstoke : Palgrave Macmillan, 2003, p. 11.

<sup>55</sup> NAY, Olivier. International Organisations and the Production of Hegemonic Knowledge: how the World Bank and the OECD helped invent the Fragile State Concept. *Third World Quarterly*, Vol. 35, n°2, pp. 210-231.

<sup>56</sup> BUKOVANSKY, Mlada. Corruption rankings Constructing and contesting the global anti-corruption agenda. In COOLEY, Alexander and SNYDER, Jack. *Ranking the world: Grading States as a Tool of Global Governance*. Cambridge University Press, 2015, p. 66.

<sup>57</sup> World Bank. *Helping Countries Combat Corruption The Role of the World Bank*. Poverty Reduction and Economic Management. Washington DC: World Bank, 1997, pp. 19-20.

- OECD Anti-Corruption Working Group – “the promise or giving of any undue payment or other advantages whether directly or through intermediaries to, or for the benefit of, a public official to influence the official to act or refrain from acting in the performance of his or her official duties in order to obtain or retain business”
- European Bank for Reconstruction and Development – “corrupt practices mean the bribery of public officials or other persons to gain improper commercial advantage”
- World Bank procurement guidelines – “the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution”
- Susan Rose-Ackerman – “an illegal payment to a public agent to obtain a benefit that may or may not be deserved in the absence of payoffs”
- Andrei Shleifer and Robert Vishny – “the sale by government officials of government property for personal gain”

Interestingly, the World Bank notes that its definition “is not original” and admits that it was chosen “because it is concise and broad enough to include most forms. Like most other definitions it places the public sector at the centre of the phenomenon”.<sup>58</sup> The World Bank thus translated the work of economists and public choice scholars into its own definition that it used as a basis for its own work and promoted by including it into policy programmes, public declarations and measurements.<sup>59</sup>

TI is the other main author of the global definition of corruption as the ‘abuse of entrusted power for private gain’. This definition has travelled way beyond its coalition of national chapters and is routinely cited in academic work and policy documents.<sup>60</sup> Many international institutions (OECD<sup>61</sup>, UNODC<sup>62</sup>, Council of Europe<sup>63</sup>), research institutes (U4 Anti-Corruption Research Centre<sup>64</sup>) and development agencies (NORAD<sup>65</sup>) indeed use this definition. As a civil society organisation, TI does not enjoy the same status as the World Bank. Its issue legitimacy on the international stage, explained in Chapter 3, and the authority gained by being the first transnational actor to propose a definition of corruption, in the early 1990s, facilitated its dissemination. TI’s

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<sup>58</sup> *Ibid.*

<sup>59</sup> The proximity of these economists to international policy circles and their influence on anti-corruption discourse is illustrated in the singling out of Susan Rose-Ackerman as a source of information used by the World Bank’s Corruption Action Plan Working Group. What is remarkable is that while the other academics are cited together with a reference to the article that the definition is taken from, Rose-Ackerman, one of the first and most prominent corruption scholars promoting an economic analysis of corruption, is cited without any particular reference, which suggests that her definition had already become normalised and circulated sufficiently to make any reference redundant.

<sup>60</sup> BUKOVANSKY, Mlada. *Op. cit.* 2015, p. 66.

<sup>61</sup> OECD. *International Drivers of Corruption A Tool for Analysis*. Paris: OECD Publishing. 2012, p. 16.

<sup>62</sup> UNODC. *Student Guide Global Corruption, Good Governance and the United National Convention Against Corruption*. Vienna: UNODC, 2013, p. 20.

<sup>63</sup> Council of Europe. *Basic Anti-Corruption Concepts A Training manual*. Strasbourg: Council of Europe. 2015, p. 12.

<sup>64</sup> U4 Anti-Corruption Resource Centre. *What is Corruption?* Online, available at: <http://u4.no/topics/anti-corruption-basics/basics> (accessed on September 4th 2019)

<sup>65</sup> NORAD. *Anti-Corruption Approaches A Literature Review*. Study 2/2008. Oslo: NORAD, 2008. This report was jointly commissioned by several development agencies: NORAD, ADB, DANIDA, DFID, SADEV and SIDA.

efforts to shape and disseminate its definition of corruption are a way, for a non-governmental organisation, to gain influence on the international stage by framing the debate on the issue of corruption. Its founders Peter Eigen and Jeremy Pope indeed even took part in the World Bank's conceptual work.<sup>66</sup>

By normalising the 'public office' definition of corruption, the World Bank, and to a lesser extent TI, contributed to make public officials the 'group of the guilty',<sup>67</sup> or the target population of future policies.<sup>68</sup> Arguably, saying that corruption is a problem that relates to the public sector is nothing controversial. But, as Elitza Katarova shows, the construction of corruption as a global problem, in international forums such as the UN or the OECD, went from looking at corporate influence on politics in the 1970s to a concern about the abuse of public power in the 1990s. She demonstrates that the focus of the international policy community was politically constructed by powerful states (US) and their international agents.<sup>69</sup> While international institutions involved in anti-corruption work consider public officials as the (potential) culprits, they do so in quite a subtle way, maintaining a certain ambiguity as to whom is considered to be the source of the problem. Their public statements however tend to use strong imagery (such as 'evil', 'enemy', 'weapons' or 'fight'). Angel Gurría, Secretary-General of the OECD, for instance mentioned in the opening speech of the 2017 Integrity Forum, "the vehicles of corruption become more sophisticated. The enemy is always updating and upgrading its own weapons".<sup>70</sup> It is however not entirely clear who the 'enemy' actually is (and whether it is a person, a group of persons or a thing). The definition of 'public official' in international conventions and policy programmes is indeed quite ambiguous, as it is either not defined or encompass a very wide range of professional groups.<sup>71</sup> One can imagine

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<sup>66</sup> World Bank. *Op. cit.* 1997, p. ii.

<sup>67</sup> ZITTOUN, Philippe. *Op. cit.* 2014, p. 29.

<sup>68</sup> SCHEIDER, Anne and INGRAM, Helen. Social construction of target populations: Implications for politics and policy. *American Political Science Review*, Vol. 87, n°2, 1993, p. 335.

<sup>69</sup> KATZAROVA, Elitza. *The Social Construction of Global Corruption From Utopia to Neoliberalism*. London: Palgrave Macmillan, 2019.

<sup>70</sup> GURRIA, Angel. Opening remarks. Global Anti-Corruption & Integrity Forum. March 2017. OECD Web TV (24'), available at: [https://oecdwebtv-solution.com/3634/en/integrity\\_forum\\_2017.html](https://oecdwebtv-solution.com/3634/en/integrity_forum_2017.html) (accessed on September 12th 2019)

<sup>71</sup> UNCAC Article 2: For the purposes of this Convention: (a) "Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public 4 Council of Europe, European Treaty Series, No. 173. 5 *Ibid.*, No. 174. 6 General Assembly resolution 55/25, annex I. 8 official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in Chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as

that maintaining a certain level of ambiguity in the definition of the problem at the international level serves both to circumvent conflicts between stakeholders with different views, and to keep some leeway to extend one's policy agenda.<sup>72</sup> As Sampson puts it: "definitions of what constitutes corruption (...) are sufficiently vague that they can be integrated in many political agendas and private projects".<sup>73</sup>

The conceptual debate is still ongoing within academia,<sup>74</sup> with a move away from the search for a definition towards the study of practical understandings of corruption.<sup>75</sup> The 'public office' definition of corruption has become dominant within the rest of the policy community, as a result of the normalisation efforts of the World Bank and Transparency International. While spreading economists' (and public choice scholars') definition of corruption to the international policy community, they also made it more ambiguous than the academic original. Michael Johnston summarises the transition to our contemporary understanding of corruption as the shift from broader moral notions towards notions that "are by now almost exclusively, material or money-based. From there it is not a long leap to the sorts of technical and index-driven outlooks on corruption and reform that are dominant, but in some important respects unsatisfying, today".<sup>76</sup> As next section will show, quantification was indeed crucial in defining corruption as a global problem and putting corruption on the map, quite literally.

#### **4.1.3. Defining corruption to render it quantifiable**

Corruption rankings and measurements played a particularly important role in putting corruption on the global agenda.<sup>77</sup> The politics of numbers indeed proved essential in raising awareness about corruption, as is still visible in contemporary reference to estimates of costs and

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applied in the pertinent area of law of that State Party; United Nations. Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Corruption. 2010, pp. 21-55.

<sup>72</sup> BEST, Jacqueline. Ambiguity and Uncertainty in International Organizations: A History of Debating IMF Conditionality. *International Studies Quarterly*, Vol. 56, 2012, p. 674.

<sup>73</sup> SAMPSON, Steven. *Op. cit.* 2009, p. 170.

<sup>74</sup> PHILP, Mark and DAVID-BARRETT, Elizabeth. Realism About Political Corruption. *Annual Review of Political Science*, Vol.18, n° 1, 2015, pp. 387-402; HEYWOOD, Paul. *Op. cit.* 2015; ROTHSTEIN, Bo and VARRAICH, Aiysha. *Op. cit.* 2017.

<sup>75</sup> TÄNZLER, Dirk and MARAS, Kostandinos. *The Social Construction of Corruption in Europe*. London: Routledge, 2012; KOECHLIN, Lucy. *Corruption as an empty signifier: politics and political order in Africa*. Leiden: Brill, 2013; LASCOUMES, Pierre and LE HAY, Viviane. Rapport à l'argent et conception de la corruption politique. *L'Année sociologique*, Vol.63, n° 1, 2013, pp. 225-260; KATZAROVA, Elitza. *Op. cit.* 2019.

<sup>76</sup> JOHNSTON, Michael. Reflection and Reassessment. The emerging agenda of corruption research, In HEYWOOD, Paul (ed.) *Routledge Handbook of Political Corruption*. Oxford: Routledge, 2015, p. 284.

<sup>77</sup> HEYWOOD, Paul M and ROSE, Jonathan. "Close but no cigar": the measurement of corruption. *Journal of Public Policy*, Vol. 34, n°3, 2014, pp. 507-529; WANG, Hongying and ROSENAU, James N. *Op. cit.* 2001; BUKOVANSKY, Mlada. *Op. cit.* 2015.

level of corruption. As Peter Andreas and Kelly M. Greenhill, argue “to measure something – or at least to claim to do so – is to announce its existence and signal its importance and policy relevance”.<sup>78</sup> The possibility offered by indicators to visualise corruption, through ranks and maps proved particularly powerful to put corruption on the global agenda.<sup>79</sup> Judith G. Kelley argues that, in the global information age, reputation-driven influence (that she terms “scorecard diplomacy”) has become an important part of diplomacy (and transnational policy-making I would add). Rankings and measurements matter since countries worry about their reputation and pay attention when provided with “credible and visible information about their performance, especially if [it] makes it easy to compare them with other states or track their performance over time”.<sup>80</sup> It is thus worthwhile to explore this type of policy-relevant knowledge in more detail to understand how it contributed to shape corruption as a global problem and how indicators became a tool of influence, fuelling competition for ‘measurement leadership’ among scholars and international institutions. Indicators are not only a form of knowledge, providing information in a simplified numerical way, but has become a technology of global governance.<sup>81</sup>

Quantifying corruption implies selecting, categorizing and analysing measurable information to make it tractable, countable, comparable and often to allow for visualisation. In that sense quantification can be said to make corruption visible through *ranking* and *mapping*. A growing scholarship now argues that quantification – referred to alternatively as ranking, indicators, counting or measurement – is fundamentally political, both because it influences state behaviour and global governance, but also because producing measurement tools is itself a political process.<sup>82</sup> As Paul Heywood and Jonathan Rose argue, “in practice, specific indicators inevitably (even if implicitly) reflect particular definitions”.<sup>83</sup> They contain biases relative to the universe of things

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<sup>78</sup> ANDREAS, Peter and GREENHILL, Kelly M. Sex, drugs, and body counts: the politics of numbers in global crime and conflict. Cornell University Press. 2010, p. 1.

<sup>79</sup> HELLMAN, Olli. The visual politics of corruption. *Third World Quarterly*, Vol.40, n°12 2019, pp. 2129-2152.

<sup>80</sup> KELLEY, Judith G. Scorecard Diplomacy Grading States to Influence Their Reputation and Behavior. Cambridge: Cambridge University Press, 2017, p. 232.

<sup>81</sup> MERRY, Sally Engle, DAVIS, Kevin E. and KINGSBURY, Benedict. *The quiet power of indicators : measuring governance, corruption, and the rule of law*. Cambridge: Cambridge University Press, 2015. They define indicators as a named collection of rank-ordered data that purports to represent the past or projected performance of different units. The data are generated through a process that simplified raw data about a complex social phenomenon. The data, in this simplified and processed form, are capable of being used to compare particular units of analysis (such as countries or institutions or corporations), synchronically or over time, and to evaluate their performance by reference to one or more standards.

<sup>82</sup> *Ibid.*; COOLEY, Alexander and SNYDER, Jack (ed.) *Ranking the World: Grading States as a Tool of Global Governance*. Cambridge University Press. 2015.

<sup>83</sup> HEYWOOD, Paul M. and ROSE, Jonathan. *Op. cit.* 2015, p. 509, citing HAWKEN, Angela and MUNCH GERALDO L. *Do You Know Your Data? Measurement Validity in Corruption Research*. Working paper, School of Public Policy, Pepperdine University, Malibu (CA), 2009.

which *could* be measured. Looking at existing measurements helps us get a sense of how the battle of the numbers framed the problem, contributing to define corruption on the global stage. In a time where modernisation theory was falling out of fashion, research on the economics of corruption made it necessary to develop an operational definition that caters to the needs of measurement and comparison. Rose-Ackerman, one of the leading figures in this field of research, provides a clear explanation of the need for “essentially equat[ing] corruption with bribery”.<sup>84</sup> She justifies narrowing the concept of corruption to bribery using a “wide range of productive research” that focusses on “the piece of the broader concept most susceptible to economic analysis – monetary payments to agents”.<sup>85</sup> The need to quantify and measure corruption certainly played an important role in the narrowing down of corruption to becoming a synonym of bribery. In the mid-1990s, international organisations also started to quantify corruption for the purpose of measurement and comparison.

As the conceptual architects of corruption within the policy community, TI and the World Bank were the first to develop corruption indicators. It is widely recognised that TI’s Corruption Perceptions Index (CPI) was an important factor in the organisation’s growing visibility and influence on the international stage, notably through the media attention that it came to receive each year.<sup>86</sup> To operationalise its governance turn, the World Bank turned to quantification with the development of its Worldwide Governance Indicators (WGI) in 1996, which includes an indicator on the ‘control of corruption’. Both measurement tools are composite indexes, merging indicators on the level of corruption and on existing mechanisms to prevent it. This suggests a vague definition of corruption, based on the ‘public office’ definition that they promote. TI rapidly became a mass-producer of corruption indicators, progressively diversifying its methods (turning to public opinion surveys with the Global Corruption Barometer – GCB) and focus (looking at the practices of exporting firms with the Bribe Payers’ Index – BPI). The corruption measurements developed by the World Bank and TI served the organisations’ ambition to normalise the ‘public office’ definition of corruption, focussing on the practices of individual office-holders.<sup>87</sup>

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<sup>84</sup> ROSE-ACKERMAN, Susan. *The Economics of Corruption: a study in political economy*. New York: Academic Press. 1978, p. 7.

<sup>85</sup> ROSE-ACKERMAN, Susan (ed.) *International Handbook on the Economics of Corruption*. Cheltenham: Edward Elgar. 2006, p. xiv.

<sup>86</sup> WANG, Hongying and ROSENAU, James N. *Op. cit.* 2001; BUKOVANSKY, Mlada. *Op. cit.* 2015.

<sup>87</sup> Corruption measurements have been extensively analysed and criticized: UNDP. *A Users’ guide to measuring corruption*. Oslo: UNDP Oslo Governance Centre, 2008; HEYWOOD, Paul M and ROSE, Jonathan. “Close but no cigar”: the measurement of corruption. *Journal of Public Policy*, Vol. 34, n°3, 2014, pp. 507-529; STEPHENSON, Matthew. A Reminder: Year-to-Year CPI Comparisons for Individual Countries are Meaningless, Misleading, and Should Be Avoided. *The Global Anti-Corruption Blog*, January 29<sup>th</sup> 2019. Online, available at:

Corruption indicators have multiplied since the first publication of TI's CPI and the World Bank's WGI in the 1990s.

Corruption measurement has become a competitive market, providing the developers of successful tools with a place under the (anti-corruption) sun, attracting academic citations, research funding and visibility in policy spheres. Other organisations joined the bandwagon of corruption measurement as the problem became increasingly visible in the public debate. The Index of Public Integrity (IPI), produced by the European Research Centre for Anti-Corruption and State-Building (ERCAS) at the Hertie School of Governance, and the European Quality of Government Index (EQI), produced by the Quality of Government Institute (QoG) at the University of Gothenburg, are interesting cases. Unlike the first indicators, these measurements were developed by academic institutions who became known for being relatively critical to the international anti-corruption regime.<sup>88</sup> These measurements do not fundamentally differ from TI and the World Bank's measurement in terms of their underlying conceptualisation of corruption. But they add a level of sophistication to the measurements, allowing for subnational ranking in the case of the EQI, and interpret *control* of corruption differently, as detailed in Table 10. More and more actors are willing to invest time and resources in developing indicators to measure corruption. This supports Diane Stone's claim that global governance is increasingly structured around interactions between state and non-state actors (the IPI and the EQI being partly funded by the European Commission, to which we return in Chapter 6), with knowledge organisations playing an increasing role.<sup>89</sup> Measurement tools have become a source of cognitive and practical/technical authority, necessary to gain visibility in the anti-corruption community and to promote one's conception of corruption (or its opposite).

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<https://globalanticorruptionblog.com/2019/01/29/a-reminder-year-to-year-cpi-comparisons-for-individual-countries-are-meaningless-misleading-and-should-be-avoided/> (accessed on March 12<sup>th</sup> 2020)

<sup>88</sup> PERSSON, Anna, ROTHSTEIN, Bo and TEORELL, Jan. Why Anticorruption Reforms Fail-Systemic Corruption as a Collective Action Problem. *Governance*, Vol. 26, n° 3, 2013, pp. 449–471; ROTHSTEIN, Bo and VARRAICH, Aiysha. *Op. cit.* 2017; MUNGIU-PIPPIDI, Alina. *The Quest for Good Governance. How Societies Develop Control of Corruption*. Cambridge University Press, 2015.

<sup>89</sup> STONE, Diane. *Knowledge Actors and Transnational Governance*. London: Palgrave Macmillan, 2013.

Table 10. Selected corruption and governance indicators

Corruption Perceptions Index	Global Corruption Barometer	Bribe Payers Index	Worldwide Governance Indicators	Index of Public Integrity	European Quality of Government Index
Composite	Public opinion survey	Expert survey	Composite	Composite	Public opinion survey
<p>The CPI draws upon data sources which capture the assessment of experts and business executives on a number of corrupt behaviours in the public sector, including: <b>Bribery, Diversion of public funds, Use of public office for private gain, Nepotism in the civil service, State capture.</b></p> <p>Some of the sources also look at the <b>mechanisms</b> available to <b>prevent corruption</b> in a country, such as:</p> <ul style="list-style-type: none"> <li>-The government's ability to enforce integrity mechanisms</li> <li>-The effective prosecution of corrupt officials</li> <li>-Red tape and excessive bureaucratic burden</li> <li>-Laws on financial disclosure, conflict of interest prevention and access to information</li> </ul>	<p>The GCB first asks a series of question on the interviewee's perception of corruption without providing a definition.</p> <p>Then it asks questions about their experience of <b>bribery</b>, referring to bribes, bribery incidents, <b>unofficial payments and gifts, and informal payments.</b></p>	<p>The BPI uses a survey questionnaire that asks business executives about their perception of the frequency of <b>bribery</b> to civil servants or other firms as well as <b>improper contributions</b> to high-ranking politicians or political parties.</p>	<p>The Control of Corruption indicator captures perceptions of the extent to which <b>public power is exercised for private gain</b>, including petty and grand forms of corruption, as well as “<b>capture</b>” of the state by elites and private interests.</p> <p>The data sources measure diversion of public funds, <b>irregular payments/unofficial</b> to government agencies, <b>bribery</b> as well as corruption. It also measures <b>transparency</b> and <b>accountability</b>.</p>	<p>The Index of Public Integrity aims to give an objective and comprehensive picture of the state of <b>control of corruption</b>.</p> <p>It consists of six components:</p> <ul style="list-style-type: none"> <li>-Judicial independence</li> <li>-Administrative burden</li> <li>-Trade openness</li> <li>-Budget transparency</li> <li>-e-citizenship</li> <li>-freedom of the press</li> </ul>	<p>The European Quality of Government Index is based on survey data on the perceptions and experiences with <b>public sector corruption</b> and citizens' belief in the <b>impartiality</b> and quality of public services.</p> <p>The questionnaire defines corruption as <b>the abuse of entrusted public power for private gain</b>, by a public employee or a politician for money, gifts or other benefits.</p> <p>It asks specific questions about <b>special advantages</b> and <b>bribery</b>, as well as quality of public services and equal treatment.</p>
Transparency International	Transparency International	Transparency International	World Bank	ERCAS	Quality of Government Institute (Uni Gothenburg)
1995	2003	1999	1996	2017	2008

Source: the information presented in the table is taken from each indicator's methodology



As Table 10 shows, a number of corruption measurements are composite indices. Given the measurement difficulties and the lack of available data on corruption, composite indicators remain the most widely used measurement tools to provide information on the level of corruption allowing cross-country comparisons, as they allow for wider country coverage.<sup>90</sup> In general, composite indicators are increasingly used from cross-national benchmarking exercises due to their “ability to integrate large amounts of information into easily understood formats and [their value] as a communication and political tool”.<sup>91</sup> Organisations producing composite indicators do not collect their own data but rely on other data sources that they aggregate to put forward a synthesised measurement. Composite indices present some methodological problems, however.<sup>92</sup> There is often a trade-off between country coverage and data quality, which leads to indicators that do not adequately reflect the problem (including its most ‘measurable’ aspects).<sup>93</sup> Moreover, data needs to be standardised and weighted, which impacts country ranking, making decisions to weight aspects of a problem or policy area not only methodological but fundamentally political.<sup>94</sup> Data sources might not be independent from each other, meaning that, while, indicators can provide statistically reliable measures, “what they reliably measure is not so clear”.<sup>95</sup> The prominence of certain composite indices and the media attention they receive might influence the assessment of experts or citizens surveyed in public opinion polls that are themselves part of the composite indices’ data sources,<sup>96</sup> that are moreover often the same ones.<sup>97</sup> Despite the multiplication of corruption measurements, the number of reliable data sources is still relatively limited, leading the organisations constructing composite indices to use each other’s data to produce their measurements. Indicators and ranking not only draw attention to the problem of corruption but also contributed to impose a certain conception of corruption promoted by TI and the World

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<sup>90</sup> UNDP. *A Users’ guide to measuring corruption*. Oslo: UNDP Oslo Governance Centre, 2008.

<sup>91</sup> FREUDENBERG, Michael. *Composite Indicators of Country Performance: A Critical Assessment*. Paris: OECD Publishing, 2003, p. 3.

<sup>92</sup> FREUDENBERG, Michael. *Op. cit.* 2003; LANGBEIN, Laura and KNACK, Stephen. The Worldwide Governance Indicators: Six, One, or None? *The Journal of Development Studies*, Vol.46, n° 2, 2010, pp. 350-370; HEYWOOD, Paul M and ROSE, Jonathan. “Close but no cigar”: the measurement of corruption. *Journal of Public Policy*, Vol. 34, n°3, 2014; Alexander COOLEY and Jack SNYDER (eds.) *Ranking the World: Grading States as a Tool of Global Governance*. Cambridge: Cambridge University Press, 2015.

<sup>93</sup> FREUDENBERG, Michael. *Op. cit.* 2003.

<sup>94</sup> COOLEY, Alexander. The Emerging Politics of International Rankings and Ratings. In Alexander COOLEY and Jack SNYDER (eds.) *Ranking the World: Grading States as a Tool of Global Governance*. Cambridge: Cambridge University Press, 2015, p. 29.

<sup>95</sup> LANGBEIN, Laura and KNACK, Stephen. *Op. cit.* 2010, p. 365

<sup>96</sup> *Ibid.*; HEYWOOD, Paul M and ROSE, Jonathan. “Close but no cigar”: the measurement of corruption. *Journal of Public Policy*, Vol. 34, n°3, 2014.

<sup>97</sup> KNACK, Stephen. Measuring corruption: A critique of indicators in Eastern Europe and Central Asia. *Journal of Public Policy*, Vol. 27, 2007, pp 255–291.

Bank. Moreover, the methods used to measure corruption contribute to reinforce these dominant conceptions of corruption as a global problem and thus to shape the cognitive framework for policy-making at the national and global levels.

TI and the World Bank were instrumental in constructing corruption as a global problem, by providing a definition that they presented as non-political and thus as applicable to all polities around the world. It is not coincidental that they appropriated a concept of corruption promoted by an epistemic community seeking to render corruption measurable and comparable across borders. From describing the (fundamentally political) process of political system decay, corruption today refers to the transgression of the rules of public office, at least within the transnational political community. Moreover this search for a *technical* definition of corruption might clash with the broader public use of the term, that can be used to express dissatisfaction with one's government.<sup>98</sup> Having traced how corruption came to be understood as a transgression of public office by international organisations, next section looks at another aspect of the construction of a public problem, namely the process of rendering an intractable problem *governable*.

## 4.2. Defining corruption as a governable problem

Defining a public problem is political, both because it entails competition between different interpretations of what comprises the *facts* of a situation<sup>99</sup> and because it determined what can and should be done to resolve the problem.<sup>100</sup> A public problem indeed suggests that policy-makers have agency to do something about a situation.<sup>101</sup> Understanding what the problem is represented to be, as Carol Bacchi puts it,<sup>102</sup> what assumptions underlie problem representation and who – or what – is assigned the blame for causing the problem are central aspects of policy analysis. Whilst transnational actors progressively found a relatively consensual definition of what they meant by corruption and turned it into a measurable problem (a first step towards making it governable), they also needed to find a common understanding of what caused corruption. This section traces the historical process of politicising corruption, moving it from the realm of fate to the realm of contingency and deliberation,<sup>103</sup> making corruption a governable problem.

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<sup>98</sup> PHILP, Mark. *Op. cit.* 2015, pp. 18-19; HAY, Colin. *Why We Hate Politics*. Cambridge: Polity Press, 2007.

<sup>99</sup> SCHÖN, Donald A. and REIN, Martin. *Op. cit.* 1994.

<sup>100</sup> HOGWOOD, Brian and PETERS, Guy. *Policy Dynamics*. St Martin's Press, 1983.

<sup>101</sup> PADIOLEAU, Jean-Gustave. *L'Etat au concret*. Paris : Sociologies, 1982.

<sup>102</sup> BACCHI, Carol. *Analysing Policy: What's the problem represented to be?* Melbourne: Pearson Education, 2009.

<sup>103</sup> HAY, Colin. *Why We Hate Politics*. Cambridge: Polity Press, 2007, pp. 79-80.

#### **4.2.1. Early politicisation of corruption: moving it out of the realm of fate**

Defining a situation as a public problem implies building governments' agency to act upon it. Borrowing Colin Hay's understanding of politics as the realm of contingency and deliberation, we need to conceive of a situation as being outside of the realm of nature and fate to see it as a public problem.<sup>104</sup> This means firstly that we see a situation as the result of human actions, and secondly that we believe that society, and more specifically governments, can do something about it. This section looks at the construction of human agency on corruption, taking a long-term perspective, before moving to the result of political deliberation about the type of actions required to eliminate (or limit) the problem (i.e. the policy itself).

Seeing corruption as a risk to be prevented through the implementation of various instruments is relatively new. In pre-modern political philosophy, as mentioned in the previous section, corruption was closely tied to the notion of virtue and embedded in a discourse on regime change. Corruption was seen as the decline of leaders', and more broadly people's, dedication to the well-being of society.<sup>105</sup> Drawing from Aristotle's constitutional change, this cyclical historiography posited that "a healthy government could easily degenerate into a corrupt and rotten form of government, such as a monarchy protecting the well-being of the polis becoming a tyranny protecting only the interests of tyrants and their allies".<sup>106</sup> While forms of abuse of power were criminalised (Section 4.1.1), corruption as a broader phenomenon was mostly understood as an inexorable fact of life, tied to human beings' sinful nature and to societies' cyclical decay. Corruption was not seen as wholly belonging to the realm of fate, but human agency was seen as limited to individual sanctions and elimination of the corrupted elements of society. Public intervention was circumscribed due to the fundamental conviction that corruption would inevitably re-appear.<sup>107</sup> Political thinkers tied corruption to human greed and to the dangers of self-interests.<sup>108</sup> Corruption as an illness of the body politics was often illustrated by the analogy of the decline of the Roman Empire. As Viscount Bolingbroke wrote about Rome: "she maintained her grandeur

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<sup>104</sup> HAY, Colin. *Op. cit.* 2007, p. 80.

<sup>105</sup> DOBEL, Patrick J. Reflection and Good Reasons in Policy Analysis. In PORTIS Edward Bryan and LEVY Michael B. (eds.) *The Handbook of Political Theory and Political Science*. New York: Greenwood Press, 1988, p 29-44.

<sup>106</sup> ARISTOTLE. *Politics*, translated and with an introduction, notes, and glossary by Carnes Lord. 2nd edition. Chicago, London: the University of Chicago Press, 2014; KROEZE, Ronald. *Op. cit.* 2016, p. 20.

<sup>107</sup> *Ibid.*

<sup>108</sup> RITNER, Scott. The Concept of Corruption in Machiavelli's Political Thought, 2011. Available at SSRN: <https://ssrn.com/abstract=1808959> (accessed on March 20<sup>th</sup> 2020); MÉNISSIER, Thierry. Corruption, Virtue and Republic in Machiavelli's Work. *South-East European Journal of Political Science*, 2013; BUCHAN, Bruce and HILL Lisa. *Op. cit.* 2014, p. 139.

whilst she preserved her virtue; but when luxury grew up to favour corruption, and corruption to nourish luxury, then Rome grew venal”.<sup>109</sup>

The 18th century and the philosophy of the Enlightenment brought a fundamental change in the understanding of the causes of corruption. Section 4.1 mentioned the importance of the construction of the modern state and the distinction between public and private spheres as essential for the modern understanding of corruption. Here it is the Enlightenment thinkers’ belief in human progress that substituted a more cyclical historiography that interest us. Moving away from the fatalistic view of the unavoidable corruption of human society, Modern political thought saw human development as inexorable. The development of commerce and market society, as well as the changed attitude towards self-interest and enrichment,<sup>110</sup> moved corruption out of the realm of (human) nature. From being the source of corruption, the pursuit of self-interest becomes the basis of human improvement, as argued in Adam Smith’s (1776) *Inquiry into the Nature and Causes of the Wealth of Nations*:

The (...) effort of every man to better his condition, the principle from which public and (...) private opulence is originally derived, is frequently powerful enough to maintain the natural progress of things towards improvement, in spite both of the extravagance of government and of the greatest errors of administration.<sup>111</sup>

This position was not consensual, and other Enlightenment thinkers, such as Jean-Jacques Rousseau for instance, still considered Montesquieu’s ‘*doux commerce*’ as a source of corruption and decadence.<sup>112</sup> Moving from a society of virtue to one of interests, humans’ self-interested nature is no longer an inevitable source of political degeneration and corruption becomes the consequence of poorly adapted political and economic settings.<sup>113</sup> Ronald Kroeze identifies a form of optimism in the Enlightenment’s perspective on corruption. He writes that, from the end of the 18<sup>th</sup> century, “corruption [is] no longer regarded as something unavailable and natural to human society but as a historical phenomenon, a thing of the past”.<sup>114</sup> Corruption came to be seen as a phenomenon that could be eliminated by getting rid of common practices of the *Ancien regime* or ‘old corruption’, such as aristocratic patronage and mercantilism. People and their governments could thus act on

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<sup>109</sup> BOLINGBROKE, Henry. *Political Writings*. Cambridge University Press. 1997, p. 167.

<sup>110</sup> BUCHAN, Bruce and HILL Lisa. *Op. cit.* 2014.

<sup>111</sup> SMITH, Adam. *An Inquiry Into the Nature and Causes of the Wealth of Nations*. Printed at the University Press, for T. Nelson and P. Brown, 1831, p. 141.

<sup>112</sup> HIRSCHMAN, Albert O. *The Passions and the Interests Political Arguments for Capitalism before its Triumph*. Princeton: Princeton University Press, 1997, p. 107.

<sup>113</sup> BUCHAN, Bruce and HILL Lisa. *Op. cit.* 2014, p. 151.

<sup>114</sup> KROEZE, Ronald. *Op. cit.* 2016, p. 23.

the problem through institutional reforms creating checks and balances, promoting free speech and publicity, rationalising government and professionalising public office.<sup>115</sup>

This institutional perspective on corruption informed the modernisation theory of development. Kroeze explains that with the allied victories of the first half of the twentieth century, *modern* became associated with “being a Western-style market economy and a parliamentary democracy based upon a liberal constitution”.<sup>116</sup> This assumption became particularly influential with the independence movements on the African and Asian continents and the emergence of ‘new’ states, a context which saw the development of an academic literature on corruption.<sup>117</sup> Robert Williams reminds us that “from this perspective, corruption is associated with forms of political and economic immaturity which educational and social progress would overcome”.<sup>118</sup> For its supporters, modernisation meant profound institutional reforms to eliminate corruption, such as those that Western country had undergone in the previous century. Development was then seen as “the cure for all manner of social and economic ills”.<sup>119</sup> Many scholars writing about corruption in the 1960s and 1970s had adopted the perspective of Robert Merton’s structural-functional sociology, perceiving corruption as fulfilling a positive function in societies in transition. Corruption could ‘grease the wheels’ of the economy and reformers should thus not focus on corruption but on economic and political development, since “preoccupation with corruption can itself become an impediment to development”.<sup>120</sup>

Confidence in modernisation theory was nevertheless shaken by the end of the 1970s as the expected economic take-off of developing states did not materialise. New theories of development, such as dependency theory, came to replace modernisation and the belief that development towards the Western model of society would solve the problems of developing states lost its prominence. In addition, the wave of scandals that shook the Western world (such as Watergate,

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<sup>115</sup> MADISON, James. Letter to W. T. Barry. 1822; BENTHAM, Jeremy. Critique of the Doctrine of Inalienable, Natural Rights. Anarchical Fallacies, Vol 2 of Bowring (ed.), Works, 1843; FOUCAULT, Michel. *Discipline and punish: the birth of the prison*. 2nd Vintage Books ed. New York: Vintage Books, 1995; BENTHAM, Jeremy. *Selected writings*, edited and with an introduction by Stephen G. Engelmann. New Haven: Yale University Press, 2011; MILL, John Stuart. *Considerations on Representative Government* (1 ed.). London: Parker, Son, & Bourn. 1861; MONIER, Frédéric. *Op. cit.* 2016.

<sup>116</sup> KROEZE, Ronald. *Op. cit.* 2016, p. 23.

<sup>117</sup> HEINDENHEIMER, Arnold (ed.). Political Corruption : Readings in Comparative Analysis. New Brunswick : Transactions Books. 1970; SCOTT, James. *Comparative political corruption*. Englewood Cliffs (N.J.): Prentice-Hall. 1972, p. v.

<sup>118</sup> WILLIAMS, Robert. Explaining Corruption The Politics of Corruption. Edward Elgar Pub. 2000, p.ix.

<sup>119</sup> *Ibid.* p.v.

<sup>120</sup> LEFF, Nathaniel H. Economic Development Through Bureaucratic Corruption. In Arnold J. HEIDENHEIMER (ed.), *Political Corruption*, New Brunswick (NJ): Transaction Books. 1970, p. 514.

the Flick scandal or *Tangentopoli* in Italy) undermined the belief that ‘modern’ societies were free of corruption and led to the ‘rediscovery of corruption in the Western democracies’.<sup>121</sup> The idea of acting directly on the problem of corruption emerged in development agencies.<sup>122</sup> As developed in Section 4.1, economists were influential in the emerging academic field, with Susan Rose-Ackerman’s 1978 *Corruption: A Study in Political Economy* and Robert Klitgaard’s 1988 *Controlling Corruption* as flagship publications on the economics of corruption. They contributed to popularise a public choice perspective on corruption, theorising public officials as rational interest-maximising agents who would act corruptly if they saw that the benefits of doing so were higher than the possible costs. Klitgaard developed a formula of corruption equating corruption to monopoly plus discretion minus accountability ( $C=M+D-A$ ),<sup>123</sup> which informed the first international anti-corruption programmes, as Chapter 3 briefly mentioned. From a consequence of political immaturity, corruption then came to be seen as a problem of wrong incentives that concerned all countries around the globe, and which could be systematically governed through specific measures and instruments.

#### **4.2.2. Defining corruption as a threat: constructing political agency to solve intractable problems**

Before turning to the international institutions’ discursive efforts and practices that contributed to defining corruption as a governable problem, one must understand how corruption was (or came to be) associated with other ‘global bads’.<sup>124</sup> Defining a situation or a practice as a public problem requires actors to highlight the importance of the problem and give it visibility by framing it as something problematic, worthy of attention, immoral or dramatic.<sup>125</sup> Deborah A. Stone argues that, to become public problems, issues need to be “portrayed in certain ways so as to win the allegiance of large numbers of people”.<sup>126</sup> International institutions indeed sought to raise awareness about corruption by presenting it as a cause of other salient problems, such as decline of public trust, political instability, lack of economic productivity or poverty. Table 11

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<sup>121</sup> KROEZE, Ronald. *Op. cit.* 2016.

<sup>122</sup> WILLIAMS, Robert. *Op. cit.* 2000, p.v.

<sup>123</sup> KLITGAARD, Robert. *Controlling Corruption*. University of California Press, 1988.

<sup>124</sup> WALTERS, William. Anti-policy and Anti-politics. Critical Reflections on Certain Schemes to Govern Bad Things. *European Studies of Cultural Studies*, 2008, Vol 11 n°5, p 267–288; HANSEN, Hans Krause. Managing corruption risks. *Review of International Political Economy*, 2011, Vol 18, n°2, pp. 251-275.

<sup>125</sup> GUSFIELD, Joseph. *The Culture of Public Problems Drinking-Driving and The Symbolic Order*. University of Chicago Press, 1981; SCHÖN, Donald A. and REIN, Martin. *Op. cit.* 1994.

<sup>126</sup> STONE, Deborah A. *Policy, Paradox and Political Reason*. Glenview (Ill.): Scott Foresman, 1988, p. 171.

provides examples of the various ‘bads’ that corruption has been associated to in international institutions’ discourse.

Table 11. International institutions’ statements framing corruption as threat

Institution	Corruption as threat
United Nations	Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption attacks the foundation of democratic institutions by distorting electoral processes, perverting the rule of law and creating bureaucratic quagmires whose only reason for existing is the soliciting of bribes. Economic development is stunted because foreign direct investment is discouraged and small businesses within the country often find it impossible to overcome the "start-up costs" required because of corruption. <sup>127</sup>
World Bank	Corruption (...) [increases] costs and reduces services (...) erodes trust and undermines the social contract (...) impedes investment, with consequent effects on growth and jobs. <sup>128</sup>
Council of Europe	Ever since antiquity, corruption has been one of the most widespread and insidious of social evils. When it involves public officials and elected representatives, it is inimical to the administration of public affairs. Since the end of the 19th century, it has also been seen as a major threat in the private sphere, undermining the trust and confidence which are necessary for the maintenance and development of sustainable economic and social relations. It is estimated that hundreds of billions of Euros are paid in bribes every year. <sup>129</sup>
OECD	Corruption hinders both public and private sector productivity. It perpetuates inequality and poverty, impacting well-being and the distribution of income and undermining opportunities to participate equally in social, economic and political life. <sup>130</sup>
Transparency International	Corruption corrodes the fabric of society. It undermines people’s trust in political and economic systems, institutions and leaders. It can cost people their freedom, health, money – and sometimes their lives. <sup>131</sup>

International institutions have framed corruption as a threat to democracy, development, peace or peace to justify putting the issue in their agenda and legitimizing their work. In the early years of the ‘corruption eruption’,<sup>132</sup> academics and international institutions not only discursively framed corruption as a threat but also sought to produced evidence of the consequences and costs

<sup>127</sup> UNODC. UNODC's Action against Corruption and Economic Crime. Official website. Online, available at: <https://www.unodc.org/unodc/fr/corruption/index.html?ref=menuaside> (accessed on September 12th 2019)

<sup>128</sup> The World Bank. Combating Corruption. Official website. Online, available at:

<http://worldbank.org/en/topic/governance/brief/anti-corruption> (accessed on September 12th 2019)

<sup>129</sup> Group of States Against Corruption (GRECO). About GRECO. Official website. Online, available at:

<https://www.coe.int/en/web/greco/about-greco> (accessed on September 12th 2019)

<sup>130</sup> OECD. OECD Recommendation on Public Integrity. Official website. Online, available at:

<http://www.oecd.org/gov/ethics/recommendation-public-integrity/> (accessed on September 12th 2019)

<sup>131</sup> Transparency International. What are the costs of corruption? Official website. Online, available at:

<http://transparency.org/what-is-corruption> (accessed on September 12th 2019)

<sup>132</sup> NAIM, Moisés. The Corruption Eruption. *The Brown Journal of World Affairs*, Vol. 2, n° 2, 1995, pp. 245-261.

of corruption.<sup>133</sup> In 1994, during their 19<sup>th</sup> conference in Valletta, the Ministers of Justice of the Council of Europe declared that they “[considered] that corruption [was] a serious threat to democracy, the rule of law and human rights” and that “the Council of Europe, being the pre-eminent European institution defending those values, [was] called upon to respond to that threat”. Similarly, in 2001 the UN General Assembly opened its Resolution 55/61, in which it decides to begin the elaboration of an international convention, by “noting the corrosive effect that corruption has on democracy, development, the rule of law and economic activity”. A World Bank publication on anti-corruption in transition countries published in 2000 cites numerous academic publications, often from the discipline of economics, providing empirical evidence of the costs of corruption on “investment (both domestic and foreign), (...) growth, (...) trade, (...) government expenditure, (...) the financial system, and (...) the underground economy (...) and poverty and income inequality”.<sup>134</sup> International institutions also sought to quantify the costs of corruption: 120 billion € per year in the EU, according to the European Commission,<sup>135</sup> 50% of the global GDP according to the United Nations, the OECD and others.<sup>136</sup>

The examples presented in Table 11 show that international institutions have a relatively unified discourse on what corruption is considered as a threat to. International institutions adapt the ‘threat frame’ to their respective agenda. The World Bank and the OECD emphasise the consequences of corruption on investments and productivity. The UN and the Council of Europe have a broader perspective on the negative consequences of corruption, extending the frame to its impact on democracy and public administration, while TI says that corruption costs human lives. Understanding corruption in this manner makes corruption into what Michael Power refers to as a primary risk to which the whole society is exposed.<sup>137</sup> As a first-order risk, corruption is seen as having harmful effects and should be ‘fought’ because of these consequences. Society as a whole

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<sup>133</sup> OECD Official 2 (OECD2). Phone interview with author. May 23d 2018. A number of literature reviews have been published by INGOs and development agencies on the costs and consequences of corruption. See for instance: JENNETT, Victoria. *Summaries of Literature on Costs of Corruption*. Berlin: Transparency International. 2007; WICKBERG, Sofia. *Literature review on costs of corruption for the poor*. Berlin: Transparency International. 2013; ROCHA MENOCAL, Alina and TAXELL, Nils. *Why corruption matters: understanding causes, effects and how to address them. Evidence paper on corruption*. London: Department for International Development UK Government. 2015.

<sup>134</sup> World Bank. *Anticorruption in Transition: A Contribution to the Policy Debate*. Washington (DC): World Bank Publications, 2000, p. 18.

<sup>135</sup> European Commission. Anti-Corruption report. Online, available at: [https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en) (accessed on November 8th 2019)

<sup>136</sup> UN News. *The costs of corruption: values, economic development under assault, trillions lost, says Guterres*. December 9th 2018. Online, available at: <https://news.un.org/en/story/2018/12/1027971> (accessed on November 8th 2019); OECD. *The rationale for fighting corruption*. Paris: OECD Publications, 2013.

<sup>137</sup> POWER, Michael. *The risk management of everything: rethinking the politics of uncertainty*. London: Demos. 2004.



is thus considered as the victim of corruption and its consequences,<sup>138</sup> public officials as risk producers and the state, and international institutions, as risk managers. Constructing corruption as a threat to democracy, economic development or peace, not only raises awareness of the seriousness of the problem of corruption but it also discursively constructs the agency of international institutions and national governments to ‘do something’ about these intractable problems by targeting the problem of corruption (seen as – more – governable). Framing corruption as a cause of these other problems makes it necessary not only to sanction the culprits, but to prevent it from happening in the first place, in order to preserve these various public goods.

#### **4.2.3. ‘Prevention is better than cure’: towards upstream policy interventions**

International institutions indeed rapidly presented corruption as a problem to be prevented and controlled through regulatory policies and instruments.<sup>139</sup> Preventive policies have become an essential part of anti-corruption efforts, together with criminalisation and law enforcement. As stated by the UNODC, “corruption can be prosecuted after the fact, but first and foremost, it requires prevention”.<sup>140</sup> Anna Coote’s typology of public interventions provides a useful framework to understand the evolution of the policies formulated to solve the issue of corruption. She identifies three types of public interventions:

- i. Upstream interventions: to prevent harm before it occurs, usually focusing on whole populations and systems;
- ii. Midstream interventions: to mitigate the effects of harm that has already happened, usually targeted at groups or areas considered ‘at risk’; and
- iii. Downstream interventions: to cope with the consequences of harm that has not been – or cannot be – avoided.<sup>141</sup>

Changes in our understanding of the causes of corruption (from fate to institutions to incentive structures) opened the possibility to develop mid-stream and even upstream interventions to limit the occurrence of corruption. When corruption was considered as an inexorable fact of life and the consequences of political leaders going rogue, only downstream solutions were envisaged, through individual sanctions mostly. With the redefinition of corruption as a governable public problem, human agency extended to the prevention of the harm before it occurs. The

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<sup>138</sup> ZITTOUN, Philippe. *Op. cit.* 2014.

<sup>139</sup> HANSEN, Hans Krause. Managing corruption risks. *Review of International Political Economy*, 2011, Vol 18, n°2, pp. 251-275.

<sup>140</sup> UNODC. United Nations Convention Against Corruption Convention Highlights. Official website. Online, available at: <https://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html> (accessed on 9 January 2017)

<sup>141</sup> COOTE, Anna. *The Wisdom of Prevention*. London: New Economics Foundation. 2012; GOUGH, Ian. The Political Economy of Prevention. *British Journal of Political Science*, Vol. 45, 2013, p. 308.

modernisation perspective on corruption as being caused by maladapted institutions should be seen as a form of upstream intervention, as profound institutional (or even regime) changes equates to modifying actors' social environment.<sup>142</sup> Interestingly, much of the international anti-corruption policy regime (further detailed in the next two chapters) is comprised of mid-stream interventions, as the policy instruments promoted target the population considered 'at risk', namely public officials (Section 4.1.2). Public interest registers are an example of a midstream intervention, placing the focus on the officials considered at risk and disclosing their interests so as to better detect any conflict of interest, and thus mitigate the risk of corruption. The recent 'integrity turn' of the OECD's approach to corruption could be seen as a move towards a new form of upstream interventions. It promotes a 'values-based approach' including the 'whole-of-society' in its theory of change, shifting the responsibility of oversight from the regulator to individual officials (assuming an internalisation of the rules) and to citizens.<sup>143</sup>

Introducing preventive interventions requires policy actors to define corruption as a certain type of public problem and to establish the 'facts' (or causes) of a situation.<sup>144</sup> Here the link between the epistemic community<sup>145</sup> and the transnational policy community comes into play. The dominant theory of change informing preventive measures against corruption has indeed been largely inspired by public choice theory, promoting a cost-benefit approach to corruption, as exemplified by TI's 'holistic approach' detailed in Section 3.1.2.<sup>146</sup> The definition of corruption as a problem of incentives is the result of the influence of the epistemic community on the transnational policy community on the one hand, and of the predominance of the Anglosphere where public choice theory and new public management had already largely come to inform the direction and content of state reforms, on the other.<sup>147</sup> Moreover, refocussing their attention to the causes of corruption, encouraged international institutions to look at how pioneers in the policy field understood (and dealt with) these causes. This facilitated the coupling of the issue of conflict of interest, 'invented' in the Anglosphere as Part One shows, and corruption understood as a global problem.

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<sup>142</sup> GOUGH, Ian. *Op. cit.* 2013, p. 311.

<sup>143</sup> OECD. Recommendation of the Council on Public Integrity. Paris: OECD, adopted in 2017; WICKBERG, Sofia. Focusing efforts and blurring lines: the OECD's shift from ethics to integrity. *Public Administration Review*, Corruption: A Bully Pulpit Symposium, 2018.

<sup>144</sup> SCHÖN, Donald A. and REIN, Martin. *Op. cit.* 1994.

<sup>145</sup> HAAS, Peter M. Introduction: epistemic communities and international policy coordination. *International Organization*, Vol.46, n° 1, 1992, pp. 1-35.

<sup>146</sup> MARQUETTE, Heather. *Corruption, Development and Politics: The Role of the World Bank*. Basingstoke: Palgrave Macmillan. 2003; HOUGH, Dan. *Corruption, Anti-Corruption and Governance*. London: Palgrave Macmillan. 2013.

<sup>147</sup> HOOD, Christopher. A Public Management For All Seasons? *Public Administration*, Vol.69, n° 1, 1991, pp. 3-19; HOOD, Christopher and DIXON, Ruth. Not What It Said on the Tin? Reflections on Three Decades of UK Public Management Reform. *Financial Accountability & Management*, Vol.32, n° 4, 2016, pp. 409-428.

Chapters 5 and 6 explain how this way of defining the problem was translated into policy solutions. This section is interested in what this public choice approach to corruption means for its emergence as a *global* problem. Section 4.1 looked at transnational actors' efforts to provide a common definition that could be used to describe corruption all over the world. Similarly, the evolution of what we see as the causes of corruption made it possible to develop global solutions that could apply to all political systems.

#### **4.2.4. The 'riskification' of corruption**

If prevention means to “reduce the probability of a risk occurring” than the increasing focus of international institutions on corruption prevention suggests that corruption is increasingly seen not only as an illegitimate practice to sanction but also as a risk that should and can be prevented from happening. The development of a corruption prevention agenda led to a ‘riskification’ of corruption, which impacts both how corruption is understood. ‘Riskification’ is a concept proposed by Olaf Carry that captures the idea of a “social process of constructing something politically in terms of risks”.<sup>148</sup> Michael Power defines risks as “contingencies or future possibilities which have not yet crystallised into events”.<sup>149</sup> As Cynthia Hardy and Steve McGuire note, understanding something as a ‘risk’ does not necessarily mean that it has become more dangerous but rather that our conscience of danger and desire to control risk and uncertainty is heightened.<sup>150</sup> It indeed suggests fundamental changes in “methods, objectives and presuppositions of governance”,<sup>151</sup> rendering the problem manageable and governable. A close reading of selected public statements and policy documents from international institutions shows that after having been discursively constructed as threat (table 11), corruption has increasingly been conceived as a risk (table 12). As an OECD official argued during an interview: “sometimes using the language of risk, the idea of risk, makes things more palpable, more real”.<sup>152</sup>

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<sup>148</sup> CARRY, Olaf. Securitisation and ‘Riskification’: Second-Order Security and the Politics of Climate Change. *Millennium: Journal of International Studies*, Vol. 40, n° 2, 2012, pp. 235–258, inspired by WÆVER, Ole. Securitization and Desecuritization. In LIPSCHUTZ, Ronnie D. (ed.) *On Security*. New York: Columbia University Press, 1995.

<sup>149</sup> POWER, Michael. *Riskwork: Essays on the Organizational Life of Risk Management*. Oxford University Press, 2016, p. 24.

<sup>150</sup> HARDY, Cynthia and MCGUIRE, Steve. Organizing Risk: Discourse, Power, And “Riskification”. *Academy of Management Review*, Vol 41, n° 1, 2016, pp. 80–108.

<sup>151</sup> WALTERS, Williams. *Op. cit.* 2008, p. 270.

<sup>152</sup> OECD Officials 1 (OECD1). Phone interview with author. April 3<sup>rd</sup> 2017.

Table 12. International institutions' statements representing corruption as risk

Institution	Corruption as risk
United Nations	States parties take different approaches to preventing corruption. Addressing public awareness and strengthening the public intolerance to corruption as well as strengthening the integrity of the public administration are primary tools; identifying and <i>addressing corruption risks</i> through corruption risk assessment is becoming more and more popular. <sup>153</sup>
World Bank	The Bank Group's approach to fighting corruption combines a proactive policy of anticipating and <i>avoiding risks</i> in its own project.  At the country level (...) every effort must be made to meet corruption at the gate, putting in place institutional systems and incentives to prevent corruption from occurring in the first place. <sup>154</sup>
Council of Europe	The mission of its membership, which extends beyond the geographical span of the Council of Europe, is to promote targeted anti-corruption action, <i>awareness of corruption risks</i> and careful consideration and implementation of reforms to remedy shortcomings in national policies, legislation and institutional set-ups. <sup>155</sup>
OECD	The ability to monitor and evaluate anti-corruption policies and frameworks would also strengthen governments' ability to conduct <i>comprehensive and effective risk assessments</i> , an important element in strengthening public sector integrity. <sup>156</sup>
Transparency International	<i>Corruption risk assessment</i> is a (diagnostic) tool which seeks to identify weaknesses within a system which may present opportunities for corruption to occur. It differs from many other corruption assessment tools in that it focuses on the potential for - rather than the perception, existence or extent of - corruption. <sup>157</sup>

Corruption has explicitly been referred to as a risk in social science literature since the 1980s and an exploratory analysis of academic work shows a peak in usage of the expression since the 1990s (Figure 16). A screening of policy documents and speeches from international institutions involved in anti-corruption work shows an increasing reference to corruption as a risk from the early 2000s, Table 12 presenting some examples.<sup>158</sup>

<sup>153</sup> UNODC. Prevention. Official website. Online, available at: <https://www.unodc.org/unodc/en/corruption/prevention.html> (accessed on September 12th 2019)

<sup>154</sup> *Ibid.*

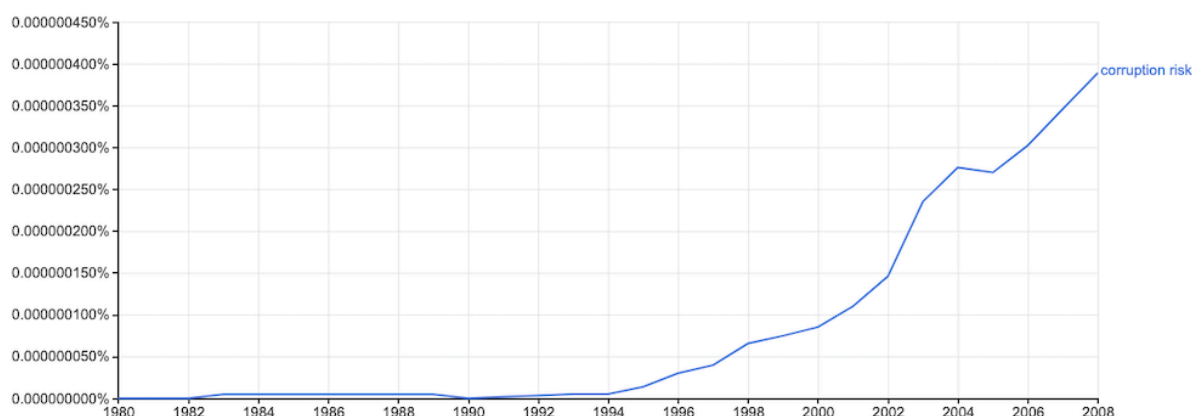
<sup>155</sup> Group of States Against Corruption (GRECO). Eighteenth General Activity Report (2017) of the Group of States against Corruption (GRECO) Anti-corruption trends, challenges and good practices in Europe & the United States of America. Strasbourg: Council of Europe. 19-23 March 2018

<sup>156</sup> OECD. Strategic Approaches to Combating Corruption and Promoting Integrity. Paris: OECD Publishing. 2018.

<sup>157</sup> MCDEVITT, Andy. *Corruption Risk Assessment Topic Guide*. Berlin: Transparency International, 2011.

<sup>158</sup> The list of all the documents used in this analysis can be found among the listed primary sources (pp. 527-543).

Figure 16. Frequency of the fixed expression ‘corruption risk’ in academic publications



Source: Google Books NGram Viewer, search for ‘corruption risk’ in available academic literature in English.

The concept of ‘corruption risk’ originated in corporate management literature where risk and risk management became popularised in the 1990s.<sup>159</sup> Framing corruption as a risk has indeed become rather common in corporate policies and accountancy firms’ recommendations, with the emergence of new international norms and regimes, such as the 1997 OECD Anti-bribery Convention, increasingly scrutinising firms’ practices and corruption risk management strategies.<sup>160</sup> As risk management became central to the internal control community and made its way from the corporate sector into government in the 2000s, there was a parallel ‘riskification’ of the OECD’s policy work. The publication of *Emerging Risks in the 21st Century: An Agenda for Action* in 2003, which laid out the elements of a comprehensive risk management cycle for national governments marks the turn of the organisation’s concern with systemic risks, which informed the development of new governance principles, including the ‘whole-of-society’ perspective that was later applied to the risk of corruption.<sup>161</sup> The notion of risk and risk management techniques have since spread to inspire large segments of the OECD’s work.

The reference to ‘risk’ in international anti-corruption discourse has two main consequences on international organisations. Firstly, it affects international institutions mandate and mission. As Desmond King and Amrita Narlikar argue, “the prism of risk (...) provides insights into the expanding reach of international organisations and also explains how global governance is

<sup>159</sup> POWER, Michael. *Op. cit.* 2004.

<sup>160</sup> HANSEN, Hans Krause. *Op. cit.* 2011; SLAGER, Rieneke. The Discursive Construction of Corruption Risk. *Journal of Management Inquiry*, 2017, pp. 1-17.

<sup>161</sup> OECD. High Level Risk Forum Draft principles on the governance of critical risks. GOV/PGC/HLRF(2013)3. Paris: OECD Publications, 2013.

changing”.<sup>162</sup> The reframing of corruption as a risk aligns with this broader tendency to see phenomena and practices as global risks that require cooperation and thus places international organisations in a privileged position to play the role of global (corruption) risk regulators. The fact that risk concerns the conditions that render a problem possible rather than the problem itself legitimises the extension of international institutions’ anti-corruption work beyond the very problem itself towards institutional structure and new technologies of government.

The ‘riskification’ of corruption indeed suggests the definition of corruption as a particular type of public problem. Risk emphasises predictability, the importance of knowledge and expertise, the belief in the manageability of the unknown and the rejection of uncertainty.<sup>163</sup> It suggests changes in organisational practices for dealing with uncertainty, bringing forth the question of who is exposed to the risk, who is responsible for the risk and who should solve the situation.<sup>164</sup> Risks are indeed considered as internal problems that cannot be eradicated but can be governed by precautionary measures and preventive policy instruments. Notably, the risk frame goes beyond the identification of the social and economic consequences of corruption to identifying corruption as a risk for organisations themselves. Addressing the increased concern for risk *management* in advanced democracies, Power argues that “society is facing a major challenge, whereby those agencies traditionally charged with handling primary risks on behalf of others, such as (...) government, are increasingly focusing on their own risks with a view to avoiding responsibility [and] blame”.<sup>165</sup> In his doctoral work, Thomas Scapin shows that the OECD contributed to construct public ethics as a *managerial* issue, which led to the creation of its ‘ethics management’ framework.<sup>166</sup> The evolution of the word choice of the OECD between 1998 and 2017 is illustrative of the explicit reframing of corruption as a risk.<sup>167</sup> Although the 1998 recommendations already used terms such as ‘ethics management’, the updated 2017 recommendations explicitly refer to corruption risks. It advises governments to apply internal control and risk management

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<sup>162</sup> KING, Desmond and NARLIKAR, Amrita. The New Risk Regulators? International Organisations and Globalisation. *The Political Quarterly Publishing*, 2003, pp. 337-348.

<sup>163</sup> CORRY, Olaf. *Op. cit.* 2012.

<sup>164</sup> POWER, Michael. *Op. cit.* 2004; HARDY, Cynthia and McGUIRE, Steve. *Op. cit.* 2016.

<sup>165</sup> POWER, Michael. *Op. cit.* 2004, p. 58.

<sup>166</sup> SCAPIN, Thomas. La circulation transnationale de l'éthique publique. Socio-histoire d'un répertoire ocdéen du bon gouvernement et de ses réceptions au Québec et en France (années 1990-années 2010). Doctoral thesis defended at Sciences Po Lyon on December 11<sup>th</sup> 2019.

<sup>167</sup> OECD. 1998 Recommendation of the OECD Council on Improving Ethical Conduct in the Public Service, including Principles for Managing Ethics in the Public Service. Paris: OECD Publishing, 1998; OECD. OECD Recommendation of the Council on Public Integrity. Paris: OECD Publishing, 2017.

frameworks, suggesting that corruption can be prevented by building the necessary structures to incentivise individuals not to act against the interests of the organisation or the collective.<sup>168</sup>

Risk management techniques, including various instruments and tools, have been integrated into international organisations' work. Asked about the benefits of such instruments, an OECD official said that "[using risk management] allows you to be more efficient, more focussed about where to invest efforts".<sup>169</sup> Risk assessment and management is thus considered as a means for international institutions and national governments to improve efficiency and reduce the potential (organisational and financial) costs of anti-corruption policy. TI's Topic Guide on corruption risk assessments explains that:

Corruption risk assessment is a (diagnostic) tool which seeks to identify weaknesses within a system which may present opportunities for corruption to occur. It differs from many other corruption assessment tools in that it focuses on the potential for - rather than the perception, existence or extent of - corruption.<sup>170</sup>

Corruption risk assessment allows international institutions to advise governments all over the world, as it does not prejudge of any cultural causes of corruption, as explained in Section 4.2.1. 'Diagnosing' the risk of corruption firstly equates to evaluating the capacity of the institutional structures to prevent corruption from occurring, relying on an understanding of corruption as an opportunity calculation. The Council of Europe methodology for risk assessment clarifies that occurrence and opportunity of corruption should not be confused and suggest that "the Klitgaard model (...) should be taken as one attempt to identify factors that may facilitate corruption, not as a means for identifying corruption itself".<sup>171</sup> When institutional vulnerabilities have been identified, the following step of the risk assessment is a mapping of said risks to prioritise action, which takes

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<sup>168</sup> The OECD recommends that governments "develop a strategic approach for the public sector that is based on evidence and aimed at mitigating public integrity risks, in particular through setting strategic objectives and priorities for the public integrity system based on a risk-based approach to violations of public integrity standards, and that take into account factors that contribute to effective public integrity policies" (OECD Recommendation of the Council on Public Integrity. Paris: OECD Publishing, 2017).

<sup>169</sup> OECD Officials 1 (OECD1). Phone interview with author. April 3<sup>rd</sup> 2017.

<sup>170</sup> MCDEVITT, Andy. *Corruption Risk Assessment Topic Guide*. Berlin: Transparency International. 2011.

<sup>171</sup> In 2010, the Council of Europe developed a methodology for corruption risk assessment in public sector institutions as "an exercise undertaken to identify factors associated with (...) or facilitating corruption in a particular institution (...) The methodology is designed to provide guidance on the following: (i) How to assess the incidence and seriousness of corruption in a given institution; (ii) How to identify the factors that cause, or create risks of corruption occurring in the institution, in order to inform the design of policies to address those factors" (Council of Europe. Project Against Corruption in Albania (Paca) Technical Paper Corruption Risk Assessment Methodology Guide. CMU-PACA-02/2011. 2010).

into account the likelihood of a risk and its potential impact. Figure 17 provides an example of a corruption risk mapping matrix developed by TI.

Figure 17. Corruption risk assessment matrix

Likelihood of corruption ↑	Medium risk	High risk	High risk
	Low risk	Medium risk	High risk
	Low risk	Low risk	Medium risk
	Impact of corruption →		

Source: McDEVITT, Andy, *Corruption Risk Assessment Topic Guide*, Transparency International, 2011

This section has shown that international institutions made corruption *governable* by moving it conceptually from the realm of fate to the realm of contingency and deliberation. From initial efforts to criminalise it at the global level, the transnational policy community has sought to understand and act on the causes of corruption to try to prevent it. Economists were very influential in policy circles and their perspective on the problem rapidly dominated the way in which corruption and its causes were understood. International institutions' discourse and emerging evidence on the threats posed by corruption encouraged the development of a preventive approach to corruption in the late 1990s, which made corruption into a (predictable) risk to be governed.

## Conclusion

This chapter has sought to show that corruption as a term is not new, nor is the concern with power-holders abusing their power a recent development, which justifies considering corruption as one of the world's oldest 'social evils'.<sup>172</sup> What is new however is the understanding of corruption as a global problem, with a shared definition and shared causes across borders. The construction of corruption as a global problem is the result of changes in world politics following the end of the Cold War that generated a number of 'public bads' such as illicit financial flows and

<sup>172</sup> Group of States Against Corruption (GRECO). About GRECO. Official website. Online, available at: <https://www.coe.int/en/web/greco/about-greco> (accessed on September 12th 2019)



organised crime (to which we return in the next chapter). But, as this chapter has demonstrated, corruption also became defined as a global problem in the 1990s, through a series of political processes: labelling, problematizing, and identifying the ‘guilty’, the victims, consequence and causes. Economists were highly influential in the transnational policy community during its early days and strongly contributed to shape how corruption was defined as a concept (making it measurable and comparable) and how the causes of corruption were understood (using a public choice theoretical perspective of human nature). TI and the World Bank appropriated the ‘public office’ definition of corruption and contributed to normalise it through knowledge production and quantification, which helped put corruption on the map and construct it as a global problem to be understood similarly across borders.

Defining a situation as a public problem also requires ‘problem brokers’ to demonstrate why it deserves governments’ attention (and, as here, the coordination of a response). Academics and international institutions (e.g. the UN, the OECD and Council of Europe) contributed to raise awareness of corruption by demonstrating that, while it was bad enough in itself, it also had dramatic consequences on democracy, public trust, political stability, peace, economic development and wellbeing (externalities). While changes in political philosophy moved corruption from the realm of fate to the realm of politics, international institutions, having exposed the necessity to ‘do something’ about corruption, constructed their agency (and that of national governments) by discursively making corruption governable. From initial efforts to criminalise it at the global level, the transnational policy community has sought to understand and act on the causes of corruption to try to prevent it. Economists and public choice theorists were influential here again, as the causes of corruption shifted from faulty political regimes requiring fundamental reform, to flawed (or perverse) incentive structures giving the opportunity to *homo aeconomicus* to act rationally and (hence) corruptly. Focussing on the causes of corruption (and on the causes of causes) led international institutions to pay attention to what had been identified as causes of corruption in certain (powerful) countries, like public officials’ (unregulated) conflicts of interest. In their policy work and discourse, international institutions increasingly presented corruption as a manageable and governable risk.

Public interest registers and codes of conduct came to be seen as solutions to the problem of corruption through its redefinition by international institutions as a global problem caused, in part, by public officials’ self-interested behaviour. This suggested in turn that the problem could be solved through the adoption of instruments that modify incentive structures to align individual

interests and the public interest. Indeed, if corruption is both an unacceptable global problem and a risk to be governed, inaction becomes intolerable. Defining corruption as a *global* problem means that an international response is required, justifying international institutions' engagement in anti-corruption work, as the primary facilitator of international cooperation. Some international institutions having made corruption a legitimate problem for international intervention (TI and the World Bank), others boarded the anti-corruption train to develop international policy solutions, as next chapter will show.

## Chapter 5. The construction of a global anti-corruption norm: consensus-building and 'passive-aggressive' transfer

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I am (...) very happy that we now have a new instrument to address this scourge at the global level. The adoption of the United Nations Convention against Corruption will send a clear message that the international community is determined to prevent and control corruption.

(Kofi A. Annan, Secretary General of the United Nations, 2004)<sup>1</sup>

The construction of corruption as a global public problem both leads to and at the same time already implies a perceived need for international cooperation and the development of global solutions,<sup>2</sup> as the above quote from UN Secretary General Kofi A. Annan's foreword to the UN Convention Against Corruption suggests. Through their redefinition of the problem, international institutions built a legitimacy to engage in anti-corruption work, which then took different forms. This chapter is concerned with what is arguably one of the most common ways to diffuse policy internationally and generate policy convergence, namely policy harmonisation through the adoption of international conventions.<sup>3</sup> The first claims about the need for international action

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<sup>1</sup> United Nations. United Nations Convention against Corruption. New York: United Nations, 2004, p. iii.

<sup>2</sup> STONE, Diane, and MOLONEY, Kim. The Rise of Global Policy and Transnational Administration. In *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press. 2019; HÜLSSE, Rainer. Creating Demand for Global Governance: The Making of a Global Money-laundering Problem. *Global Society*, Vol. 21; n°2, 2007, pp. 155-178.

<sup>3</sup> BENNETT, Colin J. What is policy convergence and what causes it? *British Journal of Political Science*, Vol. 21, n°2, 1991a, pp. 215-233; DOLOWITZ, David and MARSH, David. Who Learns What from Whom: A Review of the Policy Transfer Literature. *Political Studies*, 1996, Vol. 44, n° 2, pp. 343-357; DOLOWITZ, David and MARSH, David. Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making. *Governance: An International Journal of Policy and Administration*, Vol. 13, n° 1, 2000, pp. 5-24; HOLZINGER, Katharina and KNILL, Christoph. Causes and conditions of cross-national policy convergence. *Journal of European Public Policy*, Vol. 12, n°5, 2005, pp. 775-796; HASSENTEUFEL, Patrick. Convergence. In BOUSSAGUET, Laurie (ed.) *Dictionnaire des politiques publiques 4<sup>e</sup> édition*. Paris: Presses de Sciences Po. 2014, pp. 180-188.

against corruption date back from the mid-1970s.<sup>4</sup> In the decade stretching from 1996 to 2003, nine international conventions against corruption and a number of non-binding recommendations were adopted, with the objective to set regional or global anti-corruption standards and principles, and to foster domestic reforms and international cooperation.<sup>5</sup> The liberalisation of trade and movements across borders which contributed to the transnationalisation of organised crime pushed the international community to move from a generic all-crimes approach to the development of crime-specific conventions, including on the topic of corruption.<sup>6</sup> This section focusses on the legal instruments that are both geographically and thematically relevant, namely those developed by the Council of Europe (CoE) and the United Nations. The OECD recommendations on public ethics and integrity were presented in Chapter 3 and this section looks at the OECD's role in developing peer-review systems for monitoring state compliance with international norms. Despite the absence of an EU convention to harmonise anti-corruption legislation, the chapter also includes the European Commission's anti-corruption monitoring mechanism.

In the framework of this dissertation, looking at the development of international legal instruments contributes to answer Dolowitz and Marsh's question 'why engage in policy transfer?' They conceptualised transfer as "lying along a continuum that runs from lesson-drawing to the

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<sup>4</sup> McCOY. *Op. cit.* 2001; ABBOTT, Kenneth W. and Duncan SNIDAL. Values and Interests: International Legalization in the Fight against Corruption. *The Journal of Legal Studies*, Vol.31 no 1, 2002, pp. 141-177; JAKOBI, Anja P. *Op. cit.* 2013; KATAROVA, Elitza. *Op. cit.* 2019, p. 75.

<sup>5</sup> Conventions : The Inter-American Convention Against Corruption in 1996; the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction in 1997; the European Union Convention on the fight against corruption involving officials of the European Communities or officials of Member states of the European Union in 1997; African Union Convention on Preventing and Combating Corruption in 1999; the Council of Europe Civil Law Convention on Corruption in 1999; the Council of Europe Criminal Law Convention on Corruption in 1999; the South African Development Community Protocol against Corruption in 2001; the ECOWAS Protocol on the Fight against Corruption in 2001; and the United Nations Convention against Corruption in 2003. Recommendations: 1997 Council of Europe Twenty Principles for the fight against corruption; 1998 Recommendation of the OECD Council on Improving Ethical Conduct in the Public Service and 2017 OECD Recommendation on Public Integrity.

<sup>6</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017; GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018; NAIM, Moisés. *Op. cit.* 1995; GLYNN, Patrick, KOBRIN, Stephen J. and NAIM, Moisés. *Op. cit.* 1997; ROSE-ACKERMAN, Susan. *Op. cit.* 1999; WANG, Hongying, and ROSENAU, James N. *Op. cit.* 2001. In their book, *Policing the Globe: Criminalization and Crime Control in International Relations* (Oxford University Press, 2006), Peter Andreas and Ethan Nadelmann challenge this view by highlighting the political dimension of international crime control which reflects the ambition of Western powers to diffuse their conception of crime and deviance. My argument does not oppose Andreas and Nadelmann's perspective since I argue that the convergence of conflict of interest regulation is the result of the emulation of Anglo-American policy, but I nevertheless regard the experience of my interviewees who contributed to this movement of internationalization of crime control and view changes criminal practices as a key factor explaining the emergence of international crime-specific conventions. In my view, the two logics are not opposed; while the idea of internationalizing crime control might stem from changes in the *real* world, powerful states nevertheless seek to shape international legal instruments to reflect their own definition of crimes and their policy preferences.

direct imposition of a (...) policy”, with the necessity to comply with international conventions being in between the mid-way and the coercive end of the spectrum.<sup>7</sup> The adoption of international conventions is, to a large extent, a product of states’ agency. Thus, policy transfer as a result of compliance with international standards poses interesting questions on the reasons why such international legal and quasi-legal instruments emerge, and on the meaning of coercion and agency in the context of international institutions.<sup>8</sup> Anti-corruption conventions reflect this ambiguity between ‘obligated transfer’ and ‘voluntary but necessary transfer’, since parts of the conventions are mandatory for states to comply with, while others are not (notably those concerning conflict of interest regulation).<sup>9</sup>

This chapter (and the following) is interested in the tools and mechanisms at the disposal of international institutions to orient policy-making regarding conflict of interest regulation and to ensure that international standards are implemented at the domestic level.<sup>10</sup> As Cecily Rose argues, “anti-corruption instruments could serve as a case study in the use of ‘soft law’ in the international legal field”.<sup>11</sup> The ‘softness’ of these legal instruments with regards to conflict of interest regulation is however compensated by peer-review mechanisms to monitor states’ compliance with international standards. The use of ‘naming and shaming’ techniques by IOs<sup>12</sup> as well as their role as providers of information about states’ behaviour<sup>13</sup> creates a form of pressure on national government to import policy ideas developed elsewhere.<sup>14</sup> This suggests a form of indirect or soft coercive transfer, consequence of the emergence of an international consensus with a shared

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<sup>7</sup> DOLOWITZ, David and MARSH, David. *Op. cit.* 2000, p. 13-15; BENSON, David and JORDAN, Andrew. What Have We Learned from Policy Transfer Research? Dolowitz and Marsh Revisited. *Political Studies Review*, Vol. 9, n°3, 2011, pp. 366-378.

<sup>8</sup> BULMER, Simon, DOLOWITZ, David, HUMPHREYS, Peter and PADGETT, Stephen. *Policy Transfer in European Union Governance: Regulating the Utilities*. Abingdon: Routledge, 2007.

<sup>9</sup> UNODC. Legislative guide for the implementation of the United Nations Convention against Corruption Second revised edition. Vienna: United Nations, 2012.

<sup>10</sup> JUTTA, Joachim, REINALDA, Bob and VERBEEK, Bertjan (eds.) *International organizations and implementation: enforcers, managers, authorities?* London New York: Routledge, 2008.

<sup>11</sup> ROSE, Cecily. *International Anti-Corruption Norms Their Creation and Influence on Domestic Legal Systems*. Oxford University Press, 2015, p. 14.

<sup>12</sup> CARRARO, Valentina, CONZELMANN, Thomas and JONGEN, Hortense. Fears of Peers? Explaining Peer and Public Shaming in Global Governance. *Cooperation and Conflict*, vol. 54, n° 3, 2019, pp. 335–355; JONGEN, Hortense. *Combating Corruption the Soft Way The Authority of Peer Reviews in the Global Fight Against Graft*. PhD Dissertation Universitaire Pers Maastricht, 2017; HAFNER-BURTON, Emilie. Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem. *International Organization*, Vol. 62, n°4, 2008, pp. 689-716.

<sup>13</sup> BETZ, Timm and KOREMENOS, Barbara. "Monitoring Processes." In KATZ COGAN, Jacob, HURD, Ian and JOHNSTONE, Ian (eds.) *The Oxford Handbook of International Organizations*. Oxford University Press, 2017.

<sup>14</sup> We will return to the reception of policy transfer by national governments and by policy-makers’ ‘usage’ of international pressure in Part Three.

problem definition and agreed-upon solutions,<sup>15</sup> or of what might be termed ‘passive-aggressive’ transfer.<sup>16</sup> This chapter uses the analysis of policy documents, archives and witness testimony in the form of interviews to trace the development of the international legal instruments and review mechanisms in the Council of Europe, the United Nations and the European Union (Section 5.1). It then shifts the focus to the formulation of compliance monitoring mechanisms as transfer instruments, and gauges the similarities and differences of international institution’s recommendations and processes of evaluating state compliance with international norms (Section 5.2).

## 5.1. The construction of international norms and standards against corruption

Since the mid-20<sup>th</sup> century, international organisations have increasingly played the role of global regulators as the multiplication of international standards has sought to influence domestic policies regarding various global public goods (environment, anti-money laundering, global financial regulation, human rights or public integrity).<sup>17</sup> This section traces the history of the international anti-corruption norms and standards, with their associated peer-review mechanisms, developed in the Council of Europe, the United Nations and the European Union. It focusses particularly on the integration of public interest registers (often referred to as financial disclosure systems) and codes of conduct among these internationally-promoted standards. Peer-review mechanisms are a (relatively) new way of making states comply with international standards through mutual, intergovernmental evaluations in which countries’ policy performance is regularly assessed by experts from other states (peers). They exchange with local officials and, most often, civil society representatives to identify areas of improvement, under the auspice of an international organisation and with the help of its staff. Peer-review mechanisms are based on a system of horizontal accountability, rely on interactions between international and domestic actors, and

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<sup>15</sup> DOLOWITZ David and MARSH, David. *Op. cit.* 1996, p. 349.

<sup>16</sup> The notion of “passive-aggressive transfer” was a suggestion from my PhD supervisor Colin Hay, who deserves the credit – or blame – for the invention.

<sup>17</sup> CASSESE, Sabino. Administrative Law without the State? the Challenge of Global Regulation. *New York University Journal of International Law and Politics*, Vol. 37, n° 4, 2005, pp. 663-694; DIMITROPOULOS, Georgios. *Compliance Through Collegiality: Peer Review in International Law*. Max Planck Institute Luxembourg. Working Paper 3, 2014; KAUL, Inge. Conceptualizing Global Public Policy: A Global Public Good Perspective. In STONE, Diane and MOLONEY, Kim (eds.) *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press. 2019.

substitute sanctions with policy learning, technical assistance and peer and public pressure.<sup>18</sup> My analysis of archival records and interviews suggests that these organisations played different roles in the convergence of conflict of interest regulation.

### **5.1.1. Council of Europe and the Group of States Against Corruption (GRECO)**

The Council of Europe (CoE) is one of the leading international organisations promoting anti-corruption policy on the European continent. Founded in 1949 for the promotion of democracy, human rights and the rule of law, the CoE played a key role in putting anti-corruption on the international agenda in the late 1990s. It did so notably through the initiative of states seeking to establish their leadership in this policy field due to their early adoption of specific policy instruments. Italy indeed played an important role in this particular international venue, but so did also the United States, which joined the Group of States Against Corruption (GRECO), the CoE anti-corruption body, despite not being a member of the CoE. GRECO, as this dissertation shows, significantly contributed to the harmonisation of anti-corruption policy in Europe.

#### **5.1.1.1. Dealing with the aftermath of the Cold War**

The Council of Europe first recognise the need to cope with economic crimes in its Committee of Ministers meeting of 25 June 1981.<sup>19</sup> The international institution officially put the issue of corruption on its agenda in 1994, with the 19th conference of European Ministers of Justice.<sup>20</sup> The topic was suggested by the Italian Minister of Justice, Alfredo Biondi, following the early politicisation of corruption in Italy, with the ongoing *Mani pulite* investigations into political corruption. The operation ultimately led to several leading political figures resigning or going into exile and the disappearance of the major political parties. It made political corruption the main issue of concern in the Italy of the 1990s.<sup>21</sup> The conference was held a year after the Vienna Summit organised to prepare the continent for the aftermath of the Cold War and to establish the CoE as

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<sup>18</sup> JONGEN, Hortense. The authority of peer reviews among states in the global governance of corruption. *Review of International Political Economy*, Vol. 25, n°6, 2018, pp. 909-935; DIMITROPOULOS, Georgios. *Op. cit.* 2014.

<sup>19</sup> Council of Europe Committee of Ministers. RECOMMENDATION No. R (81) 12, adopted on June 25th 1981, available at <https://rm.coe.int/16806cb4f0> (accessed on March 25th 2018)

<sup>20</sup> Secretary General of the Council of Europe. Report of the 19th Conference of European Ministers of Justice (Valletta, 14-15 June 1994) CM(94)117. Available at : <https://rm.coe.int/16804ead6d> (accessed on February 20th 2018)

<sup>21</sup> VANNUCCI, Alberto. The Controversial Legacy of 'Mani Pulite': A Critical Analysis of Italian Corruption and Anti-Corruption Policies. *Bulletin of Italian Politics*, Vol. 1, n° 2, 2009, pp. 233-64.

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the “pre-eminent European political institution capable of welcoming on an equal footing and in permanent structures, the democracies of Europe freed from communist oppression”.<sup>22</sup> The arrival of new members encouraged the organisation to put corruption on its agenda, emphasising the need to focus on Central and Eastern European States where “the problem [of corruption] is particularly important (...) [and] democratic institutions are still young”,<sup>23</sup> which reflects the conception of corruption as a pathology of ‘underdevelopment’ that dominated the 20<sup>th</sup> century (Chapter 4). This led to the creation of the first monitoring mechanism of the institution on the functioning of democratic institutions, which touched on the topic of corruption.<sup>24</sup>

In addition to the extended membership, the end of the Cold War and the subsequent liberalisation of movements of goods, money and people in the region led to the complexification and transnationalisation of organised crime. The CoE, as well as other international institutions, reacted to this development by developing crime-specific instruments, such as the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the 1995 Agreement on Illicit Trade at Sea and the 1999 Criminal and Civil Conventions on corruption.<sup>25</sup> Prior to their efforts to ‘police the globe’,<sup>26</sup> international institutions mainly sought to facilitate international judicial cooperation. Changes in the practices of organised crime led international organisations to move from an ‘all-crimes approach’ to specialisation on various crimes, which required legal harmonisation in different domains and thus different international conventions, including international standards on corruption.<sup>27</sup>

The Conference led to the adoption of a resolution which recommended, on the Italian Minister’s suggestion, the creation of a multi-disciplinary Group on Corruption entrusted with the task of developing suitable measures for an international programme of action against corruption.<sup>28</sup> The Multidisciplinary Group on Corruption (GMC) developed most of what would become the CoE’s instruments against corruption during its period of existence from 1995 to 2000. In September 1995, the GMC presented its Programme of Action Against Corruption, which was

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<sup>22</sup> Council of Europe. Vienna Declaration. Council of Europe Summit, Vienna, October 9<sup>th</sup> 1993.

<sup>23</sup> *Ibid.*

<sup>24</sup> GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018.

<sup>25</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017.

<sup>26</sup> ANDREAS, Peter and NADELMANN, Ethan *Policing the Globe: Criminalization and Crime Control in International Relations*. Oxford University Press, 2006.

<sup>27</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017.

<sup>28</sup> Secretary General of the Council of Europe. Report of the 19<sup>th</sup> Conference of European Ministers of Justice (Valletta, 14-15 June 1994) CM(94)117. Available at : <https://rm.coe.int/16804ead6d> (accessed on February 20<sup>th</sup> 2018)

approved by the Committee of Ministers in November 1996.<sup>29</sup> It indicates that the CoE had the ambition of elaborating the first international conventions against corruption and to develop a follow-up mechanism to ensure national transcription and implementation. It prioritised the drafting of a European Code of Conduct for Public Officials and suggested the form of codes of conduct to be applied nationally.<sup>30</sup> In 2000, through Recommendation Rec(2000)10, the Committee of Ministers adopted the model Code of conduct for public officials developed by the GMC.<sup>31</sup> The work of the GMC served as a basis for the development of the CoE's Twenty Guiding Principles for the Fight Against Corruption,<sup>32</sup> approved by the Committee of Ministers in November 1997,<sup>33</sup> which set out to “take effective measures for the prevention of corruption, and in this connection, to raise public awareness and promoting ethical behaviour”, including through transparency policy, codes of conduct and additional disciplinary measures.<sup>34</sup>

The CoE raised corruption on its agenda as a result of the organisation's anticipation of the consequences of the end of the Cold War (including on the organisation itself) as well as part of a more general trend to develop more sophisticated ‘crime-specific’ international instruments. As we will see below, international institutions seeking to ‘police the globe’ did not deal with each crime in isolation, but did so often in the same venues, translating transfer tools from one issue to the other. National governments also contributed to the CoE engaging in anti-corruption policy work, as a way to internationalise a public problem they had themselves (more or less) recently put on their own agenda. International anti-corruption standards largely serve to diffuse the problem

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<sup>29</sup> Council of Europe Multidisciplinary Group on Corruption (GMC). Programme of Action Against Corruption. GCM (96)95. Strasbourg, 1996.

<sup>30</sup> Council of Europe Multidisciplinary Group on Corruption (GMC). Programme of Action Against Corruption. GCM (96)95. Strasbourg, 1996, pp. 37-39

<sup>31</sup> This model code is targeted to the public administration, not elected representatives, for which “special attention needs to be given to questions of immunity, relations with the party, sanctions and conflicts of interest” (Council of Europe Committee Of Ministers. Explanatory Memorandum to Recommendation Rec(2000)10 on Codes of conduct for public officials. May 11<sup>th</sup> 2000).

<sup>32</sup> Council of Europe Committee of Ministers. Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption. Adopted by the Committee of Ministers on November 6<sup>th</sup> 1997.

<sup>33</sup> Council of Europe. Final Declaration of the Second Summit and Action Plan. *International Legal Materials*, 1998, Vol. 37, n° 2, p. 438

<sup>34</sup> Council of Europe Committee Of Ministers. Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption. Strasbourg, adopted on November 6<sup>th</sup> 1997. The Parliamentary Assembly of the Council of Europe also took up the theme of the role of parliaments in fighting corruption in early 2000, placing parliaments at the centre of a country's fight against corruption. Its Resolution 1214 (2000) suggests that parliaments should lead by example and notes that they should “instil in their own ranks the notion that parliamentarians have a duty not only to obey the letter of the law, but to set an example of incorruptibility to society as a whole by implementing and enforcing their own codes of conduct”.<sup>34</sup> It suggests the adoption of “a series of measures, including transparency in the funding of political parties and election campaigns, a code of conduct for members of parliament and close scrutiny of their sources of income and possible conflicts of interest” (Council of Europe Parliamentary Assembly. Role of parliaments in fighting corruption Report Doc. 8652. Strasbourg, February 18<sup>th</sup> 2000).

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definition and policy solutions of influential member-states, as the sections on the United Nations and the European Union below return to.

#### 5.1.1.2. Monitoring compliance through the Group of States against Corruption

A critical development of the Council of Europe's anti-corruption work was the establishment of the Group of States Against Corruption (GRECO) and the elaboration of its two conventions against corruption, respectively on criminal law, signed in January 1999, and on civil law, signed in November 1999. The conventions are "the first attempt to define common principles and rules at an international level in the field of civil law and corruption".<sup>35</sup> Resolution (98) 7 (adopted in May 1998) and Resolution (99) 5 (adopted in May 1999) established GRECO, with the aim to "improve the capacity of its members to fight corruption by following up, through a dynamic process of mutual evaluation and peer pressure, compliance with their undertakings in this field".<sup>36</sup> It is composed of 50 member-states, including Britain, France and Sweden, as well as the United States of America which is interestingly not a member of the CoE. It is assisted by a secretariat of approximately 15 staff members.<sup>37</sup>

GRECO is tasked to monitor States' compliance with the organisations' anti-corruption standards and does so through thematic evaluation cycles.<sup>38</sup> The review mechanism of GRECO goes beyond compliance with existing legal instruments, and thus provides member states and the international secretariat with some leeway to decide on the theme(s) and institution(s) to be evaluated next. After having looked at party funding, which was seen as "breaking new ground" and "pretty innovative", turning to preventive measures targeting parliamentarians appeared to stakeholders as "the next natural step".<sup>39</sup> State representatives had suggested the need to focus on

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<sup>35</sup> UN Global Programme against Corruption. International Co-operation: Its Role in Preventing and Combating Corruption and in the Creation of Regional Strategies. Prepared for Conference of Central and East European Countries on Fighting Corruption, Bucharest, March 30-31st 2000, p. 16

<sup>36</sup> Council of Europe. Resolution (99)5 Establishing The Group Of States Against Corruption (GRECO), adopted on 1st May 1999.

<sup>37</sup> Council of Europe. Structure. n.d. Online, available at: <https://www.coe.int/en/web/greco/structure/secretariat> (accessed on March 20th 2020).

<sup>38</sup> Previous evaluation rounds concerned the independence of bodies in charge of the fight and prevention of corruption and the issue of immunities (round 1), the confiscation of proceeds of corruption, the fight against money-laundering and efforts to fight corruption within public administration (round 2) and compliance with CoE conventions and efforts to make party funding transparent (round 3). Round 5 looks at corruption prevention in central government and law enforcement.

<sup>39</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017; GRECO. Fourth Evaluation Round Revised Questionnaire on Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors. Greco (2012) 22E. October 19 2012, p. 2

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“conflicts of interest of elected representatives” already in 2009.<sup>40</sup> GRECO’s fourth evaluation round, initiated in 2012, concerned the “Prevention of corruption in respect of members of parliament, judges and prosecutors”, which is particularly relevant for this research since it explicitly assesses states’ adoption and implementation of conflict of interest regulation, including public interest registers and codes of conduct.

GRECO’s evaluation procedures involve “the collection of information through questionnaire(s), on-site country visits enabling evaluation teams to solicit further information during (...) discussions with domestic key players and drafting of evaluation reports”.<sup>41</sup> They comprise an initial horizontal evaluation, leading to recommendations on necessary reforms, which are followed up in a subsequent compliance procedure.<sup>42</sup> The questionnaire developed to gather information in preparation for in-country visits orients the substance of the evaluation.<sup>43</sup> The questionnaire of the fourth evaluation round on parliaments is composed of seven categories, out of which three directly concern codes of conduct, disclosure regimes and their implementation (asking about the development of the instrument, the definition of conflict of interest and ways to prevent and resolve them, specific content to be declared as well as sanctions and enforcement mechanisms).<sup>44</sup> The questions do not pre-empt GRECO’s conclusions since evaluators assess countries in the light of their overall institutional framework and specific problems. It however applies equally to all states under evaluation, which necessarily influences the type of recommendations made. The formulation of the questions will indeed affect the entire evaluation process, as they guide the search for information and the interactions between evaluators and the officials and experts they meet. The questionnaire is developed in three steps:

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<sup>40</sup> Council of Europe. GRECO. 45th Plenary Meeting of GRECO Summary Report. Greco (2009) 30E. January 18 2010, p. 6

<sup>41</sup> GRECO. About the evaluations. n.d. Online, available at: <https://www.coe.int/en/web/greco/evaluations/about> (accessed on February 20th 2018)

<sup>42</sup> GRECO. How does GRECO work? n.d. Online, available at: <https://www.coe.int/en/web/greco/about-greco/how-does-greco-work> (accessed on February 20th 2018)

<sup>43</sup> Council of Europe. Fourth Evaluation Round Revised Questionnaire on Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors. Greco (2012) 22E. Strasbourg: Council of Europe, 2012. Online, available here: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806cbdfc> (accessed on April 20th 2020)

<sup>44</sup> The categories are: (i) Background information ; (ii) Ethical principles and rules of conduct ; (iii) Conflicts of interest ; (iv) Prohibition or restriction of certain activities ; (v) Declaration of assets, income, liabilities and interests ; (vi) Enforcement of the rules regarding conflicts of interest and declarations of assets, income, liabilities and interests ; and (vi) Awareness (GRECO. Fourth Evaluation Round Revised Questionnaire on Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors. Greco (2012) 22E. October 19 2012)

- i. The secretariat prepares a draft, using the reference documents from the Council of Europe itself or other international institutions, focussing on the implementation of standards and the objectivity of data;
- ii. Then a working group of state representatives is set up to which the latter participate on a voluntary basis to further develop the secretariat's draft;
- iii. Member-states then approve the questionnaire during a Plenary meeting.<sup>45</sup>

The representatives of members states are usually anti-corruption experts and not diplomats as it is the case in other review mechanisms. This contributes to strengthening the authority of the evaluation process, partly through the technical and neutral appearance.<sup>46</sup> Both the international civil servants, state representatives and external experts can influence the drafting of the questionnaire. For the fourth round, 17 experts took part in the working group, including Ghassan E. Moukheiber (Chair of the Global Task Force on Parliamentary Ethics and Conduct of the Global Organization of Parliamentarians Against Corruption – GOPAC) and Jane Ley (Deputy Director of the US Office of Government Ethics).<sup>47</sup> The national delegations that are particularly active in providing input into the work of the GRECO are usually innovators in the policy field. As suggested by a GRECO official, existing practices were used to inform the development of evaluation material:

We based the questionnaire on the disclosure systems that already existed in some countries. They served as examples when we asked questions to know if declarations contained this, that or that. Well, it is a questionnaire that aims at gathering information so you try to be... as specific [as possible] and you try to cover the widest range possible of elements that could be included.<sup>48</sup>

Unsurprisingly, policy pioneers have seen their instruments being used by international institutions seeking to design assessment tools. The interviewee said that they were in demand of such expertise to create detailed and precise questionnaires that strengthen the organisation's authority:

There is an input ... People with the level of expertise that we need, which is always appreciated, that will serve as a reference point to inspire other countries.

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<sup>45</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017; GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018.

<sup>46</sup> BARNETT, Michael and FINNEMORE, Martha. *Rules for the World: International Organizations in Global Politics*. New York: Cornell University Press. 2004 ; JONGEN, Hortense. *Combating Corruption the Soft Way The Authority of Peer Reviews in the Global Fight Against Graft*. Dissertation to obtain the degree of Doctor at Maastricht University, defended on September 15<sup>th</sup> 2017

<sup>47</sup> Council of Europe. GRECO. Final Activity Report of the Working Party on the preparation of the Fourth Evaluation Round (WP-Eval IV). WP-Eval IV (2011) 2E Final. Strasbourg, 1 April 2011.

<sup>48</sup> GRECO Official 2, Council of Europe (CoE2). Interview. June 28<sup>th</sup> 2018. Author's own translation.

These are inevitably people that come from countries that have experience in the matter, that have reached a certain level.<sup>49</sup>

The United States delegation, who sent an official from the US Office of Government Ethics as a scientific expert to negotiate, is a good example of this.<sup>50</sup> Another member of the Secretariat however nuanced single delegations' influence as he emphasised the collegiality of the decision-making process, decisions being taken consensually (GRECO members rarely votes):

I accept that it is interesting for researchers [to know how the working group on the questionnaire works] but you need also to understand that in such a collective decision-making, the influence is not so clear-cut. It is not because a country raises a flag and makes one suggestion that it represents an influence in the decision-making. It is a collective decision-making effort. One country making one suggestion, is not - in and of itself - significant to the overall decision-making. It is important of course because it triggers a debate, but it is not that one country alone making one suggestion that triggers an outcome automatically. It is a collective process.<sup>51</sup>

Based on the member-states' replies to the questionnaire an evaluation team, assisted by a member of the secretariat, will gather information about policies and practices during on-site visit to the country where it meets public officials and representatives of civil society. The evaluators are suggested by the members states and selected by the GRECO Plenary to evaluate a given country according to criteria such as recognised expertise, gender balance, geographical balance and, importantly, similarity between the legal system of the country of origin and the country to be evaluated.<sup>52</sup> The evaluation team prepares an evaluation report that states if it considers that the country complies (or not) with the provisions set out on the basis of the questionnaire and usually makes recommendations that the country should act on within 18 months. The report is sent to the country under scrutiny for comments before it is submitted to GRECO for adoption.<sup>53</sup> Contrary to other implementation review mechanisms, GRECO's monitoring could be qualified as iterative and rather "intrusive", using the words of a member of the Secretariat:

We never leave a country in peace during a long period, so we are in touch regularly. The process is that after we adopt a report, 18 months later we ask the

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<sup>49</sup> GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018.

<sup>50</sup> Council of Europe. GRECO. Final Activity Report of the Working Party on the preparation of the Fourth Evaluation Round (WP-Eval IV). WP-Eval IV (2011) 2E Final. Strasbourg, 1 April 2011.

<sup>51</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017.

<sup>52</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017. Note that evaluators never evaluate their own country.

<sup>53</sup> Council of Europe. How does GRECO work? N.d. Online, available at: <https://www.coe.int/en/web/greco/about-greco/how-does-greco-work> (accessed on March 20th 2020).

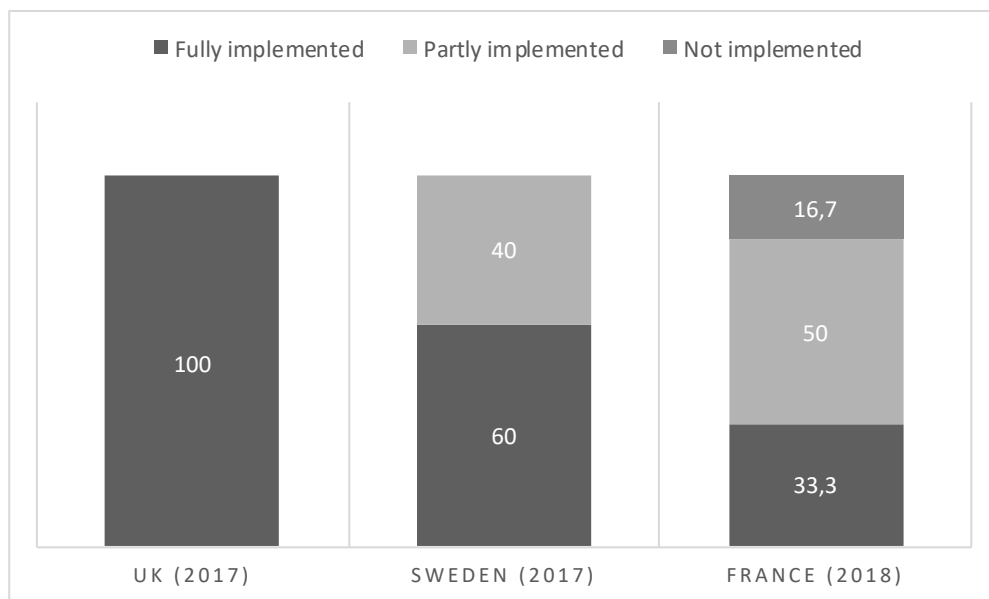
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countries to report what they have done. Depending on the answer, 12 months later we ask again, and we keep asking.<sup>54</sup>

It relies on both peer pressure and public pressure. The reports are usually made public on the GRECO's website to be used by academics and civil society organisations. Transparency International's national chapters for instance use these reports for their own advocacy work, notably to legitimise their recommendations when these are aligned with the CoE's,<sup>55</sup> which is not uncommon given that they usually feature among the list of interviewees met by the evaluation team during on-site visits.<sup>56</sup>

States' compliance is clearly assessed all along the process, gauging if states have implemented the recommendations satisfactorily, partly or not at all. Annexe 4 provides the list of recommendations addressed to Britain, France and Sweden in the fourth evaluation round regarding MPs, as well as the final decision regarding compliance with these recommendations. Figure 18 shows how Britain, France and Sweden were evaluated by GRECO with regards to the implementation of recommendations regarding corruption prevention in parliaments.

Figure 18. GRECO's evaluation of states' compliance with its recommendations



<sup>54</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017.

<sup>55</sup> Transparency International France. *Le GRECO évalue la France en matière de lutte contre la corruption*. n.d. Online, available at: <https://transparency-france.org/actu/lutte-contre-la-corruption-comment-le-conseil-de-leurope-evalue-la-france/#.XnnMW9NKhp8> (accessed on March 20<sup>th</sup> 2020)

<sup>56</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017.

Source: adapted by author from Council of Europe. Group of States Against Corruption (GRECO). *Anti-corruption trends, challenges and good practices in Europe & the United States of America*. Strasbourg, 2019, pp. 26-30

The figure shows that GRECO considers that Britain has fully complied with its recommendations regarding the prevention of corruption in parliaments. While the UK Parliament sought to comply with the international institution's recommendations, it is important to note that policy pioneers had a significant impact on the elaboration of the international standards against which they are evaluated. They had a direct impact through the active participation of national experts in the drafting of evaluation material.<sup>57</sup> They also had an indirect impact on the formulation of standards through the elaboration of the reference documents used to develop the questionnaire, which were written by British academics or funded by British foundations.<sup>58</sup> This certainly contributed to GRECO giving a 'clean bill of health' to Britain, allowing its officials to "sit back and feel good about themselves".<sup>59</sup>

The ultimate decision regarding the approval of a last compliance report, making the end of an evaluation round for a country, is the decision of the statutory committee. If a country is considered not to be sufficiently compliant, GRECO can keep the evaluation round open and ask a country to submit a new report on its progress. It might decide to close an evaluation round despite the state not being satisfactorily compliant with certain recommendations. The conclusion of the final compliance report then provides an indication of the areas that the GRECO still considers to be weak. The recommendations are relatively detailed and, despite the questionnaire and standards being the same, they are adapted to the country context. As an official from the GRECO Secretariat point out:

It is easy to have laws that comply with standards. However, implementation is more challenging and that is where I think the tailor-made comes in. The practices are different, the way, for instance, Parliaments work is different so that requires a tailor-made approach. You need to look at this as an evolution: it started in the mid-1990s with drawing crime-specific standards and it developed into translating those standards into national laws and then making sure these

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<sup>57</sup> Council of Europe. GRECO. Final Activity Report of the Working Party on the preparation of the Fourth Evaluation Round (WP-Eval IV). WP-Eval IV (2011) 2E Final. Strasbourg, 1 April 2011; GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018.

<sup>58</sup> Council of Europe. Reference texts Round 4. N.d. Online, available at: <https://www.coe.int/en/web/greco/round4/reference-texts> (accessed on March 20<sup>th</sup> 2020); POWER, Greg. *Handbook on Parliamentary Ethics and Conduct a Guide for Parliamentarians*. Westminster Foundation for Democracy, GOPAC, 2009; DAVID-BARRETT, Elizabeth. *Background Study: Professional and Ethical Standards for Parliamentarians*. Warsaw: OSCE/ODIHR, 2012.

<sup>59</sup> Parliamentary clerk 1, UK House of Commons (UKPC1). Interview with author. November 20<sup>th</sup> 2017.

are implemented effectively. The more you move towards implementation, the more tailor-made the recommendations.<sup>60</sup>

This quote suggests that international civil servants, at least in the CoE, are well aware that compliance will vary, and will ultimately lead to a form of ‘divergent convergence’, as described in Chapter 1. The interviewee gives a short and clear description of how he sees the role of international institutions providing solutions against corruption, from the broad international standards, to be translated into national law and thus adapting the template, all the way to the implementation of these laws which tends to differentiate national practices even more.

The CoE contributed to put corruption and conflict of interest on the regional and international agenda, as part of its efforts to respond to the political changes caused by the end of the Cold War, including the emergence of ‘new’ states to become members of the organisation. What was initially constructed as a problem relating to the organisation’s security and democratisation agenda developed into an instrument of policy harmonisation in old and recent member-states. The fact that the CoE monitoring mechanism does not gauge member-states compliance with one convention gives national governments a more continuous leeway to influence international norms, directly (through negotiation and participation in the organisation’s policy and monitoring work) and indirectly (through producing and brokering knowledge that will serve as reference documents). The anti-corruption standards developed by the CoE are thus the result of both international civil servants’ expertise and governments’ diplomatic efforts to turn the institution into its transfer agent. With varying degrees of success, GRECO influenced domestic policy-making regarding conflict of interest regulation (Part Three). Its recommendations, in part, follow the path set by policy pioneers and reflect their policy choices (Chapter 2), as suggested by the stellar evaluation given to Britain (Figure 18). While the Council of Europe’s monitoring mechanisms might be one of the most intrusive, it is far from the only international institution to play a standard-setting role with regards to conflict of interest regulation.

### **5.1.2. The UN convention and the universality of anti-corruption norms**

After decades of failed attempts to develop a global treaty,<sup>61</sup> the United Nations (UN) adopted its Convention Against Corruption (UNCAC) in 2003. In the foreword to the convention, Kofi A. Annan acknowledged the difficulties for an international organisation (IO) with near

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<sup>60</sup> *Ibid.*

<sup>61</sup> KATZAROVA, Elitza. *The Social Construction of Global Corruption From Utopia to Neoliberalism*. London: Palgrave Macmillan. 2019.

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universal membership to reach an agreement on corruption and highlighted the need to tackle the issue through technical means (more in Chapter 6) before rendering it acceptable politically:

For the United Nations, the Convention is the culmination of work that started many years ago, when the word corruption was hardly ever uttered in official circles. It took systematic efforts, first at the technical, and then gradually at the political, level to put the fight against corruption on the global agenda.<sup>62</sup>

While it took longer for the UN to finally adopt a convention against corruption, reaching an agreement on anti-corruption policy in an international venue assembling more than 180 states is a symbol of corruption having become a truly ‘global’ problem to which ‘global’ solutions could be found. The UN convention provides a “comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption”.<sup>63</sup> Shortly after the adoption of the convention, states-parties constructed a complex infrastructure to assist governments in transposing the convention into domestic law and implementing the new global standards.

#### 5.1.2.1. The UNCAC, a compromise between the ‘Global North’ and the ‘Global South’

Despite being one of the last IOs to adopt an international convention against corruption, the UN was the first one to put corruption on its agenda. It took decades of international negotiations to reach the compromise that is the UNCAC. With so many countries taking part in discussions, multiple perspectives on corruption were debated and as well as different countries’ objectives. As Dimitri Vlassis, the late Chief of the UNODC Division for Treaty Affairs, who acted as secretary to the Ad Hoc Committee for the Negotiation of a Convention against Corruption:

As such consensus needs to be based on a common understanding of the constituent elements of the issue, a common perception and appreciation of its impact on national efforts towards development and on the international quest for globalization beneficial to all, and finally agreement on the international aspects of the problem that require genuine and meaningful cooperation.<sup>64</sup>

As mentioned in Chapter 4, the UN did not manage to reach an agreement on how to define corruption, as governments had quite different understandings of the practices that should be

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<sup>62</sup> United Nations. United Nations Convention against Corruption. New York: United Nations, 2004, p. iv.

<sup>63</sup> *Ibid.* p. iii.

<sup>64</sup> VLASSIS, Dimitri. The United Nations Convention Against Corruption: Origins and Negotiation Process. *Resource Material Series*, Vol. 66, 2004, p. 129.



labelled ‘corruption’. Elitza Katzarova shows that Chile and the United States were particularly active in trying to put corruption on the UN’s agenda. She shows that, in reaction to Chilean attempts to raise the problem of corporate influence on politics, US officials made repeated references to the issue of bribery (or ‘illicit payments’) in trade instead.<sup>65</sup> The American perspective ultimately ‘won’ as the UN General Assembly started to look into the issue of corruption in international commercial transactions for the first time in its Resolution 3514, adopted on December 15<sup>th</sup> 1975.<sup>66</sup> As concluded in Chapter 3, American policy-makers and diplomats managed to upload their definition of the problem and policy perspective onto international institutions who progressively internalised the American perspective and helped diffuse it.<sup>67</sup>

In parallel to efforts to reduce illicit payments in international business transactions, corruption was put on the UN’s crime prevention and criminal justice agenda. The 4th UN Congress on the Prevention of Crime and the Treatment of Offenders held in Kyoto in August 1970 focussed on emerging forms of crime, including the increase of ‘white-collar crime’.<sup>68</sup> During the following congress in 1975, the focus was explicitly put on the costs of corruption for developing countries.<sup>69</sup> The Interregional Seminar on Corruption in Government held in The Hague in December 1989 marks the first step towards the development of UN standards against corruption. Participants indeed called for the production of a manual to combat corruption and discussed the possibility of an international convention and code of conduct for public officials.<sup>70</sup>

Similar to the Council of Europe, the UN’s efforts to develop an anti-corruption convention should be seen in the light of a move towards crime-specific conventions. Regional meetings were organised by the UN Office for Drug Control and Crime Prevention, notably in Africa and Asia, around the theme of organised crime and corruption to build political will to “combat [corruption]

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<sup>65</sup> KATZAROVA, Elitza. *Op. cit.* 2019.

<sup>66</sup> It appears that this resolution was not immediately acted upon, since the following policy documents were developed in the 1990s.

<sup>67</sup> NYE, Joseph. *The Powers to Lead*. Oxford: Oxford University Press, 2008; SCOTT, Shirley V. Intergovernmental Organizations as Disseminators, Legitimizers, and Disguisers of Hegemonic Policy Preferences: The United States, the International Whaling Commission, and the Introduction of a Moratorium on Commercial Whaling. *Leiden Journal of International Law*, Vol. 21, n° 3, 2008, pp. 581–600.

<sup>68</sup> United Nations. Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Kyoto, Japan, 17-26 August 1970. Report prepared by the Secretariat. United Nations publication, Sales No. E.71.IV.8.

<sup>69</sup> United Nations. Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975. Report prepared by the Secretariat. United Nations publication, Sales No. E.76.IV.2 and corrigendum.

<sup>70</sup> United Nations. Department of Technical Cooperation for Development and Centre for Social Development and Humanitarian Affairs, Corruption in Government. Report of an Interregional Seminar, The Hague, Netherlands, 11-15 December 1989. TCD/SEM.90/2 – INT-89-R56.

in all its manifestations and to promote a culture of accountability, transparency, competence and integrity in public life”.<sup>71</sup> The steps taken towards institutionalising anti-corruption work in the UN system need to be understood in the light of the broader context of negotiations in the UN Vienna office (home of the Commission on Crime Prevention and Criminal Justice), where the UN Convention against Transnational Organized Crime (UNTOC) was adopted in 2000. The successful negotiations of the UNTOC contributed to make the Commission on Crime Prevention and Criminal Justice a legitimate venue for the preparation of the future convention against corruption, since venues are often perceived by stakeholders as more legitimate after having hosted negotiations on associated issues.<sup>72</sup>

The UN did not work in a silo and similar efforts undertaken in other international venues served as a model. The Expert Group Meeting on Corruption in 1997 and in 1999 highlighted the desirability of an international instrument on corruption, after the “successful efforts at the regional level [that] demonstrated the feasibility of such an undertaking”, referring to the Inter-American Convention against Corruption adopted and the Draft convention on the fight against corruption involving officials of the European Communities or officials of member states of the European Union.<sup>73</sup> The group justified its call for internationally coordinated measures by the increasingly transnational nature of corruption resulting from globalisation and the liberalisation of trade. As Section 5.2 explores in further detail, international efforts to develop international standards and facilitate cooperation did not happen in isolation, and policy ideas and monitoring tools were indeed transferred across international institutions by actors navigated between venues.

The Commission on Crime Prevention and Criminal Justice became the venue of negotiations between what is commonly called the ‘Global North’ and the ‘Global South’. Reports from the Commission’s meetings indicate that, in its efforts to develop a global approach against corruption, it considered two subthemes: government initiatives to combat corruption and asset recovery. Governments from the ‘Global South’ had indeed used the occasion of corruption being put on the institution’s agenda to push the issue of transfers of illicitly acquired funds and the need for international cooperation to repatriate them. In 2000, the UN General Assembly established

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<sup>71</sup> United Nations. *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Corruption*. Vienna: UNODC, 2010, p. xxvii

<sup>72</sup> COLEMAN, Katharina P. Locating norm diplomacy: Venue change in international norm negotiations. *European Journal of International Relations*, 2011, Vol. 19, n°1, p. 168

<sup>73</sup> United Nations Economic and Social Council. Promotion and Maintenance of the Rule of Law and Good Governance ; Action against corruption and bribery. Report of the Secretary-General Addendum. E/CN.15/1997/3/Add. 1, April 8 1997

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an Ad Hoc Committee for the Negotiation of a Convention against Corruption through resolution 55/61. At the same time, Nigeria, on behalf of the Group of 77 (G77) and China, proposed a draft resolution on the illegal transfer of funds and the repatriation of such funds to their countries of origin. The General Assembly finally decided to include the issue of illegal transfer of funds and repatriation of funds in the negotiation of the future convention against corruption (resolution 55/188).<sup>74</sup> By placing the issue of asset recovery within the framework of the convention against corruption, members of the UN managed to reach a compromise between developing countries, who wished to repatriate the stolen funds placed in Europe and North America, and the Global North, who agreed to change its laws to confiscate and return these assets at the condition that others reformed their institutions in order to reduce corruption in government.<sup>75</sup>

#### 5.1.2.2. The UN approach to corruption: from international trade to politics

While the UN initially considered corruption only within commercial transactions, it rapidly broadened its conception of the problem to see it as a problem of politics too. The 1990s indeed saw an acceleration of the UN's efforts against corruption and a redefinition of corruption beyond illicit payments in commercial transactions. The UN General Assembly, in its Resolution 45/107, stated the importance of the harmonisation of national legislations, recommending that "member states devise administrative and regulatory mechanisms for the prevention of corrupt practices or the abuse of power".<sup>76</sup> By the time the convention was adopted, the UN had broadened its conception of corruption from 'illicit payments' in commercial transactions to a perspective more attentive to abuses of political power.

From the 1990s, UN policy work indeed included attempts to promote policy instruments to prevention political corruption within member-states, such as codes of conduct and financial disclosure. The Crime Prevention and Criminal Justice branch of the UN office in Vienna prepared a manual of practical measures against corruption which was published in 1993.<sup>77</sup> The manual contained provisions on conflicts of interest, disclosure statutes (understood as tools to prevent

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<sup>74</sup> VLASSIS, Dimitri. The United Nations Convention Against Corruption: Origins and Negotiation Process. *Resource Material Series*, Vol. 66, 2004.

<sup>75</sup> GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018.

<sup>76</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Resolution 7 Corruption in Government. Eighth Congress, Havana, 27 August-7 September 1990

<sup>77</sup> United Nations. Crime Prevention and Criminal Justice in the context of development: realities and perspectives of international cooperation Practical measures against corruption. *International Review Of Criminal Policy*, 1993, n° 41 and 42.

and detect illicit enrichment) and codes of ethics, the scope of which were limited to the public administration. In 1996, the UN General Assembly adopted the International Code of Conduct for Public Officials which contained guidance on both conflict of interest management and disclosure regimes (resolution 51/59).<sup>78</sup> Codes of conduct and financial disclosure systems were part of the preliminary discussions on corruption among UN delegates in 1990.<sup>79</sup> Based on the draft Practical Manual against Corruption, state representatives indeed urged member states to consider implementing the measures contained in the manual, including adopting a code of ethics and disclosure statutes. The background paper, prepared for the 10<sup>th</sup> UN Congress on the Prevention of Crime and the Treatment of Offenders organised in 2000, underlined the need for a comprehensive UN Convention against Corruption, emphasising prevention rather than mere repression and stating the need for codes of conduct, strong independent oversight bodies and asset disclosure for political leaders.<sup>80</sup>

The notion of public integrity was finally made central to the spirit of the convention, as can be inferred by the inscription of the need to safeguard it and to foster a culture of rejection of corruption in the preamble,<sup>81</sup> after many debates among national delegations, as some (not listed in the archives) worried that recognising integrity and good governance among the objectives of the convention “would allow for intervention in the affairs of States and non-respect for national sovereignty”.<sup>82</sup> The negotiation of the UNCAC generated a battle of ideas as to what caused corruption and how best to tackle it. Some of the preparatory documents proposed an analysis of the problem that suggests that it was mainly a pathology of the ‘developing phase’ since corruption is “basically the result of a change in the needs of civil society as it moves towards a consumer society in combination with imperfectly organized and enforced public and judicial

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<sup>78</sup> Structured as follows (i) the general principles that should guide public officials in the performance of their duties (i.e. loyalty, integrity, efficiency, effectiveness, fairness and impartiality); (ii) conflict of interest and disqualification; (iii) disclosure of personal assets by public officials, as well as, if possible, by their spouses and/or dependants; (iv) acceptance of gifts or other favours; (v) the handling of confidential information; and (vi) the political activity of public officials, which, according to the Code, shall not be such as to impair public confidence in the impartial performance of the their functions and duties.

<sup>79</sup> United Nations. Eighth Congress on Prevention of Crime and the Treatment of Offenders A/CONF.144/28/Rev.I. Havana, 1990.

<sup>80</sup> United Nations. International cooperation in combating transnational crime: new challenges in the twenty-first century. Background paper for the workshop on combating corruption. A/CONF.187/9, December 31 1999. Vienna: United Nations, 2000.

<sup>81</sup> UNCAC, Preamble “Bearing also in mind the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption”

<sup>82</sup> United Nations. Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Corruption. Vienna: UNODC, 2010, p. 16.

administrations”.<sup>83</sup> The approach centred on public integrity advocating for Western-inspired good governance reforms was not popular with the G77. This created tensions between G77 states, seeing corruption as a consequence of the possibility to hide proceeds of crime abroad, while the ‘Global North’ rather pointed to the need for institutional reforms and preventive instruments.

The European Union played an important part in shaping the section of the UNCAC urging states to adopt preventive anti-corruption policies.<sup>84</sup> Article 8, which concerns codes of conduct for public officials and contains provisions for the introduction of financial disclosure regimes, is largely built on a proposal submitted by Austria, France and the Netherlands.<sup>85</sup> During the informal meetings preceding the negotiations, the United Kingdom, together with the government of Austria had also proposed the inclusion of asset declarations, parliamentary oversight committees and a code of conduct for public officials.<sup>86</sup> In addition to the promotion of specific instruments, Article 7 of the convention states that “each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.” France had originally proposed a text that did not mention conflicts of interest but rather encouraged states to consider the adoption of income declarations for certain public offices.<sup>87</sup> This proposal was modified by the Vice-Chairman of the committee to mention conflicts of interest and the need to declare private interests as well. This suggestion was debated on the grounds that a number of delegations considered the wording inappropriate, preferring ‘assets’ or ‘patrimony’ to ‘interests’.<sup>88</sup> There is an ambiguity in the convention as to the content of declarations, which reflects the difference between civil law countries such as Italy and France which focussed on the risk of illicit enrichment and the misuse of public funds, requiring the disclosure of financial assets, and the Anglosphere which was more

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<sup>83</sup> United Nations. International cooperation in combating transnational crime: new challenges in the twenty-first century. Background paper for the workshop on combating corruption. A/CONF./187/9, December 31 1999. Vienna: United Nations, 2000.

<sup>84</sup> United Nations. Proposals and contributions received from Governments: proposals on article 5 / Spain A/AC.261/L.18. Vienna: United Nations, 2002.

<sup>85</sup> United Nations. Proposals and contributions received from Governments: amendment to article 7 / Austria, France and Netherlands A/AC.261/L.20. Vienna: United Nations, 2002.

<sup>86</sup> United Nations. Austria and United Kingdom of Great Britain and Northern Ireland: working paper on key prevention elements to be included in the United Nations Convention against Corruption. A/AC.261/IPM/5. Vienna: United Nations, 2002.

<sup>87</sup> United Nations. Informal Preparatory Meeting of the Ad Hoc Committee on the Negotiation of a Convention against Corruption A/AC.261/IPM/10. Buenos Aires, 2001.

<sup>88</sup> United Nations. Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Corruption. Vienna: UNODC, 2010, p. 89

concerned with conflicts of interest and required the disclosure of financial interests. To avoid disagreements, the final text of the convention remained ambiguous on this point.

The international anti-corruption norms set by the UN are a compromise between the starkly different positions held by member-states, seeing corruption as a problem of corporate power's influence on politics, illicit financial flows and safe havens for stolen assets, or as the result of inadequate public institutions. The UN norms and standards are thus both broader, as they concern more policy areas than the CoE or the OECD's conventions, but also more ambiguous. Their development in parallel to other initiatives in other international venues resulted in a preventive approach that is very similar to other international legal instruments. Shortly after the adoption of the UNCAC, member states started to negotiate the development of the Implementation Review Mechanism (IRM), to ensure the transposition of the convention into national law.

#### 5.1.3.3. Importing peer reviews to the United Nations

The UNCAC established the Conference of the States Parties to the Convention (CoSP) to promote and review the implementation of the Convention, which set up a mechanism to assist in the review of the implementation of the convention: the Implementation Review Mechanism (IRM).<sup>89</sup> As an interviewee who had taken part in the negotiations of the convention and of the monitoring mechanism said: “[the monitoring mechanism] was super important for the UN convention but when we were done negotiating the convention, we did not have the energy to go all the way. So the IRM was left to the first conference of the states-parties”.<sup>90</sup> The Conference of the States Parties set a UN precedent when it created the IRM.

Given the political sensitivity of the issue and the novelty of introducing a peer review mechanism with respect to the implementation of a UN convention, finding an agreement on the form of the review mechanism generated significant disagreements. Some States were in favour of an open review process similar to that of the Council of Europe (mainly members States of the

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<sup>89</sup> The IRM is a peer-review monitoring mechanism set up with a number of stated objectives: (i) to promote the purposes of the Convention; (ii) to inform the Conference on the measures taken nationally and difficulties encountered; (iii) to help States parties to identify specific needs for technical assistance; (iv) to promote and facilitate international cooperation; (v) to provide the Conference with information on successes, good practices and challenges; and (vi) to promote and facilitate the exchange of information, practices and experiences.

<sup>90</sup> Board member of Transparency International Sweden (SWCS2). Interview with author. May 18<sup>th</sup> 2017. Author's own translation.

European Union, the United States and Canada) while others (like the Group of 77 and China) pushed for a more controlled review.<sup>91</sup> Civil society organisations coordinated their efforts to advocate for an effective review mechanism, through the UNCAC Coalition established in 2006 with Transparency International (TI) providing a secretariat.<sup>92</sup> TI's consultative status with the UN Economic and Social Council (UN ECOSOC), providing it with access to ECOSOC subsidiary bodies, allowed the UNCAC Coalition to push its demands for a transparent and participatory monitoring system.<sup>93</sup> A voluntary pilot programme was set up in 2006 to test the review mechanism and to familiarise member-state with the practice.<sup>94</sup> A compromise was found at the third session of the Conference of the States Parties in November 2009 (Resolution 3/1).

The IRM is comprised of four stages. A country under review firstly completes a self-assessment checklist that is then reviewed by selected experts from two other States parties (one them from the same region). Experts from reviewing countries conduct a desk review in response to the self-assessment checklist and engage in a dialogue with officials from the state under review, including during a country visit. The review leads to the production of a country review report, which follows a blueprint provided by the UNODC secretariat, prepared in coordination with the State under review and the secretariat. Reports contain successes, good practices and challenges, observations for further implementation and needs of technical assistance. They are confidential and publication remains the sovereign right of the State under review (except for the executive summaries which are published online). Each review phase is composed of two review cycles of five years each. The first cycle started in 2010 and covers the chapters on criminalisation and law enforcement and international cooperation. The second cycle, which covers the chapters on preventive measures and asset recovery started in 2015 (it was underway when this study was written). It is thus not yet possible to assess empirically the impact of the implementation review mechanism on reform of integrity policies at the national level. The development of a review mechanism for the UNCAC provided civil society organisations with the opportunity to produce their own review reports. In response to the absence of a systematic involvement of civil society

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<sup>91</sup> JOUTSEN, Matti and GRAYCAR, Adam. When Experts and Diplomats Agree: Negotiating Peer Review of the UN Convention Against Corruption. *Global Governance*, 2012, Vol. 18, n° 4, pp. 425-439.

<sup>92</sup> The UNCAC Coalition is a network of over 350 civil society organisations worldwide coordinating their efforts to promote the UNCAC's implementation and monitoring.

<sup>93</sup> Coalition of Civil Society Friends of UNCAC. United Nations Convention against Corruption Civil Society Statement to the First Conference of the States Parties. Amman, Jordan, December 10-14 2006, p. 2

<sup>94</sup> United Nations. Project Proposal Voluntary pilot programme Review of implementation of the United Nations Convention against Corruption. Vienna, 2006.

in country reviews,<sup>95</sup> the UNCAC Coalition decided to publish its own parallel reports, produced by its local members, assessing country's progress as well as the inclusiveness and transparency of the official review process.

The conception of corruption within the UN widened from an original focus on commercial transaction towards a broader understanding of the practices that should be considered to be corrupt. While corruption emerged on the UN agenda in the 1970s, the work accelerated in the 1990s, in parallel of the World Bank's and Transparency International's efforts to define corruption as a global problem. The adoption of the UNCAC contributed to the understanding of corruption being a 'global' problem which should be fought in all countries through selected policies, such as codes of conduct, financial disclosure systems. It turned instruments adopted in policy pioneers into legitimate and 'universally' recognised anti-corruption instruments. By including them in the only existing 'universal' anti-corruption convention, negotiators indeed contributed to institutionalising this policy approach to corruption as the 'right [and only] thing'<sup>96</sup> to do to tackle this 'global bad'.

### **5.1.3. The European Union, monitoring compliance with others' standards**

The European Union first recognised corruption as a public problem and a transnational crime in the 1990s. The resignation of the Santer Commission on charges of corruption in 1999 and preparation of the 2004 enlargement especially pushed European institutions to put corruption on their agenda. The Treaty on the Functioning of the EU recognises corruption as a 'euro-crime' giving the EU the right to "establish minimum rules concerning the definition of criminal offenses and sanctions".<sup>97</sup> The EU has sought to criminalise corruption with the adoption of the 1997 Convention on fighting corruption involving officials of the EU or officials of member states<sup>98</sup> and the 2003 Framework Decision on combating corruption in the private sector.<sup>99</sup> The EU has considered corruption largely as a fraud against its own financial interests and has created a number

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<sup>95</sup> UNCAC Coalition. Civil Society Review Reports. Online, available at [http://uncaccoalition.org/en\\_US/uncac-review/cso-review-reports/](http://uncaccoalition.org/en_US/uncac-review/cso-review-reports/) (accessed on March 25 2018)

<sup>96</sup> JUTTA, Joachim, REINALDA, Bob and VERBEEK, Bertjan (eds.) *International organizations and implementation: enforcers, managers, authorities?* London New York: Routledge, 2008, p. 11; BROOME, André and SEABROOKE, Leonard. *Op. cit.* 2012; BELAND, Daniel. *How ideas and institutions shape the politics of public policy*. Cambridge: Cambridge University Press, 2019, p. 27.

<sup>97</sup> Treaty on the Functioning of the European Union. 2012/C 326/01. Art. 83.1.

<sup>98</sup> European Union. Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of member states of the European Union, 1997.

<sup>99</sup> European Union. Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector. 2003.



of institutions to deal with the matter, such as the European Anti-Fraud Office (OLAF) or the more recent Office of the European Public Prosecutor (EPP). Considerations beyond criminalisation have not been formalised in the same manner. Indeed, after a 2003 communication from the European Commission,<sup>100</sup> the Council of the European Union adopted a Resolution on a comprehensive EU policy against corruption (6902/05, 6901/2/05) which remains a statement of principles and refers to other existing international anti-corruption instruments.<sup>101</sup> While not having its own comprehensive anti-corruption policy, the EU has indeed developed a number of soft governance tools to assess member-states compliance with the standards set by other IOs, such as the CoE, the OECD and the UN.

Efforts to prevent corruption have nevertheless been a central criterion of the EU accession process. The Copenhagen criteria adopted in 1993 were interpreted as to allow the European Commission to require candidate states to adopt anti-corruption policies that go beyond the *acquis communautaire*.<sup>102</sup> Without an European anti-corruption framework, the EU relied on other institutions' legal instruments to develop anti-corruption benchmarks for candidate States.<sup>103</sup> With the accession process as a leverage, the Commission developed a double standard to urge candidate states to adopt anti-corruption policies. As a result these countries ratified the Council of Europe's criminal convention before most of the EU member States.<sup>104</sup> As Boyko Todorov puts it: "there were few assistance programmes in these countries that did not include a good governance/anti-corruption component".<sup>105</sup> The EU's concern with corruption in accessing States, much like the United Nations' or Council of Europe's willingness to monitor anti-corruption efforts in transition countries, politicised the issue at the regional level, gradually feeding back to older member States.

The introduction of an EU wide Anti-Corruption Report in 2014 embodies this effort of the European Union to address the issue of corruption *within* member-states. The EU Anti-Corruption Report provides an analysis of corruption and efforts to prevent and fight it in EU

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<sup>100</sup> European Union. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - On a comprehensive EU policy against corruption. /\* COM/2003/0317 final \*/

<sup>101</sup> European Union. Council of the European Union. 2652nd Council meeting. Justice and Home Affairs. Luxembourg, 14 April 2005, p. 13.

<sup>102</sup> Open Society Foundation. *Monitoring the EU Accession Process-Complete Report*. Open Society Foundation Accession Monitoring Program, 2002, p. 17; REED, Quentin. *Corruption and EU enlargement: Who is prepared?* Euractiv.com, November 6<sup>th</sup> 2002. Online, available at: <https://www.euractiv.com/section/social-europe-jobs/opinion/corruption-and-eu-enlargement-who-is-prepared/> (accessed on June 28<sup>th</sup> 2018)

<sup>103</sup> GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018.

<sup>104</sup> Open Society Foundation. *Op. cit.* 2002, p. 17.

<sup>105</sup> TODOROV, Boyko. Anti-corruption measures as political criteria for EU accession: Lessons from the Bulgarian experience. Bergen (Norway): U4 Brief, n° 5, 2008, p. 1.

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member states. Andi Hoxhaj describes this initiative as a form of ‘reflexive governance’ at multiple levels, which includes European institutions and national governments, but also civil society actors in the development of anti-corruption policy within the region.<sup>106</sup> The Stockholm Programme, the multiannual programme of the European Council for the period 2010-2014, identified corruption as a transnational threat that requires action at the European level and better coordination of national efforts. It thus invited the European Commission to “develop indicators, on the basis of existing systems and common criteria, to measure efforts in the fight against corruption”.<sup>107</sup> This was interpreted as to give the Commission the mandate to “give a frank assessment of how each member state tackles corruption (...) and [suggest] how each member state can step up the work against corruption”.<sup>108</sup> As opposed to other monitoring mechanisms piloted by intergovernmental organisations, the Commission could develop the assessment methodology without the control of member states and set up a group of experts on corruption to advise on the methodology and on the national assessments, choosing technical expertise over political negotiation.<sup>109</sup>

Much like the development of monitoring mechanisms in the context of the UN and the CoE, the EU Anti-Corruption Report was partly a response to the organisation’s ambition to encourage new member states to adopt anti-corruption reforms. The principle of equality among member states created a feedback of policy recommendations directed at older members of the EU. An official from the GRECO Secretariat, asked about the collaboration between GRECO and the EU Anti-Corruption report, described his understanding of the motivation behind the latter:

The elaboration of the report on corruption was, to a certain extent, a response to a criticism of the European Union about the enlargement process that was perceived as a fiasco. Countries with an informal economy of 30% of the GDP, high levels of corruption etc. are a proof of this. Thus this horizontal mechanism was meant to respond to that criticism, but then again, the principle of equality

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<sup>106</sup> HOXHAI, Andi. *The EU Anti-Corruption Report: A Reflexive Governance Approach*. Abingdon: Routledge, 2019.

<sup>107</sup> European Council. *The Stockholm Programme – An open and secure Europe serving and protecting citizens* (2010/C 115/01). Official Journal of the European Union C 115/1. May 4th 2010.

<sup>108</sup> MALMSTRÖM, Cecilia. *Commission unveils first EU Anti-corruption Report*. Speech by EU Commissioner for Home Affairs. Brussels: press conference. February 3rd 2014.

<sup>109</sup> European Commission. *Report from the Commission to the Council and the European Parliament Eu Anti-Corruption Report*. COM(2014) 38 final. Brussels. February 3rd 2014, p. 38. Information about the group of experts, of which only 11 remain and which has been dormant since its last meeting in January 2017, is available on the Commission’s Register of Commission Expert Groups, but there is no public information about the national experts, which led to some stakeholders considering the process rather opaque (CoE2). In the answer to a EP Parliamentary question on the network of local researchers, Mr. Avramopoulos, speaking on behalf of the Commission, said that the network was managed by PwC who had won a tender for this project in 2012 which was renewed in 2014 (European Parliament. Parliamentary questions E-004868/2017, September 22d 2017)

between States meant that the mechanism should apply to all EU member states and not only to [the newest Members].<sup>110</sup>

The EU Anti-Corruption Report prominently features the need for reform regarding the integrity and accountability of elected officials and political elites, including conflict of interest regulation. It emphasises the need for monitoring mechanisms and dissuasive sanctions. In her speech presenting the report, Cecilia Malmström, the Commissioner for Home Affairs, listed “better accountability and integrity standards, control mechanisms in public authorities, dealing with conflicts of interest by officials” among the main solutions to the problem of corruption that member states should introduce in their institutional system.<sup>111</sup> The European Commission presented the EU Anti-Corruption Report as a first step for the EU to fully engage with the issue of corruption prevention within member-states and as an innovation on the continent. In the words of Commissioner Cecilia Malmström:

This Report is a first step. It is the first time we have a complete overview of the situation in all member states, and a set of suggestions for how to move forward. We will now engage in a dialogue with member states, the European Parliament, National Parliaments and others - and work with member states to follow up on our suggestions. In two years' time, the next EU Anti-Corruption Report will take stock of how far we have moved forward together. Needless to say, it will take more than one report to root out corruption. But as Europe is finding its way out of the economic crisis, we cannot afford to drag our feet. We hope that this will start a political process and will spur the political will and the necessary commitment at all levels to address corruption more effectively across Europe. The price of not acting is simply too high.<sup>112</sup>

The EU Anti-Corruption Report was planned as biannual publication providing a “fair reflection of the achievements, vulnerabilities and commitments of all member states, [identifying] trends and weaknesses that need to be addressed, as well as [stimulating] peer learning and exchange of best practices”.<sup>113</sup> The initiative was however abandoned ahead of the publication the second edition of the report, as revealed by a letter dated from Frans Timmermans, Vice-President of the

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<sup>110</sup> GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018. Translation by the author.

<sup>111</sup> MALMSTRÖM, Cecilia. Commission unveils first EU Anti-corruption Report. Speech by EU Commissioner for Home Affairs. Brussels: press conference. February 3rd 2014.

<sup>112</sup> MALMSTRÖM, Cecilia. Commission unveils first EU Anti-corruption Report. Speech by EU Commissioner for Home Affairs. Brussels: press conference. February 3rd 2014.

<sup>113</sup> European Commission. Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee Fighting Corruption in the EU. COM(2011) 308 final. Brussels, June 6th 2011, p. 4

European Commission, to the European Parliament.<sup>114</sup> In addition to the change of governance in the DG Home Affairs, Cecilia Malmström who led most of the Commission's work on anti-corruption leaving after the publication of the first EU Anti-Corruption Report, observers point to the EU's supranational status and the lack of member states involvement in the preparation of the report to explain why the initiative was put down. As an official from the GRECO Secretariat suggested during our interview:

I do not necessarily have the inside track on what is happening in Brussels, but there were political factors. There were a number of blunders... I am thinking of the way in which they [the European Commission] handled this with countries that are used to do it [being monitored] differently in other international bodies. One can say that the EU is not a traditional international system, that it is (...) quasi-federal, but the fact is that the Council, and member states through the Council, retain an enormous veto right. And when the report was published, there was an outcry from member states with regards to the way the report was finalised, was presented to them, was going to be mediated etc. And they were treated in a manner that they are not used to. They were told to come that day at that time to Brussels, to enter the room without camera or cell phone, to look at the finalised report and to make proposals on how to communicate about it in their respective country. There was no possibility to comment or to bring a copy. For a first try, it was quite bold. It could have worked but it didn't.<sup>115</sup>

What the interviewee suggests is that by adopting a different (more intrusive) method of monitoring member-states, the European Commission managed to turn states, used to being held to account by international institutions on such policy efforts, against the review system. The quote also suggests that the EU's supranational authority might have turned against its monitoring efforts, by excluding national governments more than other international institutions could. Following the failure of the EU Anti-Corruption report, the European Commission replaced it with the publication of thematic factsheets in country reports and recommendations by the European Semester. An Anti-Corruption Experience Sharing Programme was set up by the Commission in 2015 as a complement to the EU Anti-Corruption Report to "support member states, local NGOs and other stakeholders in addressing specific challenges identified in the EU Anti-Corruption Report".<sup>116</sup> The experience-sharing workshops bring together member state officials, members of

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<sup>114</sup> Letter from Frans Timmermans to the Chairman of the European Parliament, sent on January 25th 2017 and published by Transparency International EU. Online, available at: <http://transparency.eu/wp-content/uploads/2017/02/20170130-Letter-FVP-LIBE-Chair.pdf> (accessed on July 2d 2018)

<sup>115</sup> Official from the GRECO Secretariat. Interview. June 26th 2018. Translation by the author.

<sup>116</sup> European Commission. Anti-corruption Experience Sharing Programme. Online, available at: [https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/experience-sharing-programme\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/experience-sharing-programme_en) (accessed on July 2d 2018)

the expert group, officials from international organisation, both intergovernmental like the OECD and non-governmental like TI and academics. These workshops give the Commission a means to maintain a relative control over the anti-corruption agenda within European institutions, as the European Parliament shows increasing interest in the topic. Integrity policies targeting elected officials have been high on the agenda, with the first edition of the experience-sharing workshop, organised in April 2015, concerning effective asset declaration systems as a means to prevent corruption. The 8<sup>th</sup> edition, organised in June 2017, dealt with conflicts of interest and revolving doors. And the 9<sup>th</sup> one, held in December 2017, included a session on new ideas for integrity policy incentives.

Many consider that the programme set out by the Stockholm Programme and the Commission's 2011 Communication on *Fighting Corruption in the EU*, initially said to be "ambitious", has failed.<sup>117</sup> The position of the EU as a supranational institution, having more leverage to influence national legislation in member states, seems to have caused more harm than good for the institution's influence in the policy field, leading it to externalise many of its anti-corruption activities, as Chapter 6 will explain. The issue however very recently re-emerged on the agenda of EU institutions. On the 2nd of October, the Justice and Home Affairs Council launched a discussion on the "EU Action against corruption", which would revive the debate on the development of a proper EU anti-corruption policy.<sup>118</sup>

The changing post-Cold War international politics created the appropriate context for the development of international norms and standards against corruption, following initial efforts of policy pioneers at the national level. Political transformations following the fall of the iron curtain helped national and transnational policy entrepreneurs construct corruption as a 'global' problem requiring 'global' solutions to be found in international legal and quasi-legal instruments. Beyond seeking to counter cross-border corruption through international cooperation, these conventions and principles sought to harmonise national legislations regarding both the criminalisation of certain practices and the adoption of policies to prevent corruption from happening in the first place (such as codes of conduct and financial disclosure systems). International legal instruments against corruption are the result of inter-governmental compromises between countries with

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<sup>117</sup> DOLAN, Carl (Transparency International EU). EU anti-corruption: Less is less. Speech during the European Parliament' workshop "How to better combat fraud? Follow up on the Commission's anti-corruption experience-sharing programme". Brussels, June 20<sup>th</sup> 2018.

<sup>118</sup> Council of the European Union. Note EU Action against corruption - Exchange of views. 12276/19. Brussels, 27 September 2019.

different understandings of corruption and policy ambitions. These international instruments were complemented by various compliance mechanisms based on peer- and public pressure through the ‘naming and shaming’ of non-compliant countries. The creation of international standards and (more or less intrusive) mechanisms, defines compliant and deviant behaviour on the part of governments and forces them to justify their policy choices, especially when they choose not to implement commonly-agreed reforms. These international instruments not only exist in parallel but that they have a common policy approach to corruption. These standards were indeed elaborated in parallel, with international institutions, national actors and intermediaries providing input into the parallel negotiations, thus facilitating the transfer of ideas between international venues.

## 5.2. “We do not want to reinvent the wheel”: the construction of a common policy approach to corruption

International institutions are increasingly interacting with each other, as their activities expand and their mandates intersect, suggesting the need for them to develop relationships and cooperate for the sake of efficiency.<sup>119</sup> The international fight against corruption is illustrative of international institutions’ cooperative practices,<sup>120</sup> as the growth of the transnational policy community encouraged them to establish formal and informal collaborative relations.<sup>121</sup> As Cecilia Malmström, then EU Commissioner for Home Affairs, said in a speech about the EU Anti-Corruption Report in 2013: “Let me reassure you that we do not want to *reinvent the wheel*, or impose new burden on national administrations when we prepare the report” (emphasis by the author).<sup>122</sup> This section focusses on their collaboration with regards to the development and promotion of

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<sup>119</sup> BOISSON DE CHAZOURNES, Laurence. Relations with Other International Organizations. In KATZ COGAN, Jacob, HURD, Ian and JOHNSTONE, Ian (eds.) *The Oxford Handbook of International Organizations*. Oxford University Press, 2017; BIERMANN, Rafael, and KOOPS J. Alexander. *The Palgrave Handbook of Inter-Organizational Relations in World Politics*. London: Palgrave Macmillan. 2016; DUPUY, René. *Le Droit Des Relations Entre Les Organisations Internationales*. Leiden, Boston: Brill. 2008.

<sup>120</sup> GRIGORESCU, Alexandru. IGO Relations in the Anti-corruption Realm and in Promoting Integrity in Public Procurement. In KOOPS, Joachim and BIERMANN, Rafael. *Palgrave Handbook of Inter-Organizational Relations in World Politics*. London: Palgrave MacMillan. 2016; ZIMMERMANN, Stephen and FARELLO Jr., Frank A. Coordinating the Fight against the Fraud and Corruption: Agreement on Cross-Debarment among Multilateral Development Banks. In CISSÉ, Hassane, BRADLOW, Daniel D., and KINGSBURY, Benedict (eds.) *The World Bank Legal Review: International Financial Institutions and Global Legal Governance*. Washington, DC: The World Bank, 2012 vol. 3, pp. 189–204; GEST, Nathaniel and GRIGORESCU, Alexandru. Interactions among intergovernmental organizations in the anti-corruption realm. *Review of International Organizations*, Vol. 5, 2010, pp. 53-72.

<sup>121</sup> GRIGORESCU, Alexandru. *Op. cit.* 2016.

<sup>122</sup> MALMSTRÖM, Cecilia. Second Regional Workshop on the EU Anti-Corruption Report/Gothenburg, Sweden. March 5th 2013. Online, available at: [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_13\\_187](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_187) (accessed on April 20th 2020)

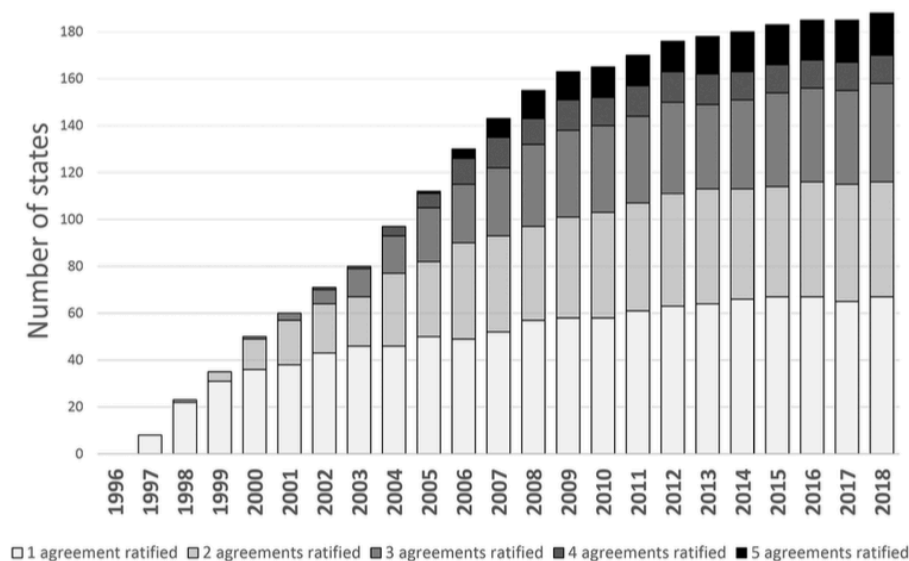
international norms and standards against (and in the face of) corruption. It firstly looks at the broad approach to anti-corruption policy, then zooms in on the promotion of conflict of interest regulation. Thirdly, it compares monitoring mechanisms and studies their interconnected construction.

### **5.2.1. Promoting the same solutions to corruption**

Between the mid-1990s to the mid-2000s, nine conventions against corruption were adopted as well as additional quasi-legal instruments, as Section 5.1 shows. This section seeks to demonstrate the similarity of these international instruments' policy message, which reinforces the impression that there are shared global norms and standards against corruption. To do so, it compares the Council of Europe, the OECD and the United Nations recommendations regarding financial disclosure systems and codes of conduct. Annexe 3 presents each instruments' provisions regarding conflict of interest regulations. Comparing the three legal instruments makes it clear that they all recommend the same preventive approach to corruption, urging member-states to adopt codes of conduct, financial disclosure systems, complemented by disciplinary measures and/or ethical training.

Most of these conventions share signatories within their respective regions and with the UNCAC. The CoE and UN instruments against corruption were negotiated only a few years apart, and when the UNCAC was signed in 2003, 46 signatories were already parties to the CoE conventions and 47 were part of GRECO (including the USA). Figure 19 shows the growing number of states that have ratified at least one international anti-corruption convention.

Figure 19. Number of states having ratified at least one anti-corruption agreement



Source: LOHAUS, Mathis. *Towards a Global Consensus Against Corruption International Agreements as Products of Diffusion and Signals of Commitment*, 1st Edition. Abingdon, New York: Routledge, 2019, p. 3.

The lists of participants to the convention negotiations show that these conventions were drafted, negotiated and signed by representatives from (future) states parties' Ministry of Foreign Affairs and Ministry of Justice,<sup>123</sup> suggesting that negotiators of the different instruments received instructions from the same ministries. Certain state representatives functioned as bridges or intermediaries between the various international forums. Notably, Sweden was represented in all negotiations by the same individual officials – Håkan Öberg from the Ministry of Justice and Klas Bergenstrand, the Prosecutor General. Birgitta Nygren, a Swedish official from the Ministry of Foreign Affairs, also took part in many international negotiations towards conventions and review mechanisms (UNCAC IRM and OECD Working Group on Bribery), before she became the Chair of the Swedish chapter of TI. International legal instruments against corruption were negotiated by representatives from the same agencies, which suggests that they were certainly eager for the standards in these different forums to be similar to facilitate compliance.

Some state representatives moved on to work within the secretariats of different international organisations involved in anti-corruption work. Two examples serve to illustrate this

<sup>123</sup> Council of Europe. 19th Conference of European Ministers of Justice. Report by the Secretary General of the Council of Europe. CM(94)117, August 3 1994 ; Council of Europe Group of States against Corruption. Report from the First Meeting, Strasbourg, 4-6 October 1999. GRECO(99)7, November 15 1999 ; United Nations General Assembly. Report of the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption, held in Merida, Mexico, from 9 to 11 December 2003. A/CONF.205/2, December 19 2003.



statement. Firstly, Dragos Kos was the first Chairman of the Commission for the Prevention of Corruption in Slovenia and worked for the Slovenian government when the GRECO was set up, thus taking part in the organisation's meeting as a state representative. He served as the president of GRECO from 2003 to 2011, and then moved on to become the Chair of the OECD Working Group on Bribery in International Business Transactions. He took part in conferences relating to the UNCAC and regularly teaches at the International Anti-Corruption Academy (set up at the initiative of the UNODC, Interpol and OLAF *inter alia*).<sup>124</sup> Secondly, John Brandolino worked for the US Department of State, notably within the Bureau of Narcotics and Law Enforcement Affairs as an expert on corruption and a US representative to the UN in Vienna, which hosts the UN Office on Drugs and Crime. In his diplomatic capacity, he participated in GRECO meetings after the United States joined the institution in 2000. He became the UNODC Director for the Division on Treaty Affairs in 2015.<sup>125</sup>

Archives from these international negotiations show that states who were already parties to an international convention against corruption or had agreed to previous international recommendations or principles, tended to suggest similar elements to existing conventions. State representatives from CoE member states taking an active part in the drafting the UNCAC frequently use policy documents from the CoE as a source for their proposals. The British and Austrian proposal to the Ad Hoc Committee for the Negotiation of a Convention against Corruption indicates in its introduction that the proposal trying to provide a structure for a possible chapter on prevention draws on existing international instruments, such as the CoE conventions, the OECD Convention, the 1999 Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption, the UN Anti-Corruption Tool Kit and information from Transparency International.<sup>126</sup> Similarly, the French proposal to the committee uses the CoE's Twenty Guiding Principles to suggest adding a paragraph to the article on code of conduct urging States "to promote ethical behaviour and to foster a culture of rejection of corruption through respect for public honesty, the proper exercise of responsibilities and the development of

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<sup>124</sup> OECD. Tech for Trust 2019 Global Anti-Corruption and Integrity Forum. Speakers. Dragos Kos. Online, available at: [https://gacif2019.sched.com/speaker/drago\\_kos.1z8t4vgn](https://gacif2019.sched.com/speaker/drago_kos.1z8t4vgn) (accessed on January 10th 2020); International Anti-Corruption Academy. Empowering Professionals Dragos Kos. Laxenburg, 2017.

<sup>125</sup> John Brandolino's LinkedIn profile. Online, available at: <https://www.linkedin.com/in/john-brandolino-392347111/?originalSubdomain=at> (accessed on January 10th 2020); Council of Europe. 10<sup>th</sup> Plenary meeting of GRECO. Strasbourg, July 8-12 2002. GRECO (2002) 26E. Strasbourg, 2002.

<sup>126</sup> United Nations General Assembly. Austria and United Kingdom of Great Britain and Northern Ireland: working paper on key prevention elements to be included in the United Nations Convention against Corruption. A/AC.261/IPM/5, November 2 2001

integrity”.<sup>127</sup> The introductions to the CoE Principles and the UNCAC contain a similar statement about the seriousness of the problem of corruption and its consequences, calling for urgent action.

The development of these international legal instruments did not happen in silos and actors involved were aware of the initiatives taken elsewhere, the instruments indeed referencing each other. The Preamble of the UNCAC makes reference to “the work carried out by other international and regional organizations in this field”<sup>128</sup> and to “multilateral instruments to prevent and combat corruption”.<sup>129</sup> During their initial meeting on the issue in 1994, the Ministers of Justice of the CoE declared that “co-operation [against corruption] could usefully be carried out through the Council of Europe, ensuring, however, a coherent and coordinated approach with the OECD and the United Nations”<sup>130</sup>. It acknowledged the ongoing work on corruption of these organisations in Resolution n°1 adopted during the event. The OECD 1998 recommendation on public ethics was developed “having regard to other recent developments which further advance international understanding and co-operation in promoting ethical culture in the public service, such as the Resolution on Action Against Corruption, including the International Code of Conduct for Public Officials, passed by the United Nations on 12 December 1996 (...) the Programme of Action Against Corruption approved by the Council of Europe in November 1996 (...)”. Similarly, in its first concrete resolution on corruption, the United Nations General Assembly recognised the work by “other international and regional organizations in this field, including the activities of the Council of Europe, the European Union, the Organisation for Economic Cooperation and Development and the Organization of American States”.<sup>131</sup>

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<sup>127</sup> United Nations General Assembly. France: elements for inclusion in the United Nations Convention against Corruption. Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption. A/AC.261/IPM/10, November 12 2001

<sup>128</sup> “including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organisation for Economic Cooperation and Development and the Organization of American States.”

<sup>129</sup> “including, inter alia, the Inter-American Convention against Corruption (...), the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of member states of the European Union (...), the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (...), the Criminal Law Convention on Corruption (...), the Civil Law Convention on Corruption (...), and the African Union Convention on Preventing and Combating Corruption...”

<sup>130</sup> Secretary General of the Council of Europe. Report of the 19th Conference of European Ministers of Justice (Valletta, 14-15 June 1994) CM(94)117. Available at : <https://rm.coe.int/16804ead6d> [accessed on February 20th 2018]

<sup>131</sup> UN General Assembly, Action against corruption: resolution / adopted by the General Assembly, 28 January 1997, A/RES/51/59. Online, available at : <https://www.refworld.org/docid/3b00f34510.html> (accessed 7 April 2020).

The secretariats of these international institutions all enjoy an observer status in each other's conferences. Thus, officials from the IOs themselves took part in international negotiations and meetings in other international venues. Representatives from GRECO for instance actively participated in the drafting of the UNCAC.<sup>132</sup> In Merida (Mexico), during the high-level political conference at which the UNCAC was signed, the Deputy Secretary General of the Council of Europe Maud De Boer emphasised the advisory role played by her organisation and offered to prolong its counsel:

The Council of Europe has actively contributed to the negotiation of this Convention and stands ready to contribute to its success in any way that may be deemed necessary. The forum that the Council of Europe provides could be notably instrumental in the monitoring of the implementation of the UN Convention at the Pan-European level (...) The Council of Europe is proud to join efforts with the UN to establish a fair, stable, transparent and clearly defined legal and institutional framework.<sup>133</sup>

The similarity of their suggested policy responses to corruption can be understood as a result of a search for effectiveness on the part of national governments who later have to comply with the standards set in these international venues, but also through institutions' and individuals' socialisation to this conception through their participation in the various negotiations. International standards against corruption indeed developed within the CoE, the OECD and the UN over a period of less than ten years. The same government agencies and sometimes the same individuals participated in the negotiations, and some experts played the role of intermediaries between the different levels of governance and the different international institutions. The latter also invited each other to take part in meetings and negotiations to share their experience, which contributed to align their policy message, following initial international efforts and diffusing solutions developed by policy pioneers.

### **5.2.2. The co-construction of monitoring mechanisms**

Beyond the textual similarities and the cross-referencing of international organisations and instruments in text, the international organisations helped shape each other's review mechanisms. The OECD Anti-Bribery Convention was the first one to be accompanied by a compliance review

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<sup>132</sup> UN General Assembly. Report of the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption, held in Merida, Mexico, from 9 to 11 December 2003. A/CONF.205/2, December 19 2003.

<sup>133</sup> Elements from the statement by Mrs Maud De Boer- Buquicchio, Deputy Secretary General of the Council of Europe on the occasion of the High Level Political meeting on Corruption, Merida, 10 December 2003

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mechanism in 1998.<sup>134</sup> For an interviewee who has had experience with various compliance monitoring system, “peer-reviews were nothing strange in the OECD. The organisation is more or less just a large peer-pressure mechanisms”.<sup>135</sup> The OECD is often referred to as the “intellectual birthplace of peer review”.<sup>136</sup> Fabricio Pagani argues that the development of peer-reviews to monitor compliance with international standards within the OECD as facilitated by “the homogeneous membership and the high degree of trust shared among the member countries”.<sup>137</sup> The OECD played a central role in popularising this instrument among international organisations monitoring state compliance with international standards, since archives and interviewees indicate that later monitoring mechanisms emulate the example that it set. The combination of self-evaluation and peer-review was an element of this implementation monitoring system that was reproduced in all subsequent mechanisms monitoring compliance with international anti-corruption norms. A GRECO official confirmed the resemblance of the mechanisms, suggesting that the international institutions copied each other, using examples from other policy fields as well, such as mechanisms monitoring compliance with anti-money laundering standards:

The mechanisms were more or less copied on each other. Moneyval [the permanent monitoring body of the Council of Europe assessing compliance with the principal international standards to counter money-laundering] copied the GAFI system [the Financial Action Task Force (FATF/GAFI) is an inter-governmental body that standards and promote effective implementation of measures for combating money laundering and terrorist financing]. GRECO looks at many mechanisms but finally stuck to the closest system, that of Moneyval and the GAFI. Governments nominate experts. They are hand-picked to form delegations. In the United Nations it is a little different (...) But these mechanisms function more or less in the same manner.<sup>138</sup>

The CoE indeed adopted its monitoring mechanism on May 1<sup>st</sup> 1999, a year after the OECD, adopting a relatively similar methodology. A number of international organisations, including the

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<sup>134</sup> Compliance review is the responsibility of the Working Group on Bribery, in which all States Parties are represented, and the monitoring is undertaken through a peer-review system. There are several phases to the compliance review: a self-assessment questionnaire, on-site visit by the examiners from the two countries assigned the evaluation, the preparation of a preliminary report on the country’s performance, evaluation and validation of the report by the Working Group on Bribery. The reports can be adopted by consensus or, alternatively, can reflect diverging opinions (OECD. Phase 1 country monitoring of the OECD Anti-Bribery Convention. Online, available at <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/phase1countrymonitoringoftheoecdanti-briberyconvention.htm> - accessed on April 19 2018)

<sup>135</sup> Board member of Transparency International Sweden (SWCS2). Interview with author. May 18<sup>th</sup> 2017. Author’s own translation – peer pressure was though used in English.

<sup>136</sup> JONGEN, Hortense. Combating Corruption the Soft Way The Authority of Peer Reviews in the Global Fight Against Graft. PhD Dissertation Universitaire Pers Maastricht, 2017, p. 28.

<sup>137</sup> PAGANI, Fabricio. Peer Review as a Tool For Co-Operation And Change: An Analysis of an OECD Working Method. *African Security Review*, vol. 11, n° 4, 2002, p. 17.

<sup>138</sup> GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018. Author’s own translation.

OECD, were invited to take part in the work of the CoE's Multidisciplinary Group on Corruption (GMC) that set up the mechanism, but the records do not show if the OECD proactively influenced its work on the monitoring mechanism.<sup>139</sup> In turn, the mechanisms set up in the CoE and the OECD inspired the Implementation Review Mechanism (IRM) set up by the Conference of States-Parties to the UNCAC. In contrast to others, setting up a monitoring system in the UN proved more controversial. As indicated previously, OECD countries were relatively used to being monitored and the CoE had set up a few monitoring mechanisms that member-states had gotten used to.<sup>140</sup> Their member-states, together with those of the Organisation of American States (who had also become familiar with compliance reviews through the Inter-American Convention against Corruption), were the ones who advocated for the establishment of a monitoring mechanism for the UNCAC. Policy pioneers and countries that already had to submit to monitoring efforts saw the creation of the UNCAC IRM as less burdensome than those for whom this was a new experience. Countries in the 'Global North' accepted to submit to another monitoring exercise in order to bring more reluctant countries on board.<sup>141</sup> American and European officials sought to import the monitoring mechanisms they were familiar with, proposing them to the UN:

Since it was the Europeans and Americans, OAS countries, who pushed the most, they tried to export (...) the models that were already there and that worked. There was no chance of going further than that in any case, to have an integrated system whereby UN civil servants would perform the evaluations. That was out of question. Countries wanted self-evaluation, but in principle that was also out of question. So the model that was already used turned out to be quite practical.<sup>142</sup>

The interviewee implied that three opposing views were in debate: (i) international secretariats in favour of an evaluation by experts and international civil servants, (ii) governments that were not yet part of any such monitoring mechanism who wanted a system based on self-evaluation, and finally (iii) the Americans and Europeans in favour of a peer-review system. The latter won the battle, both because it looked like a compromise between the two others and because it had already been "tested", which seems "quite practical". In their research on the establishment of the UNCAC IRM, Adam Graycar and Matti Joutsen describe the opposition between the States in favour of a controlled review process and those in favour of an open review process; the latter

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<sup>139</sup> Council of Europe. 10.1 Multidisciplinary Group on Corruption (GMC) GMC's Activity Report (1994-2000) CM(2000)158 (Restricted). Directorate General (Legal Affairs), October 27 2000.

<sup>140</sup> Board member of Transparency International Sweden (SWCS2). Interview with author. May 18<sup>th</sup> 2017.

<sup>141</sup> Board member of Transparency International Sweden (SWCS2). Interview with author. May 18<sup>th</sup> 2017; GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018.

<sup>142</sup> GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018. Author's own translation.

incorporating “many elements found within the framework of the OECD and the Council of Europe”, which would, for a large part, eventually form the UNCAC IRM.<sup>143</sup> They highlight the importance of the presence of experts in the delegations in favour of the open review process (EU members, the United States and Canada), alongside career diplomats; the experts being familiar with the details of review systems present in other organisations, such as the OECD and the Council of Europe.<sup>144</sup> In addition to state representatives, international civil servants also provided their input in the development of the UNCAC IRM. In her speech at the high level political meeting for the signature of the UNCAC, the representative of the Deputy Secretary General of the Council of Europe encouraged the Conference of States Parties (CoSP) to establish a review mechanism similar to GRECO, declaring:

Legal and political instruments may certainly compose a good prescription. However, for it to be effective, we need to make sure that the remedies are correctly administered and adequately processed by the organism. Regular check-ups are therefore needed to monitor the progress made and adapt the treatment if need be.<sup>145</sup>

Six years later, during the 3rd Conference of States Parties to the UNCAC (CoSP) in 2009 that set up the IRM, GRECO officials confirmed the institution’s “willingness to offer long standing expertise and knowledge and to support the implementation of the [UNCAC] to the extent possible”.<sup>146</sup> GRECO officials insist on the need for these international efforts to be complementary, to “[avoid] duplication”. This echoes the UNCAC CoSP 2006 statement that the UNCAC review mechanism should “complement existing international and regional review mechanisms in order that the Conference of the States Parties may, as appropriate, cooperate with them and avoid duplication of effort”.<sup>147</sup> The CoE was the only non-specialised intergovernmental organisation to send a representative, often from its secretariat, to all four sessions of the intergovernmental working group preparing the UNCAC IRM.<sup>148</sup> A GRECO official who took

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<sup>143</sup> GRAYCAR, Adam and JOUTSEN, Matti. When Experts and Diplomats Agree : Negotiating Peer Review of the UN Convention Against Corruption. *Global Governance*, 2012, Vol 18, n°4, pp. 425-439

<sup>144</sup> GRAYCAR, Adam and JOUTSEN, Matti. When Experts and Diplomats Agree : Negotiating Peer Review of the UN Convention Against Corruption. *Global Governance*, 2012, Vol 18, n°4, pp. 425-439

<sup>145</sup> UNODC. *Global Action against Corruption The Merida Papers*. Vienna: United Nations, 2004, pp. 109-112.

<sup>146</sup> Council of Europe. Message addressed to the Third Conference of States Parties to the United Nations Convention Against Corruption. GRECO (2009) 21E. Strasbourg, Octobre 8 2009.

<sup>147</sup> United Nations. Conference of the States Parties to the United Nations Convention against Corruption. Resolution 1/1 Review of implementation. Amman, 2006.

<sup>148</sup> United Nations. List of Participants. Open-ended Intergovernmental Expert Working Group on Review of the Implementation of the United Nations Convention against Corruption Vienna, 29 to 31 August 2007.

CAC/COSP/WG.1/2007/INF.1/Final. Vienna, 2007; United Nations. List of Participants. Open-ended Intergovernmental Expert Working Group on Review of the Implementation of the United Nations Convention

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part in many of the meetings with the UN mentioned the role of state representatives and international secretariats:

We met, there were discussions... So there is the model that was exported via member states who were able to bring things into the negotiation venues at the United Nations. And also at the level of the secretariats, there were consultations, bilaterally and multilaterally, in the framework of the [International Group for Anti-Corruption Coordination (IGAC)] (...) established at the initiative of the United Nations. We exchange a lot through this mechanism, without always knowing why one asks this or that question. 'GRECO has rules of procedure? Great! Send us a copy' Then they made the cooking. We did not always know why we were asked for certain things (...) A lot of information and know-how, knowledge was transferred. Back then it was like that.<sup>149</sup>

What this GRECO official indicates here is that, in addition to state representatives willing to make the UN mechanism resemble existing ones, UN officials also frequently turned to other international institutions, such as the CoE, via the coordination group they had themselves set up. While CoE officials had constructed themselves as experts in terms of compliance monitoring, UN officials contributed to building the CoE's image of expertise by requesting information on their experiences and practices.

Beyond cooperating in the development of these instruments, IO secretariats collaborate informally during the evaluation of countries' implementation of the respective texts. This is illustrated by the fact that the three international organisations are granted observer status in each other's specialised forum, giving them the right to send representatives to the meetings and conferences hosted by the other organisations. Officials from the CoE and from the UNODC are often present at the UNCAC IRM and GRECO meetings during which country evaluations are discussed and approved.<sup>150</sup> The OECD Country Monitoring Principles, agreed in 1998 and revised

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against Corruption Vienna, 20 to 22 September 2008; United Nations. List of Participants. Open-ended Intergovernmental Expert Working Group on Review of the Implementation of the United Nations Convention against Corruption Vienna, 15 to 17 December 2008. CAC/COSP/WG.1/2008/INF.2/FINAL. Vienna, 2008; United Nations. List of Participants. Open-ended Intergovernmental Expert Working Group on Review of the Implementation of the United Nations Convention against Corruption Vienna, 11 to 13 May 2009. CAC/COSP/WG.1/2009/INF.1. Vienna, 2009.

<sup>149</sup> GRECO Official 2, Council of Europe (CoE2). Interview with author. June 28<sup>th</sup> 2018. Author's own translation.

<sup>150</sup> Council of Europe. What is GRECO ? Online, available at <https://www.coe.int/en/web/greco/about-greco/what-is-greco> (accessed on April 18 2018); United Nations. Conference of the States Parties to the United Nations Convention against Corruption. List of Invited Organizations. Implementation Review Group First session, Vienna, 28 June to 2 July 2010. The Implementation Review Group is a subsidiary body of the Conference of the States Parties to the United Nations Convention against Corruption. It is responsible for having an overview of the review process and consider technical assistance requirements for the effective implementation of the Convention. It meets at least once a year.

in 2009, include coordination with other organisations, such as GRECO and the UNODC, to avoid duplication and burdening public officials in examined countries. As an official from GRECO indicated in an interview:

We obviously have links with our sister/brother monitoring body in other Organisations. These include the other anti-corruption monitoring bodies at the UNODC (UNCAC secretariat), the OECD - both the Working Group on Bribery and the Public Sector Integrity Group - and the OAS (the US the country we in GRECO overlap with the OAS). We try to avoid having meetings at the same time, having evaluation visits at the same time. We have desk-to-desk contact when it comes to evaluation, so for ex a colleague in charge of evaluating France will be in touch with whoever is evaluating France at the UN. We cannot share documents because we all have confidentiality obligations, but we try to exchange info on the issue to avoid coming up with different recommendations.<sup>151</sup>

Coordination between international institutions appears to be a key concern of international civil servants, as a way to smooth their respective work but also to align their policy message. It was for instance decided during the first session of this IRM working group that “potential areas of synergy with other existing review mechanisms” should be explored “to make optimal use of work undertaken in other regional and specialized settings and to reduce the workload of practitioners involved in the process”.<sup>152</sup> With the multiplication of review mechanisms, ‘monitoring (or reporting) fatigue’ was a concern by policy-makers setting up the UNCAC IRM from the outset,<sup>153</sup> which required IOs to develop similar systems, not to “reinvent the wheel”<sup>154</sup> and require public administrations to take part in yet another evaluation exercise.

The EU is a particular case in terms of compliance monitoring since it has not yet developed its own comprehensive policy on corruption. For the elaboration of its monitoring tool, the European Commission gathered expertise from different organisations active in the anti-corruption field who had made recommendations, such as the World Bank, the UN, the CoE and the OECD. The development of the EU Anti-Corruption Report took place in parallel to GRECO’s fourth evaluation round on corruption prevention in parliaments, thus the EU Anti-

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<sup>151</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11<sup>th</sup> 2017.

<sup>152</sup> Conference of the States Parties to the United Nations Convention against Corruption. Report on the meeting of the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption held in Vienna from 29 to 31 August 2007. CAC/COSP/2008/3, p. 10; JONGEN, Hortense. *Op. cit.* 2017.

<sup>153</sup> JONGEN, Hortense. *Op. cit.* 2017.

<sup>154</sup> MALMSTRÖM, Cecilia. Second Regional Workshop on the EU Anti-Corruption Report/Gothenburg, Sweden. March 5<sup>th</sup> 2013. Online, available at: [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_13\\_187](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_187) (accessed on April 20<sup>th</sup> 2020)



Corruption Report draws extensively on GRECO reports.<sup>155</sup> The individual country chapters for France, Sweden and the United Kingdom contain a paragraph on conflicts of interest and asset disclosure, highlighting latest developments and restating GRECO's recommendations (Annexe 4).<sup>156</sup> Through mutual referencing and practical cooperation between international civil servants, the international policy message became harmonised as the secretariats sought to align their recommendations. This demonstrates that, in addition to state representatives working as intermediaries between the international venues, international civil servants played an important role in creating 'global' anti-corruption instruments.

International anti-corruption standards and mechanisms developed to monitor states' compliance are largely similar, which reinforces the external pressure put on governments to adopt these internationally-promoted anti-corruption solutions. It shows the importance of the sequencing of the development of monitoring mechanisms as the early adopters influenced later efforts. International institutions indeed chose to emulate other IOs perceived as successful in establishing and maintaining monitoring mechanisms to reinforce their own legitimacy in the field.<sup>157</sup> While transfer is mainly studied as it happens between states, similar processes happen between political institutions at the international level.<sup>158</sup> International institutions thus align their policy message and adjust their harmonisation tools due both to the pressure from member states and international civil servants' practices that lead them to regularly exchange and cooperate.

## Conclusion

International anti-corruption standards emerged as a response to political transformations following the fall of the iron curtain. This helped policy entrepreneurs construct corruption as a 'global' problem requiring 'global' solutions. International (quasi-)legal instruments sought to facilitate international cooperation, but also to harmonise national policies in order to criminalise the same practices across borders and promote similar preventive approaches, which includes the regulation of conflicts of interest. While they are presented as coordinated responses to emerging

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<sup>155</sup> European Commission. Report from the Commission to the Council and the European Parliament Eu Anti-Corruption Report. COM(2014) 38 final. Brussels. February 3rd 2014, p. 41.

<sup>156</sup> European Commission. Annexe France to the EU Anti-Corruption Report. COM(2014) 38 final Annexe 10. Brussels. February 3rd 2014, pp. 6-7; European Commission. Annexe Sweden to the EU Anti-Corruption Report. COM(2014) 38 final Annexe 27. Brussels. February 3rd 2014, p. 4; European Commission. Annexe United Kingdom to the EU Anti-Corruption Report. COM(2014) 38 final Annexe 28. Brussels. February 3rd 2014, p. 2 and p. 7.

<sup>157</sup> BIERMANN, Rafael, and KOOPS J. Alexander. *Op. cit.* 2016, p. 22.

<sup>158</sup> PAGANI, Fabricio. *Op. cit.* 2002; NAY, Olivier. How do policy ideas spread among international administrations? Policy entrepreneurs and bureaucratic influence in the UN response to AIDS. *Journal of Public Policy*, Vol. 32, n°1, 2012, pp. 53-76.

challenges following the end of the Cold War, anti-corruption conventions are also the result of political negotiations to find a compromise between policy ‘pioneers’ and ‘laggards’, between countries in the ‘Global South’ seeking to repatriate stolen assets hidden in the ‘Global North’ and the latter seeking to encourage institutional change in aid recipient countries. The broadening of the conception of corruption, from a problem of international trade to one that concerned domestic politics as well, contributed to turn public interest registers and codes of conduct into international standards against corruption.

This chapter has sought to understand ‘why [actors] engage in policy transfer’ through a focus on changes in the international policy environment, which in turn asks the complex question of the meaning of coercion and agency in the context of transnational policy-making. It has showed that international institutions seek to make national governments comply with anti-corruption standards through a combination of (soft or passive-aggressive) coercive power, through the use of ‘naming and shaming’ techniques, but also through technical assistance, the provision of expertise and control over information.<sup>159</sup> International institutions promoting standards against corruption exercise a form of normative power that seeks to persuade governments that comply with their standards is the ‘right thing’ to do.<sup>160</sup> The parallel development of international standards and their respective monitoring mechanisms led international institutions to harmonise their policy message, creating and reinforcing the anti-corruption paradigm. This chapter has sought to show that the similarity in the UN, the CoE, the OECD and the EU’s approach to conflict of interest regulation is the result of the *subsequent* adoption of instruments, with late-comers emulating fore-runners. Government officials, international civil servants and transnational actors worked as intermediaries between the various international venues and thus contributed to align international prescriptions. While their efforts to construct a common ‘global’ policy approach to corruption reflect their search for efficiency, it is also the result of their professional practices and prolonged collaboration within the developing transnational policy community, which led actors to internalise norms and policy ideas about corruption.<sup>161</sup>

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<sup>159</sup> JUTTA, Joachim, REINALDA, Bob and VERBEEK, Bertjan. *Op. cit.* 2008.

<sup>160</sup> RISSE, Thomas. “Let’s Argue!” Communicative Action in World Politics. *International Organization*, Vol. 54, n°1, 2000, pp. 1–35; MANNERS, Ian. Normative power Europe: a contradiction in terms? *JCMS: Journal of Common Market Studies*, Vol 40, n°2, 2002, pp. 235-258; BARNETT, Michael and FINNEMORE, Martha. *Op. cit.* 2004; MANNERS, Ian. Sociology of Knowledge and Production of Normative Power in the European Union’s External Actions. *Journal of European Integration*, Vol. 37, n°2, 2015, pp. 299-318.

<sup>161</sup> BARNETT, Michael and FINNEMORE, Martha. *Op. cit.* 2004; CHECKEL, Jeffrey T. International Institutions and Socialization in Europe: Introduction and Framework. *International Organization*, Vol.59, n° 4, 2005, pp. 801-826; Sofia Wickberg – « *Global instruments, local practices* » - Thèse IEP de Paris – 2020

The development of international legal instruments against corruption transformed financial disclosure systems and codes of conduct, originally invented in the Anglosphere, into international anti-corruption standards, as 'global' solutions to a 'global' problem. This chapter has shown how international institutions used a form of soft indirect coercion to make national governments comply with these standards. Chapter 6 will contribute to show how the transnational policy community has sought to diffuse its policy approach through softer forms of transfer, using technical knowledge to legitimise financial disclosure systems and codes of conduct as efficient anti-corruption instruments.

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BROOME, André and SEABROOKE, Leonard. Seeing like an International Organisation, *New Political Economy*, Vol. 17, n°1, 2012, pp. 1-16.

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## Chapter 6. What works, what doesn't, what's best?

### Transferring policy through knowledge production

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If we really want to advance, we need to start thinking of evaluating impact, which means investing from the beginning in monitoring, indicators and being honest. Maybe piloting some small intervention before applying something on a broader scale but this is really a process of understanding the importance of evaluation. Then you have the political aspect. Do we want to know what works? It is perhaps even easier to just keep on with the rhetoric that 'we need transparency' because it is politically much easier than to ask the honest question 'does it really work?'. (OECD Official. Interview with author. April 3rd 2017)<sup>1</sup>

In the 1990s, international institutions construed and thereby constituted corruption as a 'global' problem to be solved through 'global' solutions. As the dissertation has so far sought to show, members of the transnational anti-corruption community share a conception of corruption as a problem arising from contradictory or wrong incentives, and a set of policy solutions in part borrowed from policy pioneers. Their individual and collective objective is then to persuade national actors that their vision of the problem is the most appropriate one and that adopting their preferred solutions is the 'right thing to do',<sup>2</sup> in so far as it is accepted that one solution fits all (in some form or other).<sup>3</sup> Chapter 5 showed how they came to construct international standards and monitoring mechanisms as a means of harmonising national anti-corruption policies. Still asking 'why engage in policy transfer?',<sup>4</sup> this chapter suggests that coercion, even in a soft form, is not the only way through which international institutions can influence domestic policy decisions. It thus shifts the focus to the (even) 'softer' ideational channels that they use to guide the design of national anti-corruption policy. Besides international conventions, the promotion of technical knowledge and shared expertise are the main channels available to international institutions seeking to

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<sup>1</sup> OECD Official 1 (OECD1). Interview with author. April 3rd 2017.

<sup>2</sup> JUTTA, Joachim, REINALDA, Bob and VERBEEK, Bertjan. *Op. cit.* 2008, p. 11; BROOME, André and SEABROOKE, Leonard. *Op. cit.* 2012; BELAND, Daniel. *How ideas and institutions shape the politics of public policy*. Cambridge: Cambridge University Press, 2019, p. 27.

<sup>3</sup> Which is ironically a position that most international institutions monitoring compliance with international norms reject.

<sup>4</sup> DOLOWITZ, David and MARSH, David. *Op. cit.* 2000, p. 13-15.

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influence national policy-making,<sup>5</sup> as the introductory quote from an OECD official suggests. This chapter analyses how this argument applies to the diffusion of anti-corruption policy, and more specifically to conflict of interest regulation.

While Chapter 5 considered international institutions largely as venues for inter-governmental negotiation, this chapter considers their organisational dimension, turning attention to the role of their secretariats and international civil servants. Michael Barnett and Martha Finnemore's seminal work changed researchers' focus to international bureaucracies and their influence on global politics, autonomously from their member-states.<sup>6</sup> This begs the question of how do international institutions construct their authority in world politics and more specifically in transnational policy-making? This chapter is particularly interested in what IO scholars have termed their 'cognitive authority'. Patrick Wilson invented the expression to refer to one's ability to present oneself as someone who 'knows what they are talking about' and that others depend on for information outside the range of their direct experience.<sup>7</sup> Political science has used the concept of 'cognitive authority' to refer to international institutions' influence on ideas held by national officials and other transnational actors, about public problems and policy solutions, and their ability to "[translate] policy ideas and diagnostic practices between different governance contexts".<sup>8</sup> International institutions construct their cognitive authority by presenting themselves as neutral actors, mobilising information and building technical expertise.<sup>9</sup> 'Knowledge is power' in global governance means that international institutions' cognitive authority helps them to shape the context of national policy-making by "[redefining] the parameters of what is socially, politically and economically possible,"<sup>10</sup> to prevent corruption for instance.

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<sup>5</sup> STONE, Diane. *Knowledge Actors and Transnational Governance*. London: Palgrave Macmillan, 2013; BARNETT, Michael and FINNEMORE, Martha. *Rules for the World: International Organizations in Global Politics*. New York: Cornell University Press, 2004; MATHIASON, John. *Invisible Governance: International Secretariats in Global Politics*. Sterling (VI): Kumarian Press, 2007; KECK, Margaret E. and SIKKINK, Kathryn. *Activists beyond Borders. Advocacy Networks in International Politics*. Cornell University Press, 1998.

<sup>6</sup> BARNETT, Michael and FINNEMORE, Martha. *Rules for the World: International Organizations in Global Politics*. New York: Cornell University Press, 2004.

<sup>7</sup> WILSON, Patrick. *Second-Hand Knowledge. An Inquiry into Cognitive Authority*. Westport, Conn.: Greenwood, 1983.

<sup>8</sup> BROOME, André and SEABROOKE, Leonard. Shaping Policy Curves: Cognitive Authority in Transnational Capacity Building. *Public Administration*, Vol.93, 2015, 959.

<sup>9</sup> BARNETT, Michael and FINNEMORE, Martha. *Op. cit.* 2004; PIIPARINEN, Touko. Secretariats. In KATZ COGAN, Jacob, HURD, Ian and JONSTONE, Ian. *The Oxford Handbook of International Organizations*. Oxford University Press, 2016; Littoz-Monnet, Annabelle. *The Politics of Expertise in International Organizations How International Bureaucracies Produce and Mobilize Knowledge*. London: Routledge, 2018; SKOGSTAD, Grace. Global Public Policy and the Constitution of Political Authority. In STONE, Diane and MOLONEY, Kim. *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.

<sup>10</sup> HAY, Colin. *Op. cit.* 2002, p. 186.

This chapter sheds light on international institutions' efforts to present themselves as organisations who 'know what they are talking about' (or who know those who know best) when it comes to corruption and the mechanisms through which they seek to influence policy change at the domestic level. It presents the acceleration of knowledge production as an activity of international institutions involved in anti-corruption work and traces the sources used to understand how policy ideas become influential and potentially dominant (Section 6.1). It then turns to the consequences of international institutions' construction of their cognitive authority, such as the scientisation of the anti-corruption discourse and the subsequent depoliticisation of policy-making (Section 6.2).

## **6.1. Knowledge production as a source of 'cognitive authority'**

This section outlines the acceleration of knowledge production as an activity of international institutions involved in anti-corruption work, maps the main actors involved in this knowledge production and traces their sources, to better understand what bodies of knowledge become accepted as "the legitimate vision of the world" in the transnational policy community.<sup>11</sup> It looks at how international institutions have invested resources in building expertise and brokering knowledge as a way to shape the global anti-corruption agenda and influence national policy-making.

### **6.1.1. Knowledge production, a rapidly growing area of global governance**

In the absence of coercive power, international institutions make use of their ability to mobilise information and to build specialised knowledge to exercise a 'softer' form of influence on national governments.<sup>12</sup> In addition to their ability to dedicate resources to knowledge production, international institutions enjoy a privileged position from which to gather information about existing policy practices, thanks to their connections with national governments, thematic experts and civil society organisations. They are increasingly making use of these resources to build their technical expertise and demonstrate that they 'know what they are talking about'.

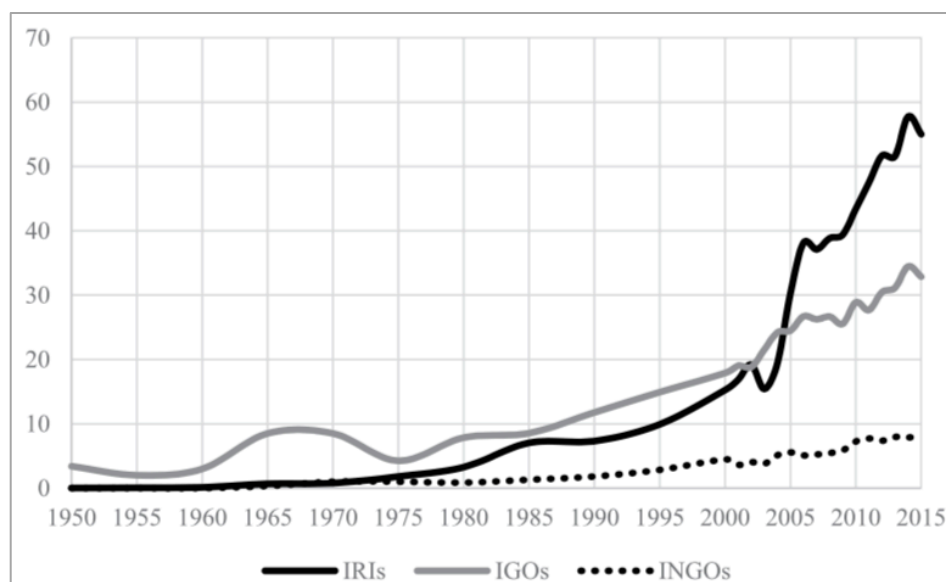
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<sup>11</sup> BOURDIEU, Pierre. Social space and symbolic power. *Sociological Theory*, Vol. 7, n°1, 1989, p. 20; BOURDIEU, Pierre and BROOKSHIRE, John Thompson. *Language and symbolic power*. Cambridge: Polity Press, 1992; BROOME, André, HOMOLAR, Alexandra and KRANKE, Matthias. *Op. cit.* 2018, p. 518.

<sup>12</sup> NIEMANN, Dennis and MARTENS, Kerstin. Soft governance by hard fact? The OECD as a knowledge broker in education policy. *Global Social Policy*, Vol.18, no 3, 2018, pp. 267-283.

Mike Zapp published a study of the scientisation of world politics and found that the number of scientific publications issued by international institutions skyrocketed in the last decades, noting an acceleration in the 1990s, as Figure 20 shows.

Figure 20. Evolution of scientific output in IRIs, INGOs, and IGOs, average, 1950–2015



Source: ZAPP, Mike. The scientisation of the world polity: International organizations and the production of scientific knowledge, 1950–2015. *International Sociology*, Vol. 33, n°1, p. 13

The production of specialised knowledge, through best practices, benchmarking or handbooks and scientific publications, has been increasingly frequently used by IOs since the 2000s to overcome the limitations of global governance, in a context of fragmentation of authority, to harmonise national policy through soft governance tools.<sup>13</sup> As Jacqueline Best puts it “the law-like economic rules of the 1980s and 1990s have been supplemented by and replaced with more flexible standards, often taking the form of best practices and benchmarks”.<sup>14</sup> Regarding corruption, Transparency International (TI) signalled this trend already in its 1996 Source Book, stating that “with many initiatives being taken in many parts of the world, emerging best practice is a rapidly growing area”.<sup>15</sup> Reports, handbooks and toolkits have indeed been used by international institutions involved in anti-corruption policy work since corruption became an issue of international resonance in the second half of the 1990s. Figure 21 shows the increase of ‘knowledge

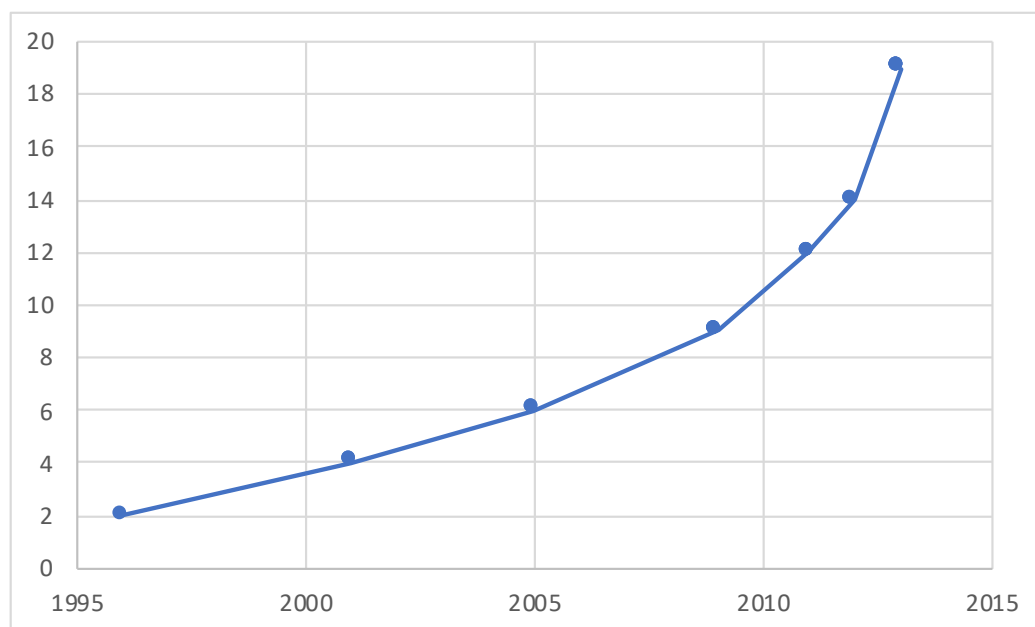
<sup>13</sup> BERNSTEIN, Steven and VAN DER VEN, Hamish. Best practices in global governance. *Review of International Studies*, Vol. 43, n°3, 2017, 534-556; RUGGIE, John Gerard. Global governance and “new governance theory”; Lessons from business and human rights. *Global Governance*, Vol. 20, n°1, 2014, pp. 5-17.

<sup>14</sup> BEST, Jacqueline. Governing failure: Provisional Expertise and the Transformation of Global Finance. Cambridge University Press, 2014, p. 116.

<sup>15</sup> POPE, Jeremy. *Op. cit.* 2000, p. i

products' published by international institutions on the prevention of corruption in the public sector which mention conflict of interest regulation, financial disclosure systems and/or codes of conduct.<sup>16</sup>

Figure 21. Number of IO/INGO publications mentioning conflict of interest regulation



Source: author's collection of publications from selected international institutions on corruption prevention that include mentions of codes of conduct and disclosure systems (EU, G20, GOPAC, OECD, OSCE, Transparency International, UNODC, UNDP and World Bank).

But what do these knowledge products look like regarding anti-corruption policy? What are their stated objectives? Table 13 presents a typology of international institutions' publications on corruption prevention and presents the type of information they contain as well as their declared objectives, based on the title of the publications, the type of information they present, and they stated objectives. These categories should be considered as Weberian ideal-types. In practice, the differences are not so marked, and publications could fit in at least two different categories.

Table 13. Typology of IO/INGO publications promoting conflict of interest regulation

Category of publication	Type of information	Stated objective(s)
Handbooks	<ul style="list-style-type: none"> <li>• Information regarding concepts, terminology and theories</li> <li>• Step-by-step guidance on policy design and implementation</li> <li>• Categories/building-blocks of policy programmes, instruments</li> </ul>	<ul style="list-style-type: none"> <li>• Assist policy-makers in their reforming efforts</li> <li>• Teach them about the policy area, the problem and previous experiences</li> <li>• Provide them with key considerations regarding a given policy</li> </ul>

<sup>16</sup> The term "knowledge product" has principally been used by Transparency International since the 2010s and the creation of its Anti-Corruption Solutions and Knowledge programme.



	<ul style="list-style-type: none"> <li>• Role and objective of different aspects/elements of a given policy</li> <li>• Lessons-learned, key questions and potential obstacles</li> </ul>	<ul style="list-style-type: none"> <li>• Provide them with references for further information</li> <li>• Provide policy recommendations</li> </ul>
Toolkits	<ul style="list-style-type: none"> <li>• List of tools which can be instruments, laws or institutions</li> <li>• Objectives and purpose of tools</li> <li>• Description of tools and target audience</li> <li>• Generic laws and models</li> <li>• International standards and international legal basis</li> <li>• Preconditions and risks</li> </ul>	<ul style="list-style-type: none"> <li>• Provide practical solutions and guidance</li> <li>• Support governments in their reforming efforts</li> <li>• Identify concerns, risks and obstacles regarding tools</li> </ul>
Assessment frameworks	<ul style="list-style-type: none"> <li>• Practical checklists</li> <li>• Decision-making tools</li> <li>• Questionnaires</li> <li>• Methodologies</li> </ul>	<ul style="list-style-type: none"> <li>• Provide policy-makers with roadmaps of reforms and actions</li> <li>• Help policy-makers evaluate their legal and institutional framework</li> <li>• Provide evidence for better policymaking</li> <li>• Sometimes rating the quality and effectiveness of a system</li> </ul>
Analytical reports	<ul style="list-style-type: none"> <li>• Background information on a policy or instrument</li> <li>• Potential benefits and disadvantages</li> <li>• Country case analysis</li> </ul>	<ul style="list-style-type: none"> <li>• Assist policy-makers in deciding whether a policy or instrument is the right choice</li> <li>• Provide an overview of advantages and limitations of policies and instruments</li> </ul>
Best practice compendiums	<ul style="list-style-type: none"> <li>• Selected country cases</li> <li>• International standards</li> <li>• Cost-effectiveness of policies and instruments</li> </ul>	<ul style="list-style-type: none"> <li>• Provide governments with an opportunity to learn from each other</li> <li>• Provide policy-makers with existing practices</li> <li>• Provide policy recommendation</li> </ul>

The different categories of publications serve different purposes and are thus constructed differently. Some are more general publications regarding anti-corruption policy while others only deal with codes or conduct and/or disclosure systems. They contain different kinds of information and data, and vary in length (from less than ten pages to more than 300). Despite these differences, their overall objective is the same: to assist reform-minded policy-makers in target countries to design prescriptive frameworks against corruption, including for instance the adoption of financial disclosure systems and codes of conduct. The recommendations included in these publications are largely similar concerning codes of conduct and disclosure regimes, despite varying levels of details. The documents covering the broader field of anti-corruption, such as the UN 2003 Anti-corruption Guide<sup>17</sup> and the OECD 2014 Integrity Toolkit simply mention the need to adopt a code of conduct and a disclosure regime, and outline the expected benefits. The more focussed documents provide more detailed advice on the formulation and implementation of these instruments, usually touching

<sup>17</sup> The 2003 UN Anti-corruption Guide is a revised version of the 1990 Practical Manual Against Corruption.

on the need to include the concerned parties in developing the tools to create a sense of ownership and on the nature of the document and its rooting in the legal system.<sup>18</sup> All organisations make it clear that codes of conduct should go beyond the law to regulate conduct that, without being illegal, could be interpreted as inappropriate and unethical, or that might create a risk of corruption.

In line with the UNCAC which includes disclosure systems in its article on codes of conduct, most toolkits and handbooks which deal with both instruments treat them as part of the same policy on public sector ethics.<sup>19</sup> A 2009 Stolen Asset Recovery Initiative (StAR) report on disclosure systems recommends that asset/interest declaration systems be “anchored in a Code of Ethics and/or Criminal Code” to ensure more legitimacy and better enforcement.<sup>20</sup> The degree of detail concerning the content of the codes and of the declarations also varies. The OECD, the Organization for Security and Co-operation in Europe (OSCE), Group of Parliamentarians Against Corruption (GOPAC), the European Parliament and the UN provide details as to what should figure in a code of conduct (such as suggested principles and rules concerning gifts, travels and expenses).<sup>21</sup> The OECD, the World Bank, the UNODC and GOPAC propose models of financial disclosure systems and suggest elements that could be included (such as outside

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<sup>18</sup> Country assessments also point to the need to implement these instruments properly. For instance, Transparency International’s European National Integrity System (ENIS) applies a methodology based on the 2000 TI Source Book to the member states of the European Union. In 2011-2012, it was the first project gathering detailed information about anti-corruption legislation and institutions in EU member states, using a common, rather rigid, methodology to evaluate countries’ “integrity systems” and systematically highlighted the importance of disclosure systems. The NIS assessment in France prominently features the need for mandatory interest declarations for all high level public officials and for a preventive policy against conflicts of interest, which later served as the basis for the organisation’s advocacy for reform. Similarly, the assessment of the British system identifies the legislature as one of its weakest pillars and points the relative inefficiency of the existing integrity and accountability mechanisms to prevent misconduct and scandals. On the contrary, the assessment of the Swedish system considers the legislature to be a strong pillar, only regretting that debts were not included in the economic interests register, which will be included in the declarations with the adoption of the 2017 code of conduct (Chapter 1) (PHELIPPEAU, Éric. *Système national d’intégrité le dispositif français de transparence et d’intégrité de la vie publique et économique*. Paris: Transparency International France, 2011; ANDERSSON, Steffan. *Motståndskraft, oberoende, integritet - kan det svenska samhället stå emot korruption?* National Integrity System assessment Sweden. Stockholm: Transparency International Sweden, 2012; MACAULAY, Michael. *National Integrity System Assessment United Kingdom Corruption in the UK*. London: Transparency International UK, 2012).

<sup>19</sup> The inclusion of the disclosure system in the code of conduct is a reality in Britain and Sweden. In France, the requirement to declare interests used to be in the parliamentary code of ethics before being taken out and made into law in 2013.

<sup>20</sup> BRADESCU, Ruxandra, REID, Gary J., GILMAN, Stuart and TRAPNELL, Stephanie. *Income and Asset Declarations: Tools and Trades-offs*. Washington DC: Stolen Asset Recovery Initiative, World Bank and UNODC, 2009, p. 16

<sup>21</sup> OECD. *Managing Conflict of Interest in the Public Sector a Toolkit*. Paris: OECD Publishing, 2005; POWER, Greg. *Handbook on Parliamentary Ethics and Conduct. A Guide for Parliamentarians*. GOPAC, 2009; BRADESCU, Ruxandra, REID, Gary J., GILMAN, Stuart and TRAPNELL, Stephanie. *Op. cit.* 2009; TOORSTRA, Dick. *Parliamentary Ethics A Question of Trust*. Brussels: European Parliament Office for Promotion of Parliamentary Democracy, 2011; OSCE. *Background Study: Professional and Ethics Standards for Parliamentarians*. Warsaw: OSCE, 2012.

employment(s)/activities, other sources of income, gifts/hospitality, potential conflict-of-interest situations and loans and liabilities).<sup>22</sup> The OECD's model for 'Registration of Private Interests for Public Officials and Immediate Family' is a good illustration of such model policies (Annexe 5). Interestingly, it shares many elements with the British Register of Members' Interests presented in Chapter 1, which reflects policy pioneers cognitive advantage to influence international institutions in search of solutions to a problem they recently 'discovered'. An alternative to recommending general content is to present country examples.

Most of the toolkits and handbooks contain recommendations about implementation, touching on the verification and publication of the content of declarations to the enforcement of rules and sanctions. The main difference to be found here is between the toolkits and handbooks that target the entire public sector and those aiming at parliaments. The former principally refer to disciplinary mechanisms within the administration, while the latter, produced by GOPAC and the OSCE, present three different models: self-regulation, co-regulation and external regulation (Chapter 1). They highlight that self-regulation has come under increasing disrepute while warning about the challenges posed by external regulation in terms of separation of powers and sense of ownership, insisting on the importance of electoral accountability and the importance of finding a balance between control and transparency.<sup>23</sup>

The similarity of the information featured in these publications is not surprising giving that it supplements international legal and quasi-legal instruments adopted in some of these venues, which themselves promote the same anti-corruption standards (Chapter 5). A similar trend is also found in international institutions' publications. There is indeed a strong tendency among these international institutions to reference each other's publications. There are several ways in which they make use of others' publications: either by listing them as relevant sources, by quoting excerpts to strengthen a point or by repeating precisely the same recommendations. The information that passes from one publication to another is either adapted, making reference to similar policies and examples, or copy-pasted. For instance, TI's Source Book borrows the language and the recommendations of the OECD to develop its recommendations on effective ethics management

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<sup>22</sup> OECD. *Managing Conflict of Interest in the Public Sector a Toolkit*. Paris: OECD Publishing, 2005; POWER, Greg. *Handbook on Parliamentary Ethics and Conduct. A Guide for Parliamentarians*. GOPAC, 2009; BRADESCU, Ruxandra, REID, Gary J., GILMAN, Stuart and TRAPNELL, Stephanie. Op. cit. 2009.

<sup>23</sup> TOORSTRA, Dick. *Parliamentary Ethics A Question of Trust*. Brussels: European Parliament Office for Promotion of Parliamentary Democracy, 2011; OSCE. *Background Study: Professional and Ethics Standards for Parliamentarians*. Warsaw: OSCE. 2012.

systems,<sup>24</sup> which will be the basis for its National Integrity System methodology, integrating all the OECD's Principles for Managing Ethics in the Public Service. The OECD even produced the G20's publication on asset and income disclosure.

Some organisations tend to serve as a source of knowledge more often than others and make policy information circulate through their publications. Looking at the bibliographies and the in-text references of these publications shows that the UN, the World Bank and the OECD, and TI to a lesser extent, are particularly influential in generating information that is then taken up by other actors.<sup>25</sup> In addition to being powerful institutions on the international stage (at the exception of TI), these organisations were the first actors to generate such knowledge, giving them the latitude to shape the cognitive landscape. Officials from these international institutions explain the circulation of information within the transnational policy community as a consequence of the scarcity of expertise and the limited number of organisations (originally) working on the topic. Officials indicate that they look for publications produced by intergovernmental organisations because they are seen as politically legitimate and that their policy message enjoys a form of international recognition.<sup>26</sup>

The development of a transnational anti-corruption community (Chapter 3) created a space for exchange among members of the community, the “usual suspects” or “normal partners” as actors themselves refer to them.<sup>27</sup> The actors working within these organisations rely on each other for their work, as explained by an employee of the TI Secretariat when asked about how they informed their work:

I think there is a lot being done already. There are many publications from other organisations (...) both nationally and internationally, that we use as resources. I think it is a good area. There are some home-grown ideas from inside the movement. We also reference other literatures and other areas of work that can have policies that relate to [corruption]. I think it is broad, but it is kind of the usual suspects from the policy arena (...) For the international organisations, you have the OECD, but not so much, the World Bank, then the bilaterals and then the other CSOs [civil society organisations] there is a lot from the folks that work on access to information, from the tech area that come up with policies

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<sup>24</sup> POPE, Jeremy. *Op. cit.* 2000, pp. 177-181

<sup>25</sup> A newer actor of the anti-corruption community focussing on transparency and open data, the Open Government Partnership (OGP), also references international publications and instruments to provide guidance to governments and civil society organisations preparing their national action plan. Regarding disclosure systems, the OGP define the documents from the following international institutions as standards: the StAR Initiative, the OECD, the UNCAC, the World Bank, the U4 Anti-corruption Resources Centre and the Sunlight Foundation.

<sup>26</sup> GRECO Official 1, Council of Europe (CoE1). Interview with author. December 11th 2017.

<sup>27</sup> Employee, Transparency International's Secretariat (TIS1). Interview with author. March 2d 2017; OECD Official 3 (OECD3). Phone interview with author. May 23d 2018.

(...) You take this principle from here and you put it into this practice here and you have your policy recommendation, and that is how you justify it.<sup>28</sup>

Actors recognise that information flows through personal encounters, but they also think about how other international organisations could use their information and the knowledge they produce, as indicated by another GRECO official:

We obviously have links with our sister/brother monitoring body in other Organisations. These include the other anti-corruption monitoring bodies at the UNODC (UNCAC secretariat), the OECD - both the Working Group on Bribery and the Public Sector Integrity Group - and the OAS (the US the country we in GRECO overlap with the OAS). We also cooperate with the OSCE/ODIHR which has no monitoring role, but which works on these issues and with which we cooperate on substance (e.g., on political party funding). We also consult with the EU, which is not a member of GRECO, but it can now participate in the GRECO meetings as observers.<sup>29</sup>

These knowledge-related activities were thus as many opportunities for international institutions to cooperate and exchange their views, which is likely to contribute to mutual learning and a harmonisation of recommendations between institutions. The publications from the StAR initiative are most illustrative of this practice, firstly because the initiative is a direct collaboration between the UNODC and the World Bank. Moreover, the acknowledgements of their reports show the involvement of many other organisations, notably the OECD and TI, who provided guidance to the authors and reviewed the pre-publication draft. The OECD and the World Bank were requested to produce the overview of good practices on asset declarations published by the G20 for the benefit of its members.<sup>30</sup> Another good example of these collaborations around knowledge production is CleanGovBiz, the initiative from which the OECD 2014 Toolkit for Integrity stems. It is presented as a response to the political impetus of two of international fora, the OECD and the G20.<sup>31</sup>

The similarity of policy information across international institutions is also the result of the strategic efforts of the less (structurally) powerful members of the transnational policy community,

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<sup>28</sup> Employee, Transparency International's Secretariat (TIS1). Interview with author. March 2d 2017.

<sup>29</sup> OECD Official 1 (OECD1). Interview with author. April 3rd 2017.

<sup>30</sup> BRADESCU, Ruxandra, REID, Gary J., GILMAN, Stuart and TRAPNELL, Stephanie. *Income and Asset Declarations: Tools and Trades-offs*. Washington DC: Stolen Asset Recovery Initiative, World Bank and UNODC, 2009. pp. xix-xxi; Stolen Asset Recovery Initiative. *Public Office, Private Interests. Accountability through Income and Asset Disclosure*. Washington DC: World Bank, 2012, pp. xiii-xiv; Stolen Asset Recovery Initiative. *Income and Asset Disclosure. Case Study Illustrations*. Washington DC: World Bank, 2013, pp. xi-xii

<sup>31</sup> OECD. CleanGovBiz Integrity in practice. Online, available at [oecd.org/cleangovbiz/about/](http://oecd.org/cleangovbiz/about/) (accessed on May 24<sup>th</sup> 2018)

such as civil society organisations for instance. Through knowledge production, transnational non-state actors push their policy ideas to other international institutions that have more authority political, as illustrated by this quote from an interview with an employee of TI's secretariat:

The objective with doing global advocacy is to convince and persuade decision-makers or those who have a stronger influence on decision-makers about a specific policy recommendation or set of actions (...) so for example you know it weights a lot if one of our recommendations falls into an OECD publication, right, because they have the ear of an audience that we cannot influence as strongly.<sup>32</sup>

This suggests that members of the transnational policy community are well-aware of their respective levels of influence and sometimes try to make use of others' more influential position vis-à-vis national governments to promote their policy message. While the ultimate goal is to influence domestic policy-making, international institutions realise that influencing the ideational context in which policy-makers think about a problem and possible solutions, notably through diffusion policy beliefs within the community can be an efficient strategy.

Besides each other's reports, international institutions also use academic publications as sources of information, overtly when bibliographies are included in the reports and more indirectly when the reports do not include a list of references.<sup>33</sup> TI's Global Corruption Report (GCR), which aims to "[highlight] cutting edge qualitative and quantitative research, [gather] knowledge on lessons learnt and [showcase] innovative tools"<sup>34</sup>, regularly comprises entries from academic figures. The first edition, for instance, lists Fredrik Galtung, Johann Graf Lambsdorff, Alan Doig, Michael Levi or Carles Boix among its contributors. The editors are supported by academic advisors, such as Susan Rose-Ackerman, Paul Heywood, Leslie Holmes or Jean-François Médard.<sup>35</sup> In 2004, the GCR focussed on political corruption. It similarly included a number of renowned academics in its editorial team: Michael Johnston, Donatella della Porta, Peter Larmour, Alena Ledeneva, Maureen Mancuso, Michael Pinto-Duschinsky, as well as Paul Heywood, Leslie Holmes and Johann Graf Lambsdorff.<sup>36</sup> Academic references are more common in policy document

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<sup>32</sup> Employee, Transparency International's Secretariat (TIS1). Interview with author. March 2d 2017.

<sup>33</sup> Interviews with officials from the OECD, Transparency International and the Council of Europe indicated that many of them try to keep relatively up-to-date with academic research or interact regularly with academics. I cannot be certain that reports without bibliographies use academic research as a source but the proximity of officials, professionals and academics within the policy community – as described in Chapter 4 – suggest that there is an indirect link between these kinds of publications.

<sup>34</sup> Transparency International. Global Corruption Report Overview. Online, available at: <https://www.transparency.org/research/gcr> (accessed on July 18 2019)

<sup>35</sup> HODESS, Robin (ed.) *Global Corruption Report 2001*. Berlin: Transparency International, 2001, pp. x-xiv.

<sup>36</sup> HODESS, Robin (ed.) *Global Corruption Report Political Corruption*. Berlin: Transparency International, 2004, pp. v-xi.

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produced by academics rather than secretariat staff or non-academic experts, which suggests that some academic are themselves knowledge brokers in the policy community. While documents published by international institutions are oftentimes anonymised to signal that the policy message reflects the opinion of the organisation, they sometimes outsource their knowledge activities to academics, through commissioning research and report-writing. One example is the OSCE *Professional and Ethical Standards for Parliamentarians*, which was written by Elizabeth David-Barrett, then research fellow at Oxford University and currently Director of the Centre for the Study of Corruption of the University of Sussex.

Some (North American) scholars seem to have the eye – if not the ear – of international secretariats, such as Maureen Mancuso, Andrew Stark or Dennis Thomson, which come back as references in several publications. Many of the academic experts that participate in international institutions' knowledge production come from the Anglosphere (or were educated there), which suggests that they are familiar with the Anglo-American political systems and specific policy approach to corruption.<sup>37</sup> In addition to the authors themselves, the experts providing input into several of the publications came from Anglo-Saxon countries, the most prominent example being the GOPAC Handbook on Parliamentary Ethics and Conduct, for which British and American parliamentary officials served as experts providing comments and suggestions.<sup>38</sup> DfID, the British government department responsible for overseas aid, the US Department of Justice and the Inter-American Development Bank (IADB), were identified as partner organisations of the StAR initiative.<sup>39</sup> The ascendancy of the English language in the organisations producing these policy reports also contributes to explaining the prominence given to the Anglo-American models in the early days of anti-corruption and ethics handbooks.

International institutions base their knowledge production on each other's expertise and on their publications which they see as legitimate and pre-approved internationally. But many of them also include academics and academic research in their knowledge work. Institutions seeking to build their cognitive authority as actors who 'know what they are talking about' with regards to

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<sup>37</sup> Jeremy Pope, author of *TP's Source Book*, is originally from New Zealand ; Elizabeth David-Barrett, author of the OSCE Background Study on Professional and Ethical Standards for Parliamentarians, is a British national ; and so is Greg Power, author of the Handbook on Parliamentary Ethics and Conduct, which was published by GOPAC and the Westminster Foundation for Democracy.

<sup>38</sup> POWER, Greg. Handbook on Parliamentary Ethics and Conduct. A Guide for Parliamentarians. GOPAC. 2009, p. 6

<sup>39</sup> BRADESCU, Ruxandra, REID, Gary J., GILMAN, Stuart and TRAPNELL, Stephanie. *Income and Asset Declarations: Tools and Trades-offs*. Washington DC: Stolen Asset Recovery Initiative, World Bank and UNODC, 2009, 2009, p. xv

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corruption turn to recognised academics as a source of thematic information but also as a source of legitimacy for their policy message. They indeed increasingly seek to back their policy arguments with scientific research and empirical ‘evidence’,<sup>40</sup> as we return to below. Diane Stone explains this valuation of knowledge by the anxiety generated by uncertainty, “in an uncertain world of countless cross-border problems, reassurance is sometimes found in ‘science’”.<sup>41</sup> She elaborates her argument, saying that (academic) research “[supports] problem definition (...) and [provides] scholarly legitimacy for policy development”, and thus that “knowledge is a key resource, and constitutive element, in global policy development”. The value attributed to knowledge in global governance explains that international institutions want to position themselves as thematic experts but also as the locus of connection between researchers and practitioners. International institutions indeed seek not only to build their own expertise but also to position themselves as brokers of expertise, showing that they ‘know what they are talking about’, but also that ‘they know those who know best’, as next section develops.

### **6.1.2. International organisations as knowledge providers and brokers**

International institutions ability to influence the global agenda and to work as an ‘engine room’ of policy ideas depends both on their delegated authority (for intergovernmental organisations) and on their image and reputation as neutral expert on a given problem,<sup>42</sup> here corruption. Many international institutions have taken on the mission to ‘bridge the gap’ between research and policy, between academics and practitioners, which has become “a dominant discourse of the past twenty years”,<sup>43</sup> and thus effectively to become knowledge brokers, intermediaries between producers and users of knowledge. Academics, international institutions and policy-makers have an interest in these collaborations. For the former, it can mean both material benefits – through funding – and symbolic gain – through international recognition as issue expert and a possibility to influence the agenda (a phenomenon strengthened by the nature of academic evaluation and the measure of academics’ social/political impact). Policy-makers can either learn about a problem they know little about and existing solutions, or get support for their policy preferences (Chapter 8). For international institutions, collaborating with academics constructs them as knowledge brokers, showing that they dispose of a rich network of thematic

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<sup>40</sup> NIEMANN, Dennis and MARTENS, Kerstin. *Op. cit.* 2018, p. 271.

<sup>41</sup> *Ibid.* p. 103

<sup>42</sup> BARNETT, Michael and FINNEMORE, Martha. *Op. cit.* 2004; BROOME, André and SEABROOKE, Leonard. *Op. cit.* 2012; PIIPARINEN, Touko. *Op. cit.* 2016; SKOGSTAD, Grace. *Op. cit.* 2019.

<sup>43</sup> STONE, Diane. *Op. cit.* 2017, p. 102.



experts. It gives them a certain control over the flow of information, as they mediate exchanges and legitimate certain bodies of knowledge. The OECD for instance seeks to build bridges between academics and policy-makers through the facilitation of direct interactions, as exemplified by the excerpts below, taken from an interview with two OECD officials:

This was very instructive when we had leading researchers and professors coming and explaining to policy-makers about implications and how it works so it was I would say a revelation, eye-opening for many country representatives (...) This is more about explaining and showing the potential of academic research and how findings could provide options for consideration for practitioners. A lot of it is very intuitive, it is to take what is there, what the academia has done and apply it in a concrete way for public officials to do within their government and society, so it is about bridging that gap. There has been a learning curve.<sup>44</sup>

These interviewees point to the OECD's role as an intermediary between academics and policy-makers or practitioners. In addition to producing its own research, the OECD seeks to present itself as a knowledge broker, which reinforces its image as a relevant actor in the field of corruption prevention. The growing focus on evidence and practical experience to legitimise policy ideas and instruments encourage organisations to invest efforts into becoming a "hub" for knowledge generation and exchange. Understanding this development is telling not only with regards to the emergence of new practices but also to the value attributed to knowledge in global governance.

Knowledge production and knowledge brokering is all the more important the less political authority an organisation enjoys. Indeed, civil society organisations cannot claim to have any authority delegated to them by national governments. They discursively construct their legitimacy through claims of representing some form of global common good, but also (and more importantly here) through building their informational capacities and technical expertise.<sup>45</sup> TI is the most illuminating example of a non-state actor playing the role of knowledge broker in this field. The objective not only to make knowledge available but to provide the latest research is clearly stated in its last two strategies as one of the organisation's core activities, constitutive of its identity. The 2015 Strategy stated that "in order to remain relevant and cutting-edge, [TI's] aim is to strengthen

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<sup>44</sup> OECD Official 3 (OECD3). Phone interview with author. May 23d 2018.

<sup>45</sup> RISSE, Thomas. *Op. cit.* 2002.

the creation, adaptation and dissemination of leading anti-corruption knowledge, experience and expertise”.<sup>46</sup> This evolved in its subsequent 2020 Strategy:

Transparency International is known for its research into corruption and its evidence-based advocacy approach (...) In recent years, our own work has been complemented by a huge increase in academic research on corruption, expanding the boundaries of our field to a new generation of researchers and practitioners. We will continue our strong tradition of research and translate the growing body of knowledge on corruption into ideas we can use to promote change...<sup>47</sup>

Research and knowledge production have remained at the heart of the identity of the organisation, which is, according to one of its development partners, “frequently [being] thought of as a ‘think-tank’ rather than an NGO”.<sup>48</sup> An interviewee from the TI secretariat indicated that producing research is was part of building the organisation’s reputation:

When we see a grand corruption case yes, we can do the first press release to state the obvious but then we do our own research to make our message stronger. I think this is also our reputation. It is not that we only point fingers on people, if we do it is because we have a base for doing it. Also we try to plan. We are still at the beginning but if we decide to speak about something we do not want only to issue a press release, we want to have a clear plan to make it stronger. Not only point the finger [at] somebody, it is about linking to what is happening in the country and to the message about what should be changed (...) I mean there [are] a few chapters that still think that research without advocacy still work... this is more my personal opinion, it is easy to have research and put on the shelf, you will not change anything, you can give it to the president but it will not work. You need a kind of advocacy strategy to make it happen. That is why I think the combination of both can make the difference and I am trying to make chapters understand. It is not only about going on the streets and shout. It can be done in different ways.<sup>49</sup>

The interviewee indicates that combining research and advocacy is what constitute TI’s identity and thus suggests that it is what differentiate it from other non-state actors. This interview excerpt echoes what was demonstrated in Chapter 3 about TI not being a ‘placard-wielding’ organisation but rather a non-threatening policy partner. The expansion of TI’s knowledge work indeed led to the establishment of the Anti-Corruption Solutions and Knowledge programme in

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<sup>46</sup> Transparency International. Strategy 2015. Berlin: Transparency International, 2011. Online, available at: [https://www.transparency.org/files/content/ourorganisation/TI\\_Strategy\\_2015.pdf](https://www.transparency.org/files/content/ourorganisation/TI_Strategy_2015.pdf) (accessed on June 27<sup>th</sup> 2018), p. 24

<sup>47</sup> Transparency International. Strategy 2020. Berlin: Transparency International, 2015. Online, available at: [https://www.transparency.org/whoweare/organisation/strategy\\_2020/1](https://www.transparency.org/whoweare/organisation/strategy_2020/1) (accessed on June 27<sup>th</sup> 2018), p. 16

<sup>48</sup> NORAD. Evaluation of Transparency International. Report 8/2010. 2011, p. xv

<sup>49</sup> Employee, Transparency International’s Secretariat (TIS2). Interview with author. March 1st 2017.

2011, a “strategic knowledge exchange and learning initiative aimed at facilitating the creation, adaptation and dissemination of leading anti-corruption knowledge, experience and expertise across the global anti-corruption community”,<sup>50</sup> to provide on-demand research and knowledge services to internal and external stakeholders, promote systematic learning from research and practice and the use of knowledge for advocacy, develop a knowledge base on what works in the fight against corruption and incubate innovative anti-corruption pilot interventions.<sup>51</sup> Knowledge production indeed serves to strengthen policy advocacy, by backing a policy message with empirical evidence. As an employee of TI’s secretariat said when asked about the organisation’s regional work on political corruption:

As you know, our work on political corruption in Europe started with the NIS [National Integrity System Assessments]. At the national level it went really well, but at the regional level not so much. We had the report, but it was much more difficult to sell. Because people, the stakeholders, were very interested in what was happening at the country level and for us it was difficult to compare. As you can imagine because from Sweden to Italy, countries have different political environments, historical background and everything. So it was difficult to compare. However, after the NIS, we started to look more at the common issues and problems of countries. One example is lobbying (...) This really helped us and the national chapters doing their work at the national level but also we saw the interest to join efforts more (...) we call it regional advocacy. It is the step forward and you need to find a topic where you can find a comparison because we noticed that the outside world is not interested in one report of 200 pages. They love numbers and they love comparison. And this is always difficult because the EU members are not the same. They are completely different, including also among the Nordic countries, so we need to find the issue that we can use to attract more attention and to bring at the EU level.<sup>52</sup>

The same TI employee explained how this research project served as a coordination tool within the network and as a political opportunity for the organisation:

The NIS, I think it was the first time that the EU members [of TI’s network] had a project all together, a big project. So for them it was an opportunity to implement a project funded by the European Commission. It was the first time that they could work on something together. And really, it was the first time that we had something in writing in Europe saying that corruption was still a big problem. The first business card for national chapters to go to talk to different stakeholders, for fundraising it was really useful because they could bring the evidence of the problem to potential donors, to governments, to everybody. So it was really the beginning of a change for Europe and you had chapters who

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<sup>50</sup> Transparency International. Network of Experts. Online, available at: [https://www.transparency.org/experts\\_network](https://www.transparency.org/experts_network) (accessed on June 27<sup>th</sup> 2018).

<sup>51</sup> Transparency International. Implementation Plan 2015. Berlin: Transparency International, 2011, p. 17

<sup>52</sup> Employee, Transparency International’s Secretariat (TIS2). Interview with author. March 1st 2017.

were really able to use it in a proper way to grow and others that didn't use it and they stayed as they were before.<sup>53</sup>

This interviewee highlights how crucial research is to raise awareness about an issue like corruption. As developed in Section 4.1, when corruption was raised on the international agenda, it was mostly considered as a development problem (and governments still largely fund international anti-corruption work through their development aid budget). Problem entrepreneurs, like TI thus invested in research to provide national governments and donors with empirical evidence of the existence of (political) corruption in Europe. Interestingly, the NIS methodology measures the ability of national institutions to cope with corruption (as defined by the methodology) rather than the existence of corruption itself.<sup>54</sup> Its comparative dimension however helped the organisation raise the issue to the regional agenda, to attract additional funds and to facilitate coordination between its national branches in the region, as the interviewee says, suggesting the central importance of research for non-state policy advocates.

Interestingly, corruption was already on the agenda of the European Commission (EC) Directorate-General of Home Affairs, who financed the research commissioned by TI to its chapters and academics through the European NIS project. The EC's Prevention of and Fight against Crime programme (ISEC) had funded smaller corruption-related project since 2007,<sup>55</sup> and the ENIS was the first region-wide project it supported. Funding a regional research project coordinated by a transnational civil society organisation became a way for the EC to raise corruption on the regional agenda. Outsourcing data collection and the construction of empirical evidence about the problem also served to create a dialogue among stakeholders at the national level, bringing academics, TI national chapters, public officials and private sectors representatives to the same table. As the interview quote shows, it also served to strengthen and professionalise anti-corruption NGOs at various levels.

In addition to launching its own knowledge products such as the Eurobarometer on corruption (the first one issued in 2006) or the EU Anti-Corruption Report (Chapter 5), the

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<sup>53</sup> *Ibid.*

<sup>54</sup> Transparency International describes the methodology as "consultative", since each national report is produced by a lead researcher, sometimes assisted by others (often academics), conducts interviews with informants to complement documentary analysis and the use of secondary sources. In their work, the researcher(s) is supported by an expert advisory group, composed of high-level public officials, company officials and academics, and by the local chapter.

<sup>55</sup> European Commission. Prevention of and Fight against Crime (ISEC). N.d. Online, available at: [https://ec.europa.eu/home-affairs/financing/fundings/security-and-safeguarding-liberties/prevention-of-and-fight-against-crime\\_en](https://ec.europa.eu/home-affairs/financing/fundings/security-and-safeguarding-liberties/prevention-of-and-fight-against-crime_en) (accessed on March 22d 2020)

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European Commission started to provide financial support to non-state actors carrying out research on corruption in the mid-2000s. Since 2012, the EC Directorate-General for International Cooperation and Development supports TI's Anti-Corruption Helpdesk that allows EC officials to obtain on-demand research on (anti-)corruption, the research output being published for public use.<sup>56</sup> The EC also supported two large academic research projects through its Framework Programmes for Research and Technological Development: the ANTICORRP (Anticorruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption) that lasted from 2012-2017<sup>57</sup> and the DIGIWHIST project (The Digital Whistleblower Fiscal Transparency, Risk Assessment and Impact of Good Governance Policies) in 2015-2018,<sup>58</sup> with an overlap of academic members and research institutions.<sup>59</sup> Both projects have a strong policy component, as ANTICORRP sought to “investigate factors that promote or hinder the development of effective anti-corruption policies”,<sup>60</sup> and DIGIWHIST build a database of legal and regulatory norms, including on conflict of interest and financial disclosure through its European Public Accountability Mechanisms observatory (EuroPAM).<sup>61</sup> Echoing previous argument about the circulation of information and problem definition, this project is built as an extension of the Public Accountability Mechanisms Initiative (PAM) of the World Bank.<sup>62</sup> As Chapter 5 shows, the EU has not developed a comprehensive policy against corruption, beyond the protection of its financial resources. Funding research projects thus became a means for the

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<sup>56</sup> Information obtained during my employment by the Anti-Corruption Helpdesk from September 2012 to December 2013.

<sup>57</sup> ANTICORRP was an interdisciplinary research project coordinated by the University of Gothenburg (Quality of Government Institute) bringing together 20 research groups, principally from academia together with a number of think tanks and Transparency International, aiming to investigate factors that promote or hinder the development of effective anti-corruption policies. The stated objectives of the project were to redefine the concept, quantify it in various ways, evaluate various anti-corruption initiatives, assess the efficiency of EU funds on governance, explain regime and policy change and foster inter-disciplinary Europe-wide research on corruption (ANTICORRP. Project objectives. Online, available at: <http://anticorpp.eu/project/objectives/>; European Commission. Evaluation of the 7th Framework Programme for Research Q&A. Online, available at:

[https://ec.europa.eu/research/evaluations/pdf/archive/fp7-ex-post\\_evaluation/fp7\\_evaluation\\_qa\\_2016.pdf#view=fit&pagemode=none](https://ec.europa.eu/research/evaluations/pdf/archive/fp7-ex-post_evaluation/fp7_evaluation_qa_2016.pdf#view=fit&pagemode=none) – accessed on July 6th 2018)

<sup>58</sup> DIGIWHIST was coordinated by the University of Cambridge and aimed to empower society to combat public sector corruption and included a collection of legal and regulatory norms on public procurement, conflict of interest, income and asset disclosure, and access to information through its European Public Accountability Mechanisms observatory (EuroPAM).

<sup>59</sup> The Hertie School of Governance is one of the participating institutions of both research projects, and a number of scholars, such as Alina Mungiu-Pippidi, Mihaly Fazekas and Istvan Janos Toth, took part in both ANTICORRP and DIGIWHIST.

<sup>60</sup> ANTICORRP. Overview. Online, available at: <http://anticorpp.eu/project/overview/> (accessed on August 30th 2019).

<sup>61</sup> DIGIWHIST. About the project. Online, available at: <http://digiwhist.eu/about-digiwhist/> (accessed on September 8th 2018).

<sup>62</sup> EuroPAM. About EuroPAM. Online, available at: <http://europam.eu/?module=about> (accessed on September 8th 2018).

European Commission to indirectly undertake policy work on corruption. The EC indeed contributed to transnational efforts against corruption as a knowledge broker.

International institutions indeed sought to present themselves as knowledge producers and knowledge brokers to build their cognitive authority in the field of corruption prevention. The emergence of online spaces dedicated to knowledge and expertise on anti-corruption policy suggests that knowledge brokering has become a new practice in which both intergovernmental and non-governmental organisations engage to promote their own work and establish themselves as “knots” and transfer entrepreneurs. The OECD is a leading knowledge broker with a recognised role in constructing and disseminating transnational research and policy ideas.<sup>63</sup> It defines its mission as an organisation as follows:

Together with governments, policy-makers and citizens, we work on establishing international norms and finding evidence-based solutions to a range of (...) challenges (...) we provide a unique forum and knowledge hub for data and analysis, exchange of experiences, best-practice sharing and advice of public policies and global standard-setting.<sup>64</sup>

With regards to corruption prevention, in addition to its own publication and its annual global forum (Section 3.2), the OECD is developing an Anti-corruption and Integrity Hub to “facilitate engagement with the global anti-corruption and integrity community” while promoting the organisation’s own work on the matter, with the ambition to become a “virtual platform for the global anti-corruption and integrity community”.<sup>65</sup> The multiplication of knowledge-related initiatives and the resources mobilised to that end suggest the interest of this intergovernmental organisation in diversifying its modes of influence through the generation and brokering of knowledge. TI established such an online knowledge hub before the OECD. Since 2012, TI’s Anti-Corruption Helpdesk, its on-demand research service, relies on a network of experts, from the TI network itself as well as academia and international organisations.<sup>66</sup> To that end, the organisation established an anti-corruption knowledge hub, serving as an online space for promoting its research and helping others identify experts with an “acknowledged authority on a particular area of anti-

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<sup>63</sup> MAHON, Rianne and MCBRIDE, Stephen. Standardizing and disseminating knowledge: the role of the OECD in global governance. *European Political Science Review*, Vol. 1, n°1, 2009, p. 84.

<sup>64</sup> OECD. Who we are. Official website. Online, available at: <https://www.oecd.org/about/> (accessed on August 29<sup>th</sup> 2019)

<sup>65</sup> OECD. The Anti-Corruption and Integrity Hub. Online, available at <http://www.oecd.org/corruption/integrity-forum/hub/> (accessed on June 25<sup>th</sup> 2018)

<sup>66</sup> Transparency International. Network of Experts. Online, available at: [https://www.transparency.org/experts\\_network](https://www.transparency.org/experts_network) (accessed on June 27<sup>th</sup> 2018).

corruption research”.<sup>67</sup> Through focussing on making anti-corruption policy-making more ‘evidence-based’, international institutions turned themselves into knowledge brokers, build their cognitive authority by producing knowledge and reaching out to the academic community, as a new way to compete for influence over the global anti-corruption agenda.

This section has demonstrated that international institutions have shown a growing interest in building their own expertise on corruption and in presenting themselves as knowledge brokers, able to mediate the flow of information between selected knowledge producers and users within national governments. International institutions’ ambition to construct their cognitive authority, to demonstrate their relevance on the topic and legitimise their policy solutions, has led to a multiplication of publications presenting financial disclosure systems and codes of conduct as recommended instruments to prevent political corruption, with the support of different groups of actors considered legitimate within the policy community. The circulation of individuals across international institutions and their tendency to reference each other has reinforced the image of certain policy solutions being ‘best practices’ against corruption (including public interest registers and codes of conduct). Next section zooms in on the effects of international institutions’ efforts to produce and broker knowledge on their discourse and policy recommendations.

## 6.2. Scientisation as a legitimization strategy

Knowledge production and brokering has become an important activity of international institutions involved in anti-corruption work, as (access to) expertise contributes to strengthen their cognitive authority in the policy field. They increasingly seek to back their policy recommendations with empirical evidence, which, as this section shows, has for some time been constituted (partly) by ‘best practices’. This poses the question of which existing national practices become ‘best practices’, and in turn, what happens to national policy ideas and practices when they are translated into the language of global policy-making. Zooming out, this section looks at the effect of the emergence of the rhetoric of evidence-based policy-making on the transnational anti-corruption discourse, suggesting that the technicisation and scientisation of international institutions’ work and discourse has contributed to render their policy preferences ‘technical feasible’ (in Kingdon’s sense) and politically neutral, which in turn facilitates international transfer.

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<sup>67</sup> Transparency International. Apply to join the expert network. Online, available at: <https://knowledgehub.transparency.org/experts/apply/> (accessed on June 27<sup>th</sup> 2018),

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### **6.2.1. What works and what doesn't: what is meant by 'evidence'?**

It has become increasingly important for international institutions to back their policy message by empirical evidence.<sup>68</sup> The first documents produced by international organisations in the late 1990s and early 2000s refer both to the need to build anti-corruption strategies on evidence and assessments and to existing anecdotal and empirical evidence.<sup>69</sup> The UN Guide for Anti-Corruption Policies, issued in 2003, establishes that anti-corruption strategies should be “inclusive, comprehensive, integrated, evidence-based, non-partisan, transparent and impact-oriented”<sup>70</sup> and encourages countries to use the comprehensive country assessment to develop their anti-corruption policies.<sup>71</sup> The OECD similarly developed a Public Sector Integrity Framework for Assessment, in 2005, on the basis that “good governance requires proper assessment” and that “governments are (...) responsible for providing evidence-based information on the results of their policies”.<sup>72</sup> The UK DfID-funded Global Integrity Anti-Corruption Evidence (GI-ACE) research programme, initially launched in 2015, is one of the latest examples of public actors’ efforts to fund research to inform anti-corruption policy. This programme, operated by the NGO Global Integrity, supports researchers “in generating new evidence that policymakers, practitioners, and advocates can use to design and implement more effective anti-corruption programmes”.<sup>73</sup>

As the previous section shows, producing knowledge and building expertise contributes to construct an actor’s cognitive authority. The rhetoric of evidence-based policymaking similarly is not only used to strengthen a policy message but also to establish the legitimacy of actors within the policy community. Evidence-based advocacy is considered as constitutive of the identity of the organisation:

It is mainly [that] the message [is] based on research, to make it stronger. Because in the end Transparency [International] is still a research organisation, what do you call it... evidence-based advocacy. So we do not advocate because we wake up one morning with an idea, it is based on research and on the result that we have.<sup>74</sup>

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<sup>68</sup> BROOME, André and SEABROOKE, Leonard. *Op. cit.* 2012; NIEMANN, Dennis and MARTENS, Kerstin. *Op. cit.* 2018;

<sup>69</sup> POPE, Jeremy. *Op. cit.* 2000

<sup>70</sup> UNODC. *UN Guide for Anti-Corruption Policies*. Vienna: United Nations, 2003, p. 39

<sup>71</sup> *Ibid.* p. 42

<sup>72</sup> OECD. *Public Sector Integrity Framework for Assessment*. Paris: OECD Publishing, 2005, p. 10

<sup>73</sup> Global Integrity. Global Integrity Anti-Corruption Evidence (GI-ACE) Research Programme. Online, available at: <https://www.globalintegrity.org/ace/> (accessed on August 30<sup>th</sup> 2019)

<sup>74</sup> Employee, Transparency International’s Secretariat (TIS2). Interview with author. March 1st 2017.

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If international institutions increasingly seek to back their policy message by empirical evidence, the question becomes what ‘evidence’ actually means for international institutions promoting anti-corruption instruments. An OECD official describes the evolution of what was meant by ‘evidence’ within the organisation:

Twenty years ago, evidence was more about the input and processes for implementation, and, in some cases like academia, focussing on the impact of corruption, documenting [this in] developing nations and [now we are] bringing new perspectives like the human perspective, behavioural insights to also understand levers for building culture of integrity in public organisations... The focus is now on the impact of integrity, building the business case for integrity. We are still at the beginning of this process, how to document and substantiate assessment in prevention, integrity building, transparency and open dialogue.<sup>75</sup>

Looking at the knowledge produced by international institutions indeed suggests that evidence collection has evolved from gauging the level of corruption as well as its costs and consequences to seeking to measure the quality of the solutions. The rhetoric of evidence-based policymaking having emerged in parallel of the international anti-corruption community itself and the use of the term ‘evidence’ (when referring to existing practices presented as *good* or *best*), in early publications is not systematically substantiated by examples or sources. From the very beginning, TI promoted its knowledge products as a response to “the challenge (...) to ensure that this knowledge of what has worked – or has not – is shared within and outside our movement”.<sup>76</sup> The first managing director of the organisation, Jeremy Pope (Box 8), initiated the organisation’s research work, with the ambition to “build a body of knowledge about what actions are effective in different countries in fighting corruption”.<sup>77</sup>

In the absence of actual policy evaluations at such an early stage, evidence often consists of existing practices and international standards and instruments.<sup>78</sup> As an OECD official bluntly put

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<sup>75</sup> OECD Official 3 (OECD3). Interview with author. May 23d 2018

<sup>76</sup> Transparency International. Knowledge Products: sharing ideas about what works. Online, accessible at [https://www.transparency.org/whatwedo/activity/knowledge\\_products\\_sharing\\_ideas\\_that\\_work](https://www.transparency.org/whatwedo/activity/knowledge_products_sharing_ideas_that_work) (accessed on the April 9 2018) The webpage was created in 2013, according to Wayback Machine Internet Archive, online, accessible at [https://web.archive.org/web/\\*/https://www.transparency.org/whatwedo/activity/knowledge\\_products\\_sharing\\_ideas\\_that\\_work](https://web.archive.org/web/*/https://www.transparency.org/whatwedo/activity/knowledge_products_sharing_ideas_that_work) (accessed on April 9 2018)

<sup>77</sup> VOGL, Frank. *Waging War on Corruption*. Plymouth (UK): Rowman & Littlefield Publishers Inc. 2012, p. 66

<sup>78</sup> POPE, Jeremy (ed.) *Combating corruption: are lasting solutions emerging?* Annual Report. Berlin: Transparency International, 1998; POPE, Jeremy. *Op. cit.* 2000, pp. 305-336; Conference of States Parties to the UNCAC. Good practices and initiatives in the prevention of corruption: The public sector and prevention of corruption ; codes of conduct (article 8 of the Convention) and public reporting (article 10 of the Convention) Background paper prepared by the Secretariat. CAC/COSP/WG4/2011/3. Vienna: UNODC, 2011.

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it, when asked about the alleged lack of evidence regarding the efficiency of policy instruments promoted by the international institutions: “often the policies just come from the good practices toolkits that are all-around and so due to time-constraints or laziness, we just copy and paste things that worked in other places”.<sup>79</sup> The same official explained this tendency of copying-and-pasting country experiences or international standards with the difficulty to finding appropriate methodologies and indicators to measure impact and change:

There is a lot of talk about evidence-based [policymaking], about what works and why, *but actually we have little evidence of what works*, and this relates to how do we measure, over the whole logic, the whole theory of change. How do we measure input, OK that is more or less easy. But then it becomes more and more difficult, output, intermediate output, not to talk about the outcome. If we really want to see change and measure change and impact, we would need good indicators for all these steps which we usually do not have and in addition you would need to ask for a counterfactual, what would have happened with another integrity policy or without this policy, to really say this policy has affected change. And we have very little evidence actually (emphasis added).<sup>80</sup>

The challenge posed by evaluating policies and policy instruments was similarly phrased by another OECD official who, when asked about the meaning of evidence for the organisation, pointed to the difficulty of measuring the success of an ‘anti-policy’,<sup>81</sup> whose success means the absence of a public bad: “It is a very complicated issue. How do you measure something that never happened?”<sup>82</sup> Building transnational knowledge and evidence on existing practices might seem pragmatic as it is assumed that these country cases have been tested, which make it easier to defend them for policy entrepreneurs at the global and national level.<sup>83</sup> As Steven Bernstein and Hamish ven der Ven argue, the legitimacy of governance through best practices relies on existing experiences and “best practices are often perceived as legitimate because they are already in-practice”.<sup>84</sup> Evidence has sometimes referred merely to the existence of a programme, without its effectiveness necessarily being empirically supported. In addition, understanding *evidence* as ‘best practices’ might hamper new ideas. Bernstein and ven der Ven continue their critical assessment of ‘best practices’ saying that they might reinforce “a problem-solving mentality instead of a system-

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<sup>79</sup> OECD Official 1. Interview with author. April 3rd 2017

<sup>80</sup> OECD Official 1. Interview with author. April 3rd 2017.

<sup>81</sup> STONE, Diane. Global Governance Depoliticized. In FAWCETT, Paul, FLINDERS, Matthew, HAY, Colin and WOOD, Matthew (ed.) *Anti-Politics, Depoliticisation and Governance*. Oxford University Press. 2017, p. 105 ; HANSEN, Hans Krause. Managing corruption risks. *Review of International Political Economy*, 2011, Vol 18 N°2, p 251-275

<sup>82</sup> OECD Official 2. Interview with author. May 23d 2018.

<sup>83</sup> Council of Europe GRECO Official. Interview with author. June 28<sup>th</sup> 2018; French parliamentary clerk. Interview with author. April 5<sup>th</sup> 2019.

<sup>84</sup> BERNSTEIN, Steven and VEN DER VEN, Hamish. *Op. cit.* 2017, p. 535

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transforming one’<sup>85</sup> The tendency of evidence-based policy-making (EBPM) rhetoric to build on existing practices indeed reinforces the circulation of existing policy ideas, positing international institutions as arbiters of which national policies are ‘best’. While this logically gives an advantage to policy ‘pioneers’ (Part One), it also risks eventually crowding out more prospective and innovative policy developments.

The rhetoric of EBPM has thus been used by international institutions to promote and justify their policy preferences – or those of its influential members – as it also drives governments to look for (self-declared) experts, within these institutions and their networks. Individuals working within these institutions sometimes themselves look at this tendency with a critical eye as the quotes above suggest. While the policy field institutionalised at the international level, the impression grew that anti-corruption efforts had little to show for themselves and that most policies promoted to reduce corruption had so far failed. Against this backdrop, evidence progressively referred to the results of anti-corruption policy evaluations, international institutions having started to invest in building indicators of policy performance. After three decades of anti-corruption efforts and a global economic crisis, policy actors realised that fighting corruption could be costly for governments, whilst the results of anti-corruption policies were slow to materialise.<sup>86</sup> Many academic publications started to point to what was increasingly seen as a case of global policy failure.<sup>87</sup> To safeguard the policy field and programmes within international institutions, the language of cost-benefit analysis became increasingly popular in the 2000s, arguing that anti-corruption efforts should be focussed on high-risk areas (Chapter 4) and that international institutions should invest in tools to evaluate what actually ‘works’ against corruption. Evidence became a consideration for the costs of anti-corruption policy-making, moving beyond the traditional discourse on the costs of corruption.<sup>88</sup> Two organisations, one intergovernmental and one academic, have been particularly dynamic in searching for measurable evidence of anti-corruption policy performance: the OECD and the U4 Anti-Corruption Resource Centre.

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<sup>85</sup> *Ibid.* p. 555.

<sup>86</sup> OECD Official 1. Interview with author. April 3rd 2017; OECD Official 2. Interview with author. May 23d 2018.

<sup>87</sup> See for instance PERSSON, Anna, ROTHSTEIN, Bo and TEORELL, Jan. Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem. *Governance*, Vol. 26, n°3, 2013, pp. 449-471; QUAH, Jon S.T. Curbing Corruption in India: An Impossible Dream? *Asian Journal of Political Science*, Vol.16, n°3, 2008, pp. 240-259.

<sup>88</sup> WICKBERG, Sofia. Focusing efforts and blurring lines: the OECD’s shift from ethics to integrity. *Public Administration Review, Corruption: A Bully Pulpit Symposium*. 2018.

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### Box 9. The U4 Anti-Corruption Resource Centre, providing expertise on corruption

The U4 Anti-Corruption Resource Centre (U4) is a permanent centre at the Chr. Michelsen Institute (CMI) in Norway, a non-profit research institute on development studies, which builds since 2002 on a partnership established at the end of the 1990s by four international development ministers (from Germany, the Netherlands, Norway and the UK) seeking to improve anti-corruption initiatives of development interventions. The U4 is funded by development “partner” agencies to whom it provides various knowledge services. The U4’s mission statement to “share research and evidence to help international development actors get sustainable results”<sup>89</sup> reflects the result-oriented philosophy of its knowledge activities. This results-based approach stems from development projects, with the objective to ensure ‘value for money’.

The U4 has a dedicated topic on measurement and evaluation that aims to provide information on “how to measure corruption and evaluate anti-corruption work”.<sup>90</sup> Since the late 2000s, it has published sixteen reports and papers on indicators and tools of success/failure of anti-corruption and integrity initiatives,<sup>91</sup> slightly shifting its focus away from measuring corruption to gauging the impact of anti-corruption interventions. The mission of the U4 to assist development agencies explains this interest in searching for evidence of ‘what works’ to reduce corruption and ensure that development aid is put to ‘good’ use.

The need to generalise policy evaluations and to find evidence of the impact of integrity and anti-corruption policy has become a concern beyond development projects, as illustrated by the OECD’s investment in the development of new indicators to assess the effectiveness of anti-corruption policies and make the “business case for integrity”.<sup>92</sup> This evolution is confirmed by an OECD official interviewed for this research who also talks about the growing awareness within the organisation that collecting evidence was part of their role assisting governments. They indicate that the OECD now advised governments not only on policy options but also on how to collect data about the impact of policies they implement, taking them on-board the EBPM train:

That is something that came between the 1998 and 2017 recommendation, [an evidence based approach is now one of the key features of the Recommendation] [that] is making sure that when governments are thinking

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<sup>89</sup> U4 Anti-Corruption Resource Centre. About U4. n.d. Online, available at: [www.u4.no/about-U4](http://www.u4.no/about-U4) (accessed on November 9th 2019)

<sup>90</sup> U4 Anti-Corruption Resources Center. Measurement and Evaluation. n.d. Online, available at: <https://www.u4.no/topics/measurement-and-evaluation> (accessed on November 9th 2019)

<sup>91</sup> The list of publications is available on the U4’s website, at: <https://www.u4.no/search?filters=topic-type-Measurement%20and%20evaluation&search=&searchPageNum=5&sort=year-asc> (accessed on November 9th 2019)

<sup>92</sup> OECD Official 3 (OECD3). Interview with author. May 23d 2018.

about [their integrity reforms] they are also thinking about how they are going to measure the impact.<sup>93</sup>

This investment in the collection of evidence was triggered by the adoption of a new set of recommendations on public integrity in 2017 that replaces the 1998 recommendation on public ethics. The new recommendations, although not radically different, have a stronger emphasis on risk management and a broader scope that goes beyond the “whole-of-government” to include the business sector and civil society in what the organisation conceptualised as its “whole-of-society” approach. Member-states’ representatives within the Senior Public Integrity Officials group (SPIO) strongly encouraged this investment in the search for *evidence* of success. An OECD official involved in the development of these indicators describes the process of developing these new indicators as follows:

By itself it is already a form of consensus about what countries should do to improve integrity, but you cannot do everything you need to set some priorities. So the idea would be to come up with some basic goals and operationalise these goals (...) say... changing behaviour in an organisation, the integrity culture in an organisation. What kind of tools do we usually need, for instance a code of ethics? The second phase would be to ask what are the good practices relating to this tool: participative development, etc. So you have a set of characteristics that make up in theory a good code, so you have a product, a code which is easy to measure. Then you could ask about the use of the code, how it is applied, and then for instance through a survey, there are integrity surveys, they could be applied at the organisational level to measure impact or actual change, in the perception of integrity in the organisation. And this could be done for all principles, but this is a lot of work ...<sup>94</sup>

They acknowledge the difficulty to move from collecting evidence of the problem (Chapter 4) to collecting evidence of the success of ‘anti-policies’. They suggest that, while there is a form of consensus – at least among international institutions – on the existing corruption measurements, described above, there is as of today no agreement on how to measure integrity and the success of anti-corruption policies, or even on the fact that integrity is possible to measure, despite efforts to do so.<sup>95</sup> The difficult search for evidence and the need to justify the costs of anti-corruption interventions have thus moved the focus of the OECD from the promotion of anti-corruption instruments to the promotion of assessment tools. The last quote illustrates that the quest for evidence of the impact of anti-corruption policy, through the development of universal indicators,

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<sup>93</sup> OECD Official 2 (OECD2). Interview with author. May 23d 2018.

<sup>94</sup> OECD Official 1. Interview with author. April 3rd 2017.

<sup>95</sup> *Ibid.*

is perceived as an uphill battle by international institutions themselves. They are conscious of the value-laden nature of the construction of evidence, recognising that research and evaluation methodologies are based on choices and compromise.<sup>96</sup> Indeed, actors, especially those invested in improving the quality of measurements, are sometimes quite candid in their assessment of the quality of evidence and the current rhetoric use of knowledge, as this quote suggests:

Then you have the political aspect. Do we want to know what works and what... It is perhaps even easier to just keep on with the rhetoric that 'we need transparency' because it is politically much easier than to ask the honest question 'does it really work'.<sup>97</sup>

Research and knowledge production have become strategic tools for international institutions involved in anti-corruption work. International institutions themselves present evidence as a means to advance their policy agenda, as this excerpt from a 2018 OECD publication on strategic approaches to fight corruption, funded by the UK government, states:

[The development of indicators] could and should be undertaken in partnership with external stakeholders, including in academia, to develop synergies and relevant partnerships to help identify and shape research in new areas that could be of specific interest for the OECD, its members and stakeholders. Having concrete evidence of the benefits of anti-corruption efforts provides also incentives to advance meaningful agendas, including in developing and emerging countries.<sup>98</sup>

This quote sheds light on that fact that evidence is, on the one hand, used to improve policy recommendations, but also that it has gained political valence, and thus that rhetoric of EBPM is used to strengthen international institutions' cognitive authority and legitimise their policy preferences. EBPM is a powerful concept which gains its appeal partly through being vague and unobjectionable.<sup>99</sup> As Paul Cairney rhetorically asks "who would not want policy to be evidence-based?"<sup>100</sup>

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<sup>96</sup> COURTENAY BOTTERILL, Linda. *Op. cit.* 2017.

<sup>97</sup> OECD Official 1. Interview with author. April 3rd 2017.

<sup>98</sup> OECD. OECD Strategic Approach to Combating Corruption and Promoting Integrity. Paris: OECD Publications, 2018, p. 18.

<sup>99</sup> CAIRNEY, Paul. *The Politics of Evidence-Based Policy Making*. London: Palgrave Macmillan. 2016

<sup>100</sup> CAIRNEY, Paul. The Politics of Evidence-Based Policy Making. In THOMSON, William R. (ed.) *Oxford Research Encyclopedia of Politics*. Oxford University Press, 2017.

### **6.2.3. Translating national practices into international ‘best practices’**

This subsection looks at the national experiences elevated to become ‘best’ practices and serve as a model for other countries to emulate, and more specifically at the process of translating them into international ‘best practices’. As André Broome and Leonard Seabrooke put it, IOs’ activities define the policy problem and policy solutions in their interactions with national governments, leading to the “menu of alternative solutions offered by an IO in a particular policy area [to be] neither comprehensive nor objectively determined”.<sup>101</sup> As Broome et al. argue with regards to IO benchmarking exercises,<sup>102</sup> power relations are central to understanding how national policies are transformed into ‘best practices’ by their inclusion in IO knowledge products, thus reinforcing a certain hierarchy among states that *fit* or do *not fit* with standards. As we see here, policy pioneers and leaders are particularly influential in a policy field as uncertain as corruption prevention.

While best practices in the earliest publications from the 1990s are largely taken from policy pioneers in the Anglosphere, they become more diversified as time goes by, with new countries adopting anti-corruption policies. Nevertheless, it is still possible to observe a trend presenting policies from countries in the Anglosphere as best practices. TI’s 1996 Source Book and the 2001 UN Anti-Corruption Toolkit are the first two reports to refer to concrete country examples as ‘good practices’ and both rely heavily on examples from countries in the Anglosphere for examples of how to prevent political corruption. Indeed, out of the 23 national practices presented by TI’s Source Book, 18 are Commonwealth nations or states that were once under British or American influence.<sup>103</sup> The UN Anti-Corruption Toolkit is an even more striking example since it illustrates its Tool #8 on codes and standards of conduct with the Australian, South African and British examples.<sup>104</sup> The OECD Toolkit for managing conflicts of interest in the public sector shows significant similarities with the British interest register (Annexe 5). The strong presence of Anglo-American inspired policy examples remains in later knowledge products. These publications have a direct target audience in the member states of the various organisations, which is reflected in the choice of best practices to feature – the G20 report on *Good practices in asset disclosure systems in G20*

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<sup>101</sup> BROOME, André and SEABROOKE, Leonard. *Op. cit.* 2012, p. 10.

<sup>102</sup> BROOME, André, HOMOLAR, Alexandra and KRANKE, Matthias. *Op. cit.* 2018, p. 516.

<sup>103</sup> POPE, Jeremy. TI Source Book Confronting Corruption: The Elements of a National Integrity System. Berlin: Transparency International. 2000.

<sup>104</sup> UNODC. The Global Programme Against Corruption UN Anti-Corruption Toolkit. Vienna: United Nations, 2001.

*countries* for instance presents how the members of the G20 chose to tackle this issue and the OECD *Asset Declarations for Public Officials* was produced for the Eastern European and Central Asian regions and thus features regional examples – but the US and Britain, together with other Westminster-style systems, always feature prominently among the selected examples.<sup>105</sup>

The Anglosphere has come to be complemented by alternatives, as more countries embarked on the institutionalisation of parliamentary ethics. The influence of the Anglo-American models on transnational knowledge on corruption prevention was gradually challenged by the slightly younger Southern European examples.<sup>106</sup> These countries (France, Italy etc.) focus more on wealth and asset declarations than on conflicts of interest, bringing the issue of illicit enrichment to the agenda. This fits well with the growing interest of the United Nations and World Bank in the issue of asset recovery, promoted by the Global South (Chapter 5).<sup>107</sup>

The policy recommendations that are communicated through international organisations' publications are not mirrored images of the policies adopted by national policy-makers. The same holds true for policy recommendations travelling from one organisation to the other. National policy examples are indeed translated into international policy language, which implies a reformulation of policy proposals and “disturbances between the ‘creation’, the ‘transmission’ and the ‘interpretation’ or ‘reception’ of policy meanings”.<sup>108</sup> One process of translation is highlighted here, namely the transformation of the practices through decontextualising them from the institutional and political system in which they are implemented. Handbooks and toolkits are developed by international organisations to provide national governments, policy-makers and other international institutions with ‘practical’, ‘useful’ and ‘clear’ guidance and solutions to the problem of corruption, illustrated by country examples.<sup>109</sup> The objective of these publications is not to describe, in detail, policies adopted by countries in their wider institutional and political contexts,

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<sup>105</sup> OECD and European Commission. *Asset Declarations for Public Officials: A Tool to Prevent Corruption*. Paris: OECD Publishing, 2011; OECD and World Bank. *Good practices in asset disclosure systems in G20 countries*, 2014.

<sup>106</sup> Spain and Italy adopted an obligation for public officials to declare wealth, property and income in 1982, followed by Portugal in 1983 and France in 1988.

<sup>107</sup> GRECO Official 2, Council of Europe (CoE2). Interview. June 28<sup>th</sup> 2018. Author's own translation; United Nations. *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Corruption*. Vienna: United Nations, 2010.

<sup>108</sup> LENDVAI, Noémi and STUBBS, Paul. Policies as translation: situating transnational social policies. In HODGSON, Susan and IRVING, Zoe (eds.) *Policy reconsidered: meanings, politics and practices*. Bristol: The Policy Press, 2007, p. 175, cited by STONE, Diane. Transfer and translation of policy. *Policy Studies*, Vol. 33, n° 6, 2012, p. 487.

<sup>109</sup> OECD. *Managing Conflict of Interest in the Public Sector*. Paris: OECD Publishing, 2005, p. 3; POWER, Greg. *Handbook on Parliamentary Ethics and Conduct. A Guide for Parliamentarians*. GOPAC. 2009, p. 5; OECD. *Asset Declarations for Public Officials: A Tool to Prevent Corruption*. Paris: OECD Publishing, 2011, p. 3; OSCE. *Background Study: Professional and Ethics Standards for Parliamentarians*. Warsaw: OSCE. 2012, p. 6.



but rather to provide a concise overview of policy options.<sup>110</sup> As Paul Cairney argues, policy-makers cannot consider all existing knowledge and evidence about policy problems and their solutions. They use heuristics to filter information,<sup>111</sup> which will lead them to favour certain forms and types of knowledge over others. International organisations promoting policy instruments thus need to adapt the style and form of their publications to their audience and frame their argument: “[evidence-based policymaking] is less about packaging information to make it simpler to understand, and more about responding to the ways in which policymakers think and, therefore, how they demand information”.<sup>112</sup>

International institutions tend to present national experiences in one of two ways: either as case studies following a general policy recommendation, or directly within the text of the recommendation itself. In-text references to country examples separate a country’s policy over various categories (principles, implementation, enforcement etc.) making it difficult to get a complete overview of the policy and its implementation mechanism. While case studies offer room for thicker descriptions, national examples are presented outside of the larger political system, for the sake of concision. The OECD’s 2011 report *Asset Declarations for Public Officials: A Tool to Prevent Corruption* offers rich descriptions of disclosure systems in Lithuania, Romania, Catalonia (Spain) and Ukraine without including, for instance, information on the existence of rules on recusal from debates and votes, on the overall economic status of public officials (income, pension, material advantages etc.) or the role of political parties, the media and the public in the implementation.<sup>113</sup> The risk is then missing other elements that contribute to the success/failure of a policy. As stated by an OECD official answering a question about the evaluation of policy instruments: “it is very likely, that one single instrument does not have any impact, and that it needs to be together with other policies... and that is actually the message of the [new] recommendation”.<sup>114</sup> Paul Heywood and Elizabeth Johnson, for instance, criticise the NIS methodology for analysing institutions in isolation from one another, for not being sufficiently sensitive to national contexts, for having a

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<sup>110</sup> With a few exceptions, the 2005 OECD assessment framework includes a number of detailed case studies written by national experts.

<sup>111</sup> CAIRNEY, Paul. *The Politics of Evidence-Based Policy Making*. London: Palgrave Macmillan, 2016; CAIRNEY, Paul. *The Politics of Evidence-Based Policy Making*. In THOMSON, William R. (ed.) *Oxford Research Encyclopedia of Politics*. Oxford University Press, 2017.

<sup>112</sup> CAIRNEY, Paul. EBPM. In Paul Cairney: *Politics & Public Policy*. Online, available at : <https://paulcairney.wordpress.com/ebpm/> (accessed on June 4 2018)

<sup>113</sup> OECD. *Asset Declarations for Public Officials: A Tool to Prevent Corruption*. Paris: OECD Publishing, 2011.

<sup>114</sup> OECD Official 1 (OECD1). Interview with author. April 3rd 2017.

narrow understanding of integrity and for being too compliance-based.<sup>115</sup> International institutions thus tend to isolate anti-corruption interventions from the broader institutional landscape in which they are implemented, presenting them as *neutral* instruments that can prevent corruption in all political and institutional systems.

Moreover, international institutions are often not clear about who the target population of the policies originally was. Indeed, as explained in Chapter 4, there is an ambiguity in the global conception of corruption of who is the responsible population. International institutions often tend to blur the lines between public servants and political representatives, grouping them under the label ‘public officials’. The example of TI’s Source Book, which was one of the first anti-corruption knowledge product issued, is illustrative. Its chapter titled *Public Service Ethics, Monitoring Assets and Integrity Testing* conflates civil servants and elected officials in its introductory paragraph:

Increasingly, the need to foster and sustain high levels of ethics in the public sector has come into focus. This is, almost universally, a lurking suspicion in many countries that public servants (both members of the public service and their political masters) have been lining their pockets at the public’s expense, and calls for the monitoring of assets of senior public sector decision-makers in particular are now heard on all continents.<sup>116</sup>

Despite the fact that TI’s policy recommendations are directed to “members of the public service and their political masters”, the examples featured largely concern public servants, referring to instruments targeting the public administration (UN International Code of Conduct for Public Officials, the CoE Twenty Guiding Principles for the Fight against Corruption and the OECD 1998 Recommendation on Improving Ethical Conduct in the Public Service). The Source Book’s chapter on the elected legislature recommends that the propriety of legislators be monitored, framing the problem as one of opacity and lack of control: “Managing conflicts-of-interest situations and monitoring the assets, income, liabilities and business interests of legislators is essential, as it is for all public officials”.<sup>117</sup> The observation should however be nuanced. While including parliamentarians in the broader group of public officials whose interests, assets and behaviour should be monitored, the Source Book also points to some fundamental differences rooted in their mandate, namely their ability to adopt laws regulating their own behaviour and concern for the separation of powers. Blurring the line between different target audiences also

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<sup>115</sup> HEYWOOD, Paul and JOHNSON, Elizabeth. Cultural specificity versus institutional universalism: a critique of the National Integrity System (NIS) methodology. *Crime, Law and Social Change*, Vol. 68, n° 3, 2017, pp 309–324

<sup>116</sup> POPE, Jeremy. *Op. cit.* 2000, p. 175

<sup>117</sup> POPE, Jeremy. *Op. cit.* 2000, p. 52

contributes to decontextualise policy instruments as they do not take into account their different roles and the expectations that correspond to them. While it may present policy instruments as adaptable, they under-estimate the differences between public servants and political actors' day-to-day activities, their degree of influence over public/political decisions or the pressures to which they are exposed. This research being concerned with the regulation of parliamentarians' conduct, it is remarkable that little attention is paid to the 'reality' of political practice, in these international knowledge products that have tended to expand policy solutions designed for the public administration to political institutions.

Translating national experiences into international best practices is thus far from a neutral process. Firstly, by producing 'best practice' compendiums, international institutions legitimise certain national policies as models from others to emulate. In a field where policy evaluation is still in its infancy and evidence of policy success is hard to find, timing and power dynamic tend to influence the international arbiters' selection of national practices to be presented as 'best practices' (Part One). Secondly, by integrating national policies in their knowledge products, international institutions tend to decontextualise them, either by not mentioning the country where a policy was originally developed or by presenting the policy outside of its institutional and political setting which has an impact on how an instrument is implemented, as Part Three will show. International institutions largely draw on existing anti-corruption practices (in policy pioneer and leader countries) to build their own policy recommendations, and tend to 'neutralise' them as they translate them as policy options for other countries. Translating national policies into international policy solutions thus contributes to turn them into *technical* instruments, which are seen as evidence-based because they were 'tested' elsewhere, and *neutral* as they can be implemented by countries with different political and institutional systems.

### **6.2.3. The scientisation of the global anti-corruption discourse: towards a technical response to a political problem**

This last subsection argues that these efforts to build expertise and the use of the rhetoric of evidence-based policy-making (EBPM) can be seen as a process of scientisation of international institutions' discourse on anti-corruption policy. EBPM is a powerful rhetorical tool and a 'technocratic distancing tactics'<sup>118</sup> which contributes to erase the political dimensions of the problem and of proposed policy choices, which carry value-laden conceptions of good and bad in

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<sup>118</sup> STONE, Diane. *Op. cit.* 2017, p. 92.

society. Using the language and philosophy of evidence-based medicine, EBPM is based on ‘diagnosing’ problems and finding the best treatment, turning political problems – such as corruption – into technical problems.

Chapter 4 describes how corruption came to be understood as a governable problem. Following a similar logic, medical rhetoric has been common for talking about corruption ever since James Wolfensohn famous speech on the ‘cancer of corruption’ in 1996,<sup>119</sup> leading to a further *scientisation* of anti-corruption. International institutions, similar to the media, tend to use disease metaphors to talk about corruption.<sup>120</sup> As Paul Heywood puts it, “we are now developing a more sophisticated understanding of corruption, but there is still an overwhelming tendency to see it as a pathology that is susceptible to treatment”,<sup>121</sup> resulting in interpretive naivety in the face of a complex and fundamentally political problem. They indeed suggest medical solutions to corruption with semantic loans such as the ‘integrity scans’ recommended by the OECD to “identify priority reforms to reinforce healthy systems of governance”<sup>122</sup> or the ‘diagnostic tools’ promoted by TI, the World Bank and the U4 Anti-Corruption Research Centre.<sup>123</sup> These metaphors suggest that, despite international institutions stating that there is no one-size-fits-all solution to corruption, they do present a model of ‘healthy’ governance system to which all countries should aspire.

In addition to the medical metaphors used in their publications, international institutions’ language on corruption is also quite technical. The categories of knowledge products listed Table 13, with toolkits, checklists, risks and preconditions, illustrate the *technicisation* of their discourse. It is reflected in the use of terms borrowed from architecture and construction work, such as ethics ‘infrastructure’<sup>124</sup>, ‘building blocks’<sup>125</sup> or ‘pillars’<sup>126</sup>, which suggests the unquestionable need for an

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<sup>119</sup> In the comment section of Paul Heywood’s blog entry cited below, Frank Vogl provides a background story to the cancer analogy used by the President of the World Bank, referring to a meeting prior to the speech to which a number of TI founders were invited and where they used the expression « cancer of corruption », and suggesting a “garbage can” narrative of the analogy.

<sup>120</sup> BRATU, Roxana and KAZOKA, Iveta. Metaphors of corruption in the news media coverage of seven European countries. *European Journal of Communication*, Vol. 33, n°1, 2018.

<sup>121</sup> HEYWOOD, Paul. *Why We Need to Kill the ‘Corruption is Cancer’ Analogy*. CDA Perspectives Blog. September 19th 2017. Online, accessible at: <http://cdacollaborative.org/blog/need-kill-corruption-cancer-analogy/> (accessed on June 12th 2018).

<sup>122</sup> OECD CleanGovBiz. Integrity scans. Paris: OECD publications, 2014. Online, available at: <https://www.oecd.org/cleangovbiz/50085676.pdf> (accessed on August 29th 2019)

<sup>123</sup> Transparency International. *NIS Assessment Toolkit*. Berlin: Transparency International, 2012.

<sup>124</sup> OECD. Creating an effective ethics infrastructure. Focus Public Management Gazette, n°7, Paris: OECD publications, 1997.

<sup>125</sup> POWER, Greg. Handbook on Parliamentary Ethics and Conduct a Guide for Parliamentarians. GOPAC-WFD, 2009, p. 5.

<sup>126</sup> OECD. OECD Recommendation on Public Integrity. Official website. Online, available at: <http://www.oecd.org/gov/ethics/recommendation-public-integrity/> (accessed on August 29th 2019).

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underlying basic framework of stable institutions. As suggested in Chapter 4, another common semantic field used to reflect the technicity of anti-corruption policy comes from audit and management, with terms such as, ethics and integrity *management* and the rhetoric of results, efficiency and performance. Many actors of the policy community work towards the development of new indicators to measure the performance of anti-corruption policies and to “help international development actors get sustainable results”<sup>127</sup> and ensure ‘value for money’, as explained by an OECD official:

Actually, the only good evaluation of impact comes from development countries. When you have some programme financed by a donor, the World Bank or whatever, who have financed and supported a specific intervention, and designed from the beginning an impact evaluation (...) But we have very little evidence.<sup>128</sup>

The need to generalise policy evaluations has become a concern beyond development projects, as demonstrated above, with the OECD and other international institutions seeking to make the ‘business case’ for integrity.<sup>129</sup> Indeed, OECD officials understand the lack of political commitment to implement anti-corruption obligations as a result of the lack of evidence showing the impact of the promoted policies:

There is a similar gap when it comes to the availability of reliable performance measurement data on anti-corruption policies and their impact. Without effective indicators for measuring the effectiveness of anti-corruption policies, it is difficult to determine their progress and to properly assess resource needs for these measures. As a result, OECD experience shows that concerted efforts to combat corruption can be seen as too onerous and resource-heavy by many governments and firms.<sup>130</sup>

This extract from an OECD strategic document is illustrative of the scientisation of international institutions’ discourse on anti-corruption policy. The use of terms such as ‘reliable performance measurement data’ or ‘effective indicators for measuring the effectiveness of policies’ demonstrate how these actors seek to present anti-corruption policy as interventions that *should* ideally be easy to evaluate, to convince national governments to adopt the preferred solutions. It

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<sup>127</sup> U4 Anti-Corruption Resource Centre. About U4. Online, available at: [www.u4.no/about-U4](http://www.u4.no/about-U4) (accessed on June 6 2018)

<sup>128</sup> OECD Official 1 (OECD1). Interview with author. April 3rd 2017.

<sup>129</sup> OECD Official 2 (OECD2). Phone interview with author. May 23d 2018.

<sup>130</sup> OECD. OECD Strategic Approach to Combating Corruption and Promoting Integrity. Paris: OECD Publishing, 2018, p. 18.

reflects William Walters' argument that "anti-policy involves a will to technologize and transform an otherwise controversial subject into a domain of numbers and facts".<sup>131</sup>

EBPM, as used in the anti-corruption community, is an example of scientisation of policy-making. It indeed stems from evidence-based medicine whose objectives is to "generate the best evidence of the best interventions and exhort clinicians to use it"<sup>132</sup> and "assess the strength of evidence relating to the risks and benefits of particular courses of treatment".<sup>133</sup> Stating that policymaking is informed by empirical evidence gives policy solutions an aura of legitimacy, based on rationality and scientific knowledge, and contributed to hide the politics of policy-making. EBPM indeed gained political currency in the 1990s, in Britain especially, as a way to replace ideology with research in the policy process.<sup>134</sup> The scientisation of policymaking and the belief that "what counts is what works"<sup>135</sup> is thus a depoliticisation tactic, as it reduces the dimension of choice which is essential to politics and policy-making,<sup>136</sup> certain policy solutions being presented as backed by empirical evidence which tends to delegitimise alternatives.

## Conclusion

Despite impressions to the contrary, corruption emerged on the global agenda relatively recently and international institutions have since sought to construct the problem as one that can be managed with the right (shared) policies and incentives. While, as has become apparent recently, there is still relatively little evidence about 'what works' to prevent corruption. International institutions have thus sought to reduce the uncertainty about the problem by investing in research, originally to better gauge the problem and more recently to evaluate the impact of existing interventions, as the quote that introduces the chapter suggests. International institutions, especially the ones that do not directly monitor compliance with international norms (such as the OECD, the OSCE and especially TI), have developed their knowledge production and brokerage to build

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<sup>131</sup> WALTERS, William. Anti-policy and Anti-politics. Critical Reflections on Certain Schemes to Govern Bad Things. *European Studies of Cultural Studies*, 2008, Vol 11 n°5, p. 280.

<sup>132</sup> CAIRNEY, Paul. *Op. cit.* 2017, p. 3

<sup>133</sup> BOAZ, Annette, GRAYSON, Lesley, LEVITT, Ruth and SOLESBURY, William. Does evidence-based policy work? Learning from the UK experience. *Evidence and policy*, Vol. 4, n°2, 2008, pp. 233- 253, cited in COURTENAY BOTTERILLA, Linda and HINDMOOR, Andrew. Turtles all the way down: bounded rationality in an evidence-based age. *Policy Studies*, Vol. 33, n° 5, 2012, p. 369.

<sup>134</sup> COURTENAY BOTTERILL, Linda. Evidence-Based Policy. In THOMSON, William R. (ed.) *Oxford Research Encyclopedia of Politics*. Oxford University Press, 2017.

<sup>135</sup> 1999 UK Cabinet Office, cited in COURTENAY BOTTERILLA, Linda and HINDMOOR, Andrew. Turtles all the way down: bounded rationality in an evidence-based age. *Policy Studies*, Vol. 33, n° 5, 2012, p. 369.

<sup>136</sup> HAY, Colin. *Op. cit.* 2007.

their cognitive authority in the field. These activities thus contribute to justify their relevance and legitimise their policy recommendations regarding conflict of interest regulation for instance. Moreover, the circulation of individuals across international institutions and their tendency to reference each other has reinforced the impression that there is an international paradigm regarding corruption prevention.

The support for and inclusion of academic experts in the policy community, as well as the use of the rhetoric of evidence-based policy-making as a means to build cognitive authority contributed to the scientisation of global anti-corruption discourse. This had two effects on the policy solutions promoted by international institutions and on the policy-making process. Firstly, the translation of the Anglo-American instruments into international ‘best practices’ against corruption decontextualised these national regulatory practices, isolating them from their institutional and political setting, and sometimes hiding the instruments’ origin. Despite transnational actors’ acknowledgement that there is no one-size-fits-all solution to corruption, translating national policies into international instruments contributes to present them as neutral tools that can (and should) be adopted by national policy-makers no matter the political system or the particular social dynamics that shape corrupt practices in the local context. Secondly, scientisation, especially through EBPM, is a depoliticisation device, as it reduces the dimension of choice central to politics and thus limits national political actors’ agency, by legitimising certain policy instruments, validated by ‘evidence’, over alternatives.

The scientisation of the global anti-corruption agenda contributed to answer the question ‘why do policy-makers engage in transfer?’. Indeed, the transnational policy community has sought to influence domestic policy decisions through ‘softer’ forms of persuasion (in comparison with the mechanisms presented in Chapter 5) that their (common) approach to corruption was the ‘right thing to do’<sup>137</sup> and the most appropriate way to tackle the issue, since it is backed by empirical ‘evidence’. Besides existing soft forms of inter-state coercion into adopting anti-corruption instruments, the ideational dimension of policy transfer is far from negligible. International institutions thus came to play a role in policy-making in this field, autonomously from their member-states. The importance of this ideational dimension contributes to explain the authority of non-state actors, such as TI, in this policy field, as their early investment in building expertise

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<sup>137</sup> JUTTA, Joachim, REINALDA, Bob and VERBEEK, Bertjan. *Op. cit.* 2008, p. 11; BROOME, André and SEABROOKE, Leonard. *Op. cit.* 2012; BELAND, Daniel. *How ideas and institutions shape the politics of public policy*. Cambridge: Cambridge University Press, 2019, p. 27.

on corruption helped them shape the context in which transnational policy-making would later unfold, demonstrating a form of ‘power through ideas’.<sup>138</sup>

Policy translation is thus a ‘two way-street’. If it corresponds to the process of creating new meanings and policy designs and reformulating policy problems and solutions through negotiations among policy actors within different jurisdictions,<sup>139</sup> then we should not neglect the role of transnational actors translating policy from a national context into a polity-neutral international policy language. While international policy-making has domestic sources, international institutions indeed usually contributed to erase the local from the global. It is then the role of policy translation scholars to make visible the ‘global’ in ‘local’, and ‘local’ in ‘global’, when analysing the travel of policy ideas.<sup>140</sup>

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<sup>138</sup> CARSTENSEN, Martin B. and SCHMIDT, Vivien A. Power through, over and in ideas: conceptualizing ideational power in discursive institutionalism. *Journal of European Public Policy*, Vol. 23, n°3, 2016, pp. 318-337.

<sup>139</sup> HASSENTEUFEL, Patrick, BENAMOUZIG, Daniel, MINONZIO, Jérôme and ROBELET, Magali. Policy Diffusion and Translation The Case of Evidence-based Health Agencies in Europe. *Novos Estudos CEBRAP*, Vol. 36, n°1, 2017, p. 81 ; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. *Op. cit.* 2013, p. 377, translated by DELCOUR, Laura and TULMETS, Elsa. *Policy Transfer and Norm Circulation: Towards an Interdisciplinary and Comparative Approach*. New York: Routledge, 2019, p. 7; MUKTHAROV, Farhad. Rethinking the travel of ideas: policy translation in the water sector. *Policy & Politics*, Vol. 42, n° 1, 2020, p. 76.

<sup>140</sup> MUKTHAROV, Farhad. *Op. cit.* 2020, p. 76.



## Conclusion to Part Two

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Public interest registers and codes of conduct were diffused internationally as anti-*corruption* policy instruments, after corruption was constructed as a *global* problem requiring *global* solutions. In the second half of the 20<sup>th</sup> century, corruption was progressively made into a global problem, through the work of economists, turning it into a universal problem of opportunity costs divested of political elements. This epistemic community inspired the World Bank and Transparency International in their efforts to define corruption for the international community. They were shortly followed by other international institutions, such as the OECD, the Council of Europe, the United Nations and others. The context of world politics contributed to make the ground fertile for the issue of corruption to be raised. The consequences of the end of the Cold War, such as changes in aid disbursement, the liberalisation of cross-border exchanges and the emergence of new *transnational* forms of crime contributed to build the legitimacy of international institutions to tackle what was seen as a cross-jurisdictional issue. The latter built their legitimacy through creating and diffusing ideas about the nature of the problem through knowledge production and the construction of indicators, putting corruption on the map.

If corruption is a global problem, it requires global solutions. Some international institutions, such as TI and the World Bank having made corruption a legitimate problem for international intervention, others boarded the anti-corruption train to develop international policy solutions. Between 1996 and 2003, nine international legal instruments were signed, until the United Nations Convention Against Corruption created a quasi-universal anti-corruption norm. These conventions not only aim to facilitate international cooperation but also to harmonise national legislation and policy, reaching all the way to the functioning of domestic political institutions, recommending for instance the adoption of financial disclosure systems and codes of conduct. These international legal instruments are accompanied by monitoring mechanisms that were transferred between international institutions as a tool to (more or less softly) pressure governments into compliance. The cooperation between international institutions involved in anti-corruption work is most visible in their collaboration, exchanges and aligned message when monitoring states' compliance with international norms and standards. If anti-corruption policy converged across countries through the emulation of policy pioneers, it is also the consequence of the emergence of a transnational policy community dedicated to construct and diffuse policy solutions against corruption.

Not only did corruption become seen a global problem, it was also gradually constructed as a *risk*. From the original ambition to criminalise corruption globally and to facilitate international cooperation for the detection and repression of transnational corruption, international institutions rapidly operated a preventive turn that moved the focus from corruption itself to tackling the causes of corruption. This shift of attention helped international institutions couple conflicts of interest to the problem of corruption, presenting public officials' private interests as a potential risk. Adopting an economistic perspective on corruption as a problem of opportunity costs contributed to make it governable. This preventive turn, the emergence of a cost-benefits discourse on the fight against corruption, combined with a more general concern for risks within international institutions (especially the OECD) encouraged the transnational policy community to develop a prescriptive framework for managing corruption risks that should apply to all countries across the global. Despite their awareness of the necessary tailoring of internationally-promoted policies, many efforts have been (and still are) made to find and share ideas about 'what works' to fight corruption. Public interest registers and codes of conduct have been included in this global anti-corruption framework as ways to mitigate corruption risks, which turned them into 'good (anti-corruption) practices'.

While international legal instruments and monitoring mechanisms are relatively straightforward means to harmonise domestic policy, international institutions have increasingly complemented them with a variety of knowledge product (reports and handbooks) and technical tools (toolboxes and assessment methodologies). International institutions involved in anti-corruption work use knowledge production to diffuse their policy preferences and the rhetoric of evidence-based policy-making to strengthen their cognitive authority as technical experts and knowledge brokers. Looking at the means through which international institutions seek to promote anti-corruption policy, one finds that the policy field experienced an instrumentation at two levels.<sup>141</sup> Firstly, the instrumentation concerns the type of policy solutions promoted as parts of international toolkits. The promotion of public integrity by international institutions progressively transformation of a classical subject of political philosophy into a problem to be governed by government *technology*. Secondly, instrumentation extends to the means used to promote and diffuse policy solutions, through the use of indicators, standards and benchmarks, toolkits and best

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<sup>141</sup> HALPERN, Charlotte, LASCOUMES, Pierre and LE GALES, Patrick (eds.) *Op. cit.* 2014.  
*Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020*

practices as a way to rationalise the policy field.<sup>142</sup> The instrumentation of the transnational policy field is not just an empirical observation, it facilitated the international transfer of anti-corruption policy, thanks to the seemingly technical and neutral nature of instruments.

While facts and scientific knowledge are increasingly important inputs for policy-makers to respond to the complex problems we face, this dissertation argues that it is nevertheless important to reflect on the consequences of the use of evidence in policy-making and to seek to understand what is meant by this term in different contexts. Scholars and practitioners are seeking to develop increasingly sophisticated means to evaluate anti-corruption policy, but evidence of ‘what works’ in this policy field remains scarce and not sufficiently reflexive on the (political) assumptions of the policies themselves or of the context in which the problem unfolds. Presenting anti-corruption instruments as evidence-based is however a powerful diffusion tool as it presents them as ‘technically feasible’. As Diane Stone notes regarding global governance more generally, experts tend to replace traditional policy actors as evidence is used to reduce uncertainty about complex problems, providing policy-makers with a ready definition of the problem and an accompanying set of (technical) solutions.<sup>143</sup> As such, the scientisation of anti-corruption discourse at the global level contributed to depoliticise the policy-making process, defining corruption as a technical problem and proposing a menu of evidence-based policy solutions.

Conflict of interest regulation converged across European countries through the emulation of those identified as policy ‘pioneers’ and the emergence of a transnational policy community seeking to harmonise national anti-corruption policy. As Chapter 1 showed, this does not mean that Britain, France and Sweden regulate conflict of interest similarly in *practice*. Part Three shifts the focus back to the national policy process to identify factors that explain why the emulation of pioneers and development of international standards did not lead to linear convergence of conflict of interest regulation.

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<sup>142</sup> DESROSIERES, Alain. L'argument statistique: I Pour une sociologie historique de la quantification. Paris: Presses des Mines, 2013 ; DESROSIERES, Alain. L'argument statistique: II Gouverner par les nombres. Paris: Presses des Mines, 2013.

<sup>143</sup> STONE, Diane. Global Governance Depoliticized. In FAWCETT, Paul, FLINDERS, Matthew, HAY, Colin and WOOD, Matthew (ed.) *Anti-Politics, Depoliticisation and Governance*. Oxford University Press. 2017, p. 101.

## PART THREE

### Lost (or gained) in translation: Indigenising anti-corruption policy

## Introduction of Part Three

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On the basis of the comparison of conflict of interest regulation in Great Britain, France and Sweden, this dissertation seeks to understand how this policy became a case of ‘divergent convergence’.<sup>1</sup> By this I mean that the three countries came to adopt the same instruments to regulate parliamentarians’ conflicts of interest (public interest registers and codes of conduct) while implementing them in strikingly different ways, resulting in significant divergence in practice. The dissertation has so far demonstrated that conflict of interest regulation converged – in the sense that common instruments were put in place - across European countries through the emulation of policy ‘pioneers’ and the emergence of a transnational policy community deploying various strategies to harmonize national anti-corruption policy. This last part of the dissertation shifts the focus to the *reception* of transferred policy ideas in France and Sweden, comparing it to policy-making in a pioneer country, the UK. The reception of transferred policy is here viewed, in contrast to some of the literature, as an active process that contributes to transform the policy itself (as well as the problem it is said to solve) along the way. Policy transfer indeed rarely creates a ‘cryogenically preserved policy’.<sup>2</sup> While France and Sweden imported policy instruments from elsewhere, actors did not unreflexively copy-and-paste them in their original form into their respective institutional framework. Anti-corruption policy is indeed not “a mass-produced (...) off-the-rack ideological suit [but rather] a bespoke outfit made from a dynamic fabric that absorbs local colour”.<sup>3</sup> The following three chapters seek to understand how imported ideas absorb such local colour.

To do so, the chapters follow the policy instruments as they are transferred into new national contexts, “tracing (...) the places [they have] travelled through and interrogating how the policy has mutated or been transformed along the way”.<sup>4</sup> A number of conditions need to be satisfied

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<sup>1</sup> HAY, Colin. Common Trajectories, Variable Paces, Divergent Outcomes? Models of European Capitalism under Conditions of Complex Economic Interdependence. *Review of International Political Economy*, Vol. 11, n° 2, 2004, pp. 231-262; LEVI-FAUR, David and JORDANA, Jacint. Regulatory Capitalism: Policy Irritants and Convergent Divergence. *Annals of the American Academy of Political and Social Science*, 2005, vol. 598, p. 191-197; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. Convergence, transferts et traduction. Les apports de la comparaison transnationale. *Gouvernement et Action Publique*, Vol. 3, n° 3, 2013, pp. 377-393.

<sup>2</sup> STONE, Diane. *Op. cit.* 2012, p. 489.

<sup>3</sup> BAN, Cornel. *Rulin Ideas. How Global Neoliberalism Goes Local*. Oxford: Oxford University Press, 2016, p. 5.

<sup>4</sup> McCANN, Eugene and WARD, Kevin. *Op. cit.* 2012, p. 46.

and opportune political circumstances put in place for an idea to be translated into an actual policy.<sup>5</sup> The degree to which a country is exposed to external pressure and how it responds to it depends both on the political and institutional contexts, and on the internal tendencies and counter-tendencies (political conflicts and negotiations) at a given point in time.<sup>6</sup> This requires the researcher to pay attention to actors who make the circulation of ideas possible, the institutions in which they are embedded and the context in which the circulation takes place.<sup>7</sup> Many terms have been used to describe this process: indigenisation, hybridisation, adaptation, mutation, localisation, transcoding, or translation.<sup>8</sup> This dissertation favours the latter, as it points to the dynamic nature of the circulation of ideas and the importance of domestic actors engaged in policy transfer as ‘norm takers’, selecting and indigenising anti-corruption instruments.

This last part of the dissertation seeks to understand how public interest registers and codes of conduct were indigenised by domestic actors in France and Sweden, and how Britain, albeit being a pioneer state, was affected by the transnational circulation of anti-corruption policy ideas. To that end, it borrows Patrick Hassenteufel et al.’s suggestion that policy translation should be analysed along three dimensions, including (i) a focus on actors, their agency and identity, bringing a ‘French touch’ to the analysis which takes the sociology of translators seriously;<sup>9</sup> (ii) a discursive and cognitive dimension, putting the focus on words, language, problem (re)formulation and coupling in Kingdon’s sense; and (iii) an institutional dimension, taking into account both the institutions into which policy ideas are introduced and those that shape policy actors’ worldview and perception of the problem.<sup>10</sup> Chapter 7 identifies transfer agents and translators at the national

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<sup>5</sup> LIBERMAN, Robert C. Ideas, institutions and political order: explaining political change. *American Political Science Review*, Vol. 90, n°4, 2002, pp. 691–712; CAIRNEY, Paul. The role of ideas in policy transfer: the case of UK smoking bans since devolution. *Journal of European Public Policy*, Vol. 16, n°3, 2009, pp. 471–488.

<sup>6</sup> HAY, Colin. *Op. cit.* 2004; BEDOCK, Camille. Les déterminants politiques de la fréquence des réformes démocratiques, 1990–2010. *Revue française de science politique*, Vol.64 no 5, 2014, pp. 929–954.

<sup>7</sup> SCHMIDT, Vivien A. *Op. cit.* 2008; HAY, Colin. *Op. cit.* 2008; SCHMIDT, Vivien A. *Op. cit.* 2010; BÉLAND, Daniel and COX, Robert (eds.) *Op. cit.* 2011; HAY, Colin. *Op. cit.* 2016; BELAND, Daniel. *Op. cit.* 2019.

<sup>8</sup> LASCOUMES, Pierre. Traduction. In BOUSSAGUET, Laurie (ed.) *Dictionnaire des politiques publiques*. Paris: Presses de Sciences Po, 2019, pp. 643–650; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. Convergence, transferts et traduction Les apports de la comparaison transnationale. *Gouvernement et action publique*, Vol. 3, n°3, 2013, pp. 377–393; STONE, Diane. Transfer and translation of policy. *Policy Studies*, Vol. 33, n°6, 2012, pp. 483–499;

<sup>9</sup> BOUSSAGUET, Laurie, JACQUOT, Sophie et RAVINET, Pauline (eds.) *Une "French touch" dans l'analyse des politiques publiques ?* Paris: Presses de Sciences Po, 2015; ANDERL, Felix. The myth of the local. *The Review of International Organizations*, Vol.11 n° 2, 2016, pp. 197–218.

<sup>10</sup> HAY, Colin. Constructivist Institutionalism. In BINDER, Sarah A., RHODES, R. A. W. and ROCKMAN, Bert A. *The Oxford Handbook of Political Institutions*. Oxford University Press, 2008; SCHMIDT, Vivien A. Discursive Institutionalism: The Explanatory Power of Ideas and Discourse. *Annual Review of Political Science*. Vol. 11, 2008, pp. 303–326; HAY, Colin. Ideas and the Construction of Interests. In BÉLAND, Daniel and COX, Robert (eds.) *Ideas and Politics in Social Science Research*. Oxford University Press, 2011.

level. It studies how they imported and reinterpreted the notion of conflict of interest and the idea that they can be prevented through registers and codes. It is interested in their resources and power struggles and how these were affected by successive events that eventually opened the policy window. Chapter 8 comes back to the idea that policy solutions can chase problems. It focusses on policy-makers and their discursive efforts to endogenize imported ideas and couple them with emerging salient problems. Lastly, Chapter 9 analyses the role of existing institutions, understood in a broad sense that includes norms, practices and representations, in translating policy ideas to make them *fit* the local context.

## Chapter 7. The role of ‘norm takers’ in the reception of transferred policy ideas

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[International institutions’ publications] are not what will enable a new public policy, or take extra steps in terms of regulation. But in times of crisis, when it was the moment to look for what to do, then yes one would look at the GRECO reports and the OECD *benchmarks* to say ‘they recommend this and that. We could go in that direction’ (...) They are rather resources that one can turn to elaborate new norms.

(Parliamentary clerk 2, National Assembly. Interview with author. April 5<sup>th</sup> 2019. Author’s own translation.)

If the source of a policy idea is to be found outside of national borders, how does it reach the domestic political system? As earlier chapters have shown, policy pioneers and international institutions engaged in the transnational anti-corruption community have shaped the ideational framework of corruption prevention and set a number of international standards, including financial disclosure systems and codes of conduct as ways to regulate conflicts of interest. This chapter shifts the point of focus to the reception of international policy ideas and global solutions by domestic policy actors. It thus looks at the adoption of public interest registers and codes of conduct in France and Sweden, since Britain is considered a pioneer in the field of conflict of interest regulation. In the absence of coercive forms of transfer, one can assume that the mere existence of international norms will not result in policy change at the domestic level, as suggested by the interviewee in the quote above. Cognitive and cultural factors come to play an important role in our understanding of the process that leads to policy change due to the transfer of ideas.<sup>1</sup> Such a perspective highlights the crucial role of the conditions that make an idea acceptable in a new context, before policy change actually occurs.<sup>2</sup>

While international policy ideas and global solutions guide domestic policy-makers, especially in a context of uncertainty about a ‘new’ problem and what to do about it, other factors contribute to bring them to the attention of policy-makers. Policy-makers indeed operate under

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<sup>1</sup> DUMOULIN, Laurence and SAURUGGER, Sabine. Les policy transfer studies : analyse critique et perspectives. *Critique internationale*, Vol. 48, n° 3, 2010, pp. 9-24.

<sup>2</sup> STONE, Diane. *Op. cit.* 2012, p. 489.



time pressure. This limits their ability to access and process all available information.<sup>3</sup> They need to be (made) aware of the problem and convinced that a particular approach is the ‘right thing’ to do.<sup>4</sup> Policy transfer scholars have identified a number of reasons why policy-makers might engage in policy transfer (outside from coercion). These include: their own dissatisfaction, public disquiet, perceived policy failure, political competition or legitimization of policy actions.<sup>5</sup> John W. Kingdon referred to ‘focusing events’ to describe the factors that create windows of opportunity for policy change. These comprise: crises, scandals, but also institutionalised events, such as elections, a change in government or the publication of new indicators.<sup>6</sup> The last part of the dissertation is interested in the journey of financial disclosure systems and codes of conduct from the global prescriptive framework against corruption to the political agenda in France and Sweden. It requires us to focus our attention on the often long and complex decision-making processes in and through which reforms were domesticated, involving various (governmental and non-governmental) actors and their interactions over time.<sup>7</sup>

This chapter is indeed interested in the actors who engage in policy transfer, and more specifically in the importation and reception of transferred ideas. Domestic policy-makers are not passive recipients or implementers of global policy solutions. They are political actors within the transfer process who select ideas to import, re-formulate them to fit the context and translate them into policy.<sup>8</sup> As Amitav Acharya argues, as much as international ‘norm brokers’, domestic ‘norm takers’ are necessary for the transnational diffusion of norms.<sup>9</sup> Focussing on the actors of transfer and their interactions makes it possible to overcome the limitations of an institutional perspective that might give too much attention to national differences while at the same time elucidating the

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<sup>3</sup> KINGDON, John W. *Agendas, Alternatives, and Public Policies*. Essex: Pearson 2d edition, 2014; ZOHLNHÖFER, Reimut and FRIEDBERT, Rüd W. *Decision-Making under Ambiguity and Time Constraints: Assessing the Multiple-Streams Framework*. London: Rowman & Littlefield International. 2016.

<sup>4</sup> RISSE, Thomas. “Let’s Argue!” Communicative Action in World Politics. *International Organization*, Vol. 54, n°1, 2000, pp. 1–35; BARNETT, Michael and FINNEMORE, Martha. *Op. cit.* 2004.

<sup>5</sup> DOLOWITZ, David and MARSH, David. *Op. cit.* 2000; BENSON, David and JORDAN, Andrew. *Op. cit.* 2011, pp. 369-370.

<sup>6</sup> KINGDON, John W. *Op. cit.* 2014.

<sup>7</sup> HASSENTEUFEL, Patrick. Chapitre 3 L’analyse décisionnelle. In *Sociologie politique : L’action publique*. Paris: Armand Colin. 2011, pp. 65-92; BRUCH, Elizabeth and FEINBERG, Fred. Decision-Making Processes in Social Contexts. *Annual Review of Sociology*, Vol. 43, pp. 207-227.

<sup>8</sup> CLAVIER, Carole. Les causes locales de la convergence. La réception des transferts transnationaux en santé publique. *Gouvernement et action publique*, Vol. 2, n° 3, 2013, pp. 395-413.

<sup>9</sup> ACHARYA, Amitav. How ideas spread: Whose norms matter? Norm localization and institutional change in Asian regionalism. *International organization*, Vol. 58, n°2, 2004, 239-275.

mechanisms and processes through which the transfer of instruments to regulate conflicts of interest actually happened in these cases.

The following sections tell the story of the context, circumstances and actors that led policy-makers in France and Sweden to adopt policy instruments invented in the Anglosphere. It focusses on the chain of events leading from the import of the policy ideas by domestic actors to their translation into policy instruments. Based on an analysis of parliamentary debate transcripts, administrative documents, grey literature, media archives and interview material, this chapter compares the process that led from the transfer of ideas to policy change in France and Sweden (Section 7.1). It then identifies the actors of policy transfer and translation in the two countries that allowed ideas about conflicts of interest regulation to circulate across borders, to understand their institutional and ideational background as well as their reasons for importing global solutions (Section 7.2).

## **7.1. From international standards to national policy: a comparison of Sweden and France's reception of registers and codes**

To understand how foreign policy ideas were turned into national policy in France and Sweden, this section uses a chronological perspective tracing the process that led from ideas being imported to their translation into national policy instruments. For that purpose, I borrow the method employed by urban studies scholars interested in policy mobility, who 'follow the policy' to trace its circulation and understand through which institutions ideas passed and by which actors they were transformed along their journey. As Astrid Wood presents it, this method allows one to "track the interactions between actors and institutions across space and time (...) retroactively from the adoption process back to the initial learning."<sup>10</sup> Sweden adopted its voluntary interest register in 1996 and introduced a code of conduct in the parliament in 2017. While it took several decades in Sweden to turn imported ideas into policy, the process was much faster in France where these instruments were introduced between 2010 and 2014. This section thus looks at the actors who made the circulation of ideas possible, the institutions in which they are embedded and the context of policy transfer.

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<sup>10</sup> WOOD, Astrid. Tracing Policy Movements: Methods for Studying Learning and Policy Circulation. *Environment and Planning A: Economy and Space*, Vol. 48, n° 2, 2016, p. 395.

### **7.1.1. 1970s-2010s: towards ethics regulation in the Swedish Parliament**

Sweden is a case in which the introduction of a public interest register (in 1996) and of a code of parliamentary conduct (in 2017) were separated by two decades, almost exactly as in the British case, where these instruments were adopted respectively in 1974 and 1995. The idea of introducing a code of conduct however emerged already in the late 1980s. It had long been considered as ‘unnecessary’ by policy-makers.<sup>11</sup> The adoption of a public interest register was slightly faster, with the first parliamentary proposals regarding financial disclosure emerging in the late 1970s. Yet, once accepted as desirable internationally, the adoption of the public interest register went faster, the instrument having been ‘tested’ in influential policy ‘pioneers’. The codification of ethics on the other hand remained an internal prerogative of political parties until the Council of Europe recommended that the parliament introduce its own code.

The very first attempts to formalise ethical rules in the Swedish Parliament and to make elected representatives declare their economic interests happened in the late 1970s, shortly after the US Congress and the German Federal Republic’s Bundestag had adopted their parliamentary codes of conduct (respectively in 1968 and 1972) and Britain had introduced a mandatory interest register in 1974. A first parliamentary motion presented in 1977 by two Liberal MPs, Per Gahrton and Bonnie Bernström (*Folkpartiet*) who proposed an official examination of the economic situation and sources of wealth of board members of large companies, high-level civil servants and political decision-makers, through a system of written declarations.<sup>12</sup> The same two MPs moved another motion in 1979 with a narrower focus on the private economy of decision-makers.<sup>13</sup> Proposed one year after the adoption of the US Ethics in Government Act of 1978, this motion was most certainly inspired by it, as it provides details on the provisions of the new American parliamentary ethics system. These motions were both rejected.

The topic of parliamentary ethics re-emerged in the 1990s. If the 1980s was a quiet decade with regards to parliamentary ethics reform, it was one of great change in other domains. During that period, Sweden experienced a significant economic downfall and the social-democratic

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<sup>11</sup> Sveriges riksdag. Konstitutionsutskottets betänkande 1992/93:KU09. November 24th 1992; Sveriges riksdag. Konstitutionsutskottets betänkande 1990/91:KU01. October 9th 1990; Sveriges riksdag. Konstitutionsutskottets betänkande. 1989/90:KU12. November 14th 1989.

<sup>12</sup> Sveriges riksdag. Motion 1976/77:1007 av herr Gahrton och fru Bernström om en utredning rörande höginkomst- och maktavargruppernas levnadsförhållanden. 25 January 1977.

<sup>13</sup> Sveriges riksdag. Motion 1978/79:1092 av Per Gahrton och Bonnie Bernström om ökad offentlighet kring beslutsfattares ekonomi. 25 January 1979.

government, having been defeated for the first time in over 40 years, introduced a large reform package inspired by new public management theory (NPM).<sup>14</sup> The populist right-wing party, Ny Demokrati (New Democracy), was established and progressively gained popularity during the 1980s, and obtained 25 seats in parliament in the 1991 elections. According to political actors themselves, it was a time of increasing public anxiety over social changes, growing inequalities and politicians' trustworthiness.<sup>15</sup> This loss of public confidence in politicians was quantified and made visible by academic research.<sup>16</sup> These new indicators were repeatedly used by MPs pushing for the formalisation of political ethics.<sup>17</sup> An MP interviewed in the framework of this research understood the problem of growing distrust as being linked to the changing political culture, with the rise of a populist discourse and unrealistic campaign promises. The MP interpret the focus on the economic dimension of political ethics as a way to be seen to 'do something' about what could be seen as the manageable part of an intractable problem:

I am most interested in the bigger ethical issues [populist discourse, demagoguery, foul language and political lies], not so much in money and representation. But they [the latter] need to be dealt with since it is also a source of distrust. But the rest: to get an honest and clear political debate... The issues that relate to the use of money and travels are concrete. One can do something about it. But the rest: how one expresses oneself, what one promises, populism etc., those issues are much harder to solve.<sup>18</sup>

A series of scandals involving members of the government and parliament were revealed by the media in the 1980s and 1990s,<sup>19</sup>. These included the 'Toblerone scandal' described below and

<sup>14</sup> SUNDSTRÖM, Göran. Administrative Reform. In PIERRE, Jon (ed.) *The Oxford Handbook of Swedish Politics*, Oxford University Press, 2015.

<sup>15</sup> Former member of the Swedish Parliament (SWMP2). Phone interview with author. May 23<sup>rd</sup> 2017; Socialdemokraterna. Öppenhet, Tydlighet, Rimlighet. En rapport om insatser mot fallskärmar, fiffel och fusk. Stockholm, 1997.

<sup>16</sup> HOLMBERG, Sören and GILLJAM, Mikael. *Väljare och val i Sverige*. Stockholm: Liber, 1987; ÖSTERMAN, Torsten. *Förtroende för politiker – En rapport om allmänhetens attityd till politiker 1973-1980*. Psykologiskt försvar n°107. Stockholm: Liber, 1981.

<sup>17</sup> KINZER, Stephen. Stockholm Journal; The Shame of a Swedish Shopper (a Morality Tale). *New York Times*, November 14<sup>th</sup> 1995; Westerholm, Barbro and Zetterberg, Eva. Vi politiker måste själva agera för att återvinna människors förtroende! Article prepared for Etik i politiken, sent by Barbro Westerholm, probably dated 1995. This article is stored in Barbro Westerholm's personal archive. It is not dated but the information it contains suggests that it was written in 1995; ANDERSSON, Ingrid, BROHULT, Johan, DALEUS, Lennart, HEGELAND, Hugo, PÅLSSON, Chatrine, WESTERHOLM, Barbro and ZETTERBERG, Eva. Etik i politiken. Utkast Debattskrift. Sundsvall (SW), 1992.

<sup>18</sup> Former member of the Swedish Parliament (SWMP2). Phone interview with author. May 23<sup>rd</sup> 2017.

<sup>19</sup> Westerholm, Barbro and Zetterberg, Eva. Vi politiker måste själva agera för att återvinna människors förtroende! Article prepared for Etik i politiken, sent by Barbro Westerholm, probably dated 1995. This article is stored in Barbro Westerholm's personal archive. It is not dated but the information it contains suggests that it was written in 1995; ANDERSSON, Ingrid, BROHULT, Johan, DALEUS, Lennart, HEGELAND, Hugo, PÅLSSON, Chatrine, WESTERHOLM, Barbro and ZETTERBERG, Eva. Etik i politiken. Utkast Debattskrift. Sundsvall (SW), 1992.

contributed to bringing the ‘manageable’ part of the issue of political ethics to the attention of the public and policy-makers. The government was first to adopt rules regarding conflict of interest regulation, notably the publication of ministers’ holdings of stocks and shares and the obligation to recuse oneself in a situation of a conflict of interest, were adopted for cabinet ministers before they applied to MPs. When Carl Bildt’s centre-right government was formed in 1991, there were concerns about ministers holding shares in companies whose sector these ministers could impact through their decisions. In 1991, the government thus set up an ethics committee to provide council to ministers and in 1992 ministers’ economic relationships started to be scrutinised by the Parliament’s constitutional committee (*Konstitutionsutskottet*).

The Social Democratic party created a working group on ethics in 1996. This working group declared that these events revealed “a previously unknown culture, in which politicians, business representatives and other power holders have used their position to legally or illegally line their own pockets”.<sup>20</sup> During the 1990s, the movement towards formalisation of political ethics indeed started within parties. Most of them developed their own rules regarding gifts, travels, private interests, and even broader ethical issues such as political honesty.<sup>21</sup> According to a former MP, one of the triggers had been revelations about the ‘golden parachutes’ received by some politicians from the Social Democratic party, which had generated public outrage. They framed the initiative to set up an working group within the party as a way to “calm the situation”.<sup>22</sup> During a party leaders’ debate in 1996, the leader of the Christian-democrats, Alf Svensson, mocked this trend saying that he found it ‘touching’ to see political parties establishing ethics committees, dismissing what we essentially saw as ‘technical solutions’ and ‘social engineering’ to the problem of corruption and dishonesty.<sup>23</sup> The Greens had for instance taken example on the American system of financial disclosure and made its top candidate disclose information about their private interests ahead of elections.<sup>24</sup>

In parallel to these initiatives internal to political parties, numerous parliamentary motions were tabled in the early 1990s. These are summarised in Table 14. In addition to concerns about

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<sup>20</sup> Socialdemokraterna. Öppenhet, Tydlighet, Rimlighet. En rapport om insatser mot fallskärmar, fiffel och fusk. Stockholm, 1997.

<sup>21</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17th 2017; Former member of the Swedish Parliament (SWMP2). Phone interview with author. May 23<sup>rd</sup> 2017.

<sup>22</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17th 2017.

<sup>23</sup> Sveriges riksdag. Riksdagens snabbprotokoll. Protokoll 1995/96:110, June 12th 1996.

<sup>24</sup> Sveriges riksdag. Etiska normer för politisk verksamhet. Motion till riksdagen 1990/91:K22 av Per Gahrton (mp). January 21<sup>st</sup> 1991.

the growing distrust in politicians, the problem highlighted in most motions touched on the risk of conflicts of loyalty, conflicts of interest and outside influence on political decision-making, especially with regards to decision-makers' stocks and shares. The parliamentary motions demonstrate a growing concern, since the 1970s when the first attempts to regulation were made, regarding the risks of elected representatives not having the public interest in mind due to their private interests. These legislative initiatives were initially rejected by the parliament's constitutional committee, which argued that it was up to political parties to ensure that their candidates were trustworthy and that most of the information that should enter the register was already made available to the public, making an interest register for MPs redundant.<sup>25</sup> The issue was thus left for political parties to deal with internally.

Table 14. Chronology of legislative initiatives to formalise political ethics in Sweden

Motion	Subject	Carried by
1976/77:1007 25 January 1977	Inquiry of the standard of living of high income-takers and decision-makers	Per Gahrton och Bonnie Bernström ( <i>Folkpartiet</i> )
1978/79:1092 25 January 1979	Increased insight into the economy of decision-makers	Per Gahrton och Bonnie Bernström ( <i>Folkpartiet</i> )
1989/90:K813 25 January 1990	Mapping of other democracies' ethical rules	Per Gahrton ( <i>Miljöpartiet</i> )
1989/90:K226 19 January 1990	A handbook on ethics for politicians	Hugo Hegeland ( <i>Moderaterna</i> )
1989/90:K807 25 January 1990	Ethical values in society	Ulla Tillander et al. ( <i>Centerpartiet</i> )
1989/90:K257 25 January 1990	Ethics and politics	Karl Erik Olsson och Pär Granstedt ( <i>Centerpartiet</i> )
1990/91:K214 15 January 1991	A handbook on ethics for politicians	Hugo Hegeland ( <i>Moderaterna</i> )
1990/91:K223 21 January 1991	Ethical norms for political activities	Per Gahrton ( <i>Miljöpartiet</i> )
1990/91:K249 25 January 1991	Ethics in politics	Barbro Westerholm ( <i>Folkpartiet</i> )
1991/92:K306 22 January 1992	Registration of MPs' economic interests	Eva Zetterberg, Johan Lönnroth ( <i>Vänsterpartiet</i> )
1992/93:K309 22 January 1993	Registration of MPs' economic interests	Eva Zetterberg, Johan Lönnroth, Bengt Hurtig ( <i>Vänsterpartiet</i> )
1993/94:Ub653 24 January 1994	Research on political ethics	Barbro Westerholm ( <i>Folkpartiet</i> ), Hugo Hegeland ( <i>Moderaterna</i> ), Lennart Daléus ( <i>Centerpartiet</i> ), Chatrine Pålsson ( <i>Kristdemokraterna</i> ), Eva Zetterberg ( <i>Vänsterpartiet</i> )
1993/94:K807 24 January 1994	Ethics in politics	Barbro Westerholm ( <i>Folkpartiet</i> ), Hugo Hegeland ( <i>Moderaterna</i> ), Lennart Daléus ( <i>Centerpartiet</i> ), Chatrine

<sup>25</sup> Sveriges riksdag. Konstitutionsutskottets betänkande 1992/93:KU09. November 24th 1992; Sveriges riksdag. Konstitutionsutskottets betänkande 1990/91:KU01. October 9th 1990; Sveriges riksdag. Konstitutionsutskottets betänkande. 1989/90:KU12. November 14th 1989.

		Pålsson ( <i>Kristdemokraterna</i> ), Eva Zetterberg ( <i>Vänsterpartiet</i> )
1993/94:K309 24 January 1994	Public registration of MPs' economic interests and assignments	Eva Zetterberg ( <i>Vänsterpartiet</i> ), Inger Lundberg ( <i>Socialdemokraterna</i> ), Barbro Westerholm ( <i>Folkpartiet</i> )

Many motions were presented by the same MPs representing most parties present in parliament,<sup>26</sup> with the notable exception of the Social Democrats (who nevertheless were the only ones, together with an MP from *Vänsterpartiet*, to oppose the rejection of this proposal by the Constitutional Committee in 1992).<sup>27</sup> In 1991, an informal cross-party working group on ethics in politics was set up. The group regularly published articles on the topic to raise their colleagues' awareness and exchanged with their peers abroad, especially in the US Congress. These MPs were behind most of the parliamentary initiatives in the 1990s. These motions were presented in a period of change in political leadership from Ingvar Carlsson's Social Democratic government (1986-1991) to Carl Bildt's centre-right government (1991-1994), with a return of a Social Democratic government in 1994. Motion 1993/94:K309 proposing the introduction of a public interest register sponsored for the first time by an MP from the Social Democratic party (then in opposition) was eventually moved forward by the constitutional committee. In May 1994, acknowledging the new broad support for interest declarations for MPs, it asked the parliamentary administration to explore the issue of interest registers and report its findings and proposals to the parliament.<sup>28</sup>

After the 1994 election, the new parliamentary leadership and the party group leaders were presented with a memorandum containing examples of policy examples from other countries. They decided that the issue should be developed further by a parliamentary working group.<sup>29</sup> The latter presented its results on June 2nd 1995 suggesting the introduction of voluntary register of economic interests.<sup>30</sup> In August 1995, Prime Minister Ingvar Carlsson declared that he wished to step down. Mona Sahlin, Minister of equality and Deputy Prime Minister, was expected to replace him until the 'Toblerone scandal' was revealed by the newspaper *Expressen* in October 1995.<sup>31</sup> It concerned allegations of misuse of her professional credit card for personal purchases. The Finance

<sup>26</sup> Chapter 8 provides a thorough analysis of the actors carrying these policies at the national level.

<sup>27</sup> Sveriges riksdag. Konstitutionsutskottets betänkande 1992/93:KU09. November 24th 1992.

<sup>28</sup> Konstitutionsutskottets betänkande. 1993/94:KU18. Reformera riksdagsarbetet. May 31st 1994.

<sup>29</sup> Sveriges riksdag. Handläggning av förvaltningskontorets uppdrag att utreda det praktiska frågorna kring ett register av riksdagsledamöters ekonomiska intressen. Dnr 10-732-94/95. 20 December 1994.

<sup>30</sup> Sveriges riksdag. Arbetsgruppens rapport. 1995/96:RFK2.

<sup>31</sup> KINZER, Stephen. Stockholm Journal; The Shame of a Swedish Shopper (a Morality Tale). *New York Times*, November 14th 1995; MARILIER, Lou. From abroad - In Sweden, transparency without obstruction. *Émile*, April 24th 2017.

Minister Göran Persson was then selected to replace Carlsson and became Prime Minister on March 22d 1996. Motion 1993/94:K309 was finally enacted on June 19<sup>th</sup> 1996 (Law 1996:810), by acclamation (without a vote), and a voluntary public interest register was introduced on September 1<sup>st</sup> 1996.

The issue of rendering registration mandatory was brought up relatively fast, with two motions tabled in 2000. Following an article in the newspaper *Svenska Dagbladet* revealing that a fifth of MPs did not register their interests, Bengt Sifverstrand, Social Democratic MP, proposed to make them mandatory in motion 2000/01:K243. With the same argument, Eva Zetterberg, formerly an active member of the cross-party group on political ethics and Deputy Speaker of the Parliament since 1998, and Kenneth Kvist (both from the Left party) presented motion 2000/01:K361. In 2001, Bengt Sifverstrand reiterated his attempt to make the register mandatory (motion 2001/02:K329), without success. It is only in November 2005, less than a year before the next election, that the parliamentary leadership decided to seize the issue and commissioned a study on interest registration to Justice of the Supreme Court Per Virdesten. The latter assessed compliance with Law 1996:810, finding that in 2006, about 75% of MPs registered their interests on a voluntary basis. With the help of a team of parliamentary clerks, he studied other Swedish institutions, the Nordic, British and European Parliaments, and suggested that interest registration should be made mandatory for parliamentarians.<sup>32</sup> The new legislature elected in September 2006 modified the 1996 law in January 2008, with the adoption of Law 2008:38 by acclamation, making the registration of economic interests mandatory.

The instrument was last modified in 2016, when the code of parliamentary conduct was adopted. While almost all motions tabled in the 1990s made reference to foreign policy practices, mainly taking inspiration from the American, British or other Nordic examples, the decision to introduce a code of conduct was even more explicitly linked to the work of transnational policy community, described in previous chapters. While political parties had formalised ethical norms internally and the idea had been floating in parliament since in the early 1990s (see Table 14), it was only in December 2016 that the parliamentary leadership and leaders of political groups finally turned it into policy. A parliamentary working group, led by Susanne Eberstein, Deputy Speaker of the Parliament, was set up in November 2013, in which all parties in parliament were

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<sup>32</sup> VIRDESTEN, Per. Registrering av riksdagsledamöternas åtaganden och ekonomiska intressen. Stockholm: Riksdagstryckeriet. 2006.

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represented, to explore the conditions and possibilities to introduce a code of conduct in the Swedish Parliament. The report summarizing the activities and recommendations of the working group, published in October 2014, established a direct relation between the decision to set up the working group on the issue and the publication of the Council of Europe's evaluation report on the prevention of corruption in the Swedish Parliament in November 2013. As shown in Chapter 2, parliamentary clerks played the role of catalyst here, since they were the ones who monitored external publications concerning the parliament, warning the its leadership about the upcoming publication recommending the adoption of a code of conduct.<sup>33</sup>

In its recommendations, the final report of the working group exclusively refers to foreign sources of information (mainly GRECO, OSCE and other Nordic countries). More specifically regarding Nordic countries, the report indicates that the working group not only studied how neighbouring countries had formalised ethics but also how they had handled the recommendations made by GRECO.<sup>34</sup> This suggests that policy-makers consider the inadequacy of the Swedish system with international standards as the problem to tackle (a point Chapter 8 will return to). A parliamentary clerk indeed mentioned during an interview that the recommendation of a code of conduct did not only concern Sweden and that "GRECO was fond of this tool ... it was a bit trendy maybe".<sup>35</sup> The working group finished its mission right before the parliamentary election of September 2014. All the members of the working group were re-elected so they could collectively hand in their final report in October 2014.

It took two years for the proposal formulated by the working group to be turned into policy due partly to the change of leadership in parliament. A parliamentary clerk indicated that it was a conscious decision on the part of the working group and parliamentary leadership to leave it to the new parliament to enact the code, to give it more legitimacy.<sup>36</sup> A member of parliament however argued that the new parliamentary leadership was less interested in the idea of the code than the

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<sup>33</sup> As described in Chapter 6, all GRECO evaluation reports need to be accepted by the organisation's member-state representatives. The Swedish delegation was thus aware of the conclusions before the report was published. Moreover, all evaluations include a self-evaluation and in-country visits. Parliamentary clerks could thus certainly envisage the 'shortcomings' that the evaluation report would point to. The empirical data that I gathered does not allow me to affirm how the clerks were informed of the content of the report in advance, but it is plausible that the information could have come from the diplomatic delegation or from clerks having taken part in the evaluation process.

<sup>34</sup> Sveriges riksdag. En uppförandekod för ledamöterna i Sveriges riksdag. Slutrapport. Stockholm. 2014, p. 6.

<sup>35</sup> Parliamentary clerk, Swedish Parliament (SWPC1). Phone interview with author. May 30<sup>th</sup> 2017.

<sup>36</sup> *Ibid.*

previous one.<sup>37</sup> Moreover, the working group's recommendation required to revise Law 1996:810 to include debts in the list of items to register and to create a gift register, which the working group and parliamentary leadership thought should be done before introducing a code.<sup>38</sup> In October 2015, parliamentary leadership asked the administration to investigate the issue of gifts and debts registration and, based on the information collected, put proposal 2015/16:RS6 to the constitutional committee.<sup>39</sup> Law SFS 2016:1118 was adopted on November 16<sup>th</sup> 2016, without any controversy in parliament or attempts to amend the bill. The four MPs who expressed themselves on this matter were all members of the constitutional committee who backed the proposal and justified it by making reference to the Council of Europe's recommendation (with the exception of the MP from the Sweden Democrats who did not present the code as an imported idea).<sup>40</sup>

The adoption of a public interest register and a code of conduct to regulate parliamentarians' conflicts of interest is the result of incremental change, from the transfer, from policy pioneers, of the idea that parliamentarians' private interests could constitute a risk of corruption and that ethical norms should be codified, to their translation into policy. Overall, the process took four decades, from the first parliamentary initiatives to the moment the code was officially introduced. While the policy ideas were imported from the Anglosphere and later from international institutions, the policy-making process, following the transfer of ideas, remained largely internal to the parliament, with relatively little mediatisation. The political scandals of the 1990s certainly opened the window of opportunity for the public interest register to finally be enacted, but compared to their British or French counterparts, Swedish policy-makers did not adopt these reforms under heavy public pressure, as the next section shows. Chapter 8 will demonstrate that this contextual difference mattered for the type of regulation that was put in place in the three parliaments.

### **7.1.2. France: policy-making under pressure in an “unchartered territory”**

Contrary to Sweden where the journey from transfer of idea to policy implementation took over two decades during which the policy ideas were circulated, reinterpreted and legitimised, in France the timeframe from import to adoption was much shorter. Indeed, only three years passed from the emergence of conflicts of interest in the public debate (an “unchartered territory” for the

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<sup>37</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17<sup>th</sup> 2017.

<sup>38</sup> Parliamentary clerk, Swedish Parliament (SWPC1). Phone interview with author. May 30<sup>th</sup> 2017.

<sup>39</sup> The administration's memorandum was made available for consultation and comments under the name dnr 133-2015/16.

<sup>40</sup> Sveriges riksdag, Riksdagens protokoll 2016/17:29. November 16<sup>th</sup> 2016, pp. 30-32.

country according to an interviewee<sup>41</sup>) to the adoption of a code of conduct and a public interest register. Another difference, probably related to the short timeframe, is that these instruments were introduced in the National Assembly as a unique policy (interest registration being part of the obligations of the code of conduct), before being separated with the adoption of the 2013 laws on transparency in public life (n° 2013-906 and n° 2013-907). France experienced a wave of anti-corruption reforms from the late 1980s,<sup>42</sup> with the introduction of an obligation to declare assets in 1988 (Law n°1988-227). The idea that elected representatives could face conflicts of interest however only emerged in the 2010s. As suggested in the introductory quote, successive political scandals convinced policy-makers to draw from the ‘policy primeval soup’ cooked up by the transnational policy community to regulate their own conflicts of interest.

The notion of conflict of interest and the idea to prevent them through written declarations were initially transferred to France through the public health sector. Following a series of dramatic public health scandals in the 1980s and 1990s, including the contaminated blood scandal, the growth hormone scandal and the asbestos scandal,<sup>43</sup> a number of measures were taken to safeguard the independence of medical expertise.<sup>44</sup> The Mediator scandal, which concerned an amphetamine-derived pill prescribed as an appetite-suppressant that was revealed in 2009 to cause severe heart problems, also contributed to raise public awareness about conflicts of interest.<sup>45</sup> In 1995, the newly created Medicine Agency (*Agence du médicament*) imposed a declaration of interest, especially regarding connections with the pharmaceutical industry, onto its experts. Martin Hirsch (Box 13), an important figure of the Ministry of Health during these public health crises played a pivotal role in transferring the policy innovation developed in the public health sector to the political world.

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<sup>41</sup> Professor of public law 1 (FREX1). Interview with author. December 20<sup>th</sup> 2017.

<sup>42</sup> GAMGANI, Lisa and de TONNAC, Aurélia. Des dispositifs évolutifs pour la prévention de la corruption. *Revue française d'administration publique*, forthcoming; PHELIPPEAU, Eric. *L'argent de la politique*. Paris: Sciences Po Les Presses, 2018.

<sup>43</sup> These public health scandals all revealed a lack of control and suspicions regarding the independence of health experts involved. (i) The contaminated blood scandal was exposed by Anne-Marie Casteret in *L'événement du jeudi* in an article where she demonstrates that the Centre for blood transfusion had knowingly transfused HIV-infected blood to thousands of hemophiliacs, causing many of them to be infected by the disease. (ii) The growth hormone scandal concerns the treatment of children suffering from growth issues with a growth hormone taken from human cadavers despite the therapeutic use of the product having been banned, not to waste the existing stock. Over a hundred people died from the consequences of the treatment, notably from the Creutzfeldt-Jakob disease. The asbestos scandal touches upon the delay between the first studies about the consequences of inhaling asbestos, in the 1940s – its link to cancer being affirmed by the International Agency for Research on Cancer in 1973, and the government's decision to ban the product in 1997.

<sup>44</sup> In 1993, Law 93-5 created the Medicine Agency (*Agence du médicament*) and the French Blood Agency (*Agence française du sang*), and the EU Directive 92/28/CEE is transposed into French law by the “anti-gift” Law 93-121.

<sup>45</sup> MULLARD, Asher. Mediator scandal rocks French medical community. *The Lancet*, Vol. 377, n° 9769, 2011, pp. 890-892.

He writes in his book on conflicts of interest published in 2010 (that he dedicated to Anne-Marie Casteret who exposed the contaminated blood scandal), that “the transposition to decision-makers of what applies to experts is utterly relevant”.<sup>46</sup> Through his position between the public health sector and politics, Hirsch not only pushed for the translation of initiatives from the public health sector to the political world, he also helped to transfer international standards into the French system. In the last three chapters of his book, he presents recommendations from the OECD, the Council of Europe and Transparency International and existing practices from Canada. His willingness to import international best practices is made explicit in the title of his book’s tenth chapter “When a simple reading of international reports gives the instruction manual”.<sup>47</sup>

A first window of opportunity opened in the late 2000s for conflict of interest regulation. A number of scandals accumulated in 2009 and 2010, which raised the issue on the public agenda. The creation of the online investigative journal, *Mediapart*, in 2008, by Edwy Plenel (the former editor-in-chief of *Le Monde*), François Bonnet (*Libération* and *Le Monde*), Laurent Mauduit (*Libération* and *Le Monde*) and Gérard Desportes (*Libération*), contributed to opening this window of opportunity.<sup>48</sup> The political scandal most often cited as the supposed trigger of governmental action concerns the relationship between Éric Woerth, then Minister of Labour, and Liliane Bettencourt, then one of the principal shareholders of L’Oréal.<sup>49</sup> When the scandal was revealed by *Mediapart* in 2010, Éric Woerth was indeed Minister of Labour, after having held the position of Minister of Budget and Public Accounts from 2007 to 2009. He was also the treasurer of his political party, the Union for a Popular Movement (UMP). The revelation of the Ministers’ possible conflict of

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<sup>46</sup> HIRSCH, Martin. *Pour en finir avec les conflits d'intérêts*. Paris: Stock. 2010, p. 62.

<sup>47</sup> *Ibid.* p. 115. Authors’ own translation.

<sup>48</sup> It is beyond the scope of this dissertation to analyse the evolution of journalism practice, towards more investigative journalism and more recently networked data journalism such as the International Consortium of Investigative Journalists (ICIJ). The evolution of the journalistic field and the emergence of actors dedicated to scrutinising power-holders, such as *Mediapart*, contributed to mediatise the issue of corruption, and, as we will see now, to raising it on the political agenda. For an overview of the history of investigative journalism, see SCHRIFIN, Anya. *Global Muckraking: 100 Years of Investigative Journalism from Around the World*. New York: The New Press, 2014; HUNTER, Mark Lee (ed.) *The Global Casebook of Investigative Journalism*. London: Centre for Investigative Journalism, 2012. On the French case, see MARCHETTI, Dominique. 8 Le journalisme d’investigation. In GARRAUD, Philippe and BRIQUET, Jean-Louis. *Juger la politique : Entreprises et entrepreneurs critiques de la politique*. Rennes : Presses universitaires de Rennes, 2002. For an analysis of the emergence of collaborative investigative journalism, see CARSON, Andrea and FERHALL, Kate. Understanding Collaborative Investigative Journalism in a “Post-Truth” Age. *Journalism Studies*, Vol. 18, n°13, 2019, pp. 1899-1911.

<sup>49</sup> JAXEL-TRUER, Pierre and ROGER, Patrick. Où commencent les conflits d'intérêts ? *Le Monde*, September 4th 2010; ROGER, Patrick. Pour prévenir les conflits d'intérêts, les députés auront un « déontologue ». *Le Monde*, April 7th 2011; PHELIPPEAU, Éric. *Système national d'intégrité le dispositif français de transparence et d'intégrité de la vie publique et économique*. Paris: Transparency International France, 2011; VAUCHEZ, Antoine (ed.) *Rapport final de recherche Un champ de la régulation publique indépendante ? Acteurs, registres de justification et formes d'autorité politique des agences de régulation en France*. Numéro du rapport : 216.10.12.20. Paris, 2019.

interest, linked to suspicions regarding the finances of the 2007 elections, put President Nicolas Sarkozy in a delicate situation.<sup>50</sup> *Mediapart* published its first articles incriminating Éric Woerth in June 2010, to which President Sarkozy rapidly reacted by setting up a commission to formulate proposals on conflict of interest prevention, in September 2010, writing in his mission letter that “recent events have shown that, even without violating the law and, more importantly, in the absence of a trade-off or search of a trade-off, certain situations (...) can lead to doubts regarding the impartiality of public action...”<sup>51</sup> This shows that the scandal contributed to make him set up this special commission, while he highlights that the problem is not that there might be conflicts of interest, but that the public questions the integrity of policy-makers.

The commission, chaired by Jean-Marc Sauvé, vice-president of the Council of State, supported by Didier Migaud, First President of the Supreme Audit Institution (*Cour des comptes*) and Jean-Claude Magendie, former First President of the Appeal Court of Paris, was the first official attempt to translate the idea of conflict of interest regulation into policy targeting government officials and high-level civil servants. President Sarkozy had explicitly requested that the commission take into consideration the “experience of great democratic countries”, and Jean-Marc Sauvé was eager to see France catch up with the “preventive turn” taken by other countries and promoted by international institutions.<sup>52</sup> It is noticeable that in the French context the word used by policy-makers is ‘prevention’ and not ‘regulation’ (even when what they promote is actually conflict of interest regulation), which reflects the country’s previous approach to conflicts of interest (before they were labelled as such) based on *preventing* them through bans and incompatibilities, rather than *disclosing* them (Chapters 1 and 9).<sup>53</sup> They conducted 69 interviews with promoters of ethics reforms and conflict of interest regulation, such as Martin Hirsch, Robert Badinter (who suggested the creating of the Senate’s ethics commission and was its first chairman), Pierre Rosanvallon, Yves Mény, François Bayrou or François de Rugy, as well as representatives from the two main anti-corruption NGOs, Anticor and Transparency International France (TI

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<sup>50</sup> SAMUEL, Laurent. Les liens troubles des époux Woerth avec Liliane Bettencourt. *Le Monde*, June 17th 2010; Système Sarkozy corrompu: Aubry soutient Royal. *L'Express*, July 1st 2010; WAKIM, Nabil. L'Élysée dépassé par l'affaire Bettencourt. *Le Monde*, July 6th 2010; Les réactions à l'aveu d'Eric Woerth sur son intervention dans le dossier Maistre. *Challenges*, September 3rd 2010.

<sup>51</sup> SARKOZY, Nicolas. Lettre de mission. Paris: Présidence de la République, September 8th 2010, published in Commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique (Commission Sauvé). Pour une nouvelle déontologie de la vie publique. Rapport remis au Président de la République le 26 janvier 2011, pp. 107-108.

<sup>52</sup> *Ibid.*

<sup>53</sup> BOLLEYER, Nicole and SMIRNOVA, Valeria. *Op. cit.* 2017.

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France).<sup>54</sup> The commission's report, presented to President Sarkozy in January 2011, suggests that its work was indeed quite inspired by the OECD's work on conflicts of interest. The commission makes an exhaustive list of proposals to prevent conflicts of interest, as indicated in Box 10.

Box 10. Examples of proposals made by the Sauvé Commission

1. Include a definition of "conflict of interest" in law as well as an obligation to resolve any conflict of interest and to act with integrity, impartiality and objectivity;
2. Develop a code of conduct for each administrative structure and for the government;
3. Create an obligation to recuse oneself in case of conflict of interest;
4. Create an obligation to declare one's interests, applicable to a number of high-level government officials and civil servants;
5. Create an obligation, for high-level government officials and collaborators, to place financial assets in a blind trust;
6. Extend incompatibility rules for members of government; extend rules on the accumulation of functions; harmonise incompatibility rules etc.
7. Adapt the repressive rules to new preventive rules;
8. Ban expensive gifts and create an obligation to declare gifts over 150€;
9. Include best practices on how to relate to lobbyists in code of conduct and encourage the creation of lobby registers in each administration;
10. Better control high-level public officials' assets;
11. Create mechanisms to allow officials to report any risks of wrongdoing;
12. Create an Authority for the ethics of public life (*Autorité de déontologie de la vie publique*) and a network of ethics commissioners
13. Include penal sanctions for ignoring the recommendations of the Authority;
14. Create ethics trainings for the administrative schools and for the public administration.<sup>55</sup>

The work of the commission happened in parallel to other governmental initiatives. In March 2011, François Fillon decided to require ministers to declare their private interests. The government also strengthened the existing system of asset declarations, with the adoption of Law n° 2011-412 on April 14<sup>th</sup> 2011, which provided for more severe sanctions for omitting to declare one's assets and broadened the prerogatives of the *Commission pour la transparence financière de la vie politique* (CTFVP).<sup>56</sup> Regarding the prevention of conflicts of interest, the Sauvé Commission's report led to two legislative bills: one from the political majority, presented by François Sauvadet,

<sup>54</sup> Interviews were conducted with elected officials, representatives from different administration and profession, local government, political parties, unions, as well as experts, academics, civil society organisations (Transparency International and Anticor) and international institutions (OECD and European Commission) can be found here: Commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique (Commission Sauvé). Pour une nouvelle déontologie de la vie publique. Rapport remis au Président de la République le 26 janvier 2011, pp. 109-113.

<sup>55</sup> Commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique (Commission Sauvé). Pour une nouvelle déontologie de la vie publique. Rapport remis au Président de la République le 26 janvier 2011, pp. 114-118.

<sup>56</sup> Loi n° 2011-412 du 14 avril 2011 portant simplification de dispositions du code électoral et relative à la transparence financière de la vie politique. JORF n°0092, April 19th 2011, p. 6831; PHELIPPEAU, Éric. *L'argent de la politique*. Paris: Presses de Sciences Po, 2018.

Minister of the Civil Service, (n°3704)<sup>57</sup> and one by the opposition tabled by the Green MP François de Rugy (n°3866).<sup>58</sup> Bill n°3704 was withdrawn by François Sauvadet on May 4<sup>th</sup> 2012, in anticipation of the change of government. Bill n°3866 was rejected by the parliament on December 7<sup>th</sup> 2011. While none of these bills were adopted, they nevertheless served to inform later policy efforts to prevent parliamentarians' conflicts of interest.<sup>59</sup>

In parallel to the work of the Sauvé Commission, the government had asked the two chambers of parliament to develop their own policy to prevent conflicts of interest. While the Senate had created an ethics committee (*Comité de déontologie*) in 2009, to advice senators on ethical matters, on a proposal from senators Robert Badinter and Josselin de Rohan, the National assembly's working group on conflicts of interest was set up in October 2010 by the President of the National Assembly, Bernard Accoyer. In addition to the demand from the government to formalise the parliamentary ethics system, interviewees suggested that there was a reputational competition between the two chambers that stimulated the policy process. As a parliamentary clerk said, "there is always a form of race between the Assembly and the Senate. When one moves, the other is prompted to follow, especially on these issues which are quite visible in the media".<sup>60</sup>

The working group had two rapporteurs, Arlette Grosskost (UMP) and Jean-Pierre Balligand (SRC), and was composed of many parliamentarians who had previously promoted anti-corruption policies.<sup>61</sup> It conducted nine interviews to inform its work, calling on many the same experts as the Sauvé Commission, including the Daniel Lebègue, president of TI France, Yves Mény, and individuals responsible for ethical issues for the Council of lawyers, the civil service and for the French Agency for the Safety of Health Products. All of them suggested the introduction of a public interest register. Daniel Lebègue suggested the use of the CoE's definition of conflict of interest as well as the introduction of a recusal rule and an ethics commissioner (*déontologue*), which was also proposed by Jacques Fournier, from Ernst and Young France. The parliamentary clerks

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<sup>57</sup> Assemblée nationale. Projet de loi relatif à la déontologie et à la prévention des conflits d'intérêts dans la vie publique n°3704. Paris, July 27<sup>th</sup> 2011.

<sup>58</sup> Assemblée nationale. Proposition de loi relative à la transparence de la vie publique et à la prévention des conflits d'intérêts n°3866. Paris, October 19<sup>th</sup> 2011.

<sup>59</sup> Parliamentary clerk 2, National Assembly (FRPC2). Interview with author. April 5<sup>th</sup> 2019.

<sup>60</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018. Author's own translation.

<sup>61</sup> Such as François de Rugy, Charles de Courson (member of TI France), Jean-Luc Warsmann (who tabled a bill on the freezing of stolen assets - Loi n° 2010-768 du 9 juillet 2010 visant à faciliter la saisie et la confiscation en matière pénale. Paris : Journal Officiel. July 10<sup>th</sup> 2010) or Elisabeth Guigou (who put French law in conformity with the OECD anti-bribery convention when she was Minister of Justice - Loi n° 2000-595 du 30 juin 2000 modifiant le code pénal et le code de procédure pénale relative à la lutte contre la corruption. Paris: Journal Officiel. July 1<sup>st</sup> 2000).

in charge of identifying informants also invited two professors of constitutional law, Anne Levade and Guy Carcassonne, who shared a rather sceptical view on transparency.<sup>62</sup> While both supported the ideas of making MPs declare their interests, they opposed the idea of making declarations available to the public, considering that such transparency would not help prevent conflicts of interest but only fuel suspicions.<sup>63</sup> With the exception of Guy Carcassonne, all the people interviewed suggested the introduction of a code of conduct for MPs, a ‘*terra incognita*’ for the parliament according to Olivier Fouquet, the president of the civil service’s ethics commission.<sup>64</sup>

While the Senate opted for a formalised system of self-regulation, the National Assembly chose a different approach, with the introduction of a code of ethics and the creation of the function of ethics commissioner (*déontologue*), thus opting for a form of co-regulation (Chapter 1), following the British or Canadian examples. It introduced an interest declaration but decided at first not to make it public. In its April 6<sup>th</sup> 2011 decision, the Assembly’s bureau states that the *déontologue* is bound by professional secrecy and cannot divulgate any information received from parliamentarians, at the risk of being sanctioned.<sup>65</sup> The parliamentary clerks assisting the working group in drafting the code of ethics used the suggestions from interviewees about how to structure the code, the report from the Sauvé Commission as well as the information collected through international “*benchmarking*”, with a special attention to the British example, the principles of which were adapted to the specificities of the French Parliament.<sup>66</sup> A parliamentary clerk said that the group decided from the start to draft a short code, “unlike the American one”, because of their lack of time and experience:

We did not have time for this job, we had no experience, we were starting from scratch, that is the thing, there was nothing (...) People say ‘your thing holds on

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<sup>62</sup> Their position is made clear in the transcript of their interview by the working group. Guy Carcassonne had published an article in which he warns against the excesses of transparency, talking about the “trouble of transparency” and the “neurosis of transparency”: CARCASSONNE, Guy. Le trouble de la transparence. *Pouvoirs*, Vol. 97, n° 2, 2001, pp. 17-23.

<sup>63</sup> Assemblée nationale. Compte rendu n°1 Groupe de travail sur la prévention des conflits d’intérêts. Paris, December 9th 2010.

<sup>64</sup> Assemblée nationale. Compte rendu n°1 Groupe de travail sur la prévention des conflits d’intérêts. Paris, December 9th 2010 ; Assemblée nationale. Compte rendu n°2 Groupe de travail sur la prévention des conflits d’intérêts. Paris, January 13th 2011; Assemblée nationale. Compte rendu n°3 Groupe de travail sur la prévention des conflits d’intérêts. Paris, January 20th 2011. Quote taken from Assemblée nationale. Compte rendu n°2 Groupe de travail sur la prévention des conflits d’intérêts. Paris, January 13th 2011, p. 24.

<sup>65</sup> Assemblée nationale. Décision du Bureau relative au respect du code de déontologie des députés. Paris, April 6th 2011.

<sup>66</sup> MELIN-SOUCRAMANIEN, Félix. *Les progrès de la déontologie à l’Assemblée nationale*. Paris: Assemblée nationale, June 17th 2015, p.15; Parliamentary clerk 2, National Assembly (FRPC2). Interview with author. April 5<sup>th</sup> 2019.

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a single sheet of paper' but one needs to see that there was really nothing and that we were conscious about it at the time.<sup>67</sup>

Despite de relatively short timeframe necessary to formalise ethics in the National Assembly, the parliamentary leadership used a 'small steps policy' to gradually create acceptance of the new rules, since as a parliamentary clerk put "everything that is new can disturb".<sup>68</sup> A Public Law Professor, Jean Gicquel, was appointed in June 2011 as the first *déontologue* to oversee the implementation of the code, but the interest declarations were only supposed to apply to the following legislature. At first, the code was not integrated in the Rules of the National Assembly, which would have required a debate in plenary and possibly a validation by the Constitutional Court. While the system remained very fragile until the adoption of the 2013 laws on transparency in public life, this discrete approach allowed for a progressive acceptance of the formalisation of parliamentary ethics. This suggests that the parliamentary leadership and administration used their knowledge of the institution to "put a foot in the door" or "sow the first seeds".<sup>69</sup>

The 2012 elections were a turning point for the politicisation of conflict of interest regulation in France. TI France managed to put corruption on the agenda of the campaigns through a 7-point pledge on public ethics for electoral candidates (based on the 2011 NIS report – Chapter 6).<sup>70</sup> This included a promise to adopt a policy to prevent conflicts of interest,<sup>71</sup> which was signed by almost all presidential candidates who discursively competed to demonstrate their commitment to the fight against corruption.<sup>72</sup> Candidate François Hollande, whose campaign platform highlighted the

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<sup>67</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> PHELIPPEAU, Éric. *Système national d'intégrité le dispositif français de transparence et d'intégrité de la vie publique et économique*. Paris: Transparency International France, 2011

<sup>71</sup> Transparency International. *Présidentielles 2012 : Transparency International France appelle les candidats à s'engager pour une véritable éthique de l'action publique*. Berlin, September 14<sup>th</sup> 2011.

<sup>72</sup> François Bayrou, the candidate of the centre party Modem, added that, if elected, he would ensure that the Council of Europe's definition of conflicts of interest is translated into French Law. Incumbent candidate Nicolas Sarkozy adds in his public statement that he was the first president to make his government publicly declare their private interests. (Transparency International France. *Présidentielles 2012: Engagements des candidats*. Éthique de la vie publique Le blog de Transparency France. n.d. Online, available at : <http://www.transparency-france.org/observatoire-ethique/francois-hollande-ps/les-candidats-a-la-presidentielle/>). Some candidates used their personal life trajectory and past engagements to demonstrate their trustworthiness. Eva Joly built her public image on her years-long investigation of the Elf Aquitaine scandal and François Bayrou emphasised his continuous commitment to the 'moralisation of public life' (Mouvement Démocrate. François Bayrou dévoile le texte de son référendum sur la moralisation de la vie publique. April 4<sup>th</sup> 2012; *Challenges*. 2007 : Bayrou veut une loi de moralisation de la vie économique. April 11<sup>th</sup> 2007). François Hollande presented himself as the 'normal president', to differentiate himself both from Dominique Strauss-Kahn (who had been expected to become the presidential candidate of the socialist party before being accused of attempted rape in the People of the State of New York v. Strauss-Kahn), and from Nicolas Sarkozy's image of a flashy lifestyle and political scandals.

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importance of both the impartiality of the state and the integrity of elected officials, pledged to ensure that detailed declarations of elected officials' interests were made public.<sup>73</sup> Building on these pledges, TI France, in collaborating with the online media *Slate.fr*, asked presidential candidates to declare their private interests. The Greens' candidate Eva Joly, known for her initiatives against corruption as a magistrate and recipient of TI's Integrity Award in 2001, published the first and most exhaustive declaration.<sup>74</sup>

Shortly after his election, François Hollande tasked former Prime Minister Lionel Jospin to set up a commission to translate his campaign promise of giving the country a "new democratic momentum and ensure the exemplarity of public institutions" into legislative proposals, including the prevention of conflicts of interest concerning parliamentarians.<sup>75</sup> The 'Jospin Commission' was composed of thirteen members, representing different public institutions and political tendencies as well as seven academics – six Public Law scholars and one economist, plus the chair Lionel Jospin and the rapporteur Alain Ménémenis.<sup>76</sup> It used the conclusions of the Sauvé Commission, the recommendations of international institutions and domestic NGOs (TI France and Anticor), as well as foreign examples as a basis for discussion. It came up with 35 proposals, including the publicity of parliamentarians' interest declarations and the creation of an independent ethics authority.<sup>77</sup> A member of the commission however explained that there was a tension between political officials, favouring control through transparency, and legal scholars who were sceptical of the "neurosis of transparency"<sup>78</sup> and rather favoured the externalisation of control through an independent authority.<sup>79</sup>

The event that would open the window for new regulations occurred a month after the Jospin Commission published its final recommendations. On December 4th 2012, Fabrice Arfi

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<sup>73</sup> HOLLANDE, François. Le Changement c'est maintenant. Mes 60 engagements pour la France. Élections présidentielles du 22 avril 2012. n.d. Online, available at: [http://www.ps29.org/IMG/pdf/Projet\\_FH2012.pdf](http://www.ps29.org/IMG/pdf/Projet_FH2012.pdf)

<sup>74</sup> Transparency International. Eva Joly: Investigating Magistrate - France (Integrity Award). Berlin, October 7<sup>th</sup> 2001. Online, available at: [https://www.transparency.org/getinvolved/awardwinner/eva\\_joly](https://www.transparency.org/getinvolved/awardwinner/eva_joly) (accessed on December 5th 2019).

<sup>75</sup> The mission letter asks the commission to consider the following reform areas: (i) revision the organisation of presidential and legislative elections and the voting procedure, (ii) rethink the penal status of the president, (iii) suppression of the Law Court of the Republic (*Cour de justice de la République*), (iv) ending the possibility to cumulate mandates and, lastly, (v) the prevention of conflicts of interest including concerning parliamentarians (The mission letter is annexed to Commission de rénovation et de déontologie de la vie publique. *Pour un renouveau démocratique*. 2012, pp. 125-127).

<sup>76</sup> Commission de rénovation et de déontologie de la vie publique. *Pour un renouveau démocratique*. 2012, p. 129.

<sup>77</sup> *Ibid.* pp. 116-117.

<sup>78</sup> CARCASSONNE, Guy. *Op. cit.* 2001.

<sup>79</sup> Professor of public law 1 (FREX1). Interview with author. December 20<sup>th</sup> 2017.

from *Mediapart* published an article about Jérôme Cahuzac, the new Minister of Budget allegedly having a hidden bank account in Switzerland. This article was the starting point of what has since been called the ‘Cahuzac scandal’. On March 19th 2013 the public prosecutor’s office opened an investigation on possible tax fraud and money-laundering. These revelations created suspicion regarding the Minister’s relationship with the pharmaceutical industry while he worked as a technical adviser to the Minister of Health Claude Evin (1988-1991), bring the issue of conflicts of interest in the public health sector back to the radar (although it was less discussed that the tax evasion dimension of the scandal).<sup>80</sup> Jérôme Cahuzac resigned from the government on the same day, although still claiming his innocence. He admitted to the judges that he had a bank account in Switzerland on March 26<sup>th</sup> and shortly after admitted his guilt publicly on his blog. On April 24<sup>th</sup> 2013, the National Assembly created a parliamentary commission, on Jean-Louis Borloo and the Union of Democrats and Independents group’s (opposition) initiative, to investigate how the government handled the scandal and what it actually knew. The political majority did not oppose this initiative.<sup>81</sup> In December 2016, Jérôme Cahuzac was found guilty of tax fraud and money laundering and sentenced to three years in jail and five years ineligibility (prohibiting his participation in elections during that period).<sup>82</sup>

The Cahuzac scandal tarnished the reputation of the new government and the image of the ‘normal president’ that François Hollande constructed during the campaign.<sup>83</sup> It triggered the movement towards the ‘moralisation shock’ (*choc de moralisation*) of the new presidency. On April 3<sup>rd</sup>, after hearing Jérôme Cahuzac’s admission of guilt, President Hollande announced new measures to be adopted: reinforcing the independence of the judiciary, fighting “mercilessly”

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<sup>80</sup> Les liens de Cahuzac avec les laboratoires pharmaceutiques à la loupe des enquêteurs. *Le Monde*, April 4th 2013.

<sup>81</sup> Assemblée Nationale. Rapport fait au nom de la commission d’enquête relative aux éventuels dysfonctionnements dans l’action du Gouvernement et des services de l’État, notamment ceux des ministères de l’économie et des finances, de l’intérieur et de la justice, entre le 4 décembre 2012 et le 2 avril 2013, dans la gestion d’une affaire qui a conduit à la démission d’un membre du Gouvernement. Enregistré à la Présidence de l’Assemblée nationale le 8 octobre 2013.

<sup>82</sup> He appealed this judgement and, in May 2018, the Appeal Court of Paris symbolically prolonged his sentence to four years, while reducing the actual jail time with a two-years suspended jail sentence (*Franceinfo*. Jérôme Cahuzac condamné à trois ans de prison ferme pour "fraude fiscale" et "blanchiment de fraude fiscale". December 8th 2016. Online, available at: [https://www.francetvinfo.fr/politique/affaire/cahuzac/l-ancien-ministre-du-budget-jerome-cahuzac-condamne-a-trois-ans-de-prison-ferme-pour-fraude-fiscale-et-blanchiment-de-fraude-fiscale\\_1959187.html](https://www.francetvinfo.fr/politique/affaire/cahuzac/l-ancien-ministre-du-budget-jerome-cahuzac-condamne-a-trois-ans-de-prison-ferme-pour-fraude-fiscale-et-blanchiment-de-fraude-fiscale_1959187.html); *Franceinfo*. Jérôme Cahuzac condamné en appel à deux ans de prison ferme pour "fraude fiscale". May 15th 2018. Online, available at: [https://www.francetvinfo.fr/politique/affaire/cahuzac/l-ancien-ministre-du-budget-jerome-cahuzac-est-condamne-en-appel-a-quatre-ans-de-prison-dont-deux-avec-sursis-pour-fraude-fiscale-et-blanchiment-de-fraude-fiscale\\_2753503.html](https://www.francetvinfo.fr/politique/affaire/cahuzac/l-ancien-ministre-du-budget-jerome-cahuzac-est-condamne-en-appel-a-quatre-ans-de-prison-dont-deux-avec-sursis-pour-fraude-fiscale-et-blanchiment-de-fraude-fiscale_2753503.html) (accessed on December 6th 2019).

<sup>83</sup> See for instance: CHANUT, Jean-Christophe. Affaire Cahuzac : un dégât collatéral pour François Hollande. *La Tribune*, April 2d 2013 ; CHEMIN, Ariane. Affaire Cahuzac : ce que Hollande savait. *Le Monde*, April 3rd 2013.

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against conflicts of interest, publishing the private assets of ministers and parliamentarians, and introducing a lifelong ineligibility sentence for anyone condemned for tax fraud or corruption.<sup>84</sup> On the same day, François Bayrou launched an online petition to push the government to pass the law that he had proposed during the presidential campaign to “moralise public life”.<sup>85</sup> The government tables three bills on April 24<sup>th</sup> 2013: n°1011 on the fight against fiscal fraud and economic crime,<sup>86</sup> and n°1004<sup>87</sup> and n°1005<sup>88</sup> on the transparency of public life, all providing for an accelerated legislative procedure.<sup>89</sup> This created the opportunity to translate past bills into law. As a parliamentary clerk interviewed in the framework of this project explicitly say:

And then there was the Cahuzac scandal. That is the moment where past proposals were taken out of the drawer [the Sauvadet and de Rugy bills] and put on the agenda (...) It is often the case with public policy... The measures are ready, in a way, the thinking has been made, the reports were written. What was missing was the trigger to put the issue on the agenda and turn them into policy, especially for parliamentarians.<sup>90</sup>

Actors interviewed have different views as to this particular scandal being a necessary condition for the reforms to have been enacted. Legal scholars and parliamentary clerks suggest that it is very believable that without the scandal nothing would have happened.<sup>91</sup> Political actors on the contrary suggested that the laws would have been passed even without the scandal.<sup>92</sup> They all agree however that the scandal acted as an accelerator of reform, due to public pressure, with polls showing that almost 90% of respondents thought that the scandal was a serious problem and

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<sup>84</sup> *Le Nouvel Obs*. VERBATIM. Aveux de Cahuzac : la déclaration de François Hollande. April 3rd 2013. Online, available at: <https://www.nouvelobs.com/politique/20130403.OBS6522/verbatim-aveux-de-cahuzac-la-declaration-de-francois-hollande.html> (accessed on December 6th 2019).

<sup>85</sup> KRAFT, Marie-Anne. "Moraliser la vie publique, une urgence !" Signez la pétition de François Bayrou. *Blog de Mediapart*. April 3rd 2013. Online, available at: <https://blogs.mediapart.fr/marie-anne-kraft/blog/030413/moraliser-la-vie-publique-une-urgence-signez-la-petition-de-francois-bayrou> (accessed on December 6th 2019).

<sup>86</sup> Assemblée nationale. Projet de loi relatif à la lutte contre la fraude fiscale et la grande délinquance économique et financière n°1011. Paris, 24 avril 2013.

<sup>87</sup> Assemblée nationale. Projet de loi organique relatif à la transparence de la vie publique n°1004. Paris, 24 avril 2013.

<sup>88</sup> Assemblée nationale. Projet de loi relatif à la transparence de la vie publique n°1005. Paris, 24 avril 2013.

<sup>89</sup> The accelerated legislative procedure (*procédure accélérée*) can be decided by the government, according to article 45 of the Constitution, to (i) circumvent the mandatory six weeks between the moment a bill is tabled and the moment it is discussed in a parliamentary chamber and to (ii) limit the number of times each chamber can revise a text by giving the Prime Minister the right to create a commission composed of members of the two chambers to come up with a compromise after only one reading in each chamber. The *procédure accélérée* was called *procédure d'urgence* until the constitutional revision of 2008.

<sup>90</sup> Parliamentary clerk 2, National Assembly (FRPC2). Interview with author. April 5<sup>th</sup> 2019. Author's own translation.

<sup>91</sup> Professor of public law 1 (FREX1) Interview with author. December 20<sup>th</sup> 2017; Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018; Parliamentary clerk 2, National Assembly (FRPC2). Interview with author. April 5<sup>th</sup> 2019.

<sup>92</sup> Former French Minister of Economy and Finance (FRMIN1). Interview with author. January 10<sup>th</sup> 2019.

6 out of 10 that the government had not handled it well.<sup>93</sup> Acting under pressure, the government prepared the bills on the basis of existing suggestions (from the Sauvé Commission, past bills and the Jospin Commission),<sup>94</sup> despite the fact that none had much to say on the specific problem exposed by the Cahuzac scandal (tax fraud). Laws n°2013-906 and n°2013-907 on transparency of public life adopted in October 2013 were not created out of the thin air, as is sometimes implied by the expression ‘panic laws’.<sup>95</sup> They built on ideas transferred from international institutions, NGOs and the public health sector and circulated among experts in the previous three years, on existing internal parliamentary rules and the 1988 rules on asset declarations and external control.<sup>96</sup>

This subsection has shown how the idea of regulating conflicts of interest through registers and codes was transferred through the public health sector in the 1990s and into the political system in the 2010s. It shows that, while scandals seem to be a *necessary* condition for policy change in this area, they are not *sufficient* by themselves. Scandals do not necessarily result in any significant reform, at least not immediately, and when they do lead to policy change, the ideas that reach the negotiation table have usually already been taken up, translated and circulated among experts and policy actors, reinterpreting them to make them *acceptable* to norm-takers.<sup>97</sup> Similar to the Swedish case, sequences of events, including scandals and elections, were necessary for the policy instruments to be taken up by national policy actors who progressively created the right conditions for them to be accepted and adopted. In contrast with the Swedish example, the process unfolded over a much shorter time-frame, since it only took three years for the transferred ideas to be translated into policy in France.

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<sup>93</sup> Harris interactive poll for LCP, cited in BOURMAUD, François-Xavier. Le scandale Cahuzac contraint Hollande à une initiative politique. *Le Figaro*, April 4<sup>th</sup> 2013.

<sup>94</sup> Assemblée nationale. Projet de loi organique relatif à la transparence de la vie publique n°1004. Paris, 24 avril 2013; Assemblée nationale. Projet de loi relatif à la transparence de la vie publique n°1005. Paris, 24 avril 2013.

<sup>95</sup> LASCOUMES, Pierre. Contre l'argent illicite, non aux lois de panique. *Mediapart*, April 17<sup>th</sup> 2013. Online, available at: <https://blogs.mediapart.fr/edition/les-invites-de-mediapart/article/170413/contre-largent-illicite-non-aux-lois-de-panique> (accessed on November 25<sup>th</sup> 2019).

<sup>96</sup> Law n°2013-907 creates, inter alia, the High Authority for Transparency of Public Life, which replaces the Commission for the Financial Transparency of Political Life that was created in 1988, an idea which was also proposed already in 2010.

<sup>97</sup> STONE, Diane. Transfer and Translation of Policy. *Policy Studies*, Vol. 33, n° 6, pp. 483–99; ACHARYA, Amitav. How ideas spread: Whose norms matter? Norm localization and institutional change in Asian regionalism. *International organization*, Vol. 58, n°2, 2004, 239-275.

## 7.2. Who are the ‘norm takers’? Elucidating the role of policy entrepreneurs, intermediaries and transfer agents

Having looked at the process that led from the transfer of policy ideas about conflict of interest regulation to their translation into policy instruments, this section zooms in on the ‘norm takers’ who engaged in this transfer process, more specifically who selected ideas to import, reformulated them to fit the context and translated them into policy.<sup>98</sup> Identifying the actors who facilitated the transfer process and their motives matters to how policy ideas were reinterpreted, according to their ideational background and the context in which they are embedded. This subsection firstly looks at political actors to understand how party politics played out in the adoption of public interest registers and codes of conduct. Secondly, it turns to the public administration which often works as a filter for policy ideas, contributing to turning them into viable solutions in the national context. Lastly, in addition to the traditional actors of policy-making, it identifies the intermediaries who worked as transmission channels between levels of governance and professional groups<sup>99</sup> and helped policy ideas travel across national and sectoral borders.

### 7.2.1. The struggle of ‘white knights’ rather than party politics

Political actors played a central role in the adoption of policies that regulate their own conduct as they pushed and debated bills and adopted reforms. Anti-corruption policy is however hard to place on the political spectrum as it does not follow traditional party lines. This subsection shows that conflict of interest regulation is often the result of continuous efforts of individual policy entrepreneurs (‘white knights’)<sup>100</sup> rather than traditional party competition. It is worth noting that these individual policy entrepreneurs often belong to small parties, such as the Greens, the Liberals or the radical left, that do not enjoy a majority in parliament but might be coalition partners.

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<sup>98</sup> CLAVIER, Carole. Les causes locales de la convergence. La réception des transferts transnationaux en santé publique. *Gouvernement et action publique*, Vol. 2, n° 3, 2013, pp. 395-413.

<sup>99</sup> NAY, Olivier and SMITH, Andy (eds.). Les intermédiaires en politique: courtiers et généralistes dans l’action politique. Paris: Economica, 2003; HASSENTEUFEL, Patrick and de MAILLARD, Jacques. *Op. cit.* 2013.

<sup>100</sup> LE GRAND, Julian. Knights, Knaves or Pawns? Human Behaviour and Social Policy. *Journal of Social Policy*, Vol.26, n° 2, 1997, pp. 149-169.

### 7.2.1.1. The (non)politics of anti-corruption policymaking

The emergence of corruption on the political agenda is sometimes considered as a symptom of the dawn of ideological politics. It has been analysed as a consequence of changes in party politics in the 1990s, with the triumph of the ‘third way’ and a form of ‘politics by other means’ to paraphrase Carl von Clausewitz.<sup>101</sup> With the convergence of political platforms, parties that previously fought for votes on ideological grounds increasingly turned to debates about public ethics and individuals’ character to convince voters.<sup>102</sup> While populist right-wing parties that emerged in the 1980s and 1990s used corruption accusations to discredit traditional party politicians, the latter responded by adopting anti-corruption instruments. Interestingly, promoters of anti-corruption policies generally present it as a non-partisan issue. As a British parliamentary clerk put it during an interview, “standards issues are seen at cross-party, rather than being party political”.<sup>103</sup> Government officials and elected representatives in the three countries indeed discursively depoliticised ethics reform. Policy promoters used this strategically to encourage the opposition to rise above party lines. Even in systems with strong party discipline, votes about ethics reforms are usually left to individual parliamentarians. As a former French Minister from the Socialist party said when asked about party politics and the anti-corruption agenda:

It is a non-partisan topic because I am not going to judge those to our right or elsewhere for being more or less rotten than us. There are people who are devoted to the public interest with ideas that are very right-wing, very left-wing and very centrist (...) On all these texts, there were votes that went above strictly partisan considerations (...) Political groups did not do much on these texts in the chamber. People wanted it. Most of the time it was people who were in favour, even if the group decided to abstain or oppose – as some other groups did in 1988 and later on – because there was too little this or too much that, knowing that the text would pass, and leaving it to freedom of expression within their political groups.<sup>104</sup>

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<sup>101</sup> GINSBERG, Benjamin, and SHEFTER Martin. *Politics by Other Means: The Declining Importance of Elections in America*. New York: Basic Books, 1990; COX, Raymond W. *Ethics and integrity in public administration: concepts and cases*. Armonk, N.Y. London : M.E. Sharpe, 2009, p. 152; ROSANVALLON, Pierre. *Le bon gouvernement*. Paris: Seuil, 2015.

<sup>102</sup> FIESCHI, Catherine and HEYWOOD, Paul. Trust, cynicism and populist anti-politics. *Journal of Political Ideologies*, Vol. 9, n°3, 2004, pp. 289–309; PUJAS, Véronique and RHODES, Martin. Party finance and political scandal in Italy, Spain and France. *West European Politics*, Vol. 22, n°3, 1999, pp. 41–63.

<sup>103</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>104</sup> Former French Minister of Economy and Finance (FRMIN). Interview with author. January 10th 2019.

There is a conscious effort on the part of policy promoters not to align the anti-corruption agenda with a particular party, as the interviewee and other former ministers have highlighted.<sup>105</sup> The interviewee nevertheless states that most reforms were passed under left-wing governments. Transcriptions of parliamentary debates show that parliamentarians from both sides seek to take ownership of previous reforms for their political side.<sup>106</sup> In France, the public ethics agenda cannot be attributed to any political party, since steps were taken both by the right and by the left. While François Mitterrand had included the requirement for asset declarations in his 1981 campaign, the instrument was eventually adopted in 1988 under his presidency but by Jacques Chirac's government (right-wing). Similarly, the issue of conflicts of interest was first raised by President Sarkozy and François Fillon's government in 2010 with the creation of the *ad hoc* Sauvé Commission. The initial steps taken by a right-wing government were later made into law by a left-wing government in 2013. As Éric Phélippeau notes, the successive governments sought to differentiate themselves from their political opponents by furthering transparency requirements and creating *ad hoc* commissions to make new proposals on public ethics and conflict of interest regulation.<sup>107</sup>

As policy windows are oftentimes opened by a political scandal that concerns the governing party, anti-corruption regulations have been adopted by governments from different sides of the political spectrum. There are nevertheless differences in the political colour of policy promoters and opponents. In France, in addition to the centre-right party Modem and the Greens who have traditionally promoted public ethics reform,<sup>108</sup> the ambition to “moralise” politics has mainly been driven by the Socialist party (François Mitterrand in 1981 and 1988, and François Hollande in 2012). Most recent anti-corruption reforms were indeed adopted under François Hollande's

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<sup>105</sup> Christiane Taubira, former Minister of Justice and François Hollande, former President of the French Republic also declared that anti-corruption was not a partisan issue, during an event organization by the organization Stopcorruption at Sciences Po Paris in December 2018. The videos of the speeches are available here: <https://www.stop-corruption.fr/videos/#list-videos> (accessed on February 10<sup>th</sup> 2020).

<sup>106</sup> During debates on a bill on transparency in public life and the prevention of conflicts of interest proposed by the Green MP François de Rugy on December 1<sup>st</sup> 2011, MPs from the Socialist party claimed that the 1988 law that introduced the obligation for public officials to declare their assets was a legacy of François Mitterrand, while MPs from the UMP argued that it was the work of Jacques Chirac's government (Nosdéputés.fr. Séance en hémicycle du 1er décembre 2011 à 15h00. 2011. Online, available at: [http://2007-2012.nosdeputes.fr/seance/5673#inter\\_cb0f0af39fbf9b2d069292d8d6473971](http://2007-2012.nosdeputes.fr/seance/5673#inter_cb0f0af39fbf9b2d069292d8d6473971))

<sup>107</sup> PHELIPPEAU, Éric. *Op. cit.* 2018.

<sup>108</sup> See for instance: Mouvement Démocrate. François Bayrou dévoile le texte de son référendum sur la moralisation de la vie publique. April 4<sup>th</sup> 2012. Online, available at : <https://www.mouvementdemocrate.fr/actualites/francois-bayrou-devoile-le-texte-de-son-referendum-sur-la-moralisation-de-la-vie>; Europe Ecologie Les Verts. Réponse d'Eva Joly à Anticor. April 4<sup>th</sup> 2012. Online, available at: <https://eelv.fr/reponse-deva-joly-a-anticor/> (accessed on December 6<sup>th</sup> 2019).



presidency.<sup>109</sup> This is a legacy of the country's reform trajectory (Chapter 9), which started with transparency requirements regarding officials' assets and wealth initially promoted by Communist parliamentarians, who could more easily demand such reforms (and use it to delegitimise political adversaries) due to their (more modest) socio-professional background, according to Phélippeau.<sup>110</sup>

In Britain, the major turn in the country's standards regulation constituted by the 'Nolan reforms' was a consequence of a the 'cash-for-questions' scandal (by which *The Guardian* revealed that two MPs had accepted to table parliamentary questions in exchange of cash) that exposed flaws in the system and shook John Major's government. Despite the progressive move away from self-regulation under this Conservative government, the scandal contributed to cost them the election. The instruments introduced under John Major's leadership were thus implemented under Tony Blair's New Labour government, which sought to construct its image as a public service moderniser.<sup>111</sup>

Traditional party politics did not play a major role in Sweden either. As the previous section showed, the process of transferring ideas about how to regulate policy-makers' unfolded in a time of frequent change of the government's political colour. Political groups in parliament did not vehemently oppose the institutionalisation of conflict of interest regulation, nor was any party seen as pushing the issue within parliament. It was considered as an issue internal to parties,<sup>112</sup> and promoted by individuals rather than collectives. Interviewees however identified the centre-right party *Moderaterna* (m) as the main opponent to the introduction of a public interest register in the 1990s.<sup>113</sup> Similarly, the development and adoption of the code of conduct happened within a working group in which all political groups were represented. A parliamentarian who was part of the group said in an interview that there were some disagreements about the level of details of the

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<sup>109</sup> Between 2012 and 2017, France adopted two laws on the transparency of public life (n°2013-906 and n°2013-907), a law against fiscal fraud and economic crime (n°2013-1117), a law on ethics in public administration (n°2016-483), a law on open data and digitalisation (n°2016-1321), a law on transparency, the fight against corruption and the modernisation of economic life (n°2016-1691). Many political figures from the socialist party took part, after their mandate, in the creation of non-governmental organisations to maintain the issue of corruption or public ethics on the agenda: Michel Sapin and François Hollande established #Stopcorruption; the former Socialist MP René Dosièrè founded the Observatoire de l'éthique publique (More information on #Stopcorruption can be found here: <https://www.stop-corruption.fr/> (accessed on December 5<sup>th</sup> 2019) and on the Observatoire de l'éthique publique here: <http://observatoireethiquepublique.com/>)

<sup>110</sup> PHELIPPEAU, Éric. *Op. cit.* 2018.

<sup>111</sup> HINE, David and PEELE, Gillian. *Op. cit.* 2016.

<sup>112</sup> Former member of the Swedish Parliament (SWMP2). Phone interview with author. May 23<sup>rd</sup> 2017.

<sup>113</sup> *Ibid.*; Member of the Swedish Parliament (SWMP1). Interview with author. May 17<sup>th</sup> 2017; Parliamentary clerk, Swedish Riksdag (SWPC1). Phone interview with author. May 30<sup>th</sup> 2017. Two of the interviewees are political figures from other parties, which could make them biased against the main right-wing party. Their statement is however confirmed by a parliamentary clerk, who is assumed to be more neutral.

declarations but that “they managed to cook it up [in 4 or 5 meetings]. It was not so difficult. We were all reasonable people, and no one had anything against us introducing a code. Some thought it was quite ridiculous but...”<sup>114</sup> The fact that none of the reforms in Sweden affected the self-regulation of parliamentary ethics and involved only few additional costs made the issue far less controversial than in Britain and France.

While not an issue that follows ideological cleavages, interviewees from left-wing parties suggested that the reluctance of their conservative counterparts could be the consequence of the different expectations of their electorate and connections to the corporate world.<sup>115</sup> The latter is sometimes reflected in opponents’ discourse, as demonstrated in Chapter 8. One can also notice that smaller parties have sometimes used the issue of standards regulation to build its image of honesty and demonstrate its commitment to public ethics, transparency and policy innovation. Political parties have indeed sometimes taken the initiative to introduce disclosure obligations for their elected members independently from reforms in the parliament. One of the first interest registers available for public scrutiny (if not *the* first) was introduced in 1967 by the Liberal group of the House of Commons for their MPs to register their interests on a voluntary basis.<sup>116</sup> In Sweden, a similar initiative was introduced by the newly formed Green Party in 1981 whereby their candidates for local and national elections were asked to present a declaration of their economic ties and situations in order to be nominated.<sup>117</sup>

As seen in Section 7.1, the impulse of reform often comes from scandals, which in turn suggests that the adoption of anti-corruption reforms is not necessarily a matter of party politics but rather a form of crisis management, as further investigated in Chapter 8. While the broad promotion of public ethics is a common discourse during election campaigns, concrete policy

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<sup>114</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17th 2017. Author’s own translation.

<sup>115</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17th 2017; Former French Minister of Economy and Finance (FRMIN1). Interview with author. January 10<sup>th</sup> 2019. Having selected interviewees on the basis of their involvement in recent reforms, I only collected the views of political actors from the left. While this gives the analysis a bias, it also gives an indication as to the parties that have promoted recent reforms.

<sup>116</sup> GAY, Oonagh. *Aspects of Nolan - Members' Financial Interests*. Research Paper 95/62. London: House of Commons Library, 1995, p. 1.

<sup>117</sup> Sveriges riksdag. Offentlig insyn i toppolitikers privatekonomi. Motion till riksdagen 1988/89:K214 av Per Gahrton (mp). Stockholm, 1989; Sveriges riksdag. Etiska normer för politisk verksamhet. Motion till riksdagen 1990/91:K223 av Per Gahrton (mp). Stockholm, 1991.

instruments to regulate conflicts of interest are more commonly promoted by individual politicians, having made it part of their political careers and presenting themselves as ‘moral entrepreneurs’.<sup>118</sup>

#### 7.2.1.2. Individual politicians as ‘white knights’ against corruption

While, in Britain and France, governmental impulse was necessary for these instruments to be adopted, in Sweden the initiative came from within the parliament, either through its leadership or from individual parliamentarians. In France, individual parliamentarians also contributed to bring the issue of conflicts of interest to the agenda by tabling bills for the adoption of preventive policies. The issue of ethics in politics was indeed politicised by MPs acting as ‘moral entrepreneurs’, after Howard S. Becker’s famous expression.<sup>119</sup> Within the parliamentary institutions, some elected officials built a political career on the issue of ethics in politics (in Sweden) or the moralisation of public life (in France), to the point of being mockingly labelled the ‘white knights’ of transparency, honesty or rigour, especially in France.<sup>120</sup> The existence of such ‘white knights’ is rarely sufficient for reforms to be adopted, especially when their party is not in power, but they play a key role in putting (and maintaining) the issue on the agenda, and formulating proposals that inform later reforms.

In France, the fight against corruption has had a number of defenders in parliament, in government and on the campaign trail, some focussing on corporate corruption and political party/campaign finance (Michel Sapin, Socialist Party) or on the influence of money on politics (François Bayrou, Modem), while others strive to improve the control of the use of public funds (René Dosièrè, Socialist Party) or to prevent conflicts of interest (François de Rugy, former Green Party). In the Senate, Robert Badinter (Socialist Party) contributed to put conflict of interest prevention on the agenda and was nominated as the first chair of the Senate’s deontological committee.<sup>121</sup> It is a policy field in which certain political players have managed to impose their name and their image of ‘white knights’ seeking to moralise public life. As the previous section

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<sup>118</sup> BECKER, Howard S. *Outsiders: studies in the sociology of deviance*. New York; London: The Free Press of Glencoe. 1963.

<sup>119</sup> BECKER, Howard S. *Op. cit.* 1963.

<sup>120</sup> See for instance, DEPRIECK, Matthieu and CHAULET, Paul. Privilèges : les 10 ‘chevaliers blancs’ de l’Assemblée agacent certains députés. *L’Express*, June 20th 2013 ; Logement des ministres: l’UMP contre-attaque contre le socialiste René Dosièrè. *Le Point* (from AFP), June 7th 2010.

<sup>121</sup> Sénat. Le Comité de déontologie parlementaire du Sénat. n.d. Online, available at: [http://www.senat.fr/role/comite\\_deontologie.html](http://www.senat.fr/role/comite_deontologie.html) (accessed on February 10th 2020)

showed, the opposition to their proposals did not follow ideological lines, and often also came from within their own party.<sup>122</sup>

On conflict of interest prevention more specifically, François de Rugy (former Green), laid the groundwork for what would become the 2013 laws on transparency in public life, which give a legal reality to the notion of conflict of interest and introduced an obligation for public officials to disclose their interests. In 2011, he proposes two bills (n°3838 and n°3866) on the “transparency of public life and the prevention of conflict of interest”, together with three other parliamentarians from the Green Party, translating some of the recommendations of the Sauvé Commission into legislative bills.<sup>123</sup> François de Rugy wanted to “go further” than the bill tabled by the government (n°3704),<sup>124</sup> providing for the introduction of the definition of conflict of interest proposed by the Sauvé Commission (inspired by those of British and Canadian Parliaments, the CoE and the OECD), into law, the publication of MPs’ asset declarations, a recusal rule, an obligation for ministers to declare their private interests and the creation of an Authority for the deontology of public life. Many of the provisions of the bills n°3838 and n°3866 were integrated in the 2013 laws on transparency in public life. François de Rugy, and the parliamentary clerks that assisted him in drafting the bills served to further transfer global solutions against conflicts of interest, from administrative reports into legislative bills.

In Sweden, the initiative for the introduction of the public interest register came from individual elected officials. Per Gahrton, a former member of the Swedish Liberal party (*Folkpartiet*) who co-founded the Swedish Green Party in 1981, was one of the first members of parliament to bring up the issue of power holders’ economic ties and their possible influence on decision-making. Influenced by Professor Gunnar Adler-Karlsson, a student of Gunnar Myrdal, who turned to the Liberal Party after having failed to convince the Social Democrats to introduce transparency obligations for power holders’ economic situation, Per Gahrton proposed several bills on the disclosure of economic interests and connections, as a Liberal MP and later as a Green MP (see Table 14).<sup>125</sup> In 1991, as mentioned in the previous section, a small number of MPs from all political

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<sup>122</sup> PHELIPPEAU, Éric. *Op. cit.* 2018.

<sup>123</sup> Assemblée nationale. Proposition de loi relative à la transparence de la vie publique et à la prévention des conflits d’intérêts n° 3838. October 18th 2011. Paris, 2011; Assemblée nationale. Proposition de loi relative à la transparence de la vie publique et à la prévention des conflits d’intérêts n° 3866. October 19th 2011. Paris, 2011.

<sup>124</sup> Assemblée nationale. Proposition de loi relative à la transparence de la vie publique et à la prévention des conflits d’intérêts n° 3866. October 19th 2011.

<sup>125</sup> Sveriges riksdag. Motion 1976/77: 1007 av herr Gahrton och fru Bernström om en utredning rörande höginkomst- och maktthavargruppernas levnadsförhållanden. Stockholm, 1977.

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parties decided to set up a thematic group to raise awareness and institutionalise ethics in parliament.<sup>126</sup> They collaborated with one of the country's journalism schools and published a number of papers on the topic.<sup>127</sup> In the 1990s, Barbro Westerholm (Liberals), Eva Zetterberg (Left party), Lennart Daléus (Centre party), Hugo Hegeland (Moderates) and Chatrine Pålsson (Christian democrats) proposed a series of bills regarding the registration of MPs' interests and the introduction of a code of conduct. Several of them travelled to Washington and Paris to participate in conferences hosted by the US government and the OECD.<sup>128</sup> This group of parliamentarians regularly used foreign examples, especially from the Anglosphere, to legitimise their proposals. Some of the group's publications are written in English and a former member of the Swedish Parliament said in an interview that the group had an international network and travelled to other European countries from time to time to seek inspiration in other advanced democracies.<sup>129</sup>

Several of these parliamentarians were newly elected in the late 1980s, having had previous experience in professions in which rules regarding professional ethics had been introduced (public health, architecture, lawyers). As suggested by a former parliamentarian interviewed for this research, they thought it natural that the parliament should have its own ethical rules.<sup>130</sup> The group indeed frequently used ethical standards upheld by professional groups to justify the need to institutionalise ethics for elected representatives, which in turn suggests that they did not only import ideas from abroad but also from other sectors of society. They framed the question of ethics as relating to the professionalisation of politics, discussing the issue of having private activities versus being a career politician, as illustrated in the excerpt below from one of the group's 1992 publications:

Of course, politicians are not a professional group – I think that, ideally, we should have more “part-time” politicians (*fritidspolitiker*) and that more politicians could devote time both to a normal job and to politics. At the same time, we all know that developments are going the other direction. It is also necessary that some people spend all their time in politics and have time to really familiarise

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<sup>126</sup> Former member of the Swedish Parliament (SWMP2). Phone interview with author. May 23<sup>rd</sup> 2017.

<sup>127</sup> *Ibid.*

<sup>128</sup> Former member of the Swedish Parliament (SWMP2). Phone interview with author. May 23<sup>rd</sup> 2017; GILMAN, Stuart C. and LEWIS, Carol W. Public Service Ethics: A Global Dialogue. *Public Administration Review*, Vol. 56, n°6, 1996, pp. 517-524.

<sup>129</sup> Former member of the Swedish Parliament (SWMP2). Phone interview with author. May 23<sup>rd</sup> 2017; The document that Barbro Westerholm sent me is entitled *rigaetik.doc*. The fact that it is written in English suggests that it was destined for a foreign audience – maybe in Latvia.

<sup>130</sup> Former member of the Swedish Parliament (SWMP2). Phone interview with author. May 23<sup>rd</sup> 2017.

themselves with the issues. Since many people actually devote many of their working years to politics, I think ethical rules are a good thing.<sup>131</sup>

They saw the institutionalisation of ethics in parliament as an appropriate response to the growing number of career politicians and to the decline in public trust (Chapter 8). Moreover, their previous professional experience provided them with knowledge about professional ethics that they used in their new political career, to demarcate themselves within their respective party and in the parliament. A more recent example is the Social Democratic parliamentarian Susanne Eberstein who chaired the 2013-2014 parliamentary working group on the code of conduct. When the working group was set up, she was vice-speaker of the parliament. She had previously been part of the group that developed the social-democratic party's ethical rules in 1996. Having worked on formalising ethical rules for the party in the 1990s, Susanne Eberstein became familiarised with the topic and carried her acquired knowledge to the parliament's working group on the code of conduct.

These 'white knights' can be career politicians or newly elected representatives. They all built a belief in the merits of transparency and ethics codification to regulate conflicts of interest, and constructed an expertise on the matter through their previous professional experience, their work within the party or years of efforts to raise the issue on the agenda. The 'fight against corruption' can thus become a political resource for political actors who demonstrate commitment to a topic that receives growing public attention. This projected image of 'mister clear' sometimes comes at a cost when their party (or themselves) are accused of malfeasance, as happened to François de Rugy and François Bayrou who both had to step down as ministers after allegedly abusing public funds/positions.<sup>132</sup> While political actors played a crucial role in opening the window for reform and for raising the issue on the political agenda, others played an equally important role but at different stages of the policy process. Next section looks at the role played by bureaucrats in defining the problem, importing ideas and shaping the instruments to make them fit the national context.

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<sup>131</sup> ANDERSSON, Ingrid, BROHULT, Johan, DALEUS, Lennart, HEGELAND, Hugo, PÅLSSON, Chatrine, WESTERHOLM, Barbro and ZETTERBERG, Eva. Etik i politiken. Utkast Debattskrift. Sundsvall (SW), 1992, p. 18.

<sup>132</sup> Démission de François Bayrou : « Il devenait le sparadrap du capitaine Haddock ». *Le Monde*, June 21st 2017; François de Rugy démissionne et dénonce un « lynchage médiatique ». *Le Monde*, July 16th 2019.

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### **7.2.2. Bureaucrats as transfer agents behind the scene**

Bureaucrats are central actors of public policy, most often considered for their role in the implementation phase. However, they also contribute, through expertise, skills and connections, to the promotion of policy ideas and in the formulation of policy instruments.<sup>133</sup> High-level civil servants are important players in the construction of public policy, including conflict of interest regulations as this section shows. While not influential on the political agenda, other bureaucrats nevertheless played a crucial role identifying policy ideas to transfer and in translating them into the language and practices of political institutions. The section identifies three types of bureaucrats that worked as transfer agents, with varying degrees of visibility: high-level civil servants chairing *ad hoc* commissions; parliamentary clerks; and public officials working within specialised ethics or standards institutions.

#### **7.2.2.1. High-level civil servants marking reforms with their names**

High-level civil servants contributed to shape ethics reforms in Britain and in France, within specialised committees set up by the government. Scandals accelerated the agenda of reform in Britain and in France (less so in Sweden) and governments often set up external commissions as an immediate reaction to a crisis: “the best way to bury a problem is to create a commission” as a French interviewee said, (supposedly) quoting Georges Clémenceau.<sup>134</sup> Scandals usually involved political officials from the governing party and concerned a topic that is increasingly seen as not being for politicians themselves to solve, citizens perceiving that they were “marking their own homework”<sup>135</sup>, thus justifying the creation of specialised administrative committees.

In 1994, Prime Minister John Major created the Committee for Standards in Public Life chaired by Lord Nolan (known as the Nolan Committee), following the cash-for-questions scandal. It played a significant role in the formalisation of ethical standards and the formulation of ethics reforms in Britain and beyond. Lord Nolan is a key figure of the institutionalisation of ethics worldwide. Rumour has it that he drafted what has come to be known as the seven *Nolan Principles*

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<sup>133</sup> HASSENTEUFEL, Patrick. Chapitre 6 les acteurs politiques. In *Sociologie politique : l'action publique*. Paris: Armand Colin. 2011.

<sup>134</sup> Professor of public law (FREX1). Interview with author. December 20th 2017. Author's own translation; GARRIGUES, Jean. *Le Monde selon Clemenceau Formules assassines, traits d'humour, discours et prophéties*. Paris: Tallandier, 2014.

<sup>135</sup> House of Commons, Committee on Standards. The Standards System in the House of Commons Sixth Report of Session 2014–15. London, 2015, p. 14.

on the back of a napkin in an airplane.<sup>136</sup> These principles have shaped standards regulation in Britain but has also informed reforms in other countries as well as international standards. The Nolan Committee was composed of ten members including Lord Nolan and two MPs: Tom King and Peter Shore.<sup>137</sup>

Box 11. Michael Patrick Nolan, commonly known as Lord Nolan

In his obituary of Lord Michael Nolan, Andrew Roth of The Guardian wrote that Lord Nolan “made a profound mark on national life by substantially cleansing the Augean stable of corrupt politics as founding chairman of the Committee on Standards in Public Life”. Nolan was born in Bexhill, Sussex, in 1928, from a Catholic solicitor whose family had left Ireland to escape the potato famine. According to Roth, lord chancellor Lord Mackay of Clashfern, a strict Presbyterian, recommended Lord Nolan to John Major, recognising that the judge's strict morality was rooted in his devout Catholicism.<sup>138</sup> He was educated at Ampleforth college, in Yorkshire, and studied law at Wadham College, Oxford. He was called to the Middle Temple bar in 1953 and to the Northern Ireland bar in 1974. From 1982, he sat on the Queen's bench division of the High Court of Justice and joined the Court of Appeal in 1991. He was a Member of the Lords between 11 January 1994 and 22 January 2007. He was the Chairman of the Committee on Standards in Public Life from 1994 to 1997 where he insisted on conducting all meetings and inquiries in a transparent manner, despite the John Major’s suggestion that they would sit in private.<sup>139</sup> His work within the CSPL markedly changed the regulation of standards in Britain, with departure from traditional parliamentary self-regulation. Under his chairmanship, the CSPL “carved out an unexpectedly robust niche for itself”.<sup>140</sup> As a chair of the CSPL, he met foreign politicians and public officials interested in ethics reforms and participated in international events organised inter alia by the OECD.

The Committee collected evidence through 2000 letters received from citizens and experts, 100 interviews and opinion surveys. Most evidence came from within the UK, but the Committee also took inspiration from abroad, through written exchanges and in-person meetings. Lord

<sup>136</sup> Professor of political science, University of Warwick (UKEX1). Interview with author. November 14<sup>th</sup> 2017.

<sup>137</sup> The Committee was composed of Lord Nolan, Sir Clifford Boulton GCB, Sir Martin Jacomb, Prof. Anthony King, Tom King CH MP, Peter Shore MP, Lord Thomson of Monifieth KT DL, Sir William Utting CB, Dame Anne Warburton DCVO CMG and Diana Warwick. It was assisted by a secretariat of eleven people.

<sup>138</sup> ROTH, Andrew. Lord Nolan Committee chairman charged with keeping MPs up to standard. *The Guardian*, January 26<sup>th</sup> 2007.

<sup>139</sup> MORTON, James. Lord Nolan. *The Independent*, January 26<sup>th</sup> 2007.

<sup>140</sup> HINE David and PEELE Gillian. *The Regulation of Standards in British Public Life: Doing the Right Thing?* Manchester: Manchester University Press, 2016, p. 53.



Nolan's Committee published its first report in May 1995, which mentions the recourse to information about foreign experiences, notably the United States and Canada (Chapter 2).<sup>141</sup> Lord Nolan's committee was set up at a time where only few countries had institutionalised conflict of interest regulation and parliamentary ethics. The empirical evidence does not allow any conclusion as to the idea that the CSPL imported the ideas of codifying standards from the United States, but the report indicates that Lord Nolan and the committee members were aware of the ethics regulation as practiced elsewhere.

Similarly, President Nicolas Sarkozy created an *ad hoc* commission to make proposals on how to prevent conflicts of interest in public life. Jean-Marc Sauvé, vice-president of the Council of State, was appointed as chairman of this commission that informally took his name. The Commission Sauvé was composed of two other members: Didier Migaud, First President of the Court of Accounts (Cour des comptes) and Jean-Claude Magendie, former First President of the Appeal Court of Paris.

#### Box 12. Jean-Marc Sauvé and Didier Migaud

**Jean-Marc Sauvé** was the vice-president of the Council of State between 2006 and 2018. Born in 1949 in Templeux-le-Guérard, he graduated from Sciences Po Paris in 1970 and was part of the 'promotion Malraux' of the National School of Administration (ENA) between 1975 and 1977. He did most of his career within the Council of State but held other important administrative positions. He was for instance technical advisor to the Ministers of Justice Maurice Faure and Robert Badinter between 1981 and 1983, a position where he was in charge of criminal justice and international cooperation. He worked closely with Robert Badinter on the bill to abolish death penalty. He held the function of Secretary-general of the Government between 1995 and 2006, under four Prime Ministers (Alain Juppé, Lionel Jospin, Jean-Pierre Raffarin and Dominique de Villepin).<sup>142</sup> In 2006, he becomes vice-president of the Council of State, and as such took the presidency of the Commission on the Financial Transparency of Political Life (CTFVP), the predecessor of the High Authority on Transparency in Public Life (HATVP). The CTFVP was largely seen as an empty shell<sup>143</sup> and the arrival of Jean-Marc Sauvé contributed to make it more propositional, with the publication

<sup>141</sup> Chairman Lord Nolan. Standards in Public Life. First Report of the Committee on Standards in Public Life. Volume 1 : Report. Presented to the Parliament by the Prime Minister on May 1995. p. 17

<sup>142</sup> Conseil d'Etat. Vice-président du Conseil d'État de 2006 à 2018. n.d. Online, available at : <https://www.conseil-etat.fr/le-conseil-d-etat/organisation/le-vice-president/jean-marc-sauve> (accessed on February 10th 2020)

<sup>143</sup> HIRSCH, Martin. *Op. cit.* 2010.

of the 2007 report listing recommendations for improvement.<sup>144</sup> After the Woerth-Bettencourt scandal, President Sarkozy put him in charge of the Commission on the prevention of conflicts of interest in public life, where Jean-Marc Sauvé will get a chance to put the ideas developed during his time at the CTFVP onto the political agenda. The Sauvé Commission marked France's turn towards a more preventive approach to the problem of corruption and imported the idea of *soft law* in this policy field. He is now the chair of the ethics committee of the Paris2024 (in charge of the Olympic Games).

**Didier Migaud** was the president of the Court of Accounts (Cour des comptes) from 2010 to 2020, when he became the president of the HATVP. He was born in 1952 in Saint-Symphorien and graduate from Sciences Po Lyon. He has held several local and national mandates and was a member of the Socialist Party until he became president of the Court of Accounts. As a member of parliament, he was engaged in reforming the control of public spending and was known for his concern for budgetary rigor. This reputation probably helped him become president of the Finance Commission of the National Assembly in 2007 and president of the Court of Accounts a few years later. In this last position, he contributed to make the Court of Accounts more transparent, with more reports published and more data opened to the public. Since January 2020, he is the second president of the HATVP, the agency in charge of overseeing integrity in French public life. His experience in the Sauvé Commission and with the Court of Account made him a valued candidate to succeed to Jean-Louis Nadal, the first person to hold this function.

This commission was mandated to formulate recommendations as to how to prevent conflicts of interest, which informed discussions in the parliamentary working groups, in the Commission Jospin created under the following administration, subsequent bills, until finally being turned into policy in 2013. Jean-Marc Sauvé framed his mission as advising the government on how to catch up with the preventive turn that Canada, the United Kingdom or Portugal as well as the OECD, the Council of Europe or the European Union.<sup>145</sup> Jean-Marc Sauvé, Didier Migaud and Jean-Claude Magendie were indeed inspired by the work of the OECD on conflicts of interest, that they cite multiple times in their report and whose definition they used to elaborate their own.

<sup>144</sup> Commission pour la transparence financière de la vie politique. Treizième rapport de la Commission pour la transparence financière de la vie politique. JORF n°0295 du 20 décembre 2007; VAUCHEZ, Antoine. *Un champ de la régulation publique indépendante ? Acteurs, registres de justification et formes d'autorité politique des agences de régulation en France*. Rapport final de recherche. Paris: Université Paris Sorbonne, 2019, p. 45.

<sup>145</sup> Commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique (Commission Sauvé). Pour une nouvelle déontologie de la vie publique. Rapport remis au Président de la République le 26 janvier 2011; SAUVÉ, Jean-Marc. Pour une déontologie assumée de la fonction publique. *Les Cahiers de la fonction publique*, n° 331, 2013.

They also refer to the codes of conduct introduced in the European Commission, Britain and Australia, as well as at the interest declaration systems in place in the European Commission, Australia and Canada. They thus became the first public officials to transfer global solutions to regulate conflicts of interest to the French political agenda.

While the initial commission was not tasked to investigate the regulation of parliamentarians' conflicts of interest, its recommendations were translated to include them two years later. President François Hollande tasked former Prime Minister Lionel Jospin to set up a commission to elaborate proposals on the renovation and ethics (*déontologie*) of public life, in July 2012. The commission was created to formulate concrete proposals in line with François Hollande's campaign promise to renew French democracy and make public institutions exemplary. The composition of the 'Jospin Commission' was more diverse than the one chaired by Jean-Marc Sauvé, as it included academics, former ministers and high-level civil servants among its members.<sup>146</sup> Two of its members would later be nominated as ethics commissioner of the National Assembly (Félix Mélin-Soucramanien and Agnès Roblot-Troizier). In addition to the expertise of its members, the Jospin Commission used the work of its predecessor to come up with its recommendations, as well as publications from international institutions, specialised NGOs and foreign examples, which they adapted to the French context.<sup>147</sup>

Public officials taking part in such commissions played a decisive role in designing conflict of interest regulation, including the choice to introduce a public interest register and a code of conduct overseen by an independent ethics commissioner. These commissions' recommendations informed later reforms. Indeed, through the selections of commission members, experts and evidence, they worked as a filter for policy ideas that would reach policy-makers. Parliamentary clerks played a similar role, although much more behind the scene.

#### 7.2.2.2. Parliamentary clerks as important receptors and translators of ideas

Parliamentary clerks played an important role in shaping conflict of interest regulation. This is not because they were themselves promoting these instruments (they are not policy entrepreneurs) but because, through selecting experts and documents they essentially filtered the information that reached the final decision-makers. Analysing policy documents and interviewing

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<sup>146</sup> Commission de rénovation et de déontologie de la vie publique (Commission Jospin). Pour un renouveau démocratique. Paris, 2012, p. 129.

<sup>147</sup> Professor of public law (FREX1). Interview with author. December 20th 2017.

both parliamentarians and clerks made it clear that, in this specific case they were crucial agents of transfer. Emma Crewe, having observed, interviewed and interacted with parliamentary clerks for her ethnographic study of the House of Commons, describes clerks as a professional group characterised as being “keen observers, utterly discreet, and wordsmiths of political texts”, and “experts on the procedure of political debate and privilege”.<sup>148</sup> As all bureaucrats, their influence lies in their knowledge of the functioning of the institution, accumulated expertise on certain issues and memory of previous texts and debates.<sup>149</sup> In Britain, France and Sweden, parliamentary clerks worked as transfer agents (bringing foreign practices to the attention of MPs), translators (adapting policy ideas to their respective parliament) and even indirect agenda-setters (informing the leadership of the publication of international monitoring reports).

In 2010, when President Sarkozy set up the Sauvé Commission, the leadership of the National Assembly and of the Senate each established a working group to formulate proposals to prevent conflicts of interest for parliamentarians. The low chamber’s working group (known as ‘groupe de travail Accoyer’ after the name of then President of the Assembly) was assisted by three parliamentary clerks: Catherine Leroy (clerk working within the General Secretariat, assisting the bureau), Eric Thiers (clerk to the law commission) and Eric Buge (clerk working within the legal department). They filtered the information that the working group used to formulate its recommendations, by drafting the initial list of experts to be auditioned, preparing a benchmark of foreign practices and an overview of international organisations’ definition of conflict of interest.<sup>150</sup> Given the relatively vague mandate given to the working group, they played an important role in making policy ideas available to MPs. A parliamentary clerk said in an interview that the working group had no intention to introduce a code of conduct at first and that the idea came with the hearings.<sup>151</sup> They later helped select the ethics commissioner (or *déontologue*) by finding people with ‘moral authorities’ among public law professors with a good knowledge of the parliament, by drafting the lists of potential candidates for the Assembly’s president.<sup>152</sup>

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<sup>148</sup> CREWE, Emma. Magi or Mandarins? Contemporary Clerkly Culture. In EVANS, Paul (ed.) *Essays on the History of Parliamentary Procedure: In Honour of Thomas Erskine May*. London: Bloomsbury Publishing, 2017, p. 49.

<sup>149</sup> BALOGÉ, Martin. Chapitre 2 : Les administrateurs du Parlement. Contribution à une sociologie des collaborateurs d’élus. In BEAUVALLET, Willy and Sébastien, MICHON (eds.) *Dans l’ombre des élus : Une sociologie des collaborateurs politiques*. Villeneuve d’Ascq: Presses universitaires du Septentrion, 2017, pp. 53-74.

<sup>150</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018; Parliamentary clerk 2, National Assembly (FRPC2). Interview with author. April 5<sup>th</sup> 2019.

<sup>151</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018.

<sup>152</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018.

Parliamentary clerks also contributed to make the new ethics institution acceptable to parliamentarians and helped the successive *déontologues* navigate the institution, thanks to their knowledge of the rules and procedures. They helped the president of the Assembly to develop a strategy to incrementally impose ethics rules on deputies. Instead of introducing the code in the rules of the House, which would have required a debate in the chamber and an assessment by the Constitutional Court, they suggested to maintain it as a decision of the bureau, which did not require debate or external control. The following legislature nevertheless felt bound by it and the obligations of the code were gradually integrated into the rules of the House, and made some into law in 2013.<sup>153</sup> As Denis Saint-Martin wrote “it is difficult to be against ethics in a democracy”, citing Calvin Mackenzie arguing that it is “politically costly to oppose”.<sup>154</sup> Introducing toothless ethics rules that are not legally binding helped to circumvent political and institutional opposition and thus made future policy change possible.

Eric Buge played a particularly interesting role in the construction of France’s system of conflict of interest regulation. After having assisted the working group with the code of conduct, he was asked to assist François de Rugy in drafting a bill on transparency of public life and the prevention of conflicts of interest, a task for which he used the knowledge accumulated assisting the working group. After the adoption of the 2013 laws on transparency in public life, Eric Buge became vice-secretary general to the newly created High Authority for Transparency in Public Life (HATVP), that he contributed to shape and where he helped to develop the public interest register. After the 2017 elections, he joined François de Rugy at the Presidency of the National Assembly and assisted him in implementing a new ethics policy for the parliament, such as the Parliament’s Open Government Partnership action plan and the 2017 law on trust in public life. His career trajectory made him a central (though discrete) figure of the French public ethics system, who contributed to shape reforms as an inter-institutional translator of conflicts of interest regulation.

In Britain, while the Nolan Committee provided the principles and ideas for reforming the public standard system, parliamentary clerks helped to translate them into parliamentary rules.<sup>155</sup> In the British standards system, with the Committee on Standards studying individual cases of

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<sup>153</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018.

<sup>154</sup> SAINT-MARTIN, Denis. Path dependence and self-reinforcing processes in the regulation of ethics in politics: toward a framework for comparative analysis. *International Public Management Journal*, Vol. 8, n°2, 2005, p.144; MACKENZIE, Calvin G. *Scandal Proof: Do Ethics Laws Make Government Ethical?* Washington, D.C.: Brookings. 2002, p.5.

<sup>155</sup> HINE, David and PEELE, Gillian. *Op. cit.* 2016.

misconduct, the role of parliamentary clerks is slightly different from the other cases. Indeed, the parliamentary clerk assisting the Committee on Standards has a crucial role to play in dealing with individual cases, advising the committee on the types of sanctions applied in the past, ensuring fairness and circulating information. They also function as an interface between the Parliamentary Commissioner for Standards (the independent strand of the standard system) and the Committee on Standards (its political strand).<sup>156</sup> They have a fine-grained understanding of the ethics rule of the House and informally advise MPs on how to comply with them. They generally encourage them to declare as much as possible, sticking to the rule that it is “better to declare than not declare. Better to over-declare.”<sup>157</sup> Their permanence within the institution, internal and external networks and knowledge of institutional rules and practices give them power to influence the implementation and evolution of the standards system. They organise the regular reviews of the ethics rules, draft reports and provide information and evidence. They benefit from a network of clerks in other countries, especially with the Commonwealth, the United States Congress and other EU Parliaments.<sup>158</sup> As a parliamentary clerk put it during our interview:

The clerk tries to bring cohesion to the work of the committee. Very good handover notes between clerks, lot of time on the phone. It is a small organisation and we know each other well. I took over from my colleagues that I know well, and we had many meetings over coffee etc. There is a lot of informal exchanges.<sup>159</sup>

One example of the influence of clerks on changes in the standards system concerns the lay members. The idea to integrate lay members in the committee came from the chair (MP) who had been a lay member on the General Medical Council and thought the idea should be introduced in parliament, after the expenses scandal.<sup>160</sup> The Committee clerk however influenced the decision regarding the number of lay members, bringing it from two to three.<sup>161</sup> Their knowledge of the rules and practices of the House led them to take a pragmatic decision that would ensure to ensure that quorum would more easily be met for the Committee to run smoothly. Unintentionally, they also laid the groundwork for future reforms of the system by providing the lay members with more

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<sup>156</sup> Parliamentary clerk, UK House of Commons (UKPC2). Interview with author. March 15th 2018.

<sup>157</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>158</sup> *Ibid.* Parliamentary clerk, UK House of Commons (UKPC3). Interview with author. November 20th 2017.

<sup>159</sup> *Ibid.*

<sup>160</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>161</sup> Parliamentary clerk, UK House of Commons (UKPC2). Interview with author. March 15th 2018.

weight within the committee. As next section will show, lay members indeed became a force for change in the standards system, to the surprise of the clerks and MPs.

In Sweden's *Riksdag*, parliamentary clerks played a key role in the adoption of the code of conduct. The parliamentary clerk assigned to the working group on the code of conduct, established in 2014, collected foreign examples, travelled abroad (to London, Warsaw and Berlin) and gathered knowledge produced by international organisations (OSCE, CoE) to inform the elected members of the group.<sup>162</sup> In addition to being conduits of information and transfer agents, Swedish parliamentary clerks also contributed to put and promote the issue on the parliament's agenda. They indeed follow publications about the parliament closely, especially from international organisations, and were thus aware of the upcoming CoE publication recommending that Sweden adopt a parliamentary code of conduct.<sup>163</sup> It was the clerks' initiative to signal this to the president of the parliament, because, in the words of a former parliamentarian: "it was not parliamentarians who took this up. We had no idea".<sup>164</sup> In the absence of a dedicated institution overseeing compliance with the code and disclosure obligations, they also contribute to the implementation of the ethics rules, since they assist parliamentarians in complying with the requirements. They see it as part of their mandate to protect parliamentarians from the humiliation of being called out by the president in the chamber and thus chase them to make sure they register their interests on time.<sup>165</sup>

The relative lack of interest of most political actors for these policy instruments gave parliamentary clerks more room to manoeuvre and ultimately shape conflict of interest regulation. They are particularly well placed to design ethics rules that do not go against the rules of parliament, give them cohesion and make them acceptable to their political masters, thanks to their knowledge of, and attachment to, the parliamentary institution. The permanence of their position also served as a resource. Many of the parliamentary clerks interviewed seem to have developed a real interest in the issue that root formalised ethics in the culture of the parliamentary administration, "the enthusiasm of the newly converted" (a reference, again, to the semantic field of religion).<sup>166</sup> Parliamentary clerks played an important role in transferring policy ideas by making relevant information available to political decision-makers. Filtering information allows them to shape the

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<sup>162</sup> Parliamentary clerk, Swedish Parliament (SWPC3). Phone interview with author. May 30<sup>th</sup> 2017.

<sup>163</sup> Parliamentary clerk, Swedish Parliament (SWPC3). Phone interview with author. May 30<sup>th</sup> 2017.

<sup>164</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17<sup>th</sup> 2017. Author's translation.

<sup>165</sup> Parliamentary clerk, Swedish Parliament (SWPC3). Phone interview with author. May 30<sup>th</sup> 2017.

<sup>166</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018.

world of policy options for decision-makers to choose from. Lastly, they influence the evolution of policies by implementing them, identifying the weaknesses and potential improvements, and establishing relations with peers abroad working on similar issues.

### 7.2.2.3. Ethics regulators as transfer agents: feedback effect of new policies

Reforms of conflict of interest regulation in Britain and France created new institutions in charge of regulating conflicts of interest, which contributed to inform (and promote) further policy changes. In Britain, three institutions came to play the (unexpected) role of transfer agents: the Committee on Standards in Public Life (CSPL) set up as a permanent body in 1994, the Parliamentary Commissioner for Standards for the House of Commons created in the 1995, and the three lay members invited to join the Committee on Standards in 2012. While it was set up to diffuse a crisis and propose ideas for immediate reform, the CPSL was established as a standing advisory Non-Departmental Public Body (NDPB) sponsored by the Cabinet Office, to examine current concerns about standards of conduct of all holders of public office. The Committee can conduct inquiries “but can also revisit those areas and monitor whether and how well its recommendations have been put into effect”.<sup>167</sup> It has played the role of engine of standards-related reforms in Britain ever since, as it advises institutions and produces knowledge and opinion surveys which serve to flag weaknesses and possible improvements.<sup>168</sup>

The Committee on Standards of the House of Commons showed a growing interest in reforming the standards system with the arrival of the lay members in 2012. While the MPs and the clerk thought they would be form of adjudicatory body, they soon realised that the lay members of the committee were far more interested in reforming the standards system.<sup>169</sup> The three first lay members all agreed that the system needed to be reformed and they used their professional experience to try to bring about change. One of them, interviewed for this research, said the main agenda they had set themselves was to make sure the committee had a “workplan for reform”.<sup>170</sup> They organised focus groups with citizens to gather information about changes needed to regain public trust and, most important, they convinced the committee to set up a Standards Review Subcommittee in 2014, chaired by one of them. In its comprehensive review of the standards

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<sup>167</sup> Committee on Standards in Public Life. Standards matter A review of best practice in promoting good behaviour in public life. Fourteenth Report Cm 8519. January 2013, p. 65.

<sup>168</sup> HINE, David and PEELE, Gillian. *Op. cit.* 2016.

<sup>169</sup> Parliamentary clerk, UK House of Commons (UKPC2). Interview with author. March 15<sup>th</sup> 2018.

<sup>170</sup> Former lay member of the Committee on Standards (UKLM). Interview with author. March 13<sup>th</sup> 2018.



system in the House of Commons, the Sub-Committee gathered information on the standards systems from local governments and devolved institutions in the UK, from the two houses of the United States' Parliament, the Australian House of Representatives, the Parliament of New South Wales, the Canadian House of Commons and the Parliament of New Zealand. As a parliamentary clerk put it:

This is proof of the energy you can get from getting new people in. They [lay members] were the push behind [the standards review subcommittee] and they produced reflection papers which are not endorsed by the committee, but are their independent views. Ideas for extra things come from lay members wanting to look at things more broadly. Elected members might want to take things further as well. For example, after the review they may want to take some issues further.<sup>171</sup>

Lay members represented a force for change within the House of Commons and they put a lot of time and energy into reforming the system, motivated by their perception that society was changing much faster than parliament.<sup>172</sup> They worked closely with the clerks, and sometimes circumvented the rules and the inertia of the committee by going directly to the Speaker, against the clerk's advice.<sup>173</sup> Their main success was to bring parity in the membership of the Committee on Standards, composed, since 2015, of 7 elected and 7 lay members.<sup>174</sup> Sir Kevin Baron MP, then chair of the Committee on Standards, saw this development as a way to bring "the House's system closer into line with the regulatory systems for professions such as the law and medicine, and (...) way ahead of lay input in the Parliaments of Australia, Canada, New Zealand and the USA".<sup>175</sup> The lay members seemed eager to search abroad for new policy ideas. Insiders and outsiders to the parliamentary system thus seem to have a different view on the need for the British system to be reformed and to learn from other countries' practices. As a former lay member said at the end of our interview, "I hope your research will shed some light on some good practice that we could bring from Sweden and France".<sup>176</sup>

In France, two institutions set up to regulate conflicts of interest similarly turned into agents of change: the National Assembly's *déontologue* created in 2011 and the High Authority for the

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<sup>171</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>172</sup> Former lay member of the Committee on Standards (UKLM). Interview with author. March 13th 2018.

<sup>173</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>174</sup> Parliamentary clerk, UK House of Commons (UKPC2). Interview with author. March 15th 2018; Former lay member of the Committee on Standards (UKLM1). Interview with author. March 13th 2018.

<sup>175</sup> House of Commons. Hansard. House of Commons Debates. Volume No. 594 Part No. 126. March 17 2015

<sup>176</sup> Former lay member of the Committee on Standards (UKLM1). Interview with author. March 13th 2018.

Transparency of Public Life (HATVP) established in 2014. Whether policy innovation was included in their mandate or not, these institutions came to play a propositional role, extend their functions and improve the existing instruments. When the function of *déontologue* was created and the code was adopted, practicalities and details were still left to be defined.<sup>177</sup> In addition to reviewing interest declarations (which they never did) and to provide ethical guidance to individual parliamentarians, the *déontologue* was envisaged as an institution that would help improve existing policy. The *déontologue* produces an annual report that reviews their activities, identifies strengths and weaknesses in the system and suggests improvements. This propositional aspect of the function has become increasingly important.<sup>178</sup> To that purpose, they organise hearings with domestic and foreign actors, and commission comparative studies on specific changes they want to propose, with the help of clerks. They use handover notes and previous reports to move the agenda forward.<sup>179</sup> For instance, Noëlle Lenoir suggested the introduction of a procedure of oral declaration to complement the interest registration (as is traditionally the case in Westminster) and this proposal was taken up by all subsequent *déontologues*. While it was never turned into policy, the practice of orally declaring interests is nevertheless catching on,<sup>180</sup> suggesting that the *déontologue* is an agent of incremental change that instils new ideas in the institution. The possibility for parliamentarians to recuse themselves was also introduced following a recommendation from the *déontologue*.<sup>181</sup> Most *déontologues* were invited to hearings by the various *ad hoc* commissions and working groups on the prevention of conflicts of interest, demonstrating the cognitive authority acquired by the function.

The HATVP has also become a transfer agent, going beyond its initial mandate of receiving, verifying and publishing officials' declarations. Officials of the institution, be it the chairman of the council or the secretariat, rapidly turned the institution into a form of public think tank, wanting to turn the institution into more than a controller, interpreting the institution's legal mandate as including policy work.<sup>182</sup> Antoine Vauchez and Jana Vargovcikova for instance argue that Jean-

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<sup>177</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7<sup>th</sup> 2018.

<sup>178</sup> Indeed, while Jean Gicquel's first report was 33 pages long, the following one prepared by Noëlle Lenoir was almost 200 pages. The last one, prepared by Agnès Roblot-Troizier is 244 pages long and contains a list of 23 proposed reforms in the introduction (GICQUEL, Jean. *Rapport du déontologue au bureau de l'assemblée nationale*. Paris: Assemblée nationale, 2012; LENOIR, Noëlle. *Rapport public annuel*. Paris: Assemblée nationale, 2013; ROBLOT-TROIZIER, Agnès. *Un nouvel élan pour la déontologie parlementaire*. Paris: Assemblée Nationale, 2019).

<sup>179</sup> Professor of Public law (FREX2). Interview with author. February 28<sup>th</sup> 2018.

<sup>180</sup> Professor of Public law (FREX2). Interview with author. February 28<sup>th</sup> 2018.

<sup>181</sup> LENOIR, Noëlle. *Rapport public annuel*. Paris: Assemblée nationale, 2013; ROBLOT-TROIZIER, Agnès. *Un nouvel élan pour la déontologie parlementaire*. Paris: Assemblée Nationale, 2019.

<sup>182</sup> Public officials 2 and 3, HATVP (FRPO2, FRPO3). Interview with author. November 30<sup>th</sup> 2017.

Louis Nadal, its first chairman, rapidly became a ‘moral entrepreneur’, turning the HATVP into what Anne Revillard calls an ‘activist institution’ (*institution militante*).<sup>183</sup> The officials working for the HATVP established relations with their counterparts abroad and with the international civil servants working for international institutions involved in anti-corruption work (especially at the OECD, the CoE and the European Commission). They participate in various initiatives, such as the OGP, organise events with different audiences (students, data scientists, international academics) to encourage the reuse of their data. Developing collaborations with international institutions and national NGOs, the HATVP established a form of ‘network agency’, while at the same time constructing its image as a national expert on public integrity.<sup>184</sup> They conduct regular hearings with relevant actors, and collect information regarding foreign practices and international recommendations that they included in reports that inform (and legitimise) their policy recommendations.<sup>185</sup> As a former HATVP official described the purpose of their publications:

Some publications have a propositional purpose. The objective is that the proposals are taken up by relevant interlocutors. That was clearly the ambition of our first report, but it is also partly the role of our annual reports which report on the year’s activities and suggest ways to improve our activities in the future (...) Some recommendations are influential, other not at all. There is a monitoring table on the website. Some proposals were rapidly translated into law while other did not go that far.<sup>186</sup>

In its communication, the HATVP uses some of the techniques of advocacy groups, such as visualisations to monitor the uptake and implementation of the proposals that they publish (in their reports and on the website). The institution’s investment in communication tools suggests that it has sought to reach out to the public and the media, through data visualisation and easily accessible information.<sup>187</sup> While legislators provided the HATVP with significant resources to go beyond its core mandate, the initiative to invest in research, networking and policy work largely came from within the institution.<sup>188</sup> Public officials of the HATVP turned the institution into a

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<sup>183</sup> VAUCHEZ, Antoine and VARGOVCIKOVA, Jana. La Haute autorité pour la transparence de la vie publique et la régulation déontologique des « responsables publics ». In VAUCHEZ, Antoine (ed.) *Rapport final de recherche Un champ de la régulation publique indépendante ? Acteurs, registres de justification et formes d'autorité politique des agences de régulation en France*. Numéro du rapport : 216.10.12.20. Paris, 2019.

<sup>184</sup> *Ibid.*

<sup>185</sup> Public officials 2 and 3, HATVP (FRPO2, FRPO3). Interview with author. November 30<sup>th</sup> 2017.

<sup>186</sup> Public official 1, HATVP (FRPO1). Interview with author. October 27<sup>th</sup> 2017. Author’s own translation.

<sup>187</sup> While other similar administrative bodies, such as the commission that oversees political campaign finances, the CNCCFP, have relatively out-of-date communication tools (user unfriendly website and poorly designed reports), the HATVP has developed a nicely designed and user-friendly interface and eye-catching publications.

<sup>188</sup> Public official 1, HATVP (FRPO1). Interview with author. October 27<sup>th</sup> 2017; Public officials 2 and 3, HATVP (FRPO2, FRPO3). Interview with author. November 30<sup>th</sup> 2017.

transfer agent by reaching out to international institutions, and making research and comparative work important dimensions of the institution's activities.

Public officials, whether high-level civil servants tasked to chair *ad hoc* committees, parliamentary clerks or public officials working within regulatory institutions became transfer agents, whether this was the initial intention of legislators or not. An interesting finding here is that, while establishing institutions to regulate public officials' conflicts of interest, legislators created a mechanism to maintain the issue on the agenda. This echoes existing research that shows that public ethics reforms have feedback effects: resource effects that shape patterns of behaviour and interpretive effects that shape representations and interpretations.<sup>189</sup> Given the relative disregard of political officials for the issue of conflict of interest (at least initially), bureaucrats had some latitude to shape policy. They are indeed particularly well-placed to inform policy change. Their position within these institutions, their knowledge about the political system and the thematic expertise gained through their activities builds their cognitive authority in the policy field. The permanence of their position also served as a resource through the continuity they represent. They influence the policy field by filtering the information that reaches political decision-makers. Next section turns to policy intermediaries who helped transfer conflict of interest regulation into the French and Swedish Parliaments.

### **7.2.3. Policy intermediaries as transmission channels**

Research interested in the transfer and translation of policy ideas is well advised to pay attention to actors situated in between different worlds as they make policy ideas circulate and 'mutate' them in the process.<sup>190</sup> These policy intermediaries are ideal-typical translators of policy ideas, as they operate in different social spheres (the languages, norms and practices of which they master) giving them the ability to make ideas from one sphere understandable and acceptable to another.<sup>191</sup> In the case of the translation of ideas about conflict of interest regulation, important intermediaries were found between different sectors within the same country. They are also situated between the world of international policy-making and the world of national policy making, allowing

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<sup>189</sup> SAINT-MARTIN, Denis. *Op. cit.* 2005, p. 139.

<sup>190</sup> STONE, Diane. *Op. cit.* 2012, p. 483.

<sup>191</sup> NAY, Olivier and SMITH, Andy (eds.). *Les intermédiaires en politique : courtiers et généralistes dans l'action politique*. Paris: Economica, 2003; HASSENTEUFEL, Patrick. Chapitre 8 les acteurs intermédiaires des politiques publiques. In *Sociologie politique : l'action publique*. Paris: Armand Colin. 2011.

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ideas about interest registration and ethics codification to circulate across sectoral and jurisdictional borders.

#### 7.2.3.1. Transferring policy ideas across sectors

In France and Sweden, the problematisation of conflicts of interest and the idea that that decision-makers private interests needed to be regulated did not emerge with to political decision-makers in mind. Indeed, several professional groups, for whom unresolved conflicts of interest and related corrupt practices could have a serious impact on people's lives such the health sector, architecture or the construction sector, formulated solutions involving ethics codes and interest disclosure, which were later translated into political institutions. This subsection concentrates on France, as more actors were involved in importing these instruments, and thus more intermediaries could be identified. It is worth noting however that, in Sweden, parliamentarians themselves played the role of intermediaries between the public and the private sector. Among the politicians who formed a multi-partisan group on ethics in politics in the 1990s, a few had only recently been elected to parliament, having had a professional career outside of politics. Barbro Westerholm (Liberal), Ingrid Andersson (Social-Democrat) and Chatrine Pålsson (Christian Democrat) worked in the medical sector before being elected to the parliament, the two latter as nurses, and the former as a doctor and professor who had learned about ethics through her experience overseeing the marketisation of breast milk substitutes. A similar situation of elected officials importing the ethics rules from their former profession was noted in France with the arrival of many new parliamentarians in 2017.<sup>192</sup>

In France, the public health sector played a pivotal role in putting conflicts of interest on the agenda. One intermediary in particular contributed to the circulation of conflict of interest regulation across sectors in France. Martin Hirsch, having held many different positions (Box 13), became aware of the problem of conflicts of interest through major health scandals (Section 7.1). He later contributed to transfer the solutions adopted in the public health sector to guarantee the independence of medical experts (notably interest declarations) to the public administration and the political field.

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<sup>192</sup> Professor of Public law (FREX2). Interview with author. February 28<sup>th</sup> 2018; BROUARD, Sylvain. *Elections législatives 2017 : un renouvellement parlementaire inédit depuis 1958*. Paris: CEVIPOF, 2017.

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### Box 13. Martin Hirsch, from public health to politics

Born in 1963, Martin Hirsch graduated from the Ecole normale supérieure (ENS Ulm) and from the National School of Administration (ENA), and has a diploma in biochemistry and neurobiology. He has taught at ENA (1994) and Sciences Po (1990-1997), been on the board of the Assistance publique – Hôpitaux de Paris (AP-HP), of the European Medicines Agency (EMA) and of the Association of Cancer Research (ARC). He was the director general of the Agency for the Sanitary Safety of Foods (AFSSA) from 1999 to 2005 and the president of Emmaüs France from 1995 to 2002. He co-founded the New Agency on Active Solidarity in 2006 and became the High Commissioner for Solidarity and the Fight against Poverty in 2007 and High Commissioner for Youth in 2009. In 2013, he became president of the Agency for Civic Service in 2010 and Director general of the AP-HP in 2013. He also served as secretary of the Commission for the Financial Transparency of Public Life (CTFVP), the predecessor of the HATVP. Martin Hirsch discovered the notion of conflict of interest and its potentially grave consequences with the public health scandals of the contaminated blood and the Mediator, after which the obligation for public health experts evaluating new drugs to disclose their interests and ties with the pharmaceutical industry. Having left the government in 2010, Hirsch published a book *Pour en finir avec les conflits d'intérêts*,<sup>193</sup> where he accused some high-level political officials of conflicts of interest and suggests several policy solutions, such as mandatory interest declarations, a better control of gifts or new rules on incompatibilities. He was the first expert heard by the Sauvé Commission in 2011. His experience in the health sector and with the CTFVP built his expertise on conflict of interest regulation and he contributed to import several instruments from the health sector, that had been imported from North America (Section 7.1), from other countries and from international institutions and to translate them into the French political system.

Besides the public health sector, legal scholars played a role of intermediaries in the process of translating conflict of interest regulations into the French system. Legal experts, such as Anne Levade, Félix Mélin-Soucramanien, Julie Benetti or Agnès Roblot-Troizier, contributed to the doctrine on conflicts of interest and public ethics, with Guy Carcassonne (who initially pointed to the risks of conflicts of interest posed by the accumulation of mandates) spearheading this scholarship. Many legal scholars who shaped the cognitive framework for conflict of interest regulation in France were students of Jean Gicquel, who became the first parliamentary ethics commissioner. More recently, two public law scholars, Jean-François Kerléo and Matthieu Caron, founded a think tank on public ethics (*l'Observatoire de l'éthique publique*), together with René Dosièr

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<sup>193</sup> HIRSCH, Martin. *Op. cit.* 2010.

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(former Socialist politician). Many of these scholars served as experts in the commissions set up to formulate policy solutions to prevent conflicts of interest, together with a few scholars from other academic disciplines, such as Yves Mény and Pierre Rosanvallon. The legal experts who contributed to the translation of ideas about conflicts of interest were often later nominated as ethics commissioners of the National Assembly (Jean Gicquel, Félix Mélin-Soucramanien or Agnès Roblot-Troizier) or board members of the HATVP (Anne Levade).

Transcripts of legal scholars' hearings during the elaboration of the National Assembly's policy on conflicts of interest and the 2013 laws on transparency show that they tend to be rather sceptical towards imposing strong transparency regulations on elected officials, and generally support the idea of administrative control of declarations. They reminded policy-makers that French law traditionally prevented conflicts of interest through incompatibility and ineligibility rules. These constitutional law experts generally argue against imposing too many rules of parliamentarians that could weaken the position of the parliament as a representative body.<sup>194</sup> This position was often opposed to proposals of political scientists who are more willing to look abroad for policy ideas and promote transparency, echoing recommendations from civil society organisations like TI France.<sup>195</sup> Given legal scholarship's dominance over the topic of corruption prevention and conflicts of interest in France, this epistemic community was particularly influential in shaping reform proposals. The cognitive framework through which they interpret the problem of conflicts of interest, with a strong attachment to French constitutional principles, indeed played an important role in translating imported policy ideas regarding conflicts of interest regulation into the French legal system, slowing down the transfer of the 'soft' approach based on transparency instruments that existed in countries of the Anglosphere.<sup>196</sup> Their scepticism regarding transparency also relates to the existence in France of an obligation for a number public officials to disclose their private assets (controlled by an administrative agency), the publicity of which could be a violation

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<sup>194</sup> Assemblée nationale. Compte rendu n°1 Groupe de travail sur la prévention des conflits d'intérêts. Paris, December 9th 2010; Assemblée nationale. Le statut des députés et leurs moyens de travail Compte-rendu n°3. Paris, October 30th 2017; Professor of Public law (FREX2). Interview with author. February 28th 2018.

<sup>195</sup> See for instance Guy Carcassonne and Anne Levade's hearing by the Assembly's working group on conflicts of interest as opposed to Yves Mény's suggestions (Assemblée nationale. Groupe de travail sur la prévention des conflits d'intérêts. Session 2010-2011. Compte-rendu n°1, December 9th 2010 and compte-rendu n°2, January 13th 2011)

<sup>196</sup> In his doctoral dissertation, Thomas Scapin also highlights the role of legal scholars involved in producing a doctrine on public ethics and conflicts of interest as obstacles to the transfer of a 'soft' preventive approach to public ethics in France (SCAPIN, Thomas. *La circulation transnationale de l'éthique publique. Socio-histoire d'un répertoire océdéen du bon gouvernement et de ses réceptions au Québec et en France (années 1990-années 2010)*. Doctoral thesis defended at Sciences Po Lyon on December 11th 2019).

of officials' right to privacy. This should however be nuanced, as they do not all share the same scepticism and it mostly applies to the publicity of a certain type of personal information. While making them seem rather conservative, as Anne Levade herself said during a hearing "I am not a big revolutionary, legal scholars rarely are",<sup>197</sup> their knowledge of (and attachment to) constitutional law made them influential policy translators, re-interpreting policy ideas imported from abroad to make them fit the French legal system.

### 7.2.3.2. Transferring policy ideas across borders

Beyond moving ideas across sectors, some intermediaries situated at the crossroads between global and national policy-making contributed to the circulation of policy ideas on corruption prevention across levels of governance. Anti-corruption policy-making has become increasingly transnational, as previous chapters have demonstrated. The emergence of international policy brokers facilitated the international diffusion of public interest registers and codes of conduct as means to regulate conflicts of interest. This subsection is interested in another type of intermediary located at the national level, with strong connections to the transnational policy community, which acts as a transmission channel between global policy-making and 'norm takers' at the domestic level.

In the field of anti-corruption policy, no example is as illustrative as TI (presented in Chapter 3). TI's governance structure combines an international secretariat, board of directors and individual members, in charge of developing the organisation's global discourse and tools, and national chapters involved in domestic politics, using the "TI franchise".<sup>198</sup> This structure makes it an ideal transnational intermediary, with international actors constructing and circulating 'global' solutions to the 'global problem' of corruption, and domestic actors translating them for domestic politics, "global reach, local knowledge" in its own words.<sup>199</sup> With few non-state actors involved in anti-corruption work in France, TI France, founded in 1995 by Michel Bon, Daniel Dommel,

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<sup>197</sup> Assemblée nationale. Le statut des députés et leurs moyens de travail Compte-rendu n°3. Paris, October 30th 2017.

<sup>198</sup> De SOUSA, Luis. The institutionalisation and franchising of TI. In De SOUSA, Luís, LARMOUR, Peter and HINDESS, Barry. *Governments, NGOs and Anti-corruption: The New Integrity Warriors*. London: Routledge, 2008, p. 190

<sup>199</sup> Transparency International. Overview. Official website, available at: <https://www.transparency.org/whoweare/organisation> (accessed on November 30th 2018)

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Jacques Friedman, Raymond Lévy, Pascal Lamy, Pierre Rosanvallon and Jean-Claude Paye,<sup>200</sup> became an important transfer agent. With its transnational structure, TI can easily move from one cognitive universe to the other and thus transfer concepts and translate their meaning, as Box 14 illustrates.

Box 14. Transferring concepts: the example of ‘redevabilité’

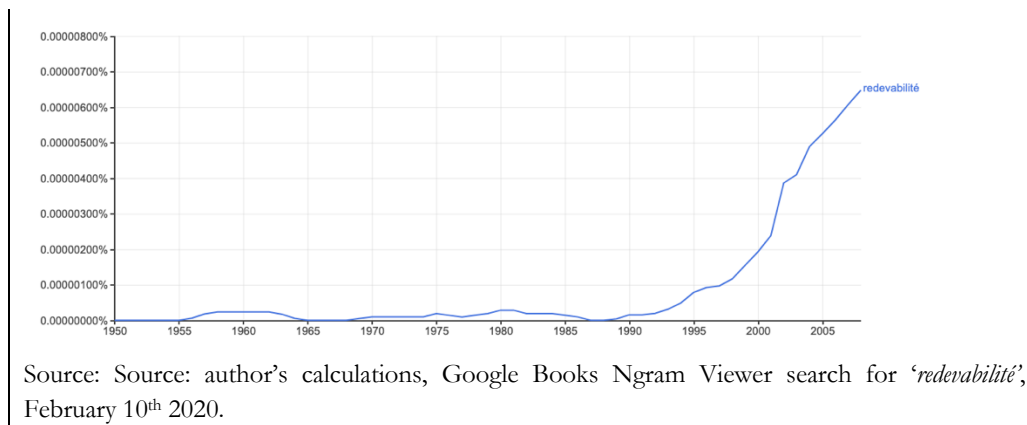
The term ‘accountability’ is of common usage in English political language, with roots in the American political tradition of citizens’ inalienable right to hold leaders to account. As Christopher Hood writes, “accountability is a term associated with English-language discussions of governance [conventionally taken as the central problem in the Anglo-American public administration literature] and there is said to be no precisely equivalent word in some languages”.<sup>201</sup> Indeed, it did, until recently, not have an equivalent in France. The idea of power-holders being accountable to the public existed and was conveyed by the expression ‘*obligation de rendre des comptes*’, ‘*reddition de comptes*’ or alternatively by the term ‘*responsabilité*’. The still debated new term ‘redevabilité’, constructed from the adjective ‘*redevable*’, emerged as a translation of accountability in the 1990s with the good governance agenda, especially in developing francophone countries, with the impulse of TI among others. As the graph below suggests, it became increasingly used in the 2000s as way to say that individuals and institutions are held responsible for reporting their activities and executing power properly. Daniel Lebègue, the president of TI France from 2003 to 2017, contributed to popularise the term in French political discourse.<sup>202</sup> ‘Redevabilité is indeed one of the values that TI France seeks to promote in a country where, according to a board member, transparency, accountability and civil society participation are not part of the political culture.’<sup>203</sup>

<sup>200</sup> LEBEGUE, Daniel. Chapitre 1. Lutte contre la corruption : quel rôle et quels moyens d’action pour la société civile ? L’exemple de Transparency International. In HUNAULT Michel. *La Lutte contre la corruption, le blanchiment, la fraude fiscale*. Paris: Presses de Sciences Po, 2017, p. 51.

<sup>201</sup> HOOD, Christopher. Accountability and Transparency: Siamese Twins, Matching Parts, Awkward Couple? *West European Politics*, Vol. 33, n°5, 2010, pp. 989-1009.

<sup>202</sup> Assemblée nationale. Pour une nouvelle Assemblée nationale. Le statut des députés et leurs moyens de travail. Séance de dix-sept heures compte rendu n° 5. Paris, November 13th 2017.

<sup>203</sup> Former chair of Transparency International France (FRCS1). Interview with author. April 14th 2017.



In the 2010s, the organisation contributed to move conflict of interest up the political agenda and was involved in the formulation of related policy solutions. TI France was in regular contact with policy-makers and its president was invited to contribute to the work of all the working groups and commissions formulating proposals on conflict of interest prevention, sometimes being the only NGO representative to participate in hearings.<sup>204</sup> He pushed for the translation into French law of the CoE's definition of conflict of interest and promoted the introduction of a mandatory interest declaration and a public interest register, a recusal register and a code of conduct.<sup>205</sup> To do so, TI France used what a former employee said was an 'ultra-classic approach':

There are topics that are not sufficiently present, so we produce content, recommendations on a particular topic like conflict of interest prevention (...) We formalised this with the National Integrity System report in 2011 (...) with the objective of the 2012 elections. We developed advocacy tools, means to raise public awareness, media awareness etc. We created a petition, found celebrities who wanted to support us. All this led to the main candidates taking pledges, including François Hollande, pledges that we monitored afterwards. We had a first evaluation at the end of 2013. That is the classic strategy: having an analysis, pushing for pledges and monitoring implementation. Then everything accelerated with Cahuzac. But even before that we were known as legitimate actors on the topic (...) we were auditioned by the Sauvé Commission. I am not sure if the Jospin Commission officially auditioned us, but they used our recommendations and there were constant exchanges. With Cahuzac, these reports that were largely informed by our work served as a starting point for many new measures adopted in 2013.<sup>206</sup>

<sup>204</sup> LEBEGUE, Daniel. *Op. cit.* 2017.

<sup>205</sup> Assemblée nationale. Groupe de travail sur la prévention des conflits d'intérêts. Session 2010-2011. Compte-rendu n°1, December 9th 2010.

<sup>206</sup> Former general delegate, Transparency International France (FRCS2). Interview with author. November 2d 2016. Author's own translation.

TI France could rely on its international network to gather knowledge about foreign practices, and used benchmarking both to formulate proposals and to justify them as legitimate instruments to adopt in France, what a board member of the organisation called the “*benchmarking effect*”.<sup>207</sup> They justified reforms as a way to “grow closer to other models of democracy (...) like Northern Europe, not all Anglo-Saxon countries but Canada, New Zealand or the United Kingdom”.<sup>208</sup> All these proposals were eventually taken up by policy-makers. The strategy of the organisation is to build credibility, notably through its international and national recognised members, and its expertise.<sup>209</sup> TI is well-connected with international organisations involved in anti-corruption work with whom it is rarely opposed (except for asking for more ambitious reforms). In addition to translating policy ideas developed at the international level, national chapters sometimes serve as echo chambers for recommendations or policy message originating from IOs. The publication of the GRECO’s evaluations is usually relayed by TI national chapters and serves as an opportunity for them to promote their own agenda.<sup>210</sup> The emergence of this transnational non-state actor played a pivotal role for international standards to be transferred to the national level, thanks to the ability of national chapter employees to translate them into the local language and political system.

In France, actors within government agencies in charge of regulating conflicts of interest progressively turned into intermediaries between French politics and the international policy community. The High Authority for Transparency in Public Life (HATVP) more specifically has developed a transnational strategy to export the French model and translate international recommendations for a French audience. Its legal department has a staff member dedicated to international networking who developed connections with IOs involved in anti-corruption policy work (OECD, UNODC, Council of Europe, UNDP and the EU) and made sure the HATVP had been identified as a legitimate interlocutor. The creation of the HATVP contributed to strengthen France’s presence within international policy forums.<sup>211</sup> Illustrative of this proximity, the person

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<sup>207</sup> Former chair of Transparency International France (FRCS1). Interview with author. April 14<sup>th</sup> 2017. Benchmarking was used verbatim in French.

<sup>208</sup> *Ibid.*

<sup>209</sup> Former chair of Transparency International France (FRCS1). Interview with author. April 14<sup>th</sup> 2017.

<sup>210</sup> See for instance: Transparency International France. *Le GRECO évalue la France en matière de lutte contre la corruption*. n.d. Online, available at: <https://transparency-france.org/actu/lutte-contre-la-corruption-comment-le-conseil-de-leurope-evalue-la-france/#.XkPN2RNKiRs> (accessed on February 10<sup>th</sup> 2020)

<sup>211</sup> SCAPIN, Thomas. *Op. cit.* 2019, p. 497.

who led this work was recently employed by the OECD Public Integrity Division to contribute to its work on lobbying regulation.<sup>212</sup>

This section identified actors who ‘embodied’ the translation of conflict of interest regulation across sectors and jurisdictions. Government officials and parliamentarians, as the ultimate decision-makers, were key to turn ideas into policy. Many others contributed to shaping the cognitive framework in which the conflict of interest regulation was designed, transferring policy ideas from abroad and across professions, and filtering the information that eventually reached political decision-makers. The relative disregard of the latter for the technical dimensions of conflict of interest regulation contributed to give civil servants and policy intermediaries influence over the policies in the making. These ‘norm takers’ contributed to shape conflict of interest regulation through their interactions with each other at the national level, with their counterparts abroad and with actors operating within the transnational policy community. Despite diverging views on what the best solutions might be, inter-personal exchanges between policy actors progressively constructed a consensus on the fact that there is a problem (referred to as conflict of interest or else as Chapter 8 will show) that deserves public intervention, through interest registers and codes of conduct. The position of these policy actors, their knowledge of the national legal system and the functioning of the parliamentary institution as well as their thematic expertise contributed to ‘mutate’ imported ideas about conflicts of interest to make them relevant to the national context and adaptable to existing institutions.

## Conclusion

This chapter has shown how policy ideas promoted by international policy brokers reach the domestic political system to be turned into national policy. It has traced the journey of the policy instruments, to understand *how* transferred policy ideas become national policy instruments and *whom* is involved in the process. The adoption of public interest registers and codes of conducts in France and Sweden did not happen overnight. On the contrary, it was a relatively long process that required the engagement of different groups of skilful actors situated in (or circulating between) the public or private sectors, the administrative or political world, at the international or national level. This detailed analysis of the process that led transferred ideas to become national policy, involving substantial domestic efforts to endogenize these ideas, reveals that, in this case, the fears

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<sup>212</sup> LinkedIn. Emilie Cazenave. n.d. Online, available at: <https://www.linkedin.com/in/emilie-cazenave-90208231/?originalSubdomain=fr> (accessed on February 10<sup>th</sup> 2020).

of existing literature about ‘inappropriate transfer’ is largely unfounded.<sup>213</sup> The time necessary for policy-makers to adopt the imported instruments in France and Sweden varies significantly, stretched over a couple of years in the former, and decades in the latter.<sup>214</sup> The sequence of policy adoption means that the issue of conflict of interest reached the political agenda as the transnational anti-corruption community was emerging in Sweden, and after its construction in France. Actors at the national level were thus, knowingly or not, influenced by the ideas about corruption prevention promoted by international institutions, creating both opportunities (technical assistance and availability of solutions) and constraints (limiting the world of legitimate solutions).

The process of transferring foreign ideas and turning them into policy remained largely internal in Sweden, involving mainly politicians and parliamentary clerks, while the actors involved in transferring the policy in France were more numerous and diverse. This contributes to explaining why Swedish policy-makers managed to maintain the tradition of parliamentary self-regulation, while their French and British counterparts were pressured into externalising control, resulting in ‘divergent convergence’ of regulatory practices. Political actors played a crucial role as the ultimate decision-makers. Bureaucrats, academics and advocacy groups were however important in the identifying possible solutions for policy-makers to choose from. They contributed to shape the cognitive framework in which conflict of interest regulation was formulated, transferring policy ideas from abroad and across professional groups, and filtering the information that eventually reached political decision-makers. Policy intermediaries, influenced by the transnational policy community, were a first step for the transfer of ideas about conflicts of interest regulation into these new contexts. These ideas were then translated by various actors reinterpreting them through their ‘background ideational abilities’ and their ‘foreground discursive abilities’.<sup>215</sup> ‘Norm takers’ contributed to shape conflict of interest regulation thanks to their strategic position, reputation and expertise, through their interactions with each other at the national level, their counterparts abroad and actors operating within the transnational policy community.

This chapter has demonstrated that, most often, the existence of international standards is not a sufficient condition for their adoption by national policy-makers, especially in the absence of any (truly) coercive form of transfer (such as conditionality for instance). The path leading from

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<sup>213</sup> DOLOWITZ, David P. and MARSH, DAVID. *Op. cit.* 2000.

<sup>214</sup> Next chapter will return to the incremental process of reform in Sweden compared to the French experience of policy-making under pressure to investigate how it affected the formulation and implementation of the conflict of interest regulation.

<sup>215</sup> SCHMIDT, Vivien A. *Op. cit.* 2010.

the identification of a ‘global’ solution to corruption all the way to it becoming a national policy instrument is indeed long and winding. Transferring public interest registers and codes of conduct required involved a variety of actors in interaction, especially in France, and a series of events (such as scandals, elections, the emergence of new actors or the development of new indicators) that led to open the policy window. Understanding why policy actors engaged (knowingly or not) in the transfer of ideas regarding conflict of interest regulation requires one to consider the uncertainty of ‘new’ problems, which contributes to turn their attention to whomever demonstrates experience or thematic expertise.<sup>216</sup> It however also requires one to pay attention to actors’ cognitive skills and the discursive mechanisms through which they reinterpret and reshape ideas so as to make them fit a new context, which next chapter will explore.

## Chapter 8. Making transferred ideas relevant in new political contexts

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No, but it was an evidence that we would take the Council of Europe’s recommendations seriously. It would be awful to get a bad grade! If people would say that Sweden did not care about this... That would not do!

(Member of the Swedish Parliament. Interview with author. May 17<sup>th</sup> 2017. Author’s own translation)

From 2012 to 2017, real work has been done in France in terms of transparency and the fight against corruption (...) This fact has been recognised globally (...). Americans are telling us ‘well, now that you have become the highest international standard, we will look at what you do. You are at the highest level thanks to this uninterrupted work’.

(Former French Minister of Economy and Finance. Interview with author. January 10<sup>th</sup> 2019. Author’s own translation)

Having looked at *the actors* who reinterpreted policy ideas as they were transferred into the French and Swedish political systems, this chapter seeks to understand *how* policy actors succeeded in legitimising imported ideas and how their interpretation of the context affected the implementation of the policy instruments, in terms of the level of transparency and the locus of regulatory power. The dissertation has so far demonstrated that conflict of interest regulation

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<sup>216</sup> CRESAL. Situations d’expertise et socialisation des savoirs. *Actes du colloque organisé par le CRESAL*. Saint-Étienne, 1985, pp. 3-9.

converged in Britain, France and Sweden due to the emulation of policy pioneers and international policy brokers efforts to harmonise national policies. The transfer of policy ideas does not create exact copies in new host countries and international standards tend to ‘absorb local colour’<sup>1</sup> as they are indigenised by domestic actors. This chapter is interested in these actors’ efforts to justify policy transfer and adapt imported ideas to the national context, discursively giving them local colour.

While policy ideas might be imported from elsewhere and presented as international standards in a policy field, that in itself might not be sufficient to justify their implementation as national policy and the translation required to put that in place. Many domestic policy actors were necessary to enable ideas to circulate and to integrate them as the new ‘rules of the game’. Policy-makers (if aware of it) might use the foreign origin of an idea to legitimise it or, on the contrary, seek to hide it so as not to present one’s country as a ‘laggard’ (having seemingly fallen behind international progress). The quotes above illustrate the fact that international references have become a common element of political discourse in this area and that international reputation matters for policy-makers adopting new regulations, whether they seek to be seen as a good student (Sweden) or as a new leader (France). Analysing the discursive dimension of the translation of conflict of interest regulation into the French and Swedish Parliaments means comparing how policy-makers in the different countries relate to foreign practices and international standards.

Discursively translating policy ideas to *fit* the national context also implies reformulating policy problems and goals to make policy change (more) acceptable to national actors in a given context.<sup>2</sup> Reformulation policy problem in this case implies more than re-interpreting conflict of interest or corruption. Indeed, policy-makers discursively shape the social meaning of a policy by associating it with other connected problems that they perceived as salient in the local context and over which they want to demonstrate agency.<sup>3</sup> While their institutional embeddedness and related ‘background ideational abilities’ allow policy actors to reinterpret transferred ideas (Chapter 7), they

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<sup>1</sup> BAN, Cornel. *Ruling Ideas. How Global Neoliberalism Goes Local*. Oxford: Oxford University Press, 2016.

<sup>2</sup> HASSENTEUFEL, Patrick, BENAMOUZIG, Daniel, MINONZIO, Jérôme and ROBELET, Magali. Policy Diffusion and Translation The Case of Evidence-based Health Agencies in Europe. *Novos Estudos CEBRAP*, Vol. 36, n°1, 2017, p. 81.

<sup>3</sup> KINGDON, John W. *Op. cit.* 1984; MAJONE, Giandomenico. *Evidence, Argument and Persuasion in the Policy Process*. New Haven: Yale University Press, 1989; SCHÖN, Donald A. and REIN, Martin. *Frame reflection: toward the resolution of intractable policy controversies*. New York: Basic Books, 1994; FISCHER, Frank. *Reframing public policy discursive politics and deliberative practices*. Oxford: Oxford University Press, 2003; SCHMIDT, Vivien A. Taking ideas and discourse seriously: explaining change through discursive institutionalism as the fourth ‘new institutionalism’. *European Political Science Review*, Vol. 2, n°1, 2010, pp. 1-25.

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use their ‘foreground discursive abilities’ to convince others that policy change is necessary.<sup>4</sup> It is thus important to consider the ideational and political context in which transfer activities take place, to understand how policy actors translate policy ideas into policy proposals as a result of their perception of the situation and of their interests in that context.<sup>5</sup>

Drawing on archives of parliamentary debates as well as interview material, this chapter firstly explores policy-makers’ ‘usage’ of international and foreign references to justify reform (Section 8.1). It then compares the problems with which policy-makers choose to couple public interest registers and codes of conduct (Section 8.2). Lastly, it investigates the events that trigger policy change and how policy-makers’ interpretation of the context and their interests contributes to explain why conflicts of interest are not regulated in a similar way, in practice, in our three cases (Section 8.3).

## 8.1. Different ‘usages’ of foreign references to legitimise policy ideas

The existence of a global prescriptive policy framework against corruption constitutes an opportunity and a constraint for policy actors at the national level. It indeed provided a toolkit of solutions, but one only filled with the policy options selected by international institutions. The way in which national policy-makers decide to use international standards to justify their policy preferences thus helps us to understand *how* international policy-making matters in different contexts. To use the term coined by Cornelia Woll and Sophie Jacquot, this section looks at the “usage” of international standards and foreign ‘best practices’ by actors involved in national policy-making.<sup>6</sup> While the rhetoric of ‘laggards’ and ‘pioneers’ can serve to build the argumentation of policy-makers in favour of reforms,<sup>7</sup> the policy translation literature suggests that policy-makers need to discursively endogenize a policy idea to make it work (as Chapter 9 will show), and to present it as a legitimate and appropriate choice.<sup>8</sup> The choice to legitimise public interest registers

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<sup>4</sup> SCHMIDT, Vivien. *Op. cit.* 2010.

<sup>5</sup> HAY, Colin. Ideas and the Construction of Interests. In BÉLAND, Daniel and COX, Robert (eds.) *Ideas and Politics in Social Science Research*. Oxford University Press, 2011, p. 79.

<sup>6</sup> WOLL, Cornelia and JACQUOT, Sophie. Using Europe: Strategic action in multi-level politics. *Comparative European Politics*, Vol.8, n° 1, 2010, pp. 110-126.

<sup>7</sup> BENNETT, Colin J. *Op. cit.* 1991b; SAUNIER, Pierre-Yves. Les régimes circulatoires du domaine social 1800-1940 : projets et ingénierie de la convergence et de la différence. *Genèses*, Vol. 71, n°2, 2008, pp. 4-25.

<sup>8</sup> HASSENTEUFEL, Patrick and de MAILLARD, Jacques. Convergence, transferts et traduction. Les apports de la comparaison transnationale. *Gouvernement et action publique*, Vol. 3, n°3, 2013, pp. 377-393; STONE, Diane. Transfer and translation of policy. *Policy Studies*, Vol. 33, n°6, 2012, pp. 483-499.

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and codes of conduct through references to international standards or to discursively conceal the transfer process is telling with regards to both the country's self-perception vis-à-vis the international community, and the efforts and resources dedicated to endogenize the policy.

### **8.1.1. Britain, reforming the system to keep the 'lead'**

Britain, and other policy pioneers in the Anglosphere, shaped the path of conflict of interest regulation as promoted by international institutions. As successive governments sought to shape the global agenda on corruption prevention, it is not surprising that British policy actors present themselves as being on the exporting end of policy transfer rather than the importing end.

In the field of parliamentary standards, British officials generally position themselves as the policy 'teachers' who can assist others with their reforms.<sup>9</sup> During interviews, parliamentary clerks referred to a number of networks and counterparts to which they turned for information, such as the European Centre for Parliamentary Research and Documentation (ECPRD), Commonwealth Parliaments or the American Congress.<sup>10</sup> MPs on the other hand do not mention any foreign source informing their decisions, during parliamentary debates or in policy documents, which suggests that they see – or wish to present – reforms as wholly endogenous. The House of Commons Committee on Standards however engaged directly with the Council of Europe's GRECO after the publication of the evaluation report on *Corruption prevention in respect of members of parliament, judges and prosecutors*,<sup>11</sup> where specific recommendations were given with regards to the House of Commons' standards system. It however did so mostly to justify why it considered it unnecessary to follow the recommendations. A British parliamentary clerk, for instance, described the House of Commons' relationship to GRECO as follows:

The UK has been given a clean bill of health by GRECO, so we will just sit back and feel good about ourselves for a moment. I do not think it has been published yet, it got caught up in the elections and when the government could not publish anything. It is something that was taken seriously, maybe not by committee but certainly by the commissioner and the House, when Britain was being criticised. We took steps to address the criticism. There are concerns that there are differences that are not understood by GRECO, like the limits on parliamentary privileges for instance: in the UK anything criminal is not handled

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<sup>9</sup> Parliamentary clerk 1, UK House of Commons (UKPC1). Interview with author. November 20<sup>th</sup> 2017; Parliamentary clerk 2, UK House of Commons (UKPC2). Interview with author. March 15<sup>th</sup> 2018.

<sup>10</sup> Parliamentary clerk 1, UK House of Commons (UKPC1). Interview with author. November 20<sup>th</sup> 2017; Parliamentary clerk, UK House of Commons (UKPC3). Interview with author. November 20<sup>th</sup> 2017.

<sup>11</sup> House of Commons Committee on Standards. Guide to the Rules relating to the conduct of Members: GRECO Report and other developments. First Report of Session 2012-13, HC 724.

by the House itself because MPs do not have immunity from criminal proceedings. We keep having to repeat this. Personally, I think that there are things that could be changed. Now the pressure is off, but I am not so sure there was so much pressure to begin with. It is part of the British attitude, the House is not very bothered by GRECO and it mostly seems like misunderstanding of the UK system. However, officials would pick up these reports, and the chair of the committee, he has been around the longest and has good awareness of these debates and actors.<sup>12</sup>

The interviewee indicates that it does indeed bother British policy-makers to be criticised by international institutions, but that the latter's ability to put pressure on the former should not be overestimated. Interestingly, and in slight contradiction with the argument of the thesis, the interviewee says that the way the Council of Europe's evaluations are conducted denote a misunderstanding of how the UK Parliament functions, notably regarding the absence of immunity from criminal prosecution. Britain's position as a policy pioneer and its influence over the construction of international standards nevertheless puts the country in a privileged position in the policy field, as the transnational policy community encourages others to emulate its approach, which supports its self-image of role model.

In their discourse, policy actors do not ignore foreign practices or the existence of a transnational policy community. They rather legitimise reforms *by* their presentation of Britain as a policy leader. This quote from Prime Minister John Major, announcing his decision to set up the CSPL illustrates the argument: "this country has an international reputation for the integrity and honour of its public institutions. That reputation must be maintained and be seen to be maintained".<sup>13</sup> International pressure is thus presented as a justification for reform, not through the need to import 'best practices', but to safeguard status and maintain the country's position within the policy field.

### **8.1.2. Sweden, transferring policy to appear as a 'good student'**

Swedish policy actors use the opposite strategy to their British counterparts to legitimise the idea of regulating conflicts of interest through a public interest register and a code of conduct. Indeed, they frame the instruments largely as an exogenously-inspired reform. References to international 'best practices' and the use of the rhetoric of 'laggards' and 'pioneers' appears extensively in policy-makers' discourse. Ever since the first parliamentary motions in the late 1970s,

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<sup>12</sup> Parliamentary clerk 1, UK House of Commons (UKPC1). Interview with author. November 20<sup>th</sup> 2017.

<sup>13</sup> House of Commons debate, HC Deb 25 October 1994 vol 248 c759. London, 1994.

Swedish parliamentarians have used foreign examples to back their policy proposals. After their first failed attempt to introduce a financial disclosure system within the Swedish Parliament, the parliamentarians Per Gahrton and Bonnie Bernström used a recent reform in the US Congress to justify the need for reform in Sweden. In their parliamentary motion, they argued that it was “high time to raise the question of Swedish ethics rules concerning the transparency of political decision-makers’ economy” *because* another country, that they present as being sufficiently similar, had introduced the very instrument that were promoting for Sweden (a register of financial disclosure).<sup>14</sup>

As Chapter 7 showed, a number of policy-makers promoting ethics reforms in Sweden were actively involved in international discussions and events organised by the United States and the OECD. In their public communication, they established a clear link between the foreign experiences they learned about from these interactions and their willingness to promote new policy instruments, frequently making reference to Britain and the United States.<sup>15</sup> In a debate article, Barbro Westerholm and Eva Zetterberg argue in favour of a committee on public ethics, based on the British CSPL, and justify it through the existence of similar examples in Australia, ‘England’, Canada and the USA.<sup>16</sup> Likewise, while the constitutional committee of the Swedish Parliament first decided not to introduce a public interest register in 1992, the Social Democratic group expressed its reservation regarding this decision, arguing that such registers already existed in many other countries, including Norway, France, Portugal, Spain and Britain.<sup>17</sup>

Presenting policy ideas as inspired by foreign practices is even more central in the introduction of the parliamentary code of conduct in 2017, as is made clear in policy documents, media advisories and actors’ discourse.<sup>18</sup> For instance, the report published by the parliamentary

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<sup>14</sup> Sveriges riksdag. Motion 1978/79:1092 av Per Gahrton och Bonnie Bernström om ökad offentlighet kring beslutsfattarens ekonomi. Stockholm, January 25<sup>th</sup> 1979.

<sup>15</sup> Westerholm, Barbro and Zetterberg, Eva. *Vi politiker måste själva agera för att återvinna människors förtroende!* Article prepared for Etik i politiken, sent by Barbro Westerholm, probably dated 1995. This article is stored in Barbro Westerholm’s personal archive. It is not dated but the information it contains suggests that it was written in 1995; ANDERSSON, Ingrid, BROHULT, Johan, DALEUS, Lennart, HEGELAND, Hugo, PÅLSSON, Chatrine, WESTERHOLM, Barbro and ZETTERBERG, Eva. *Etik i politiken. Utkast Debattskrift*. Sundsvall (SW), 1992; Barbro Westerholm, Riksdagens protokoll. 1995/96:97 Onsdagen den 22 maj; Former member of the Swedish Parliament (SWMP2). Phone interview with author. May 23<sup>rd</sup> 2017.

<sup>16</sup> WESTERHOLM, Barbro and ZETTERBERG, Eva. *Vi politiker måste själva agera för att återvinna människors förtroende*. Article prepared for Etik i politiken, sent by Barbro Westerholm. Document from Barbro Westerholm’s personal archive, probably dated from 1995.

<sup>17</sup> Sveriges riksdag. Konstitutionsutskottets betänkande 1993/94:KU18

<sup>18</sup> Sveriges riksdag. En uppförandekod för ledamöterna i Sveriges riksdag. Slutrapport. 2014; Sveriges riksdag. Arbetsgruppen föreslår uppförandekod för ledamöter. Pressmeddelande 19 November 2014; Member of the Sofia Wickberg – « *Global instruments, local practices* » - Thèse IEP de Paris – 2020

working group on the code of conduct for instance highlights the role of the CoE (GRECO) right from the introduction:

The background to the formation of this group was, inter alia, a report from the *Group of States against Corruption*<sup>19</sup> (GRECO). The report contains a recommendation regarding a code of conduct for Swedish parliamentarians together with a number of other proposals regarding the parliamentarians' working style. Since issues of openness and clarity are important for the parliament, we welcomed GRECO's recommendation and the report was perceived as a good basis for a joint and deepened discussion on ethics and rules regarding MPs' mission.<sup>20</sup>

Mentioning that a number of related bills had been rejected throughout the years, the report presents the CoE as the central actor opening the policy window and the main source of information underpinning the reform. It emphasises the recommendations' resonance with the country's values and presents the publication of the monitoring report as an opportunity to bring the issue of parliamentary ethics on to the agenda of government. A whole section of the report is dedicated to the results of the working group and GRECO's recommendations, displaying a two-column table presenting the working group's proposals alongside the IOs' recommendations.<sup>21</sup>

While references to foreign practices were present since the first attempts to raise the issue on the agenda, the adoption of international norms and standards made the international dimension all the more important in policy actors' discourse. Reference to foreign practices and international institutions to legitimise policy change indeed increased in parliamentary debates and policy documents. Since the 1990s, policy-makers have used foreign practices as exemplars for future reforms. This was complemented in the 2010s by the argument that Sweden needed to comply with international standards and be a 'good student', as the introductory quote illustrates. Interviewees indeed insisted that it is uncommon for Swedish policy-makers to adopt international rules that they were not ready to transpose into national law.<sup>22</sup>

Swedish policy actors' discourse legitimises the transfer of policy as a need to adapt to international developments and not be seen as lagging behind. Similar to British policy-makers, they put emphasis on the country's international reputation as a 'good student' of public ethics

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Swedish Parliament (SWMP1). Interview with author. May 17<sup>th</sup> 2017; Parliamentary clerk, Swedish Parliament (SWPC3). Phone interview with author. May 30<sup>th</sup> 2017.

<sup>19</sup> In English in the original text.

<sup>20</sup> Sveriges riksdag. En uppförandekod för ledamöterna i Sveriges riksdag. Slutrapport. Stockholm, 2014, p. 3.

<sup>21</sup> *Ibid.* p. 17-18.

<sup>22</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17<sup>th</sup> 2017; Board member of Transparency International Sweden (SWCS2). Interview with author. May 18<sup>th</sup> 2017.

policy, even though here it implies importing new ideas from abroad. They also highlight the resonance of internationally-promoted instruments with the Swedish political culture of transparency and openness (a theme further developed in Chapter 9), suggesting that no significant efforts are needed to translate them into national policy.<sup>23</sup>

### **8.1.3. France's ambivalent relationship to international norms**

French policy-makers are less eager than their Swedish counterparts to use international references to legitimise policy change. As Guillaume Courty and Marc Milet have noted, France often has (and has had) an ambivalent and ambiguous relationship to policy ideas developed elsewhere and/or promoted by international institutions.<sup>24</sup> While foreign practices and international standards are used to justify the need for reform, French actors make a clear effort to endogenize policy ideas in their discourse and inscribe them in national political history and tradition. The usage of foreign references evolved between the 1980s and the 2010s. When presenting the 1988 bill introducing asset declarations, Prime Minister Jacques Chirac traced the source of the issue both abroad, “this issue (...) is not new (...) because it emerged outside France”, and within national politics, “(...) then because the issue was raised before 1988. Since the beginning of the 5<sup>th</sup> Republic, and especially in the last ten years, many bills (...) were tabled concerning party finances and the transparency of politicians' wealth”.<sup>25</sup> Policy documents and archives show that foreign practices were used already in the 1980s to inform policy-making, but the government's discourse rather focussed on internal dimensions of the reform, arguing that “France does not need to be taught by anyone [with regards to the honour and integrity of its political class]”.<sup>26</sup>

The transnationalisation of the policy field, and especially the development of benchmarks and rankings affected policy actors' discourse. When presenting the 2013 bills on transparency in public life, which legally defined conflict of interest, introduced the public interest register and created the HATVP, Alain Vidalies (Minister in charge of relations with the Parliament) suggested

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<sup>23</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17<sup>th</sup> 2017; Former member of the Swedish Parliament (SWMP2). Phone interview with author. May 23<sup>rd</sup> 2017.

<sup>24</sup> COURTY, Guillaume and MILET, Marc. La juridicisation du lobbying en France. *Politique européenne*, Vol.61, n° 3. 2018, pp. 78-113.

<sup>25</sup> Assemblée nationale. Déb. parl. AN du 2 février 1988. Paris, 1988, p. 5. Author's own translation.

<sup>26</sup> *Ibid.*

that France needed not only to follow the international trend towards the regulation of conflicts of interest, but that it should become a new leader in the policy field:

On the prevention of conflicts of interest, we are proposing a democratic progress that will become a landmark. For the first time in our history, a legal text will define the notion of conflict of interest and create tools to prevent it. Our ambition is to place our country among the most advanced democracies in this area.<sup>27</sup>

This excerpt demonstrates that the rhetoric of ‘laggards’ and ‘pioneers’ also appears as a central discursive strategy to legitimise the need for policy change in France. It also suggests that France cannot be seen as taking lessons and should thus strive to become a lesson-definer. The country’s reputation is emphasised, similarly to the British and Swedish cases, and references to foreign practices and international trends are here framed as a competition, with past governments (‘for the first time in history’) and especially with peers abroad. While the government presents the reforms as a way to turn France into one of the “most advanced democracies” in this policy field, parliamentarians defending the reform use references to international institutions’ (G20, Council of Europe, OECD, Transparency International etc.) recommendations to legitimise the proposed changes.<sup>28</sup>

The notion of conflict of interest is particularly interesting when looking at the endogenization of policy ideas. French policy-makers appropriated the term ‘conflict of interest’ from the OECD and the Council of Europe, and adapted it to the French context. In contrast to others, they however codified it and initially included the possibility of two public interests being in conflict. They also endogenized the concept discursively. The 2011 Sauvé Commission and the 2012 Jospin Commission both recognised that the notion was new to the French context and that they used the policies of other countries (such as Canada) and international institutions (mainly the OECD) to develop their own.<sup>29</sup> Policy promoters however strive to discursively attach this notion, seen as being “of Anglo-Saxon origin”,<sup>30</sup> to the French legal culture. Administrative reports and

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<sup>27</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013. Author’s own translation.

<sup>28</sup> *Ibid.*

<sup>29</sup> Commission de réflexion pour la prévention des conflits d’intérêts dans la vie publique (Commission Sauvé). Pour une nouvelle déontologie de la vie publique. Rapport remis au Président de la République le 26 janvier 2011, pp. 12-13; Commission de rénovation et de déontologie de la vie publique (Commission Jospin). Pour un renouveau démocratique. 2012, p. 82.

<sup>30</sup> BUGE, Éric and CARON, Matthieu. *Op. cit.* 2017, p. 386.

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policy-makers' discourse highlight existing legislation relating to the *prise illégale d'intérêts*,<sup>31</sup> and previous offenses prohibiting the interference of public officials in certain businesses.<sup>32</sup> The notion of conflict of interest is presented as a complement that integrates a preventive dimension in the French legal framework. Jean-Jacques Urvoas, the rapporteur of the 2013 bills, clearly expressed the ambiguity of the policy promoters' position presenting the reform as both imported and endogenous:

My job, dear colleagues, is a difficult one. How to successfully present you with a text (...) that I believe to be innovative, without relying on arguments that have been made for more than a hundred years?<sup>33</sup>

Even when ideas and instruments are imported, French policy-makers' discourse use historical categories and references to frame their policy preferences as legitimate and to make them acceptable. While acknowledging international standards and foreign practices, they inscribe reforms in French political history, using references to important historical moments (the Revolution, the Third Republic) and thinkers (Jean-Jacques Rousseau or Montesquieu). Alain Vidalies even refers to conflicts of interest as being rooted in Christian tradition, quoting the Gospel of Matthew: "no one can serve two masters, for either he will hate the one and love the other; or else he will be devoted to one and despise the other".<sup>34</sup> They discursively construct a link between current and past reforms, including their proposals in a longer process of policy formulation, making references to François Mitterrand's 1981 campaign pledge to 'moralise' public life, the 1988 laws on asset declarations and Pierre Bérégovoy's keynote address to parliament in 1992 on wealth declarations and parliamentary incompatibilities.<sup>35</sup> Interestingly, efforts to frame the policy change as endogenously-inspired were more significant in the 2013 parliamentary debates than during earlier reforms.

The context in which policy actors operate influences their 'usage' of international standards and foreign practices. Policy actors in the three countries demonstrate an interest in maintaining the country's international reputation, be it as 'good student' (Sweden), as an existing 'leader'

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<sup>31</sup> The French Criminal Code article 432-12 defines the "prise illégale d'intérêts" as the act of a public or elected official to take or receive, directly or indirectly, an interest in a company or an operation of which s/he is responsible, in whole or in part, of the oversight, administration, liquidation or payment.

<sup>32</sup> The Jospin Commission's report mentions article 175 of the 1810 Criminal Code which codified provisions from pre-revolutionary times.

<sup>33</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013. Author's own translation.

<sup>34</sup> *Ibid.* English Standard Version of the Bible (Matthew 6:24).

<sup>35</sup> *Ibid.*

(Britain) or a new one (France). Britain having adopted its public interest register and code of conduct before the transnationalisation of the policy field, policy actors, unsurprisingly, rarely mention the world beyond their own national boundaries. Their French and Swedish counterparts adopted these instruments in a context where the transnational policy community had emerged, and the instruments had spread internationally. They thus more frequently refer to other countries' experiences and to international norms. But they do so quite differently. Swedish policy-makers more easily present their policy proposals as international 'best practices' and norms to comply with, whilst French policy actors discursively endogenize policy ideas. This observation echoes existing literature on countries' compliance with European norms, which presents Sweden as being part of the 'world of law observance', where the perceived necessity to comply with international norms tends to override domestic concerns. In this framework, Britain belongs to the 'world of domestic politics' where compliance is only one goal and might face political resistance. France on the other hand is placed in the 'world of transposition neglect' where compliance with supranational imperatives is not seen as a goal in itself.<sup>36</sup> Beyond policy actors' usage of the international norms and foreign practices to legitimise reforms, their efforts to discursively translate policy ideas also implies making them relevant to existing policy problems that they face in their respective political context.

## 8.2. Reformulating problems to make policy solutions relevant locally

Policy-makers legitimise transferred ideas by presenting them as international best practices or, on the contrary, as being deeply rooted in the national political system. They also need to justify their reforms by showing why and how they are relevant in the national context. Policy-making is not a rational exercise of solving well-identified problems.<sup>37</sup> To give meaning to a policy proposal, actors discursively turn it into a 'solution' by giving it a label, associating it to problems to resolve and attributing values to it.<sup>38</sup> This makes argumentation fundamental to policy-making, as policy-makers shape the social meaning of a policy by associating it with problems that they, in turn,

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<sup>36</sup> FALKNER, Gerda and TREIB, Oliver. Three worlds of compliance or four? The EU-15 compared to new Member States. *Journal of Common Market Studies*, Vol. 46, n°2, 2008, pp. 293-313.

<sup>37</sup> KINGDON, John W. *Agendas, Alternatives, and Public Policies*. Boston: Little Brown and Company, 1984, p. 215; BÉLAND, Daniel and HOWLETT, Michael. How Solutions Chase Problems: Instrument Constituencies in the Policy Process. *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 29, n° 3, 2016, pp. 393-409.

<sup>38</sup> ZITTOUN, Philippe. *Op. cit.* 2014, p. 75.



contribute to (re-)define by ‘solving’ them in one way rather than another.<sup>39</sup> While Chapter 7 presented the multiple actors that helped turn transferred ideas into policy, this section focusses on political decision-makers and their discursive strategies to legitimise public interest registers and codes of conduct, and make them *fit* the political context. This however needs not necessarily be only strategic. Studying how policy-makers legitimise their policy proposals provides an insight as to how they conceive of problems.<sup>40</sup> This section, based on the analysis of parliamentary debates, identifies similarities and differences in how policy-makers represent the problem(s) that these reforms are supposed to solve.

### **8.2.1. A reluctance to associate policy solutions to the problem of corruption**

While international institutions establish a clear connection between conflict of interest and corruption, this link is more equivocal in national policy-makers’ discourse. International policy brokers generally frame public interest registers and codes of conduct as instruments to prevent corruption. The reference to corruption is however much more uncommon in national policy-makers’ words, who tend to frame these instruments as solutions to conflicts of interest (without making the link to corruption), *inter alia*. This subsection demonstrates firstly that the reference to corruption is used to argue that, although the policies being debated might look like they address the problem of corruption, corruption is actually *not* a problem in the three countries. Secondly, it shows that references to corruption in parliamentary debates evolve overtime, which suggests that the emergence of a transnational anti-corruption community had an influence on policy-makers’ idea of the problem to solve, as their discourse became peppered with references to corruption in the 2010s, especially in France and Sweden.

Against this argument, in Britain, the reference to corruption actually decreased from the first wave of reform in the 1970s (public interest register) to the second wave in the 1990s (code of conduct). Debates in the House of Commons in 1974, before the adoption of the register of members’ interests, made extensive reference to the terms ‘corruption’ and ‘corrupt’, not on the side of policy promoters but rather in the words of those opposing policy change. British MPs who framed the debate in terms of corruption prevention were those who considered that reforming the standards system was unnecessary for the very reason that there was no corruption in the House

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<sup>39</sup> MAJONE, Giandomenico. *Evidence, Argument and Persuasion in the Policy Process*. New Haven: Yale University Press, 1989; SCHÖN, Donald A. and REIN, Martin. *Op. cit.* 1994; FISCHER, Frank. *Op. cit.* 2003; SCHMIDT, Vivien A. *Op. cit.* 2010.

<sup>40</sup> BACCHI, Carol. *Op. cit.* 2009.

of Commons. This is well illustrated by former Leader of the House James Prior's argument against a compulsory register of interest: "the opportunity for corruption in its broadest sense, as the public know about it, is nil". Prior then stated that "we are not a corrupt Parliament".<sup>41</sup> Underlying the relatively limited individual influence of MPs on policy, John Stokes (Conservative MP) also opposing reform said: "Bribery and corruption do not find fertile ground in the House of Commons, certainly not among back benchers: we have too little power".<sup>42</sup> The term corruption appears even less in later debates (on the appointment of the Parliamentary Commissioner for Standards or the introduction of a code of conduct) and only refer to the fact that, compared to other Western countries, corruption is not a problem in the UK (the main point of comparison here being Italy where the *Mani pulite* investigations were ongoing).<sup>43</sup>

The analysis of parliamentary documentation in France and in Sweden shows that interest registers and codes of conduct were progressively presented as solutions to corruption in the 2010s. In the 1996 debates in the Swedish Parliament, only Peter Eriksson (Greens) associated the term 'corruption' with the disclosure of private economic interests, a reform that he supported, to argue that such an instrument would be useless against corruption.<sup>44</sup> According to a former Swedish MP, while discussions at the international level concerned corruption, the issue had not been defined as such at the national level.<sup>45</sup> In the 2010s, the term corruption gained prominence as the code of conduct was clearly presented as an anti-corruption instrument.<sup>46</sup> The report of the working group on the Swedish code of conduct published in 2014 however argued that "much speaks for saying that corruption and other practices that harm public trust are very uncommon in the Swedish Parliament".<sup>47</sup> This instrument was thus presented, by its promoters, as a solution to a problem that did not concern the country. While this could be a sign of Swedish policy-makers' high sensitivity to corruption, one could reasonably believe that its association to corruption relates to the fact that its adoption was largely a consequence of (soft) pressure from the Council of Europe, who framed the instrument this way.

French policy-makers' coupling of the instruments and corruption also evolved over time, as suggested by an analysis of their interventions in parliamentary activities. When the first step in

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<sup>41</sup> House of Commons debate, HC Deb 22 May 1974 vol 874 cc403-413. London, 1974.

<sup>42</sup> *Ibid.*

<sup>43</sup> House of Commons debate, HC Deb 18 May 1995 vol 260. London, 1995.

<sup>44</sup> Sveriges riksdag. *Riksdagens protokoll*. 1995/96:97 Onsdagen den 22 maj. Stockholm, 1996.

<sup>45</sup> Former member of the Swedish Parliament (SWMP2). Phone interview with author. May 23<sup>rd</sup> 2017.

<sup>46</sup> Sveriges riksdag. En uppförandekod för ledamöterna i Sveriges riksdag Slutrapport. Stockholm, 2014, p. 5

<sup>47</sup> *Ibid.* Author's own translation.

the direction of financial disclosure was taken in 1988, parliamentarians declared that corruption was rare in France compared to other countries.<sup>48</sup> References to the problem of corruption multiplied in the 2010s. While the instrument were rather associated with other problems, as outlined below, some actors did mention corruption. The presence of the chairman of TI France during parliamentary hearings concerning conflict of interest prevention in 2010 put the problem of corruption on the table. The only policy-maker to make reference to corruption, Gaëtan Gorce (Socialist Party), however did so to say that the problem was not corruption but citizens' *suspicion* of corruption.<sup>49</sup> During parliamentary debates on the bills on transparency in public life in 2013, 'corruption' was mentioned almost 80 times. There was however no consensus among policy-makers as to the reality of the problem in France. Some parliamentarians in favour of the proposed bills mentioned TI's corruption ranking (the Corruption Perceptions Index) as an indication that corruption was indeed a problem in France. Yet, Alain Vidalies, representing the government, and Jean-Jacques Urvoas, the rapporteur of the bills, did not present their reform as a solution to corruption, or only indirectly by quoting a 1793 text from the French Convention. Other parliamentarians in favour of the text however made repeated references to international institutions and anti-corruption NGOs' recommendations regarding the transparency of declarations.<sup>50</sup>

Policy-makers at the national level were relatively reluctant to present interest registers and codes of conducts as solutions to corruption since that would mean admitting that corruption was indeed a problem in the country. This tendency however weakened over time. The emergence of a transnational policy community presenting public interest registers and codes of conduct as anti-corruption instruments indeed contributed to normalise references to corruption in policy-makers' discourse. Even when parliamentarians mentioned corruption to say that it isn't actually a problem, they showed that in their mind the instruments and the problem of corruption were associated. While international institutions promoted these instruments as solutions to corruption, national policy-makers are much more eager to present policy change in a positive (and ambiguous) light, as the next sections show.

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<sup>48</sup> Assemblée nationale. Déb. parl. AN du 2 février 1988. Paris, 1988, p. 8.

<sup>49</sup> Assemblée nationale. Compte rendu n°1 Groupe de travail sur la prévention des conflits d'intérêts. Paris, December 9th 2010.

<sup>50</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013.

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### **8.2.2. Registers and codes as solutions to the decline of public trust**

Presenting disclosure systems and codes of conduct as solutions to declining public trust is common to the three countries and across time. The overarching recurring theme in British, French and Swedish parliamentary debates is indeed the decline of trust in government and public anxiety about the trustworthiness of politicians. Thus, policy-promoters present new regulation as a necessary sacrifice. This reflects the idea both that there is a cost associated with being an elected official and that adopting instruments to enhance transparency and regulate individual conduct will make citizens less anxious about the integrity of their representatives. While the section focusses on promoters, it is worth noting that opponents to reforms also refer to the decline of public trust, typically arguing that furthering transparency would fuel suspicion.<sup>51</sup> Already in 1974, the Leader of the House of Commons, Edward Short, presented the introduction of a register to complement the existing custom of oral declaration of interests as a way to reassure the public about the integrity of political decision-making:

We believe that any disadvantages of the kind I mentioned are now clearly outweighed by the need to reassure the public that we as a Parliament are doing all we can to allay public anxiety in this matter and that, in order to do so, we must collectively recognise that we are prepared to pay the price by giving up a certain amount of privacy in these matters.<sup>52</sup>

Reinforcing this point, William Hamilton, Labour MP for Fife, Central, straightforwardly established the link between the defined problem and the proposed solution:

We had better face the fact that, rightly or wrongly, an increasing number of people outside the House, fortunately or otherwise, are cynical and sceptical about this place. We are today engaged in an exercise designed to allay their anxieties and suspicions.<sup>53</sup>

Growing anxiety was also at the centre of the decision to establish the Nolan committee in 1995, which would then inform significant reforms of the British standards system: “The central reason for setting up the Nolan committee was, of course, the growing public concern about standards in public life”.<sup>54</sup> The Chancellor of the Duchy of Lancaster, David Hunt, phrases his introduction to the upcoming reforms as to make the initiative to set up a committee an obvious

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<sup>51</sup> Sveriges riksdag. *Riksdagens protokoll*. 1995/96:97 Onsdagen den 22 maj. Stockholm, 1996; Assemblée nationale. Déb. parl. AN du 2 février 1988. Paris, 1988; Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013.

<sup>52</sup> House of Commons debate, HC Deb 22 May 1974 vol 874 cc391-513. London, 1974.

<sup>53</sup> House of Commons debate, HC Deb 22 May 1974 vol 874 cc391-513. London, 1974.

<sup>54</sup> House of Commons debate, HC Deb 18 May 1995 vol 260 c481. London, 1995.

answer to growing distrust in public institutions. In 1995, in his letter to the Prime Minister presenting his report, Lord Nolan, having received public contributions, acknowledged the existence of such a public anxiety among British citizens and recognised that the government and others in power were well aware of the problem:

[Contributions from ordinary citizens and experts] made it plain that the public anxiety which led [the Prime Minister] to set up the Committee was widely shared and deeply felt. But we found that it was matched on all sides by a resolute determination to see that things are put right.<sup>55</sup>

Swedish policy-makers also tend to associate the instruments to the declining trust in government. Pär-Axel Sahlberg (Social Democrats) presenting the law on the register of economic interests also framed the reform as one pertaining to declining public trust, giving the argument a positive light, talking about trust instead of distrust, when he claimed:

Trust in elected officials comes from good leadership and good conduct. Unfortunately, we have seen many examples of these lacking, with the media uncovering the hidden surface and showing blatant mistakes as well as betrayed trust. Mistakes will always be made. But if political work happens in the open and publicly, it does not only build the preconditions for stable trust, it also contributes to better knowledge and understanding of the political process.<sup>56</sup>

He associated public trust and good conduct in order to defend the need to further transparency by adopting an interest register, arguing that the new instrument would help create the preconditions to *stable* trust. He recognised that the value of such instruments was highly symbolic: “The symbolic value of us, hopefully all, reporting our economic ties can contribute to deepen trust in us elected representatives”.<sup>57</sup> The decline in public trust in politicians had been made visible by survey data and academic research.<sup>58</sup> These new indicators were repeatedly used by MPs pushing for the formalisation of political ethics.<sup>59</sup> Barbro Westerholm, (Liberals), who had

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<sup>55</sup> Committee on Standards in Public Life Chairman Lord Nolan. Standards in Public Life. First Report. Volume 1. London, 1995.

<sup>56</sup> Sveriges riksdag. *Riksdagens protokoll*. 1995/96:97 Onsdagen den 22 maj. Stockholm, 1996. Author’s own translation.

<sup>57</sup> The word used by Pär-Axel Sahlberg for elected representative here is the Swedish word “förtroendevalda” which literally translates to elected on trust, emphasizing the importance of trust in the role of MPs.

<sup>58</sup> HOLMBERG, Sören and GILLJAM, Mikael. *Väljare och val i Sverige*. Stockholm: Liber. 1987; ÖSTERMAN, Torsten. *Förtroende för politiker – En rapport om allmänhetens attityd till politiker 1973-1980*. Psykologiskt försvar n°107. Stockholm: Liber. 1981.

<sup>59</sup> KINZER, Stephen. Stockholm Journal; The Shame of a Swedish Shopper (a Morality Tale). *New York Times*, November 14<sup>th</sup> 1995; Westerholm, Barbro and Zetterberg, Eva. Vi politiker måste själva agera för att återvinna människors förtroende! Article prepared for Etik i politiken, sent by Barbro Westerholm, probably dated 1995. This article is stored in Barbro Westerholm’s personal archive. It is not dated but the information it contains suggests that it was written in 1995; ANDERSSON, Ingrid, BROHULT, Johan, DALEUS, Lennart, HEGELAND, Hugo, Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

promoted the topic of political ethics since entering office in the late 1980s, used these indicators of decline trust to attract her peers' attention and convince them of the necessity of reform:

This is good but it is only one step in the process that we must follow to reinforce the public's trust in us, politicians. The declining trust, that political scientists in Gothenburg point to since the 1960s, is worrying. And the situation was not made better with the recent credit card scandals, stories about representation and more that have come out in daylight.<sup>60</sup>

Swedish policy-makers' discourse during the adoption of the register of interest and the code of conduct suggest that they saw it as central to their role and the role of the Parliament to shield people's trust in political institutions. This is also reflected in the very term they use to refer to themselves: '*förtoendevalda*', which could be translated to 'chosen by trust'. The first article of the Swedish code of conduct indeed states that:

The mission of a parliamentarian builds on the trust expressed by citizens in the general elections. The members of Parliament have agreed on a common code of conduct that will contribute to protecting this trust.<sup>61</sup>

French policy-makers also frequently presented interest declarations and codes of conduct as solutions to the decline in public trust. As early as 1988, Prime Minister Jacques Chirac introduced the bills on financial transparency of political life as follows

[The bills] concern the moralisation of French political life, to lift doubts and suspicions that public opinion might have (...) [My wish] echoes the legitimate expectations of the French people who want to respect and trust the men and women that they chose to represent them or to lead the affairs of the state.<sup>62</sup>

In France, the references to declining trust became more frequent and dramatised in the 2010s, painted as a "crisis of confidence". In 2013, Alain Vidalies presented conflict of interest regulation as a solution to distrust: "This is not a matter of party politics, of right or left, but of the necessary response to the crisis of confidence that we collectively face".<sup>63</sup> As these quotes show, policy-promoters converge in their argument that imposing rules on oneself through these instruments is the price to pay to safeguard public trust in politicians. It is noticeable that the

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PÅLSSON, Chatrine, WESTERHOLM, Barbro and ZETTERBERG, Eva. *Etik i politiken*. Utkast Debattskrift. Sundsvall (SW), 1992.

<sup>60</sup> Sveriges riksdag. *Riksdagens protokoll*. 1995/96:97 Onsdagen den 22 maj. Stockholm, 1996. Author's own translation.

<sup>61</sup> Sveriges riksdag. *En uppförandekod för ledamöterna i Sveriges riksdag*. Stockholm, 2016, p. 5. Author's own translation

<sup>62</sup> Assemblée nationale. Déb. parl. AN du 2 février 1988. Paris, 1988; Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013.

<sup>63</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013.

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discourse on the object of public trust evolved over time. From a concern for people's trust in politicians, the discourse progressively shifts towards a worry regarding distrust in the whole political system.

Interestingly, the belief that disclosing policy-makers' private interests will improve citizens' trust in their representatives, in the institution or the whole political system, is presented as matter-of-fact, despite the lack of evidence regarding the link between trust and transparency. Until the 2000s, this lack of evidence was initially a consequence of the absence of research on that very topic. Later, when scholars had actually sought to answer the question of the relationship between trust and transparency, they rarely find any evidence of transparency leading to increased trust, the causal link certainly not being a direct one.<sup>64</sup> Policy-makers promoting disclosure systems and codes of conduct rarely present their theory of change as to how these instruments will contribute to reinforcing public trust in political actors and institutions. The assumption that adopting new policy instruments will directly lead to increased confidence appears to be taken for granted. This reflects the discourse used by international institutions to justify the need for more transparency and control over public officials. While opponents to reforms argue that, on the contrary, transparency might only lead to growing distrust, the belief in the ability to reinforce public trust through financial disclosure is widely shared across the three countries. It is however also a rhetorical tool that constructs their agency over an intractable problem. Jacques Chirac's argument for the need to introduce more transparency in French political life is exemplary in this sense, when he states:

If we leave the situation as it is, if, once again, nothing is decided, nothing is voted, nothing is limited and controlled, then doubts will continue to weight on the integrity of French political life (...) which is of course not acceptable in our democracy.<sup>65</sup>

Similar to the argument made in Chapter 4 about the redefinition of the intractable problem of corruption as a governable risk, the discourse of policy-makers aims to construct the decline of public trust in institutions as a situation they have agency over. As Stephen Grimmelikhuijsen et al. put it: "Transparency is now proposed as the solution to one of the most intangible problems of

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<sup>64</sup> CUCCINIELLO, Maria and NASI, Greta. Transparency for Trust in Government: How Effective is Formal Transparency? *International Journal of Public Administration*, Vol. 37, n° 13, 2014, pp. 911-921; BAUHR, Monika and GRIMES, Marcia. Indignation or Resignation: The Implications of Transparency for Societal Accountability. *Governance*, Vol. 27, n°2, 2014, pp. 291-320; GRIMMELIKHUIJSEN, Stephan, PORUMBESCU, Gregory, HONG, Boram and IM, Tong. The Effect of Transparency on Trust in Government: A Cross-National Comparative Experiment. *Public Administration Review*, Vol. 73, n°4, 2013, pp. 575-586.

<sup>65</sup> Assemblée nationale. Déb. parl. AN du 2 février. Paris, 1988, p. 5.

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democratic governance: citizens' increasing mistrust of government".<sup>66</sup> The rhetorical construction of agency is even more remarkable when policy promoters present these policy instruments as means to protect democratic institutions and democracy itself.

### **8.2.3. Regulating conflicts of interest to protect a threatened democracy**

Policy-makers promoting these instruments sometimes go further than presenting them as a safeguard of public trust, framing the debate around the need to protect democratic institutions and a threatened democracy. Associating these policy proposals with the defence of democracy is most often presented in a dramatic light, highlighting the risks of inaction, as we return to below, but it can also serve a more positive argumentation. In France, both asset declarations in 1988 and interest declarations in 2013 were described as means to deepen democracy, using the exact same expression in the 2010s as in the 1980s: "make our democracy even more democratic".<sup>67</sup> Similarly, in Sweden, the opening statement of Pär-Axel Sahlberg in the parliamentary debate of 1996 also presents the introduction of a register of interests as a democratic advancement: "our common mission, that goes beyond party politics, is to stand up for, to defend and to work for the development of our democracy. This register can contribute to that mission."<sup>68</sup> In Britain, John Mendelsohn, Labour MP, argued in 1974 that "[adopting a register of interests] would redound to our credit; it would strengthen democracy and the position of the House and the country if we do so tonight by a convincing vote".<sup>69</sup>

Policy-makers however tend to use a more dramatic rhetoric when associating interest registers and codes of conduct to the state of democracy, arguing that they can help to solve the problems of disillusion, apathy and populism. Framing the debate as one pertaining to democratic legitimacy and regime survival emphasises the need for political officials to be responsive, demonstrate that they are aware of the issue and be seen to 'do something' about the problem.<sup>70</sup> In 1994, announcing the establishment of the CSPL, Prime Minister John Major declared:

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<sup>66</sup> GRIMMELIKHUIJSEN, Stephan, PORUMBESCU, Gregory, HONG, Boram and IM, Tong. *Op. cit.* 2013, p. 575.

<sup>67</sup> Déb. parl. AN du 2 février 1988; Déb. parl. AN (CR) du 17 juin 2013, 1ère séance, 2013

<sup>68</sup> Sveriges riksdag. *Riksdagens protokoll* 1995/96:97, Onsdagen den 22 maj. Stockholm, 1996, p. 2.

<sup>69</sup> House of Commons debate, HC Deb 22 May 1974 vol 874 cc391-513. London, 1974.

<sup>70</sup> EDELMAN, Murray. *Political Language. Words that Succeed and Politics That Fail*. Madison: University of Wisconsin, 1977.



I hope that I have made it clear that I am determined to ensure that this is a wide-ranging review of the safeguards of standards of public office. It is *vital* that the system is seen and recognised to be beyond criticism (emphasis added).<sup>71</sup>

In 2013, Alain Vidalies argues along the same line and refers to reform as a democratic imperative:

We know that representative democracy can only be understood, and accepted, if those who hold a mandate from the people fulfil it not for their own gain but for the good of the citizens who placed their trust in them. It is in the name of this *imperative* that the Government is determined to act (emphasis added).<sup>72</sup>

Framing the problem to be solved in this way not only suggests that the government has agency over it, but makes inaction unacceptable. One of the main arguments of political opponents across countries is indeed the uselessness of such instruments (“a powerful strike in the air”<sup>73</sup>). Dramatising a foreseeable future thus contributes to legitimise the need for public intervention.<sup>74</sup> Policy-makers use a range of issues that they perceive as threats to democracy, such as the emergence of populist parties or the decline of political participation, to justify the need for new regulation. Swedish MP Barbro Westerholm most clearly presented the problem as an existential threat, alluding to the popularity of New Democracy, a new right-wing populist party created in 1991, represented in Parliament from 1991 to 1994, and linking it to Europe’s history of fascism:

This is a threat to our democracy. If trust in politicians declines it creates a fertile ground for political apathy among the public. This in turn lays the ground to the growth of alternative parties which may not have the same idea of democratic values as our current parties. The experience of the 1930s is frightening.<sup>75</sup>

The argumentation about the defence of democracy is used both by promoters and opponents. Parliamentarians who are opposed to the introduction of new instruments to regulate their conduct or disclose elements about their private life present them as a threat to representative democracy in two ways. Firstly, they argue that the instruments would further demagoguery and populism rather than strengthen democracy, thus using the exact opposite argument from policy promoters. Secondly, they worry that the obligation to declare outside interests and connections would deter certain professional groups from taking an active part in politics as transparency

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<sup>71</sup> House of Commons debate, HC Deb 25 October 1994 vol 248 cc757-70. London, 1994. Emphasis by the author.

<sup>72</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013. Emphasis by the author.

<sup>73</sup> ANDERBERG, Christel. Sveriges riksdag. *Riksdagens protokoll* 1995/96:97, Onsdagen den 22 maj. Stockholm, 1996, p. 3

<sup>74</sup> ZITTOUN, Philippe. *Op. cit.* 2014, p. 34.

<sup>75</sup> Sveriges riksdag. *Riksdagens protokoll*. 1995/96:97 Onsdagen den 22 maj. Stockholm, 1996.

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requirements might reveal too much information about their clients (a relatively disingenuous argument given that almost no information is disclosed about individual client connections). The end result, they argue, would be a less representative parliament, dominated by civil servants and career politicians, which could threaten representative democracy in the long run.<sup>76</sup>

#### **8.2.4. Convincing the target population: regulating conflicts of interest to protect parliamentarians**

Since the 1970s in Britain, late 1980s in France and 1990s in Sweden, policy promoters came to frame disclosure and codes not only as a means to safeguard public trust and protect the democratic regime. They however also presented ethics reforms as a way to shield individual officials from unfair suspicions, and ultimately protect parliamentary institutions themselves. Dramatising the debate (as the previous framings do) can serve to mollify the opposition. Presenting the instruments as a protection for political officials, as this subsection describes, appeals more to their own interests in adopting new regulations targeting themselves.

Nowhere was this idea more present than in Britain, where Westminster's tradition of self-regulation has been increasingly criticised as a way for MPs to 'mark their own homework'. This quote from the Committee on Standards Sixth Report of Session 2014–15 is illustrative of this argumentative strategy: "we accept Lord Bew's assessment that (...) the perception that MPs 'mark their own homework' is damaging to public confidence in the system, and therefore to the standing of MPs and of the House".<sup>77</sup> Framing disclosure systems as a means to protect MPs from unfair suspicion and attacks is used more frequently in France and Britain than it is in Sweden. In all likelihood this is linked to the fact that reforms in France and Britain followed major scandals. It was however also used as an argument in Sweden as well, as policy promoters sought to comfort their peers as to possible assumptions regarding their motives. Arguing in favour of a rapid implementation of the interest register, Pär-Axel Sahlberg for instance suggested that MPs should have nothing to worry about: "We do not think that there are any connections that could not bear day light (...) we do not have any ties which could discredit us or make us act for our own or our

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<sup>76</sup> Sveriges riksdag. *Riksdagens protokoll* 1995/96:97, Onsdagen den 22 maj. Stockholm, 1996; Assemblée nationale. Déb. parl. AN du 2 février 1988. Paris, 1988; Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013.

<sup>77</sup> House of Commons, Committee on Standards. The Standards System in the House of Commons Sixth Report of Session 2014–15. London, 2015, p. 14.

relatives' gain".<sup>78</sup> Likewise, the Speaker of the Swedish *Riksdag* presented the new code of conduct in his closing statement in December 2017 by stating that "it creates clarity both for voters and elected officials. The code of conduct is a way to shield trust in the Parliament".<sup>79</sup>

Disclosure systems are presented as a tool to protect honest MPs from doubts about their motives, suggesting that registering interests would be sufficient to clear them in the eyes of the public. This is exemplified by this 1974 quote from Edward Short, Leader of the House of Commons:

Increasingly it has been felt that what is needed is not only declaring [interests] in public debate (...) but making them known to the House as a whole and to the general public (...). If that is done, a Member then has a complete protection against any unfair allegations or innuendos which might be made against him.<sup>80</sup>

Likewise, defending the establishment of a compulsory register in 1974, the Leader of the House of Commons put this frame in plain language:

A compulsory register is also a defence mechanism for the profession which is registered. If someone says, "You did not register that", a Member's simple answer is, "No, I didn't. I am not supposed to. It is your own morbid, prurient curiosity that makes you ask why I did not. I did not, but I registered what I was supposed to register".<sup>81</sup>

Pierre Mazeaud, the chair of the Law Commission and rapporteur of the 1988 Laws, similarly framed the instruments as a way to give justice to politicians: "Justice will firstly be given to politicians. By regulating the links between money and politics, these bills will alleviate the suspicion that burdens them in the eyes of the public opinion".<sup>82</sup> Alain Vidalies uses almost the exact same sentence in 2013:

Justice will first be given to public officials, elected or not: by regulating the links between money and politics, these bills want to reduce the suspicion of the public towards them. Justice also for our fellow citizens, who, with better information and guarantees, will be able to distinguish the true from the false, without looking at us through the lens of suspicion.<sup>83</sup>

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<sup>78</sup> Sveriges riksdag. *Riksdagens protokoll* 1995/96:97, Onsdagen den 22 maj. Stockholm, 1996. Author's own translation.

<sup>79</sup> AHLIN, Urban. *Avslutning*. Riksdagens web-tv. 16 December 2016. Author's own translation.

<sup>80</sup> House of Commons debate, HC Deb 22 May 1974 vol 874 cc391-513. London, 1974.

<sup>81</sup> House of Commons debate, HC Deb 22 May 1974 vol 874 cc391-513. London, 1974.

<sup>82</sup> Assemblée nationale. Déb. parl. AN du 2 février 1988. Paris, 1988, p. 11. Author's own translation.

<sup>83</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013. Author's own translation.

Presenting conflict of interest regulation as a way to safeguard officials' individual and collective reputation suggests that corruption and other forms of misconduct are individual problems reflecting the behaviour of a few *rotten apples*. The underlying assumption of this argumentation is that parliamentarians overall are honest and beyond reproach and that they therefore should have nothing to hide. Public concern about corruption is indeed presented as largely unfounded, as the Nolan Report states it in its introduction:

It is equally clear from a considerable body of this evidence that much of the public anxiety about standards of conduct in public life is based upon perceptions and beliefs which are not supported by facts. Taking the evidence as a whole, we believe that the great majority of men and women in British public life are honest and hard-working, and observe high ethical standards.<sup>84</sup>

Already in the 1974 debates in the House of Commons, Patrick McNair-Wilson, a Labour MP advocating for the registration and the publicity of the Members' interests, similarly suggest that MPs have nothing to hide and should show it.

It is to prevent that kind of gossip, that slur, that half-truth, that I believe that we as a House of Commons have to take some action. It is not just that we are a body of comparatively clean individuals. It is that we have to be seen by the world at large and by others to be clean.<sup>85</sup>

The argument that it is not sufficient to be honest and that honesty should be demonstrated by the introduction of a disclosure regime is central to the discourse on conflict of interest regulation that unfolds in international organisations – and especially at the OECD – around the notion of appearance of propriety, which has come to be considered as almost equally important as the actual conduct of officials.<sup>86</sup> The declining level of trust is referred to in debates as a result of mediatised scandals. This line of argument changes the locus of 'evil'. Presenting MPs' reputation as needing protection indeed points to the role of the press in generating public anxiety. This is particularly true in the British case where the press, especially the tabloid media, are frequently identified as a problem for the reputation of MPs. This is illustrated in this quote from George Strauss, the Labour MP who chaired the 1969 committee on interest declarations:

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<sup>84</sup> Committee on Standards in Public Life Chairman Lord Nolan. Standards in Public Life. First Report. Volume 1. 1995, p. 15.

<sup>85</sup> House of Commons debate, HC Deb 22 May 1974 vol 874 cc391-513

<sup>86</sup> OECD. Managing Conflict of Interest in the Public Sector A Toolkit. Paris: OECD Publishing, 2005, p. 7.

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Nowadays, one of the greatest social evils is the extent to which people and their families, especially those in public life, are exposed to hostile and unfair newspaper gossip so suffering interference with the privacy of their lives.<sup>87</sup>

This view becomes central to MPs' argument in favour of interest registration, as illustrated by this quote from the House Leader Edward Short in 1974:

There is increasing public concern and anxiety about these matters, a great deal of which has been generated by the Press. Because of this, there is a need for Members to have better opportunities to protect themselves against allegations of concealed financial motivation.<sup>88</sup>

The role of the press in generating anxiety continues to be central in the introduction of the Nolan report in 1995, albeit expressed in a more moderate tone:

The amount of media interest in the subject of misconduct in public life, particularly sexual misconduct, has certainly intensified (...) In recent years there have been periods when instances of real or alleged malpractice seemed to be reported in the newspapers every few weeks. There is no precedent in this century for so many allegations of wrongdoing (...) It is not therefore surprising that opinion polls suggest that people believe that there is more actual misconduct than in the past (...) It would be comforting to think that the public believe that standards have declined only because of the growth in media activity and intrusion into the private lives of public figures. Yet we do not believe that this is the whole answer. The newspapers may have run with or encouraged the 'sleaze' issue, but they generally print what they believe to be the facts and can be challenged in court if what they say is defamatory or untrue. A free press using fair techniques of investigative journalism is an indispensable asset to our democracy.<sup>89</sup>

The role of the press and the perception of a growing intrusion into politicians' private life is not used as an argument in parliamentary debates in Sweden but it is mentioned in internal papers on ethics in politics produced by Swedish parliamentarians in the early 1990s, which mentioned the decreasing deference of the media and the transition from political to the media's influence over the agenda.<sup>90</sup> The perception of a changing media environment was also mentioned as an important reason to strengthen regulation and help politicians defend themselves by a Swedish parliamentarian in an interview conducted for this research.<sup>91</sup> In France, this argument is not often

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<sup>87</sup> *Ibid.*

<sup>88</sup> House of Commons debate, HC Deb 22 May 1974 vol 874 cc391-513. London, 1974.

<sup>89</sup> Committee on Standards in Public Life Chairman Lord Nolan. Standards in Public Life. First Report. Volume 1. 1995, pp. 15-16.

<sup>90</sup> WESTERHOLM, Barbro. Politik och journalistik i växelverkan. *Etik i politiken*. ca 1992. Author's own archive.

<sup>91</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17<sup>th</sup> 2017.

used by policy-promoters. The opposition however make use of it repeatedly, rejecting the reforms as proof that the government was giving in to the pressure of the media.<sup>92</sup>

Presenting these policy instruments as a way for politicians to protect themselves suggests that they are under some form of threat, and the vocabulary of victimisation is recurring, with the use of words like ‘intrusion’, ‘witch-hunt’, ‘unfairness’, ‘protection’, ‘hostility’ or ‘exposure’. This discourse of victimisation is relatively widespread in parliamentary debates, among both promoters of reform and its detractors, whilst it is not used in communication outside parliament. This form of argumentation can indeed be said to appeal more to the target population of the instruments than to the public at large. Disclosure is presented by policy promoters in the three contexts as a pro-active choice from political actors to eliminate all grounds for suspicion and demonstrate their (assumed) integrity.

#### **8.2.5. Reaction to changes or new answer to an old problem?**

British, French and Swedish policy promoters share their argumentation of conflict of interest regulation being a response to decline levels of public trust, as a safeguard to democracy and a shield for their reputation. There is however a clear difference in their framing of ethics reform as a reaction to changes in political practices. In Britain, the argument that reforming standards regulation is necessary due to changes in political practices suggests that policy-makers sought to find a targeted solution to an emerging problem. During parliamentary debates, MPs promoting the adoption of new instruments emphasised the issue of MPs increasingly undertaking paid consultancies and using their office for lobbying purposes. This development is often illustrated by a 1965 statement from then Chancellor of the Exchequer, James Callaghan, about MPs, reported in *The Telegraph*:<sup>93</sup>

I do not think of them as Honourable Member of X, Y or Z. I look at them and think ‘investment trusts’, ‘capital speculators’ (...) I have almost forgotten their constituencies, but I shall never forget their interests.<sup>94</sup>

In 1974, George Strauss, who had chaired the 1969 commission that informed later debates, argued along these lines, hinting at the revelation of Gordon Bagier, Labour MP, having accepted

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<sup>92</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013.

<sup>93</sup> Which reminds the author of Jean Gabin’s speech in Henri Verneuil’s film *Le Président* (1961), where the actor playing the Prime Minister (*Président du Conseil*) lists parliamentarians and their interests in various companies and industries.

<sup>94</sup> House of Commons debate, HC Deb 5 July 1965 vol 715 c 1134. London, 1965; WILLIAMS, Martin. *Parliament Ltd: A journey to the dark heart of British politics*. London: Hachette UK, 2016.

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payments from a public relations firm representing the Greek military government, which led to the formation of the Select Committee on Members' Interests:<sup>95</sup>

New action had to be taken, for reasons which all hon. Members know. There had been a great development of public relations activity (...) Foreign Governments were using (hon. Members') help. The expansion was such that the old custom of declaration was completely out of date. New proposals were necessary, and we brought forward these.<sup>96</sup>

Similarly, in 1995, following the publication of the Nolan Committee's first report, Robert MacLennan<sup>97</sup>, MP from the Liberal Democrats, pointed to the changes that he had observed concerning MPs' recourse to consultancies:

In some ways, it is regrettable that today's debate is necessary; but necessary it is (...) I have not served in the House for as long as the Father of the House, but I am in my 30<sup>th</sup> year of service. Even in my time, I am aware of the changes that have taken place, not least in the accumulation of consultancies.

The problems that registers and codes are presented as solutions to often overlap. The cash-for-questions scandal and the allegations of impropriety against two Conservative MPs made by Mohamed Al-Fayed served, five days after the publication of *The Guardian's* article in October 1994, to introduce Prime Minister John Major's decision to establish the CSPL. Between the 1970s and the 1990s, changes in extra-parliamentary activities and paid consultancies appear as the most significant changes of practice that reformers sought to address in Britain.

Swedish policy-makers do not identify any systematic change in politicians' conduct or practices as a motivation for promoting the adoption of the new policy instruments. Policy documents produced by the group of parliamentarians working on ethics in politics in the 1990s mention changes in ethics regulation in other sectors and professions (lawyers, doctors, architects) to be emulated by the parliament, rather than any changes in their own practices.<sup>98</sup> The introduction of the disclosure system and more significantly of the code of conduct were nevertheless presented as ways to clarify existing rules concerning the parliamentary mandate and the political process. The report from the parliamentary working group on the code of conduct indicated that the

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<sup>95</sup> *The Telegraph*. Gordon Bagier. Political Obituaries, April 17<sup>th</sup> 2012.

<sup>96</sup> House of Commons debate, HC Deb 22 May 1974 vol 874 c415. London, 1974.

<sup>97</sup> House of Commons debate, HC Deb 18 May 1995 vol 260 c522. London, 1995.

<sup>98</sup> ANDERSSON, Ingrid, BROHULT, Johan, DALEUS, Lennart, HEGELAND, Hugo, PÅLSSON, Chatrine, WESTERHOLM, Barbro and ZETTERBERG, Eva. Etik i politiken. Utkast Debattskrift. Sundsvall (SW), 1992; WESTERHOLM, Barbro and ZETTERBERG, Eva. *Vi politiker måste själva agera för att återvinna människors förtroende*. Article prepared for Etik i politiken, sent by Barbro Westerholm. Document from Barbro Westerholm's personal archive, probably dated from 1995.

purpose of the instrument was not to respond to a change of conduct that could present a risk of corruption. It rather pointed to the complexity of the system and its rules:

Even if (...) corruption and violations of public trust are unusual in the Swedish Parliament, there are many advantages to a code of conduct. Gathering all the important rules concerning the parliamentary mandate in a single document creates clarity both for voters and elected representatives.<sup>99</sup>

Growing complexity is argued to be a potential source of confusion for parliamentarians, who might not be fully aware of what is expected of them and what their obligations towards voters and the institution are. Citizens similarly might not know what they can expect from their representatives, which is an obstacle for holding the latter to account. A code of conduct is then presented as a solution to this lack of clarity regarding existing rules. The idea that public mistrust stems from a lack of comprehension about the role of parliamentarians, what they actually do and the purpose they serve was mentioned by British and French interviewees.<sup>100</sup> A French law professor suggested that the French people's distrust of parliamentarians partly stems from the difficulty in evaluating the latter's effectiveness, which gives the impression that they are rather useless.<sup>101</sup>

In France, the government did not emphasise any particular change of practice to justify its ambition to reform existing ethics regulation. Instead, ministers and supporting parliamentarians presented reforms as a long-expected initiative to tackle old problems. Pierre Mazeaud in 1988<sup>102</sup> and Alain Vidalies in 2013<sup>103</sup> both quote Jean-Jacques Rousseau, saying, in his *Social Contract*, that “nothing is more dangerous than the influence of private interests in public affairs.”<sup>104</sup> The idea that private interests and money are a threat to the proper conduct of public life is indeed a recurring theme of in French policy-makers' discourse in favour of such regulation. The need to clarify the link between money and politics is a leitmotiv among policy-promoters in France, as Pierre Mazeaud says in 1988, “in our country, money and power have always had a close and complex relationship”.<sup>105</sup> In 2013, Jean-Jacques Urvoas cites Joseph Barthélémy, MP during the

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<sup>99</sup> Sveriges riksdag. *En uppförandekod för ledamöterna i Sveriges riksdag*. Stockholm, 2016, p. 5. Author's own translation.

<sup>100</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017; Former lay member of the Committee on Standards, House of Commons (UKLM1). Interview with author. March 13th 2018; Professor of public law (FREX1). Interview with author. December 20th 2017.

<sup>101</sup> Professor of public law (FREX1). Interview with author. December 20th 2017.

<sup>102</sup> Assemblée nationale. Déb. parl. AN du 2 février 1988. Paris, 1988, p. 8

<sup>103</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013.

<sup>104</sup> ROUSSEAU, Jean-Jacques. *Du contrat social*. Paris : Bazar-Pigoreau. 1832. Author's own translation.

<sup>105</sup> Assemblée nationale. Déb. parl. AN du 2 février 1988. Paris, 1988, p. 8. Author's own translation.



Third Republic, who said, in a 1921 report on parliamentary incompatibilities, that “the problem posed by the relationship between finance and politics is common to all times and all regimes”.<sup>106</sup> Rather than identifying any remarkable change in political practices, reformers argue that there is a need for more transparency and for officials to be exemplary, using an illustrative reference to Antiquity: “Caesar's wife must be above suspicion”.<sup>107</sup> This suggests that it is citizens’ expectations (or politicians’ perception of citizens expectations) that evolved rather than politicians’ practices.

British policy-makers are the only ones to clearly identify a change of practices to which they seek to respond by adopting new regulatory instruments. They indeed point out the tendency of MPs engaging in paid advocacy as new problem that needs to be solved. Swedish reformers do not identify any changes in the conduct of politicians as the grounds for adopting new instruments but rather point to the growing complexity of politics, requiring clarification. French policy-makers, on the contrary, highlight continuity in the ‘taboo’ over money and politics, framing reform as a long-expected answer to an old problem. Given the sequencing of adoption and the role that the British approach to conflict of interest regulation played in shaping global solutions to conflicts of interest, this difference in argumentation is significant. When these instruments were ‘invented’ in the Anglosphere (here Britain more specifically), they were presented as a solution to an emerging problem related to gaps in the existing regulatory framework. Public interest registers and codes of conduct pre-existed the emergence of the various problems that French and Swedish policy-makers associated the instruments with, as they were already floating in the transnational ‘policy stream’.

This section has shown that, in France and Sweden especially, public interest registers and codes of conduct were not explicitly constructed to solve a well-defined problem but were rather ‘chasing’ salient problems as policy actors sought to make them relevant in the national context. As Martin Rein puts it: “the defining challenge of public policy lies in (...) reframing ends so as better to cope with unavoidable problems of vagueness and conflicts among the ends themselves”. In this case, in addition to the promise that they will make corruption less likely, interest registers and codes of conduct are presented as solutions to public distrust and disaffection in political institutions, to the crisis of representation and the decline of democracy. Despite the problem-solving rhetoric characteristic of this policy field, there is a certain vagueness regarding the problems that these instruments are presented as solutions to. The context in which they are

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<sup>106</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013. Author’s own translation.

<sup>107</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013. Author’s own translation.

embedded shapes policy actors' discursive efforts to make transferred ideas relevant. But, as next section will show, it also has an impact on how policies are formulated.

### **8.3. Depoliticising regulation after the crisis: how 'focusing events' matter**

Policy-makers promoting ethics reforms reformulated the problems to which their pet solutions are coupled, identifying what seemed like the most salient ones in their national context. While partly an argumentative strategy, it is also the result of policy-makers' reaction to the context they find themselves in. This section is interested in the 'focusing events' that opened the window for policy entrepreneurs to put new anti-corruption instruments on the political agenda.<sup>108</sup> If scandals are not by themselves sufficient for policy change as the dissertation has shown so far, they were often necessary to create the right conditions for policies to be adopted. Beyond opening the policy window, the factors of politicisation affected the formulation and implementation of conflict of interest regulation. This section is interested in the contingency of policy-making, differentiating between cases where politicisation of the issue was high (Britain and France) and where it was much lower (Sweden), and then seeing the impact that this differentiated politicisation had on policy outputs.

#### **8.3.1. What triggered change? Focusing events and pressure for reform**

This subsection builds on the comparative analysis of the sequencing of events that led to the adoption of public interest registers and codes of conduct in Britain, France and Sweden (Chapter 7), analysing the 'focusing events' that opened the policy window more specifically.<sup>109</sup> It establishes the difference between the British and French cases of high politicisation, where events were heavily mediated and constructed as crises by policy entrepreneurs, and the Swedish case of low politicisation, where instruments were adopted without political scandals as trigger.

##### **8.3.1.1. Crisis management or incremental change?**

Since the 1970s, parliamentary standards in Britain have been reformed as a result of scandals. In the early 19<sup>th</sup> century, the general narrative was that Britain was a country free of corruption and that if issues arose, they were the result of individual flaws rather than systematic

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<sup>108</sup> KINGDON, John W. *Op. cit.* 1984, p. 96.

<sup>109</sup> *Ibid.*

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deficiencies. Until the 1990s, many scandals, such as the Profumo scandal<sup>110</sup> or the controversies around Harold Wilson's entourage,<sup>111</sup> challenged this understanding. They did not however generate demand for increased regulation. The 1973 Poulson affair led to the establishment of the Redcliffe Maud Committee and later the Royal Committee chaired by Lord Salmon to examine the standards of conduct in local government, which in turn pushed the House of Commons to set up the register of Member's interests in 1974, which remained overseen by MPs themselves. Changes in the role of the state and a growingly pro-business environment during the Thatcher years modified the British political culture by making the boundaries between the public and private sector more porous and creating a new generation of MPs eager to get involved in parliamentary lobbying.<sup>112</sup> It was however the scandals of the 1990s that led to the British tradition of self-regulation to be challenged. The 'cash-for-questions scandal' led Prime Minister John Major to establish the CSPL, which were to have a significant impact on conflict of interest regulation in Britain and, indirectly, abroad.

In France it was, similarly, a series of scandals that opened the window for policy change with regards to corruption prevention. The Cahuzac scandal was undoubtedly the pivotal moment that made it possible to create a public interest register and establish the HATVP. It is however also the result of the accumulation of smaller steps taken in response to other scandals: (i) the revelations of illegal party financing in the Luchaire and Urba scandals in the 1980s that led to the institutionalisation of asset declarations for public officials; (ii) the public health scandals in the 1990s and 2000s that imported the practice of interest declarations for decision-makers; (iii) the Worth-Bettencourt scandal that popularised the term 'conflict of interest' and pushed the government to set up an *ad hoc* commission, and parliament to adopt a code of conduct and create the institution of the *déontologue*.

The accumulation of scandals functioned as a trigger of reform in Britain, where there was no clear entrepreneurship for ethics reform before the 1990s. In France, scandals served rather as an accelerator of reforms, given the existing pressure from within, from organised civil society and from international institutions. Reforms in Britain and in France thus happened in a context of *high* (or at least heightened) politicisation of the issue of political corruption, attracting significant media

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<sup>110</sup> Lord DENNING. *The Denning Report: The Profumo Affair*. London: Pimlico, 1963.

<sup>111</sup> BLICK, Andrew. *People Who Live in the Dark: A History of the Special Adviser in British Politics*. London: Politico's, 2004.

<sup>112</sup> HINE David and PEELE Gillian. *The Regulation of Standards in British Public Life: Doing the Right Thing?* Manchester: Manchester University Press, 2016, pp. 38-40.

attention and generating public outrage. British and French governments, faced with revelations of misconduct within their own political party, used reforms as a form of *crisis management*, to safeguard the rest of their mandate (in France) or their chances to be re-elected (in the UK). Beyond the need to solve the ‘emerging’ problem of politicians’ abuse of power, it is the question of the government’s credibility and legitimacy that was at stake.

In Sweden, the creation of the public interest register and the introduction of a code of conduct in parliament happened in a context of relatively low politicisation of corruption. The ‘Toblerone affair’ and other similar scandals involving the ‘golden parachutes’ received by politicians in the mid-1990s certainly contributed to accelerate the reform agenda.<sup>113</sup> But, in contrast to Britain and France, no direct link was established by policy-makers between the new instruments and the scandals, and there were no external actors involved in the policy process. The tenacity of transfer agents within the political class and the ‘softening up’ of opponents, in a context of sweeping public sector reforms and decline public trust, contributed to create the right conditions of reform.<sup>114</sup> The code of conduct was adopted without any particular scandal generating outrage, but rather as a reaction to the publication of a CoE monitoring report, which attracted the attention of the press.<sup>115</sup> Scandals might have helped ‘soften up’ opponents to conflict of interest regulation but they had a more indirect effect in Sweden than in Britain and France. They were not major triggers of change and the level of politicisation of conflicts of interest remained relatively low. The reform initiative came from within the parliament, as a means to prevent such crisis from happening. The process of policy formulation thus remained largely internal.

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<sup>113</sup> WESTERHOLM, Barbro and ZETTERBERG, Eva. *Vi politiker måste själva agera för att återvinna människors förtroende*. Article prepared for Etik i politiken, sent by Barbro Westerholm. Document from Barbro Westerholm’s personal archive, probably dated from 1995; Member of the Swedish Parliament (SWMP1). Interview with author. May 17th 2017.

<sup>114</sup> HOLMBERG, Sören and GILLJAM, Mikael. *Väljare och val i Sverige*. Stockholm: Liber. 1987; ÖSTERMAN, Torsten. *Förtroende för politiker – En rapport om allmänhetens attityd till politiker 1973-1980*. Psykologiskt försvar n°107. Stockholm: Liber. 1981; Westerholm, Barbro and Zetterberg, Eva. *Vi politiker måste själva agera för att återvinna människors förtroende!* Article prepared for Etik i politiken, sent by Barbro Westerholm. This article is stored in Barbro Westerholm’s personal archive. It is not dated but the information it contains suggests that it was written in 1995; ANDERSSON, Ingrid, BROHULT, Johan, DALEUS, Lennart, HEGELAND, Hugo, PÅLSSON, Chatrine, WESTERHOLM, Barbro and ZETTERBERG, Eva. *Etik i politiken*. Utkast Debattskrift. Sundsvall (SW), 1992.

<sup>115</sup> See for instance: BRORS, Hendrik. *Krav på hårdare regler mot korruption i Sverige*. *Dagens Nyheter*, November 12<sup>th</sup> 2013; Riksdagen föreslås börja registrera ledamöters gåvor. *Dagens Nyheter*, February 19<sup>th</sup> 2016.

### 8.3.1.2. The construction of crisis by policy entrepreneurs

When scandals are triggers or accelerators of reform, they are however not a sufficient condition for new policies to be adopted. Indeed, all three countries would have passed many more ethics reforms to this day if that were the case. Using a constructivist institutionalist view on the notion of *crisis*, I argue instead that certain situations are constructed as crises by policy protagonists to create a favourable environment to pass legislation they had planned to adopt. Rather than seeing a crisis as an external shock, constructivist institutionalist scholars consider them as endogenous and constructed.<sup>116</sup> Citing R. A. W. Rhodes, Mark Bevir and David Richards, Colin Hay argues that “institutions of governance are always prone to fail in some way (by disappointing our expectations of them, for instance)”<sup>117</sup> and that such governance failure can generate new ideas and make policy-makers *soften up* to them through the transformation of the institutional and ideational context, and of political actors themselves. Kingdon also sees focusing events as social constructions, based on events *out there*: “some objective features define a policy window (...) but the window exists in the perceptions of the participants as well”.<sup>118</sup>

For a policy window to open, various actors must perceive a situation as one of crisis. There is a rich literature on the constructed nature of scandals which emphasises the role (and changing perceived interests) of journalists, political opponents and the judiciary.<sup>119</sup> The active role of government officials in constructing an event as a crisis is particularly relevant in France. The adoption of the 2013 laws on transparency in public life is indeed a good illustration of such a construction. Indeed, when the existence of Jérôme Cahuzac’s hidden bank account was revealed by *Mediapart*, the case rapidly snowballed into a scandal, as the event became “*l’affaire Cahuzac*”. Political opponents demanded his resignation from the government and questioned how much the

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<sup>116</sup> SCHMIDT, Vivien. *Op. cit.* 2010.

<sup>117</sup> HAY, Colin. Interpreting Interpretivism Interpreting Interpretations: the new Hermeneutics of Public Administration. *Public Administration* Vol. 89, n° 1, 2011 p. 179.

<sup>118</sup> KINGDON, John W. *Op. cit.* 2014, p. 171, cited in BELAND, Daniel. *Op. cit.* 2016, p. 234.

<sup>119</sup> THOMPSON, John B. *Political scandal power and visibility in the media age*. Cambridge, England: Polity Press, 2000; TUMBER, Howard and WAISBORD, Silvio. Introduction: Political Scandals and Media Across Democracies, Volume II. *The American Behavioral Scientist*, Vol.47 n° 9, 2004, pp. 1143-1152; BREIT, Eric. On the (Re)Construction of Corruption in the Media: A Critical Discursive Approach. *Journal of Business Ethics*, 2010, Vol.92, n°4, pp. 619-635; EHRAT, Johannes. *Power of scandal semiotic and pragmatic in mass media*. Toronto: University of Toronto Press, 2011; ENTMAN, Robert M. *Scandal and silence: media responses to presidential misconduct*. Cambridge Malden, Mass: Polity Press, 2012; LASCOUMES, Pierre. Des cris au silence médiatique : les limites de la scandalisation. *Éthique publique*, vol. 18, n° 2, 2016 ; WICKBERG, Sofia. Scandales et corruption dans le discours médiatique français : la partie émergée de l’iceberg ? *Éthique publique*. vol. 18, n° 2, 2016.

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president knew and how the case was handled by the government.<sup>120</sup> Civil society organisations used the event to push their reform agenda: Anticor demanded the introduction of an ineligibility rule for anyone having been accused of economic crime<sup>121</sup> and TI France called on the government to turn the proposals of the Jospin commission into law (including the creation of a public interest register and the creation of an independent administrative agency).<sup>122</sup> The government also constructed the situation as a crisis. If François Hollande and his government certainly did not welcome the revelation, they eventually used it to accelerate the rhythm of reforms.<sup>123</sup> The Cahuzac scandal led to the adoption of a law that targeted the problem actually exposed by the scandal, namely tax fraud (Law n° 2013-1117 on the fight against fiscal fraud and economic and financial crime). It also served to turn transferred ideas about conflicts of interest (which were relatively unrelated to the scandal itself), that had been circulating among policy actors and suggested in the recent electoral campaign.<sup>124</sup> A parliamentary clerk neatly sums it up:

Well, it is often the case with regards to public policy... the measures were ready, in a way, reflection had been made, reports had been written. What was missing was... the trigger to put the issue of the agenda and make reforms acceptable, including to parliamentarians who were not eager to impose any constraints on themselves (...) and so the trigger was the Cahuzac scandal which made a whole series of measures acceptable which were not accepted at all before (...) Existing mechanisms from within the Assembly were transposed, regulation was externalised to an independent authority, so the control is strengthened (...) for MPs it does not change much. The thing that makes a real difference is the publicity [of declarations].<sup>125</sup>

President Hollande and his government, with their rhetoric of the “*choc de moralisation*” – a slight semantic change from the previous “*choc de simplification*”<sup>126</sup> – became a sort of policy entrepreneur ‘à la Kingdon’<sup>127</sup> and coupled policy changes regarding transparency in public life,

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<sup>120</sup> See for instance : Elysée : Cahuzac a nié «des yeux dans les yeux» face à Hollande. *Le Parisien*, April 2d 2013; Copé: aucune mesure d'Hollande n'aurait empêché l'affaire Cahuzac. *Le Point*, April 10<sup>th</sup> 2013; Affaire Cahuzac : le rapport de la commission d'enquête devrait blanchir le gouvernement. *Le Figaro*, September 17<sup>th</sup> 2013.

<sup>121</sup> Anticor. Anticor écrit à François Hollande. April 15<sup>th</sup> 2013. Online, available at:

<https://www.anticor.org/2013/04/17/anticor-ecrit-a-francois-hollande/> (accessed on January 20<sup>th</sup> 2020)

<sup>122</sup> Transparency International France. Prévention des conflits d'intérêts, contrôle des déclarations de patrimoine : que faut-il changer ? April 8<sup>th</sup> 2013. Online, available at : <https://www.transparency-france.org/observatoire-ethique/2013/04/08/prevention-des-conflits-d%e2%80%99interets-controle-des-declarations-de-patrimoine-que-faut-il-changer/> (accessed on January 20<sup>th</sup> 2020)

<sup>123</sup> Former French Minister of Economy and Finance (FRMIN1). Interview with author. January 10<sup>th</sup> 2019.

<sup>124</sup> Employee of Transparency International France (FRCS3). Interview with author. March 2<sup>d</sup> 2018.

<sup>125</sup> Parliamentary clerk 2, National Assembly (FRPC2). Interview with author. April 5<sup>th</sup> 2019. Author's own translation.

<sup>126</sup> RICHE, Pascal. Moralisation de la vie publique : les cinq outils dans la boîte de Hollande. *Nouvelobs*, April 6<sup>th</sup> 2013.

<sup>127</sup> KINGDON, John W. *Op. cit.* 2014.

that were already in the pipeline, with the Cahuzac scandal, thus turning it into a focusing event opening the window for transferred ideas to be made into policy.

British, French and Swedish policy-makers were neither exposed to the same kind of pressure when they adopted public interest registers and the code of conduct, nor did they react similarly to that pressure. While Britain and France reformed their ‘public ethics infrastructure’, to borrow the OECD’s expression, their governments were exposed to strong public pressure to ‘do something’ in response to recent cases of political abuse. Reforms in Britain happened at a time where foreign examples of parliamentary ethics policies were rare. John Major’s government appointed the CSPL to investigate the issue of standards in public life and public perception of officials’ conduct. In May 1995, the CSPL published its first report which would inspire domestic reforms as well as reforms abroad – many foreign codes of conduct deriving from the British one adopted by the House of Commons in July 1996. When France passed its reform, many foreign examples existed as well as international standards and circulated among policy actors. The government could thus react much more swiftly, using the accelerated procedure of legislative work, and had its laws on the transparency of public life passed within ten months after the scandal was exposed. Reforms in Sweden were much more discrete and incremental, and happened in a context of comparatively low politicisation of public ethics. Temporality and contingency thus explain differences in the policy-making process across the three countries; reform being a form of crisis management in Britain and France, but not in Sweden where the reform process was much more incremental.

### **8.3.2. How does the policy window affect actual regulation?**

The context in which public interest registers and codes of conduct were introduced in Britain, France and Sweden differed in terms of the level of pressure put on policy-makers and the level of politicisation of the issue. The diverging elements regarding the regulation of conflict of interest in practice in the three countries is partially explained by the context in which the instruments were adopted. Focusing events indeed change the politics of policy-making and the influence of actors promoting or opposing reform. This section seeks to understand how different forms of politicisation affect the formulation and implementation of these instruments.

### 8.3.2.1. Scandals and the rejection of self-regulation

Despite the growing similarity of conflict of interest regulation in Britain, France and Sweden, the three countries differ with respect to the implementation of instruments. The conduct of members of Parliament has traditionally been controlled through self-regulation. The regulatory systems introduced in the three Parliaments mark a move away from a fully informal control mechanism, but France, Sweden and the Britain did not follow the same path, with different actors, institutions and resources being involved in the regulation of conflicts of interest. As presented in detail in Chapter 1, Sweden introduced new rules and instruments, but kept a wholly trust-based self-regulatory system, which relies heavily on the parliamentary administration and on party groups to ensure the compliance. On the contrary, French and British policy-makers progressively introduced elements of external oversight into the regulation of their own conduct, creating new institutions responsible for policy implementation. The diverging dimensions of conflict of interest regulation is partially explained by the context in which instruments were adopted. A context of low politicisation and the absence of public pressure for reform allows policy-makers to maintain the traditional system of self-regulation, the introduction of new instruments being seen as a sufficient effort, as is the case in Sweden.

In Britain and France, the high level of politicisation and the pressure for governments to act, and be *seen* to act, made policy-makers move away from traditional practices of self-regulation. Scandals were interpreted as more systemic problems linked to the regulation of MPs' conduct and conflicts of interest. This highlights different dimensions of trust, since the problem is not only that people's trust in the integrity of individual officials is affected, but also that their trust in the ability of the institution to regulate their conduct is being challenged. This is well illustrated by this statement of the House of Commons' Committee on Standards, used in the previous section: "the perception that MPs 'mark their own homework' is damaging to public confidence in the system, and therefore to the standing of MPs and of the House".<sup>128</sup> In his 1995 book on *Ethics in Congress*, Dennis Thompson noted that parliamentarians judging other parliamentarians raises "reasonable doubts about the independence, fairness, and accountability of the process",<sup>129</sup> to which Denis Saint-Martin added that it generated a "perception that MPs face an inherent and inescapable

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<sup>128</sup> House of Commons, Committee on Standards. The Standards System in the House of Commons Sixth Report of Session 2014–15. 2015, p. 14

<sup>129</sup> THOMPSON, Dennis F. *Ethics in Congress*. Washington, D.C.: Brookings, 1995, p. 131.

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conflict of interest when they sit in judgment of fellow MPs”.<sup>130</sup> British policy-makers were pushed to move away from the country’s tradition of self-regulation, due to the scandals that opened successive policy windows, with the creation of new independent institutions (CSPL, Parliamentary Commissioner for Standards and more recently the IPSA) and the introduction of lay members in the House of Commons Committee on Standards. Since 1995, public pressure has forced the House of Commons to enter a path of ‘slow erosion of self-regulation’, injecting greater independence and elements of external oversight in its disciplinary infrastructure.<sup>131</sup>

The willingness to move regulation out of parliamentarians’ hands is indeed very present in the French government’s discourse following the Cahuzac scandal. President Hollande insisted on his ambition to set up an administrative agency that should be “totally independent” to control officials’ declarations.<sup>132</sup> While his wish was not realised (parliament largely retaining control over the decision to sanction parliamentarians) the 2013 reform nevertheless externalised the control over (and publicity of) parliamentarians’ interest declarations.<sup>133</sup> In France, the government extensively used references to the people, the *vox populi*, to justify its reform as a change demanded by the public. Alain Vidalies’ speech presenting the 2013 bills on transparency in public life to the National Assembly is illustrative of this rhetoric of government responsiveness:

Ladies and gentlemen, the reading of our proposals is looked at favourably by our fellow citizens. They observe us with a particular attention at a moment when an economic and social crisis hits us hard (...) and challenge the very bases of public authority (...) The people [*les français*] will only be able to listen to us if trust is restored in the public word (...) Ladies and gentleman, parliamentarians, our people [*les français*] expect us to be exemplary.<sup>134</sup>

The public reaction to the scandal gives the government a chance to legitimise its approach as something that the public demands. Reforms were used as a means to manage the ‘crisis’ created by the scandal, by ‘acting fast’ with ‘strong actions’ to create a ‘*choc de moralisation*’.<sup>135</sup> While the scandal allowed the government to move on campaign promises, the public reaction also affected policy formulation, requiring higher levels of transparency and externalisation of control. A legal

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<sup>130</sup> SAINT-MARTIN, Denis. Path Dependence and Self-Reinforcing Processes in The Regulation of Ethics in Politics: Toward a Framework for Comparative Analysis. *International Public Management Journal*, 2005, Vol. 8 n°2, p. 135.

<sup>131</sup> HINE, David and PEELE, Gillian. *Op. cit.* 2016, p. 96.

<sup>132</sup> BEKMEZIAN, Hélène. Affaire Cahuzac : François Hollande répond avec trois réformes. *Le Monde*, April 3rd 2013.

<sup>133</sup> Parliamentary clerk 2, National Assembly (FRPC2). Interview with author. April 5<sup>th</sup> 2019.

<sup>134</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013.

<sup>135</sup> Professor of public law (FREX1). Interview with author. December 20th 2017.

expert who took part in the 'Jospin commission' regretted what she saw as a reaction to public outrage rather than a response to the problem as analysed by experts:

The government yielded to the public emotion, clearly. François Hollande had talked about a '*choc de moralisation*'. What was needed was a shock. And if I am not mistaken, Emmanuel Macron talked about a '*choc de confiance*'. Shock after shock. They needed strong measures. These are symbolic measures that, in reality, do not change the state of the law. It is not through the publication of their declarations that you encourage a parliamentarian to be more respectful of the law (...) Publicity... on the one hand there is a degree of voyeurism, and on the other hand it violates privacy. You saw the article in *Le Monde* "there are several millionaires in the government"... How can that not worsen public distrust? A government with several millionaires, that will not restore trust among the governed who are confirmed in their idea that it is a caste of privileged.<sup>136</sup>

The interviewee suggests that by (over-)reacting to a scandal and public emotion, the government might have laid the ground for new scandals and for further suspicion. Scandals can indeed be made possible by new anti-corruption policies, defining new practices as unacceptable, or providing the public and the media with new information and ways of scrutinizing political actors' conduct. The media has indeed used the transparency measures introduced following the Cahuzac scandal to assess politicians' wealth, which was not the original objective of the 2013 reforms.<sup>137</sup> This situation is a consequence of the hybridisation of public ethics reforms, France importing transparency instruments from the Anglosphere and translating them into the existing system centred around asset declarations (rather than private interests), leading to the disclosure of substantial amounts of private information about policy-makers.<sup>138</sup>

Heightened politicisation of political corruption and popular pressure for reform seem not only to lead to the 'slow erosion of self-regulation' but tend also to the move policy innovation in this domain out of political officials' hands.<sup>139</sup> Specialised bodies and agencies created to 'manage' parliamentary ethics and regulate conflicts of interest in Britain and France (the CSPL and the PCS in the UK, the HATVP and the *déontologue* in France) have also been mandated to examine current concerns regarding ethical matters and conflicts of interest, and make recommendations to the

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<sup>136</sup> Professor of public law (FREX1). Interview with author. December 20th 2017. Author's own translation.

<sup>137</sup> See for instance: PIETRALUNGA, Cédric and MICHEL, Anne. De nombreux millionnaires parmi les membres du gouvernement. *Le Monde*, December 16th 2017.

<sup>138</sup> As explained in Chapter 1, parliamentarians' asset declarations are not published online but can be accessed in person in certain government buildings through a rather complex process.

<sup>139</sup> HINE, David and PEELE, Gillian. *Op. cit.* 2016, p. 32.

governments or the parliament about needed changes to the existing system<sup>140</sup> - a role these institutions have embraced fully as Chapter 7 showed.

Scandals and moments of crisis thus not only opened policy windows, they led to a the depoliticisation and externalisation of the regulation of elected representative's conduct. Moving away from this tradition of parliamentary self-regulation is not something that policy-makers do willingly. Moments of crisis led to the involvement of external actors in the policy-making process, which was not the case in Sweden where policy formulation remained largely internal, allowing parliamentarians to retain control over conflict of interest regulation. By changing the locus of regulation and the responsibility of oversight, policy-makers respond to the public perception that political actors are not well placed to regulate their own behaviour and conflicts of interest. They also result in the depoliticisation of policy initiative, introducing new actors in the policy-making process, which tends to generate a form of path-dependence towards more externalisation (a theme to which we return in Chapter 9).<sup>141</sup>

### 8.3.2.2. Dampening opposing voices

Like most “anti-policies”, anti-corruption policy knows few, if any, opponents. As Luis de Sousa, Peter Larmour and Barry Hindess put it, “in other policy areas, such as environmental protection or the war in Iraq, there are groups who are for or against. The case of corruption, in contrast, only attracts opponents”.<sup>142</sup> Unsurprisingly, the main resistance to new regulation came from political actors themselves, who are in this case (unusually) both the makers and the main target of policy. They are however careful in how they express their opposition to ethics reforms, due to the potential risks to their reputation. Calvin Mackenzie noted, about the United States in 2002, that “ethics regulation has been the motherhood issue of recent times – too costly to oppose even when benefits were uncertain”,<sup>143</sup> and Canadian political scientist Denis Saint Martin similarly

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<sup>140</sup> Committee on Standards in Public Life. Terms of reference. n.d. Online, available at: <https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life/about/terms-of-reference>; House of Commons. Parliamentary Commissioner for Standards Office. n.d. Online, available at: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/parliamentary-commissioner-for-standards/>; Assemblée nationale. Déontologie à l'Assemblée nationale. n.d. Online, available at: [http://www2.assemblee-nationale.fr/qui/deontologie-a-l-assemblee-nationale#node\\_63885](http://www2.assemblee-nationale.fr/qui/deontologie-a-l-assemblee-nationale#node_63885); Law n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique.

<sup>141</sup> SAINT-MARTIN, Denis. *Op. cit.* 2005.

<sup>142</sup> De SOUSA, Luis, LARMOUR, Peter and HINDESS, Barry. *Governments, NGOs and Anti-corruption: The New Integrity Warriors*. Routledge, 2009, p. 1.

<sup>143</sup> MACKENZIE, Calvin G. *Op. cit.* 2002, p. 5.

sees that “it is politically difficult to be against ethics in a democracy”.<sup>144</sup> Scandals and crisis moments can thus serve both to put the issue on the agenda but also to dampen the opposition, making it hard to reject what is presented as a solution to a problem that the public is concerned about.

Parliamentarians have resisted, through words and vote, the adoption of policy instruments designed to divulge information about their outside interests or to regulate their conduct, through highlighting the ‘dangers’ of elements of proposed policies, claiming that the reform is either not ambitious enough, or suggesting that the reform is unnecessary because the existing system just needs to be implemented better. This reflects de Sousa, Larmour and Hindess’ argument that “while everyone is against corruption, they do not necessarily agree on what they are for”,<sup>145</sup> nor do they agree on what should be done about the problem and what sacrifices they are willing to make.

In Sweden, as Chapter 7 showed, no political groups vehemently opposed the new instruments. In the 1990s, the centre-right party *Moderaterna* (m) showed some resistance to reform.<sup>146</sup> Their political group presented two bills rejecting the introduction of a voluntary interest register, on the grounds (i) that what was introduced in parliament should be aligned with what the previous centre-right government had proposed for ministers, (ii) that the publication of parliamentarians’ interests was a violation of their privacy, (iii) that the reform was unnecessary because many of the elements to be declared were already public (as for all citizens), and (iv) that such a register constituted a risk for the representativeness of parliament, favouring civil servants without many financial interests over entrepreneurs and business owners and employees.<sup>147</sup> Christel Anderberg, who had tabled one of the motions opposing the public register, repeated her concerns regarding the new instrument and declared that her political group did not oppose the committee’s decision and would not oppose the law because it would be politically costly, giving their opponents easy political points.<sup>148</sup> Similarly, the development and adoption of the code of conduct happened

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<sup>144</sup> SAINT-MARTIN, Denis. *Op. cit.* 2005, p. 144.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*; Member of the Swedish Parliament (SWMP1). Interview with author. May 17th 2017; Parliamentary clerk, Swedish *Riksdag* (SWPC1). Phone interview with author. May 30th 2017. Two of the interviewees are political figures from other parties, which could make them biased against the main right-wing party. Their statement is however confirmed by a parliamentary clerk, who is assumed to be more neutral.

<sup>147</sup> Sveriges riksdag. Motion 1995/96:K9, av Carl Bildt m. fl (m), October 26 1995; Sveriges riksdag. Motion 1995/96:K10, av Christel Anderberg m. fl (m), October 26 1995.

<sup>148</sup> Sveriges riksdag. Riksdagens snabbprotokoll. Protokoll 1995/96:97, May 22d 1996.

within a working group with one representative per political group, some of which thought the new code was “quite ridiculous”<sup>149</sup> but did not formally reject it. The fact that none of the reforms in Sweden affected the self-regulation of parliamentary ethics and that all of them involved only few additional costs to the institution made the issue far less controversial than in Britain and France.

In France, to circumvent opposition, the President of the Assembly chose to introduce the code of conduct and the institution of the *déontologue* as a decision of the bureau that did not need to be debated in the chamber.<sup>150</sup> Indeed, initial attempts to regulate conflicts of interest failed due to the opposition of a majority of parliamentarians.<sup>151</sup> Disagreements became apparent when the non-binding policy was translated into law two years later, which included *inter alia* the transparency of interest declarations and the creation of the HATVP. The initiative came from the left-wing government, which had a majority in the National Assembly. Parliamentarians voted for Laws n°2013-906 and n°2013-907 largely according to party lines and alliances, the socialist group and supporters in the Greens group and the former Communist group voting in favour of the new laws, while the conservative opposition voted against to a large majority and the centre-right opposition abstained.<sup>152</sup> Most amendments that were adopted in the chamber had been tabled by the rapporteur and changes suggested by the opposition were predominantly rejected.<sup>153</sup> The accelerated legislative procedure dismissed the changes made to the laws by the Senate, where disagreements emerged between the Law Commission and the chamber, where debates had been

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<sup>149</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17th 2017. Author’s own translation.

<sup>150</sup> Assemblée nationale. Analyse du scrutin n° 830 - Première séance du 07/12/2011 Scrutin public sur l'ensemble de la proposition de loi organique relative à la transparence de la vie publique et à la prévention des conflits d'intérêts.

<sup>151</sup> Parliamentary clerk, National Assembly (FRPC1). Interview with author. May 7th 2018.

<sup>152</sup> Assemblée nationale. Analyse du scrutin n°594 Première séance du 17/09/2013. Scrutin public sur l'ensemble du projet de loi relatif à la transparence de la vie publique; Assemblée nationale. Analyse du scrutin n°595 Première séance du 17/09/2013. Scrutin public sur l'ensemble du projet de loi relatif à la transparence de la vie publique.

<sup>153</sup> The Law Commission, at the initiative of the rapporteur Jean-Jacques Urvoas, amended the texts, regarding (i) the content of interest declarations, which the government had left to the Council of State but the members of the Law Commission decided to draw up themselves; (ii) the publicity of MPs’ assets which was included in the original bill and modified to allow for their consultations by citizens who are registered to vote, in their local prefecture; (iii) the definition of conflicts of interest to which the notion of apparent conflict of interest was added; (iii) the composition of the High Authority, to which it added members designated by the presidents of the parliamentary chambers; and (iv) the control power of the High Authority which it strengthened (Assemblée nationale et Sénat. *Rapport fait au nom des commissions mixtes paritaires chargées de proposer un texte sur les dispositions restant en discussion du projet de loi organique et du projet de loi relatifs à la transparence de la vie publique*. Rapport n°1271 et 1272 de l'Assemblée nationale et n°770 du Sénat. Paris, 16-17 July 2013).

“bitter” according to the Senate rapporteur Jean-Pierre Sueur.<sup>154</sup> Interviewees from within and outside the state point to the opportunity offered by the Cahuzac scandal to make reluctant parliamentarians adopt measures they would otherwise have opposed.<sup>155</sup>

It is clear that the cursors were pushed much further than what would have been possible otherwise. And the parliamentarians also had much less leeway to lessen the pressure (...) It is clear that the Cahuzac scandal put such a level of pressure on the executive power and on the parliament, that the government was able to push forward more than it normally would have.<sup>156</sup>

As a focusing event, the scandal allowed the government to launch the accelerated procedure to pass its reform, which put the decision-making power in the National Assembly where it had a political majority. In addition, it focussed the public and media attention on parliamentary debates, which contributed to limit (at least partly) parliamentarians’ ability to water-down the bill. In that way, it changed the balance of power towards policy promoters over defenders of the status quo (the latter being constituted mainly by MPs in opposition having less to gain politically from a reform initiated by their political opponents). Because they strengthened the influence of policy entrepreneurs and reduced the possibility to resist reforms, public outrage changed the formulation of the policy, especially regarding the level of external control and the degree of transparency, as well as the resources dedicated to implementation. Public pressure also affected the position and attitude of the government itself, who felt encouraged to further depoliticise and externalise regulation, as a sign of responsiveness.

## Conclusion

Policy actors at the domestic level are active participants in the transfer process as they problematise policy ideas and translate them for the local context, to make them acceptable and understandable. Context affects opportunity structures through actors’ understanding of changes, as Hay suggests: “actors are oriented normatively towards their environment”.<sup>157</sup> This chapter has looked at policy-makers’ discursive strategies to legitimise the introduction of new instruments to

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<sup>154</sup> Assemblée nationale et Sénat. Rapport fait au nom des commissions mixtes paritaires chargées de proposer un texte sur les dispositions restant en discussion du projet de loi organique et du projet de loi relatifs à la transparence de la vie publique. Rapport n°1271 et 1272 de l’Assemblée nationale et n°770 du Sénat. Paris, 16-17 July 2013.

<sup>155</sup> Professor of Public law 2 (FREX2). Interview with author. February 28<sup>th</sup> 2018; Employee of Transparency International France (FRCS3). Interview with author. March 2<sup>d</sup> 2018; Parliamentary clerk 2, National Assembly (FRPC2). Interview with author. April 5<sup>th</sup> 2019.

<sup>156</sup> Parliamentary clerk 2, National Assembly (FRPC2). Interview with author. April 5<sup>th</sup> 2019. Author’s own translation.

<sup>157</sup> HAY, Colin. *Op. cit.* 2008.

regulate conflicts of interest. It has shown that references to foreign practices and international norms are present, to various degrees, in policy-makers' discourse on conflict of interest regulation, demonstrating that the policy field has been transnationalised, even in the minds of national policy-makers. While their country's reputation on the international stage matters across the picture, policy actors make a different 'usage' of foreign practices. Governments tend to frame it as a question of international competition for policy 'leadership' (Britain and France) or compliance with international norms (Sweden) – which is slightly ironic given that, of the three, Sweden is the one that enjoys the image of a 'clean country'. Policy actors do not attribute the same value to internationally-promoted ideas about corruption prevention. In Sweden, foreign practices and international standards have a strong legitimising power, while French policy actors are more divided, some using them to legitimise their policy preferences (individual parliamentarians, clerks, non-state actors) while others strive to discursively endogenize policy ideas (government officials, text rapporteurs). 'Usage' of international norms is not monolithic, but more research would be needed to really understand actors' rapport to them in this policy field.

The chapter also showed that temporality and context influenced how policy-makers constructed the public problems that sustain their policy proposals. Analysing the transfer of ideas regarding conflict of interest regulation from pioneers to other contexts, it is not surprising to see that policy-makers in Britain pointed to a quite specific problem to be solved by these instruments (MPs' involvement in paid consultancy), following scandals that made this practice visible. While British policy-makers also coupled these policy instruments to other related problems, the association of interest registers and codes of conduct with broader and vaguer problems, such as the decline of public trust or the crisis of democracy, was prominent in France and Sweden. Defining the formulation of conflict of interest regulation as an exercise of solving 'wicked problems' (that are complex, interpretively ambiguous, severe to the point of threatening the political system)<sup>158</sup> contribute to present the situation as unacceptable, thus weakening potential oppositions, and construct governments' agency over intractable problems. While the domestic interpretation of the problems that these instruments can solve is relatively well aligned with transnational actors' (Chapter 4), national governments and policy-makers were reluctant to frame these instruments as solutions to corruption. When they did, they most often insisted on the

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<sup>158</sup> RITTTEL, Horst and WEBBER, Melvin. Dilemmas in a general theory of planning. *Policy Sciences*, Vol.4, n° 2, 1973, pp. 155-169

prescriptive nature of the intervention, not to recognise that corruption might actually be a problem in the national context.

Context matters in (at least) two ways: because it influences policy promoters' legitimisation strategies, modifying opportunities and constraints, but also because it ultimately affects how conflicts of interest are regulated in practice. The *usage* of international standards and reference to foreign practices by policy-makers should be contrasted with the level of politicisation of corruption in the different countries and the resources that policy-makers dedicated to implementing these instruments. In contrast to their Swedish counterparts, French policy-makers sought to discursively endogenize ethics reforms, but they also put more resources into complying with international standards than the latter. The context of policy-making also affects the outcome of the policy process, especially with regards to the intrusiveness of transparency requirements and externalisation of regulation. Scandals, and their construction as moments of crisis, not only opened policy windows, they led to a partial externalisation of the regulation of conflicts of interest. Through the increased public (and political) pressure they put on governments, moments of crisis led to the involvement of external actors in the policy-making process which made it more difficult to maintain the tradition of self-regulation, seen as having failed.

By partially externalising regulation to independent institutions, policy-makers respond to the public belief that political actors are not well placed to regulate their own conduct. The context in which policy-making happened thus contributes to explain the divergence in conflict of interest regulation in practice. France and Britain indeed responded to 'crises' by depoliticising regulation, while Swedish policy-makers maintained their tradition of self-regulation. Divergence, much like convergence, is thus intrinsically contingent, as policy-makers are differently exposed to pressure(s), which they cognitively mediate. In this transnationalised policy field, domestic actors take an active part in selecting ideas to be transferred and making them relevant to the national *political* context. Policy actors also need to adapt them to the *institutional* framework, which contributes to further explain the 'divergent convergence' of conflict of interest regulation across the three countries, as next chapter will show.





## Chapter 9. Giving local colour to transferred ideas: the role of national institutions

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At dinner ... all concluded that the bane of the Parliament hath been the leaving off the old custom of the places allowing wages to those that served them in Parliament, by which they chose men that understood their business and would attend it, and they could expect an account from, which now they cannot.

(Samuel Pepys, diary entry for 30 March 1668)<sup>1</sup>

How one understands professional ethics is intrinsically linked to how one thinks about the role and responsibilities of a function. Thus parliamentary ethics need to be thought of in the light of existing institutions that frame what is to be expected of elected representatives. The above excerpt from Samuel Pepys' diaries refers to the custom of constituents, in late 17<sup>th</sup> century English, paying their Member of Parliament. This, its author suggests, allowed them to keep their representative in check. Political accountability and ethics are indeed not new concerns, and they evolved over time and across jurisdictions, with changes to the role of parliaments and their members. As previous chapters have shown, international institutions have sought, in the last decades, to develop generic instruments to regulate ethical matters, but these do not "[transit] intact between jurisdictions".<sup>2</sup> 'Norm takers' at the national level take an active part in the transfer of policy ideas, as they reformulate them to fit their political and institutional context. As Marie-Laure Djelic argues: "floating ideas are potential institutions. They won't be real ones, though, (...) before they are acted upon and turned into 'rules of the game providing stability and meaning'".<sup>3</sup> This chapter is interested in how, by becoming institutions, transferred ideas about corruption

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<sup>1</sup> Samuel Pepys' diary entry for 30 March 1668, cited in House of Commons Information Office Members' pay, pensions and allowances. Factsheet M5 Members Series. Revised May 2009

<sup>2</sup> CZARNIAWSKA-JOERGES, Barbara and SEVÓN Guje. *Translating Organizational Change*. New York, Berlin: Walter de Gruyter, 1996; PEDERSEN, Lene Holm. Ideas are transformed as they transfer: a comparative study of eco-taxation in Scandinavia. *Journal of European Public Policy*, Vol.14, n°1, 2007, pp. 59-77; McCANN, Eugene and WARD, Kevin. *Op. cit.* 2012.

<sup>3</sup> DJELIC, Marie-Laure. Institutional Perspectives—Working towards Coherence or Irreconcilable Diversity? In Morgan, GLENN, L. CAMPBELL, John, CROUCH, Colin, PEDERSEN, Ove Kaj and WHITLEY, Richard (eds.) *The Oxford Handbook of Comparative Institutional Analysis*. Oxford University Press, 2010.

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prevention are translated into existing institutions and thus ‘absorb local colour’.<sup>4</sup> Global ‘solutions’ need to be embedded in the institutional context of their new host country to become meaningful rules of the game.

The concept of an institution is taken to refer to “a relatively enduring collection of rules and organized practices, embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances”.<sup>5</sup> In this chapter, institutions range from formal rules such as constitutional design, political and electoral systems, organisational characteristics, routines and past policy choices, to conceptions of politics and of appropriate behaviour in the political sphere. Political institutions matter because they have an “ordering effect on how authority and power are constituted, exercised, legitimated, controlled, and redistributed”.<sup>6</sup> Existing studies have looked at the impact of the nature of executive–legislative relations, as well as the nature of administrative traditions to explain the different policy answers to external pressure for reform.<sup>7</sup> Institutions however also work as ideational filters. Policy actors are indeed institutionally-embedded, and these institutions contribute to shape their worldview and core beliefs. While actors are strategic, meaning that they can transform institutions, they are also socialised in a given environment which limits the information and perspectives to which they have access.<sup>8</sup> Institutions thus also matter because they influence the way in which policy actors reinterpret ideas as they transfer them into a new context. Lastly, institutions matter because they generate ‘path-dependencies’, meaning constraints on the range of policy options available to actors.<sup>9</sup> Institutions and past policy choices are the soil into which new policy ideas are planted and they contribute to shape the social interpretation of policy problems and the landscape of future

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<sup>4</sup> BAN, Cornel. *Op. cit.* 2016.

<sup>5</sup> MARCH, James G., and OLSEN, Johan P. Elaborating the New Institutionalism. In BINDER, Sarah A., RHODES, R. A. W. and ROCKMAN, Bert A. (eds.) *The Oxford Handbook of Political Institutions*. Oxford University Press, 2008.

<sup>6</sup> *Ibid.*

<sup>7</sup> BOLLEYER, Nicole, SMIRNOVA, Valeria, DI MASCIO, Fabrizio and NATALINI, Alessandro. Conflict of interest regulation in European parliament: Studying the evolution of complex regulatory regimes. *Regulation & Governance*, 2018; BOVEND'EERT, Paul. Public Office and Public Trust: Standards of Conduct in Parliament: A Comparative Analysis of Rules of Conduct in Three Parliaments, *Parliamentary Affairs*, gsy048, 2018.

<sup>8</sup> HAY, Colin. *Op. cit.* 2008; BELAND, Daniel. *Op. cit.* 2019.

<sup>9</sup> CAMPBELL, John L. Institutional Reproduction and Change. In Morgan, GLENN, L. CAMPBELL, John, CROUCH, Colin, PEDERSEN, Ove Kaj and WHITLEY, Richard (eds.) *The Oxford Handbook of Comparative Institutional Analysis*. Oxford University Press, 2010.

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possibilities, due to institutional and cognitive stickiness. As Theda Skocpol famously put it: “politics creates policies, policies also remake politics”.<sup>10</sup>

Using data collected through interviews with domestic actors, in archives and academic literature, this chapter studies the impact of national conceptions of the role of parliamentarians and political representation more broadly on how transferred ideas become coloured locally (Section 9.1). It then turns to their translation into the existing ‘rules of the (political) game’ (Section 9.2). Finally, it borrows the concept of a ‘reform trajectory’ from Bruno Palier and Philippe Bezes to understand the impact of past policy choices and the succession of sequenced reforms on how conflicts of interest are regulated in practice (Section 9.3).

## 9.1. Parliament as a congress of ambassadors or a deliberative assembly?

“Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion ... Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of parliament.”

(Edmund Burke's Speech to the Electors of Bristol, 1774)

In his famous speech to the electors of Bristol, Edmund Burke drew up his view of what political representation meant and what the role of MPs should be in relation to the various interests that coexist within a society. The classic political theory question of representation is explored here in a new light, linking it to the more recent theme of anti-corruption policies. Indeed, how one understands ethics and corruption is intrinsically linked to how one thinks about the role and responsibilities of a function: medical ethics for instance relate to the social role of the medical profession. Similarly, parliamentary ethics need to be thought of in the light of the broader institutional and ideational framework of political representation, which underpins what is to be

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<sup>10</sup> SKOCPOL, Theda. *Protecting Soldiers and Mothers: the Political Origins of Social Policy in the United States*. Cambridge MA: Belknap Harvard, 1992, p. 58.

expected of elected representatives. While popular conceptions of how politics work and how it should work fluctuate and are rarely consensual,<sup>11</sup> political institutions (partially) resolve the ambiguity through the rules, norms and practices that organise the political system. Imported ideas about conflicts of interest adapt to the political system, administrative tradition and conception(s) of political representation of the destination polity.

This section is interested in how societies resolve the ambiguity of acceptable and desirable conduct in politics and how imported ideas about conflict of interest adapt to and change such conceptions. But it also studies the adoption of conflict of interest regulation against the actual policy-making power of parliamentarians, to understand if there is a link between the actual influence of individual parliamentarians and the strictness of the regulations imposed on them. Indeed, conflict of interest regulation is often framed as a means to preserve the integrity of political decision-making and to prevent a particular form of political corruption labelled ‘policy capture’. Focusing on parliamentarians is interesting in this regard since the assumption is that parliaments in Western Europe have only modest policy-making power.<sup>12</sup> Indeed, parliamentarians, arguably, do not dispose *individually* of a sufficient influence over policy-making for there to be a risk of such policy capture.

### **9.1.1. Conceptions of political representation and the role of interests**

Despite the difficulties posed by the concept of representation – as Heinz Eulau puts it “in spite of centuries of theoretical efforts, we cannot say what representation is”<sup>13</sup> – understanding whom elected officials are supposed to represent and whose interests are considered legitimate sheds a welcome light on the notion of conflict of interest as well as on the *raison d’être* and adaptability of policies aiming at preventing them. An important question here concerns what is considered acceptable, or even legitimate influences. As Hanna Pitkin provocingly notes, criticising concepts related to representation such as accountability, “neither [concept] can tell us anything about what goes on during representation, how a representative ought to act... whether he has

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<sup>11</sup> CLARKE, Nick, JENNINGS, Will, MOSS, Jonathan and STOKER, Gerry. *The Good Politician: Folk Theories, Political Interaction, and the Rise of Anti-Politics*. Cambridge: Cambridge University Press, 2018.

<sup>12</sup> ARTER, David. Introduction: Comparing the legislative performance of legislatures. *The Journal of Legislative Studies*, Vol.12, n° 3-4, 2006, pp. 245-257.

<sup>13</sup> EULAU, Heinz. Changing Views on Representation. In DE SOLA POOL (ed.) *Contemporary Political Science: Towards Empirical Theory*. New York: McGraw-Hill. 1967, p. 54, cited in ESAIASSON, Peter and HOLMGREN, Sören. *Representation from Above. Members of Parliament and Representative Democracy in Sweden*. Aldershot, Hants (UK): Dartmouth Publishing Company. 1996.

represented well or bad”.<sup>14</sup> The spectrum ranging from a pluralist conception of democracy to a republican one structures the analysis of this section. As Karen Getman and Pamela S. Karlan put it “where one falls on the pluralist-republican continuum may significantly influence one’s views on a wide variety of policies related to conflicts of interest”.<sup>15</sup> The question of legitimate interest representation is at the heart of the comparison. When a pluralist system understands democratic politics as the aggregation of individual interests formed outside the political system, a civic republican model sees the purpose of democratic politics as being to shape people’s preferences and construct a view of the common good,<sup>16</sup> thus opposing a preference-accommodating to a preference-shaping role for political actors.

Existing literature on political representation generally seeks to transcend the simple dichotomy between the meaning of representation in pluralist versus republican tradition.<sup>17</sup> Political sociologists working on the practices of representation are especially eager to show that representation as delegation and trustee representation almost always coexist.<sup>18</sup> I nevertheless base my analysis on the historical divide between the civic republican system where a representative is a *trustee* who is not tied to any particular interests and does not speak in the name of any particular group, and the pluralist system where a representative is a *delegate* who would be expected to represent the interest of his/her constituents.<sup>19</sup> When political competition in one implies the confrontation of sectoral or geographical interests (pluralist system), the other suggests that it is views of the common good that are confronted (republican). In a pluralist system, a conflict of interest arises if a representative betrays his/her constituents to pursue his/her interests. In a civic republican perspective, the pursuit of constituents’ narrow interests is already problematic, as it could be at the expense of the common good.<sup>20</sup> The pluralist/republican spectrum is a useful tool

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<sup>14</sup> PITKIN, Hanna. *The Concept of Representation*, Berkeley and Los Angeles: University of California Press. 1967, p. 58, cited in ESAIASSON, Peter and HOLMGREN, Sören. *Representation from Above. Members of Parliament and Representative Democracy in Sweden*. Aldershot, Hants (UK): Dartmouth Publishing Company. 1996.

<sup>15</sup> GETMAN Karen and KARLAN Pamela S. Pluralists and Republicans, Rules and Standards: Conflicts of Interest and the California Experience. In TROST, Christine and GASH, Alison L. *Conflict of Interest and Public Life*. Cambridge University Press, 2008, p. 57

<sup>16</sup> *Ibid.*

<sup>17</sup> SINTOMER, Yves. Les sens de la représentation politique : usages et mésusages d'une notion. *Raisons politiques*, Vol. 50, n° 2, 2013, pp. 13-34.

<sup>18</sup> MAZEAUD, Alice (ed.) *Pratiques de la représentation politique*. Rennes: Presses universitaires de Rennes, 2014.

<sup>19</sup> PITKIN, Hanna. *The Concept of Representation*, Berkeley and Los Angeles: University of California Press, 1967; MANIN, Bernard. *Principes du gouvernement représentatif*. Paris: Flammarion, 1995; DOVI, Suzanne. Hanna Pitkin, The Concept of Representation. In LEVY, Jacob T. *The Oxford Handbook of Classics in Contemporary Political Theory*. Oxford University Press, 2015.

<sup>20</sup> GETMAN Karen and KARLAN Pamela S. *Op. cit.* 2008, pp. 58-9.

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for analysing our cases and understand why the British pluralist system appears to have been a fertile ground for conflict of interest regulation. It also serves to examine how such regulation was translated into traditionally civic republican systems – France and Sweden.

#### 9.1.1.1 Westminster as a fertile ground for conflict of interest regulation

British democracy is built on a pluralist approach to representation and citizenship. Before becoming an institution of democracy, the Westminster Parliament was (and still is) an institution of representation.<sup>21</sup> This matters here because of the role it gives MPs vis-à-vis the electorate. The historical position of parliament as a forum for electors to “secure a redress of their grievances by the executive”<sup>22</sup> suggests that, before the advent of parliamentary democracy, Westminster was perceived as an echo chamber of the interests of groups having obtained the right to vote. Influenced by liberal thinkers and Whig representatives, this view of British politics is still valid today, as Florence Faucher and Colin Hay note “sovereignty belongs to Parliament which draws on deliberation and pluralism in order to justify the legitimacy of its choice: the legitimate collective decision is the product of an aggregation of individual interests”.<sup>23</sup> The House of Commons recognises this tradition when it attempts to list MPs’ tasks as follows: “supporting their party in votes in Parliament; representing and furthering the interests of their constituency; representing individual constituents and taking up their problems and grievances”.<sup>24</sup> In a pluralist system like the British one, politics are conceived largely as the struggle among interests for limited social resources.<sup>25</sup> Thus, MPs are considered and see themselves as the representatives of these various interests. Their professional experience and related interests are not considered contrary to their position as elected representatives. Peter G. Richards writes, “the opinions of Members are affected by their age, sex, education, social status and the like. And if a Member is nominated by a particular organization [such as unions or the industry], it is also reasonable to suppose that he will reflect the attitude of the sponsoring body on issues which concern the latter”<sup>26</sup>, suggesting the recognition

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<sup>21</sup> KELSO, Alexandra. Parliament. In FLINDERS, Matthew, GAMBLE, Andrew, HAY, Colin and KENNY, Michael. *The Oxford Handbook of British Politics*. Oxford University Press, 2009, p. 224

<sup>22</sup> *Ibid.*

<sup>23</sup> FAUCHER, Florence and HAY, Colin. Voting Rituals in France and the United Kingdom. *Revue française de science politique*. Vol. 65, n° 2, 2015, p. 60.

<sup>24</sup> House of Commons. Modernisation of the House of Commons - First Report. Session 2006-07. London, 2007.

<sup>25</sup> SUNSTEIN, Cass R. Beyond the Republican Revival. *The Yale Law Journal*. Vol. 97, 1988, p. 1542.

<sup>26</sup> RICHARDS, Peter G. *Honourable Members. A study of the British Backbencher*. London: Faber and Faber LTD, 1963, p. 190

of a form of *descriptive* representation.<sup>27</sup> The author goes on to cite Dr. Broughton MP who declared in 1954:

In my constituency, there is a café which is run by a small company of which I am one of the directors. In saying that, I declare a personal interest and at the same time lay claim to a little knowledge in the field.<sup>28</sup>

This quote illustrates that MPs' personal experience far from being frowned upon can be used as a claim of distinctive knowledge and thus as an advantage over their peers. Conflict of interest regulation emerged on the British (and American) agenda earlier than elsewhere because the fear of abuse of power are built in their liberal theory of government. Representative institutions serving to aggregate *pre-political* interests that exist outside of the political sphere and officials, who act according to constituents' desires should "exercise little or no independent judgment".<sup>29</sup> MPs being *delegates* of their constituencies, checks and balances (including transparency and accountability mechanisms) were considered a necessity to control and limit government, which present a "threat of oppression".<sup>30</sup> Centuries later, this concern about office-holders abusing their power encouraged policy-makers in Anglo-liberal countries to embark on New Public Management reforms, aiming at reducing elected officials' scope for influence, in complement to existing checks on political institutions.<sup>31</sup>

Having established certain characteristics of the British representative democracy, it might not be surprising to see that conflict of interest regulation emerged in the Anglo-liberal setting where the role of MPs' private interests was a recognised element of political life. While it is accepted – and encouraged – for an MP to talk in the name of particular groups, guaranteeing a wide and diverse representation of society, it would be considered unethical or corrupt for them to use their parliamentary status for their own personal advantage or in return of payment. As described in detail in Section 9.3, Westminster developed a tradition of oral declarations of interests, which is the basis for the current financial disclosure system, that would allow

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<sup>27</sup> SALISBURY, Robert H. Interest Representation: The Dominance of Institutions. *The American Political Science Review*, Vol.78, n° 1, 1984, pp. 64-76.

<sup>28</sup> House of Commons. H.C. Deb., Vol. 530, col. 1793. London, 1793, cited in RICHARDS, Peter. G. *Op. cit.* p. 198.

<sup>29</sup> *Ibid.* p. 1543

<sup>30</sup> HONOHAN, Patrick. Liberal and Republican Conceptions of Citizenship. In SHACHAR, Ayelet, BAUBÖCK, Rainer, BLOEMRAAD, Irene and VINK, Maarten. *The Oxford Handbook of Citizenship*. Oxford University Press, 2017, p. 84

<sup>31</sup> HAY, Colin. *Why we hate politics*. Cambridge: Polity Press, 2007; DUNLEAVY, Patrick and HOOD, Christopher. From Old Public Administration to New Public Management. *Public Money and Management*. Vol. 14, n° 3, 1994, pp. 9-16; HOOD, Christopher. A Public Management for All Seasons? *Public Administration*. Vol. 69, n°1, 1991, pp. 3-19.

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constituents (the principals) to check their representative (the agent), by reducing the asymmetry of information.

#### 9.1.1.2. France: the search for the common good above private interests

The first administrative report produced in France on the topic of conflict of interest prevention in the public sector, published in 2011, provides an illustrative indication of how the centrality of the *common good* and *general will* influenced the French conception of public ethics, making the country almost impermeable to the idea of conflict of interest, or at least of officials deliberately benefiting from a conflict of interest:

The French tradition of public service, which is deeply engrained, and the attachment to the values fundamental to this service, as well as to the public interest, result in the fact that conflicts of interest are rarely the consequence of a deliberate will or the search of an advantage but remain largely fortuitous and unconscious.<sup>32</sup>

The notion of the common good, indeed, largely underpins both the French tradition of public administration and its conception of democratic representation. The theoretical conception of political representation in France, based on the Republican myth of the indivisible social body and the incarnation of the general will, is quite different from the British one. The civic republican conception of politics see it, not as an aggregation of pre-political interests, but as collective self-government in search of the common good.<sup>33</sup> As Pierre Rosanvallon puts it, the French revolutionaries saw “election [as] a way of bestowing trust rather than a way of conveying a pre-existing social will to an elected representative”.<sup>34</sup> He cites Raymond Carré de Malberg’s argument that seeing elections as a vote of confidence “is to say that it is a means by which voters relinquish control rather than assert it”.<sup>35</sup> Deliberation is at its heart, as Cass R. Sustein puts it “the function of politics (...) is not simply to implement existing private preferences”.<sup>36</sup> Indeed, republicanism differs from pluralism in its perspective on the role of private interests in politics which are, in

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<sup>32</sup> Commission de réflexion pour la prévention des conflits d’intérêts dans la vie publique (Commission Sauvé). Pour une nouvelle déontologie de la vie publique. Rapport remis au Président de la République le 26 janvier 2011. p. 8. Author’s own translation.

<sup>33</sup> HONOHAN, Patrick. *Op. cit.* 2017, p. 85

<sup>34</sup> ROSANVALLON, Pierre. *Democratic Legitimacy Impartiality, Reflexivity, Proximity*. Princeton: Princeton University Press, 2011, p. 79.

<sup>35</sup> CARRÉ DE MALBERG, Raymond. *Contribution à la théorie Générale de l’État*. Paris: CNRS, 1962 [1922], cited in *ibid.*

<sup>36</sup> SUNSTEIN, Cass R. *Op. cit.* 1988, p. 1548

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contrast to pluralist theory, not fixed preferences that policy-makers are expected to defend (preference-accommodating), and should be “revisable in light of collective discussion”<sup>37</sup> in search of the common good (preference-shaping). Republicanism wishes to protect political representatives from private influence, as much as it tries to isolate the elector from “the communities that hamper the pure expression of reason”.<sup>38</sup>

The French political system has a strong republican tradition that takes its roots in the French Revolution. French republicanism is constructed *against* the monarchy, the Empires and the church, on the foundation of an abstract citizenry, which is ‘ontological’ rather than ‘sociological’, and is the unique collective holder of sovereignty. The successive French constitutions indeed codified this idea of collective sovereignty, as presented in Table 15. After monarchy was abolished, the term *nation* was changed to *people* until the Constitution of the 4<sup>th</sup> and 5<sup>th</sup> Republic where an ambiguity transpires through the parallel mention of popular and national sovereignty. All these texts have in common the idea of *oneness* and indivisibility of sovereignty, a constant throughout French constitutional history.

Table 15. Mentions of national and/or popular sovereignty in French constitutional law

Constitution	Excerpt on sovereignty
1789 Declaration of the Rights of Man and the Citizen	“The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.”
1791 Constitution	“Sovereignty is one, indivisible, inalienable, and imprescriptible. It appertains to the nation; no section of the people nor any individual may assume the exercise thereof”
1793 Constitution	“The sovereign people is the universality of French citizens”
1795 Constitution of year II	“The universality of French citizens are the sovereign”
1799 to 1830	No mention of sovereignty.
1848 Constitution of the 2d Republic	“Sovereignty resides in the universality of French citizens. It is inalienable and imprescriptible. No individual, no fraction of the people may assume the exercise thereof”
1875 Constitutional laws of the 3 <sup>rd</sup> Republic	No mention of sovereignty.
1946 Constitution of the 4 <sup>th</sup> Republic	“National sovereignty appertains to the French people. No section of the people nor any individual may assume the exercise thereof.”
1958 Constitution of the 5 <sup>th</sup> Republic	“National sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum. No

<sup>37</sup> *Ibid.* p. 1549

<sup>38</sup> LE BART, Christian. *L'individualisation*. Paris: Presses de Sciences Po, 2008, p. 89, cited by FAUCHER, Florence and HAY, Colin. *Op. cit.* 2015, p. 59.

	section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof.”
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For Christian Le Bart, the Revolution created the democratic individual by the eradication of previously existing communities and the denial of the very idea of communitarian identities. He cites Jean-Louis Thireau who writes that “the society of the *Ancien Régime* was ‘corporatist’, composed of bodies bringing individuals together along criteria that could be functional or social (...), territorial (...), professional (...), religious or charitable (...)” to contrast with the post-Revolutionary France where communities are not considered in the same way as “all individuals are equal before the law which is the expression of the general will”.<sup>39</sup> There should indeed be no interference in the direct relation of the citizenry, holder of sovereignty, and the state, executor of the general will.<sup>40</sup> This explains the rejection of intermediaries such as corporations, associations and early forms of political parties, exemplified by the adoption of the Law Le Chapelier in 1791 which prohibits professional associations because “there are no more corporations within the State; there is only the particular interest of the individual and the public interest”.<sup>41</sup> The search and defence of the general will is indeed at the heart of French republican tradition, as this excerpt from Maximilien Robespierre’s speech to the National Convention in 1794 illustrates:

What is the fundamental principle of the democratic or popular government (...) It is virtue; I speak of the public virtue that led to many wanders in Greece and Rome and must perform even more remarkable ones in Republican France; of this virtue that is nothing other than love of the land and its laws (...) It is true that this sublime sentiment assumes a preference for the public interest over all particular interest.<sup>42</sup>

French republicanism’s promotion of the ideas of a common good above the aggregation of individual interests and the ‘oneness’ of the people is the basis for the principle that designates French *députés* as representatives of the Nation as a whole (and not, in theory, of a local constituency). These elected representatives are, indeed, according to the French political mythology, not supposed to represent any private interest, not even that of their constituents or of

<sup>39</sup> LE BART, Christian. *Op. cit.* 2008, p. 86 Author’s own translation from French.

<sup>40</sup> MENY, Yves. *Op. cit.* 2013, p. 27

<sup>41</sup> Excerpt from Isaac René Guy le Chapelier’s speech presenting what is now known as the Le Chapelier Law, cited by LE BART, Christian. *Op. cit.* p. 86, authors’ own translation.

<sup>42</sup> Rapport sur les principes de morale politique qui doivent guider la Convention nationale dans l’administration intérieure de la République, fait au nom du Comité de salut public, le 18 pluviôse, l’an 2e de la République, par Maximilien Robespierre ; imprimé par ordre de la Convention nationale (18 pluviôse an II - 5 février 1794). Author’s own translation.

any other sectional group to which they might belong. They are expected to strive to reach an agreement about the common good through deliberation and the exercise of wisdom and judgement.<sup>43</sup> Similarly, voting citizens should be “symbolically detached from social connections”<sup>44</sup> as Faucher and Hay find in their comparative study of voting rituals in France and Britain. When confronted with political practices, this political myth creates an ambiguous and paradoxical situation. As Yves Mény argues, this political myth is difficult to make concrete since “parliamentarians consider themselves, first of all, as representatives and protectors of ‘their’ territory”.<sup>45</sup> The recent debates on the prohibition of the *cumul des mandats*, a practice by which parliamentarians used to hold one or several local mandates in parallel to their national one, is symptomatic of the paradoxes of political representation in France.

With its republican tradition, France was not a natural setting for the institutionalisation of conflict of interest regulation. The lack of recognition of parliamentarians’ private interests and their potential influence on political decisions partly explains why the notion of conflict of interest appeared relatively late in France compared to other advanced democracies and why policy-makers only recently adopted policies that regulate the influence of such private interests, beyond the incompatibility rules described in Chapter 1. French policy-makers initially understood public ethics through the lens of the risk of misuse of public funds, rather than undue influence of private ones. This primary concern with public money rather than private interests is still visible in current controversies, such as the demands of the “*gilets jaunes*” movement to reduce politicians’ standard of living without consideration for the consequences it might have on their vulnerability to corporate interests.<sup>46</sup>

The ambiguities of French republican ideals, where outside interests are supposed to vanish when one is elected and certain outside activities are prohibited,<sup>47</sup> make it clear that they were not compatible with the conception of parliamentary integrity through the publicity of interests and regulation of conflicts as understood in the Anglo-liberal world. The temporality of reform, making

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<sup>43</sup> GETMAN, Karen and KARLAN, Pamela S. *Op. cit.* 2007, p. 58

<sup>44</sup> FAUCHER, Florence and HAY, Colin. *Op. cit.* 2015, p. 59

<sup>45</sup> MENY, Yves. *Op. cit.* 2013, p. 28

<sup>46</sup> DURAND, Anne-Aël. « Baisser le salaire des députés et ministres » : une solution simpliste, partagée sur Facebook. *Le Monde*, November 12th 2018.

<sup>47</sup> This does of course not mean that political actors were not influenced by their outside activities and private interests, only that this was not taken into account, beyond incompatibility rules, in early considerations of political ethics. Henri Verneuil’s film *Le Président* (1961), already mentioned in a previous chapter, demonstrates that the concern about politicians’ private interests influencing political decisions was as present in France as elsewhere.

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France a late-comer to the field, contributes to explain why France has been relatively permeable to international influence in this policy field – the “OECD effect”,<sup>48</sup> importing the definitions of conflict of interest promoted by international organisations such as the OECD or the Council of Europe. The recent change of trajectory and acceleration of *deontological* reforms aiming at preventing and detecting conflicts of interest probes the question of the impact on such policy instrument on the political myths around French republicanism, the *oneness* of the sovereign people and the representative role of MPs.

### 9.1.1.3. Swedish parliamentarians as political party representatives

Placing Sweden on our pluralist-civic republican spectrum is trickier than positioning France or Britain. Sweden’s hybrid conception of representation is described by Peter Esaiasson and Sören Holmgren as an “elitist system run from above”. It is characterised by an individualist representational model functioning in a largely party-based democracy<sup>49</sup>. The authors argue that Sweden rejected the delegate model of representation decades before Edmund Burke made his speech in favour of the freedom of conscience and the independence of elected representatives. They situate this choice of trajectory in the Age of Liberty of the 18<sup>th</sup> century, a time when Sweden adopted its historic law on access to information (Section 9.3). Against the Stockholm burghers who wished to recall the mandate of their representatives for not following their wish regarding the choice of a new prince, the Swedish Parliament decided that parliamentarians were only bound by constitutional law and could not receive authoritative instructions. The principle of parliamentarians’ independence of judgement and unbounded mandate subsequently gained constructional strength.<sup>50</sup> Peter Esaiasson and Lena Wägnerud note that to the parliamentary institution’s discourse about itself demonstrates that it sees the *Riksdag* as “an instrument for the people to rule themselves”.<sup>51</sup> This appears in the Swedish Constitution – the Instrument of Government Act of 1974 – under the words “All public power in Sweden proceeds from the people” and “the *Riksdag* is the foremost representative of the people”, which resonates with the French constitution.

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<sup>48</sup> Public official 1, HATVP (FRPO1). Interview with author. October 27<sup>th</sup> 2017.

<sup>49</sup> ESAIASSON, Peter and HOLMGREN, Sören. *Representation from Above. Members of Parliament and Representative Democracy in Sweden*. Aldershot, Hants (UK): Dartmouth Publishing Company. 1996.

<sup>50</sup> *Ibid.* p. 49

<sup>51</sup> ESAIASSON, Peter and WÄGNERUD, Lena. Political Parties and Political Representation. In PIERRE, Jon (ed.) *The Oxford Handbook of Swedish Politics*. Oxford University Press, 2015

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A major distinction between the Swedish and the French political systems is the role and influence of political parties. Sweden is indeed a country where political parties are comparatively strong and influential on the running of the State. Esaiasson and Holmgren emphasise the importance of partisan history to balance the notion of representative's freedom of judgement and unbounded mandate. The centrality of political parties and their influence on parliamentarians' decisions is rooted in the development of the country's party system in the early 20<sup>th</sup> century and the evolution of its political electoral system. The adoption of a proportional electoral system as early as 1911 contributed to put the party before the individual representative and ensure a certain level of loyalty of party members, leading to the development of a 'party-bounded mandate'.<sup>52</sup> This point is reflected in Swedish parliamentarians' view of their own representative role. Survey results suggest that party loyalty has become stronger among parliamentarians between the 1980s (77% of them considering that defending the interests of their party was very important to them) and the 2010s (86%). The need to defend their constituency also increased in importance (44% to 50%) while parliamentarians' prioritisation of individual voters decreased (from 49% to 33% over the same period). This echoes Holmgren's statement that "Swedish members of Parliament are primarily party representatives (...) Without doubt, the parties, not the individual members, are the principal actors in the *Riksdag*".<sup>53</sup>

What does this tell us about ethics policies in the Swedish *Riksdag*? I argue that the Swedish hybrid conception of representative democracy, rooted in its corporatist tradition, contributes to explaining why conflicts of interest only emerged as a problem (or as a framing of a problem rather) at the end of the 20<sup>th</sup> century. The central role that political parties have come to play in the Swedish conception of representation coloured the development of parliamentary ethics in the country, since the regulation of ethics was considered as the prerogative of political parties before these rules made their way to the parliament (Chapter 7).

The liberal-pluralist conception of political representation as an aggregation of pre-political interests that is common to countries of the Anglosphere was a fertile ground for the emergence of conflicts of interest as a problem that could be regulated through eliminating the asymmetry of information between constituents and representatives. The internationalisation of the problem of conflicts of interest (Chapter 3) and the transfer of regulatory instruments (interest declarations

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<sup>52</sup> ESAIASSON, Peter and HOLMGREN, Sören. *Op. cit.* p. 50

<sup>53</sup> HOLMGREN, Sören. Political Representation in Sweden. *Scandinavian Political Studies*, Vol. 12, n° 1, 1989, p. 9

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and codes of conduct) invented for a liberal-pluralist system to other political tradition thus prompts the question of their impact on host countries conception of political representation, while adapting these instruments to different political ideational and institutional systems.

### **9.1.2. Conflict of interest regulation and parliamentarians' livelihood**

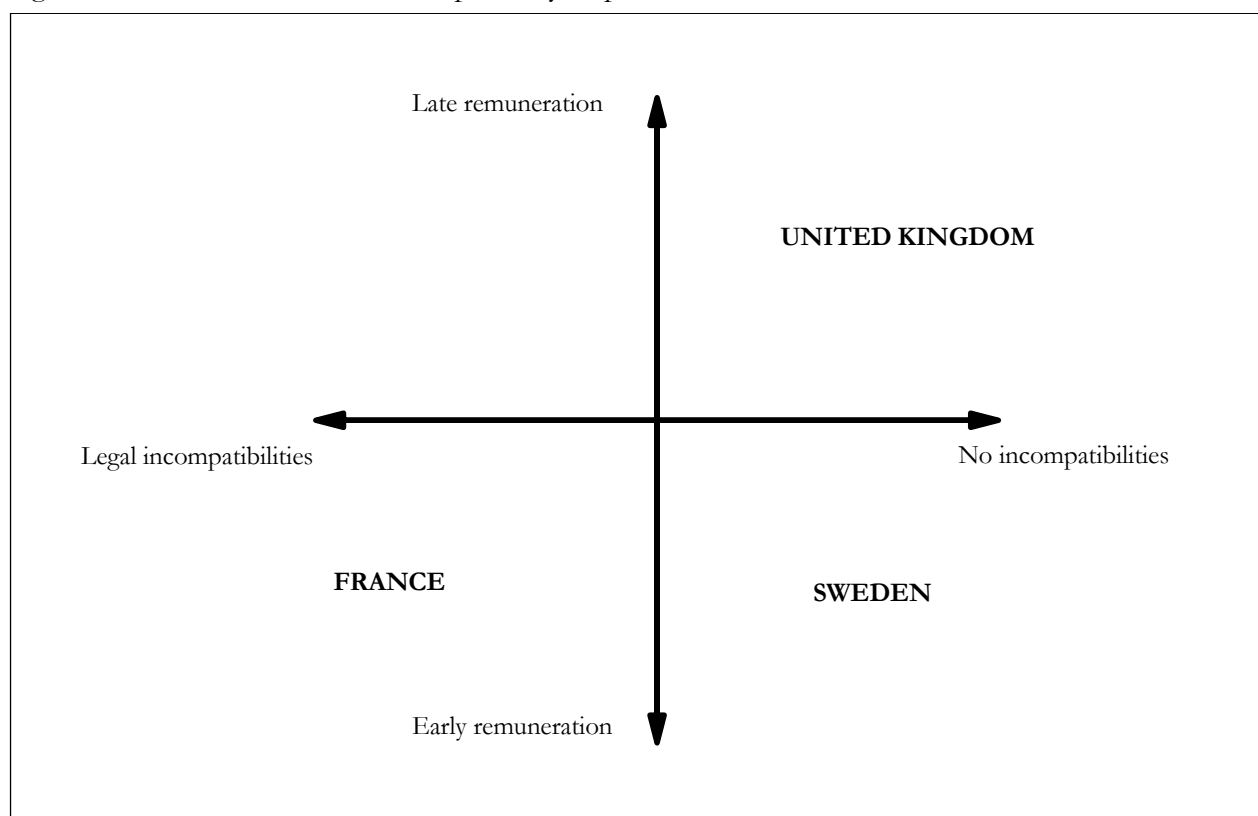
Parliamentarians' roles and the conception of political representation are closely related to the more practical dimension of their economic situation. In short, after having looked at who parliamentarians represent, this section asks 'who pays them?'. Conflicts of interests being understood largely in economic terms, it is important to understand the professionalisation of the parliamentary mandate and elected officials' economic situation. Policies that define the material situation of parliamentarians, and especially the way they sustain their livelihood, have an influence on their outside activities and interests, which shapes parliamentary ethics. This subsection looks at two elements that determine parliamentarians' economic situation: the professionalisation of politics through the remuneration of the political mandate and incompatibilities with outside employment. These are closely related, as incompatibilities were historically considered as a restriction imposed on elected official as a consequence of their remuneration by the public purse. The same logic applies in reverse, with parliamentarians being allowed to hold outside employment to sustain their livelihood if they were not financially compensated for their mandate.

Situating our three cases in a two-dimensional space, Britain, France and Sweden fit in different quadrants, as shown in Figure 22. France was relatively early in granting elected officials a financial compensation for their mandate, while putting restrictions on the activities they could undertake on the side of their political role. In contrast, Britain started remunerating MPs only in 1911. As a research paper from the House of Commons Library indicates, "it is worth noting that until comparatively recently Members were expected to have outside interests, if only for a means of supporting themselves".<sup>54</sup> Sweden shares similarities both with France (since it started remunerating parliamentarians in the mid-1800s) and Britain (since there are almost no restrictions on their outside activities).

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<sup>54</sup> GAY, Oonagh. Aspects of Nolan - Members' Financial Interests. House of Commons Library. Research Paper 95/62. 1995, p. 1.

Figure 22. Remuneration and incompatibility of political mandates with outside activities



#### 9.1.2.1. Professionalising the parliamentary mandate through remuneration

Conflicts of interest are today understood mainly in financial terms and concern the possibility for an elected official to benefit financially from pursuing an interest other than the public interest. Considering conflicts of interest through a financial lens makes it necessary to associate the reflection about their regulation with the question of parliamentarians' financial compensation and livelihood. The remuneration of elected representatives is indeed a political question to which many other important political issues are attached, such as the representativeness of the parliament or the possible interference of private interests (related to outside remuneration) in political decision-making, the latter being what interests this section.

The British approach to MPs' remuneration and traditional expectation of outside activities is yet another factor that makes Westminster a natural birthplace for conflict of interest regulation. As previously mentioned, British MPs were long expected to fund their mandate themselves, either through their wealth or through outside activities, as they did not receive any financial



compensation from the public purse until the adoption of the 1911 Parliament Act.<sup>55</sup> Demanded by the Chartists as a means to democratise Parliament, remuneration was seen as a way to enable ordinary citizens without an independent income to enter politics. The tradition of outside activities remained a common practice for most of the 20<sup>th</sup> century. When the Boyle Committee of 1971 found that a large majority of MPs spent most of their time on parliamentary work, arguing that they should receive a financial compensation equivalent to a full-time employment, 70% of MPs were still holding other paid occupations.<sup>56</sup>

In contrast, France and Sweden offered a financial compensation from the institution for political work early on. In France, when the National Assembly was created in 1789, it enacted a form of parliamentary salary which was later taken away with the return of the suffrage by census. The remuneration of French *députés* is indeed intrinsically linked with universal suffrage, as a parliamentary allowance was re-introduced in 1848, with the instauration of universal suffrage, in order to open the institution to less financially advantaged groups.<sup>57</sup> Similarly, Swedish parliamentarians received an allowance since 1866, calculated on the duration of sessions – then only four months. Those of the high chamber received compensation first in 1909. Until 1932, parliamentarians received their allowance in the form of per diem sums, which became a set monthly compensation in 1933. Parliamentarians from outside the capital received a higher compensation than those who resided in Stockholm, until 1954 when the compensation became equal for all and taxable.<sup>58</sup>

Today, all democratic regimes have introduced a form of financial compensation, which is most often not referred to as a salary, since a parliamentary mandate is not conceived of as a professional activity.<sup>59</sup> British, French and Swedish parliamentarians receive relatively similar financial compensation today. In Britain, the basic annual ‘salary’ for an MP is £74,962, as of April 1<sup>st</sup> 2016. MPs holding special positions, such as the Speaker and the Chairs of Committees receive an extra salary and most MPs who also hold a ministerial position in the Government are paid an extra ministerial salary. In addition to their salary, British MPs are entitled to a number of other

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<sup>55</sup> GAY, Oonagh. *Aspects of Nolan - Members' Financial Interests*. House of Commons Library. Research Paper 95/62. London, 1995.

<sup>56</sup> *Ibid.*; RUSH, Michael. *The Role of the Member of Parliament Since 1868: From Gentlemen to Players*. Oxford University Press, 2001, p. 118.

<sup>57</sup> GARRIGOU, Alain. Le salaire de la politique. *Le Monde diplomatique*, June 2010.

<sup>58</sup> Sveriges riksdag, Public official of the Parliamentary administration (SWPC4). Email communication. January 11<sup>th</sup> 2018.

<sup>59</sup> GARRIGOU, Alain. *Op. cit.* 2010.

advantages such as, for instance, a pension, capped accommodation expenditures, a set contribution for every eligible dependant, capped office expenditure, capped staffing costs, uncapped travel and subsistence allowance, additional budgets for members with special security or disability needs and winding up expenditures. In France, the parliamentary allowance (7,209.74€ in 2017) is composed of a basic allowance (5,599.80€ in 2017), a residence allowance (167.99€ in 2017) and a duty allowance (1,441.95€ in 2017). Certain functions within the assembly, including President of the Assembly, the *quaestors*, and commission chairs and rapporteurs are compensated by an additional allowance. Members of the Assembly enjoy a pension and a “back-to-work” allowance, both managed by the National Assembly. Swedish parliamentarians receive a monthly remuneration (65,400SEK in 2017). Some functions within the Parliament come with a higher remuneration: the Speaker receives the same remuneration as the Prime Minister (168,000SEK in 2017), Deputy Speakers earn the standard allowance plus thirty percent and the committee chairs an additional twenty percent. Parliamentarians are entitled to the same social insurance as national civil servants. In addition, they receive financial support at the end of their mandate, with varying amounts and duration depending on time of election, length of mandate and age, which can be withdrawn under certain circumstances such as being criminally sanctioned, not having done efforts to find employment or working without receiving an appropriate income. They are entitled to the standard pension system and receive a complement from the Parliament.

The fixing of parliamentarians’ financial compensation has been taken out of the hands of parliamentarians themselves in the three countries. In France, the amount given to deputies to compensate them for their parliamentary work has been index-linked to the salary of high-level civil servants since the late 1930s. The system was established by law in the decree n° 58-1210 of December 13th 1958.<sup>60</sup> In Sweden, parliamentarians’ remuneration is set by the Parliament’s Remuneration Board, *Riksdagens arvodenämnd*, an independent authority appointed by the parliament leadership for a four-year period. In Britain, MPs themselves voted on their financial compensation until recently. Following the expenses scandal, the 2009 Parliamentary Standards Act, amended by the 2010 Constitutional Reform and Governance Act, took the management of MPs’ economic benefits out of the realm of self-regulation and created a statutory independent body, the Independent Parliamentary Standards Authority (IPSA), to regulate MPs’ business costs and

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<sup>60</sup> Assemblée nationale. Fiche de synthèse n°17 : La situation matérielle du député. N.d. Online, available at : <http://www2.assemblee-nationale.fr/decouvrir-l-assemblee/role-et-pouvoirs-de-l-assemblee-nationale/le-depute/la-situation-materielle-du-depute> (accessed on April 5th 2020).

expenses, determine MPs' pay and pension arrangements and to provide financial support to MPs in carrying out their parliamentary functions.

In addition to their 'salary', parliamentarians received a compensation for the costs related to their political activities. This has been the source of public outcry recently in both France and Britain. Until 2009 and the adoption of the Parliamentary Standards Act, the Fees Office of the House of Commons managed the process of reimbursement. In Britain, the flexible and rather sort approach to expense claims and the "culture of deference" of the Fees Office, identified by Sir Thomas Legg during his review of these payments in 2009, allowed for the manipulation of the rules by MPs and eventually led to the 2009 expenses scandal revealing how "liberally MPs helped themselves".<sup>61</sup> There are indications that this approach to expenses and allowances was in fact a way to increase MPs' financial compensation without raising their salary. As MP Nadine Dorries candidly put it: "MPs were (...) told by people in the fees office: 'an MP's salary is not commensurate with anyone else at your professional level. This pot of money has been awarded to you as an allowance, not expenses. Our job here is to help you maximise that'".<sup>62</sup> Few claims actually constituted fraud and (only) five MPs were imprisoned due to their claims, while 52% of the 752 MPs whose expense claims had been reviewed were ordered to repay the claims deemed improper.<sup>63</sup> The scandal had significant consequences on the management of MPs' expenses, pay and pension. The scandal indeed led to the most radical move away from traditional parliamentary self-regulation within the British context, with the reform of the management of MPs' economic benefits and the creation of an independent agency, the IPSA, in 2010. The IPSA has since been presented as a good practices example abroad<sup>64</sup> but has come under a lot of criticism from MPs for being too onerous and burdensome.<sup>65</sup> This echoes what Chapter 7 presented as crisis-engendered politicisation and response-mode (thus downstream) policy-making.

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<sup>61</sup> HINE, David and PEELE, Gillian. *Op. cit.* 2016, p. 105.

<sup>62</sup> JAGGER, Suzy and WEBSTER, Philip. MP slapped down over suicide remark; Tory accused of wild and erratic statements. *The Times* (London), May 23<sup>rd</sup> 2009, p. 8, cited in EGGERS, Andrew and FISHER, Alexander. *Electoral Accountability and the UK Parliamentary Expenses Scandal: Did Voters Punish Corrupt MPs?* LSE Political Science and Political Economy Working Paper n°8/2011. London: London School of Economics, 2011, pp. 29-30.

<sup>63</sup> HINE, David and PEELE, Gillian. *Op. cit.* 2016, p. 107.

<sup>64</sup> Sénat. *Projet de loi organique rétablissant la confiance dans l'action publique. Rapport législatif.* Paris: Sénat, 2017; HATVP. *Rapport d'activités 2017.* Paris: HATVP, 2018.

<sup>65</sup> Parliamentary clerk 1, House of Commons (UKPC1). Interview with author. November 20th 2017; HINE, David and PEELE, Gillian. *Op. cit.* 2016, p. 120.

In France, each parliamentarian gets a monthly credit for the employment of one to five assistants (10,581€ since 2018).<sup>66</sup> If the entirety of the credit is not used, the remaining credit can remain in the budget of the Assembly or be given to the parliamentarian's political group for the employment of assistants. They also receive a compensation for operational expenses (*avance de frais de mandate* – AFM – of 5,840€ in 2017). The compensation of operational expenses has generated many debates in the last years mostly because, until recently, the IRFM was paid to each parliamentarian without any requirement to justify or account for the use of the funds. In 2012, the Commission for the financial transparency of political life, now replaced by the High authority for the transparency of public life (HATVP), explained in its annual report that the IRFM led to personal enrichment varying between 1,400€ and 200,000€ over the period of a mandate.<sup>67</sup> In 2015, the Bureau of the Assembly introduced a first attempt to regulate the utilisation of the IRFM and required members to submit a sworn statement of its proper use. In its Order n° 12/XV, implementing the Organic Law n° 2017-1338, the Bureau presented a list of accepted and prohibited uses of what is now called the *avance de frais de mandate* (AFM) and introduced a control mechanism that entered into force on January 1<sup>st</sup> 2018, by which the AFM will be transferred monthly on an separate account; deputies are required to keep receipts and justifications for their usage of the AFM; and the *déontologue* checks a sample of deputies each year. Breaches of these rules will require the member to reimburse the expenses they cannot justify. In a leaked report, the *déontologue* criticised the new control mechanism for being watered down and imperfect.<sup>68</sup>

In Sweden, parliamentarians also receive financial support for the fulfilment of their mandate (travels, housing etc.), as reimbursement of their expenses. The parliamentary administration verifies compliance with relevant rules and checks receipts before reimbursement. They are free to decide on their own trips within the European Union and in candidate countries but have to put a request to one of the deputy speakers for any other travel, submitting its purpose and programme.

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<sup>66</sup> Until the entry into force of the 2017 Law on trust in public life (n° 2017-1339), parliamentarians could employ members of their family as parliamentary assistants. This law also put an end to a the fact that parliamentarians could distribute their share of the *réserve parlementaire* (130,000€ per parliamentarian with additional funds for those holding certain functions), a set of State subsidies managed by Ministries but the use of which is left to political groups and parliamentarians, to organisations and local governments in their constituency, for specific projects and local investments. Largely seen as opaque and prone to clientelism, the *réserve parlementaire* was made transparent by the Law on transparency for public life in 2013 and abolished in 2017, following the adoption of the Law on trust in public life.

<sup>67</sup> Commission pour la transparence financière de la vie politique. *Quinzième rapport*. Paris, 2012.

<sup>68</sup> LEMARIE, Alexandre. La déontologue de l'Assemblée critique la réforme des frais de mandat des députés. *Le Monde*, December 7th 2017, p. 9

All information concerning economic benefits of Swedish parliamentarian is public, with a few exceptions to safeguard privacy. Financial support for office assistance, including support for hiring staff and support for international travels, is distributed through the parties to which parliamentarians belong, in accordance with Law (1999:1209).<sup>69</sup> The financial support comprises a base amount (1,700,000SEK/year) and a supplement (57,000SEK/seat/year). This sum corresponds to the costs of one political advisor per parliamentarian, but parties are free to use the funds as they wish to build their secretariat. The use of this financial support is to be accounted for annually. The Council of Europe's evaluation of corruption prevention in the Swedish Parliament indicates that Swedish parliamentarians may receive additional external contributions to their office budget without having to report on the type or amount of the contribution.<sup>70</sup> Law (1996:810) however includes permanent material benefits and staff that is not remunerated by the MPs themselves among the economic interests to register.

There is a remarkable difference in how the three parliaments historically dealt with parliamentarians' remuneration. The traditional expectation for British MPs to support themselves through outside activities made their private interests a normal part of the political landscape and, at the same time, a long-standing concern with regards to the potential interference of these private interests and connections with political decision-making. This reflects the British conception of politics as an aggregation of interests that should be represented through a fair competition, and contributed to make British politics a fertile ground for the emergence of conflict of interest regulation. This section showed that, while parliamentarians are now financially compensated by the parliament in the three countries, the parliaments still organise the payment or reimbursement of expenses quite differently, with a predominant role given to political groups and the parliamentary administration in Sweden while Britain and France progressively moved towards respectively complete (and external) or partial depoliticisation of the management of parliamentarians' economic benefits. Conflicts of interest are closely related to the financial situation and sources of income of parliamentarians and their regulation is thus adapted to the institutional framework that shapes the parliamentarians' financial situation.

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<sup>69</sup> Sveriges riksdag. Lag (1999:1209) om stöd till riksdagsledamöternas och partigruppernas arbete i riksdagen. Stockholm, 1999.

<sup>70</sup> Council of Europe GRECO. Eval IV Rep (2013) 1E. Strasbourg: Council of Europe, 2013, p. 13

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### 9.1.2.2. Incompatibilities: isolating parliamentarians from outside interests

The sources of parliamentarians' financial remuneration are linked to the acceptance or prohibition on outside activities. France is a remarkable case here. As remuneration was seen early on as a way to diversify political representation, it was associated with restrictions on outside activities that parliamentarians could undertake, to "remove the parliamentarian from suspicious economic influences and thus protect their independence".<sup>71</sup> Bans on outside activities were indeed the way the French system prevented conflicts of interest before the term itself emerged.<sup>72</sup> As often in this domain, France opted for prohibition and repression before introducing preventive policies in the late 20<sup>th</sup> century. Contrary to Britain and Sweden, there are indeed a number of restrictions on the mandates and activities that French parliamentarians can undertake. Rooted in the principle of separation of powers, incompatibility prohibits the accumulation of certain functions with a parliamentary mandate, as detailed in Chapter 1. As mentioned earlier, the compatibility of national and local mandates has been debated as a potential source of conflicts of interest (as initially understood in France). A law adopted in 2014 made it illegal for members of the Assembly to hold certain local mandates, such as mayor or deputy mayor, starting with the renewal of the Assembly in 2017.<sup>73</sup> A *député* cannot start a consultancy activity during their mandate, and starting with the next legislature (to be elected in 2022), they will also have to renounce the consultancy activities that they started less than twelve months before their election, following the Organic Law n° 2017-1338 adopted on September 15th 2017.

The 'Jospin Commission' set up in 2012 by President Hollande initially considered to change the traditional logic of *a priori* compatibility between outside activities and the parliamentary mandate, to make professional activities *a priori* incompatible with a parliamentary mandate. It moved away from this initial position, considering it to sit outside of the group's mandate and being a prerogative of the Parliament itself<sup>74</sup>. The current regime thus remains one of *a priori* compatibility between the parliamentary mandate and professional activities, with a number of

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<sup>71</sup> BERGOUIGNOUX, Georges. Le statut de parlementaire. De l'application souveraine à la souveraineté du droit. *Revue de droit public et de la science politique en France et à l'étranger*. Vol. 118, n° 1-2, 2002, p. 351. Author's own translation.

<sup>72</sup> HYEST, Jean-Jacques, ANZIANI, Alain, BORVO COHEN-SEAT, Nicole, COLLOMBAT, Pierre-Yves, DÉTRAIGNE, Yves, ESCOFFIER, Anne-Marie and VIAL, Jean-Pierre. Rapport d'information fait au nom de la commission des lois (...) n°518. Paris: Sénat, 2011.

<sup>73</sup> LOI organique n° 2014-125 du 14 février 2014 interdisant le cumul de fonctions exécutives locales avec le mandat de député ou de sénateur. JORF n°0040 du 16 février 2014 p. 2703.

<sup>74</sup> Commission de rénovation et de déontologie de la vie publique. *Pour un renouveau démocratique*. Paris, 2012, p. 100. Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

exceptions set out by law. Transparency International France developed a tool to visualise and make sense of the information included in parliamentarians' declarations, which shows that approximately 62% on French deputies undertook outside activities, which includes public mandates and voluntary work (French officials need to disclose more information than their British and Swedish counterparts, as Chapter 1 showed). This percentage is similar to what the previous legislature (2012-2017) declared.<sup>75</sup>

British MPs were long expected to hold outside activities, thus very few restrictions are imposed on them. Besides a number of listed incompatibilities, MPs can engage in almost any kind of additional non-parliamentary activity. They do not have to follow standard working hours and are free to organise their parliamentary activities as they see fit. The UK Parliament imposes very few restrictions on MPs regarding outside activities, favouring transparency and registration over regulation and prohibition, as demonstrated in Chapter 1, partly for the sake of representativeness and effectiveness: "the House of Commons would be less effective if all MPs were full-time professional politicians and MPs should not be prevented from having outside employment".<sup>76</sup> The only exception to the right to outside employment is the prohibition to undertake paid advocacy. The restriction on paid advocacy exists in House of Commons since 1695 and was reinforced in 1858 and 1947. Following the 1994 "cash-for-questions" scandal, the CSPL warned that "it reduces the authority of Parliament if MPs sell their services to firms engaged in lobbying on behalf of clients" and pushed for furthering the ban.<sup>77</sup> This prohibition was integrated into the House of Commons Code of Conduct adopted by resolution in 1996. The number of MPs registering employment as advisors or consultants declines dramatically following the introduction of these rules (from 41% in 1995 to 11% in 2005), but MPs still declare over £7 million in outside income.<sup>78</sup>

Swedish MPs are expected to work full-time and during the entire year<sup>79</sup>, but there are no formal rules about attendance and presence, MPs being free to organise their mandate as they best see fit. Law (1994:1065), detailing parliamentarians' economic benefits, indeed considers them to

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<sup>75</sup> Transparency International France. *Integrity Watch France*. 2019. Online, available at: <https://www.integritywatch.fr/index.html> (accessed on April 5th 2020).

<sup>76</sup> Chairman Lord Nolan. Standards in Public Life. First Report of the Committee on Standards in Public Life. Volume 1: Report. Presented to the Parliament by the Prime Minister on May 1995. London, 1995.

<sup>77</sup> *Ibid.*

<sup>78</sup> WINTOUR, Patrick and PERRAUDIN, Frances. Miliband calls on Cameron to clamp down on MPs' outside interests. *The Guardian*, February 23<sup>rd</sup> 2015; HINE, David and PEELE, Gillian. *Op. cit.* 2016, p. 96.

<sup>79</sup> Sveriges riksdag. Konstitutionsutskottets betänkande 1983/84:15. Stockholm, 1984, p. 3

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be working full-time on their mandate<sup>80</sup>, but there is no law or rule that prohibits or restricts outside employment or activities. Swedish MPs are free to hold positions in the public and private sector, remunerated or not. The Council of Europe's evaluation mention that a number of MPs have carried on parallel occupations during their mandate, such as lawyer or doctor, and that many of them hold additional political mandates at the local level.<sup>81</sup>

This section has shown the fundamental difference between France and Britain's approach to parliamentarians' remuneration and outside activities. France has indeed historically been stricter about outside activities that parliamentarians might undertake, partly due to the financial compensation they received for their political work. Making certain activities incompatible with the parliamentary mandate was indeed the country's initial policy to prevent conflicts of interest, shielding elected officials from outside interests. British MPs being expected to hold outside activities, the ideas to making other MPs as well as the public aware of the sources of outside earnings made its way into the political debate early. Sweden resembles France as parliamentarians have been financially compensated since the mid-1800s, and Britain, since there are almost no restrictions on MPs' outside activities. A remarkable aspect of the Swedish case, like its Nordic neighbours, is the relative 'modesty' of elected representatives who, while being financially comfortable, do not usually enjoy great luxuries or excessive lifestyles, as opposed to the perceived extravagance of their peers abroad revealed by successive scandals. Such a – seemingly – modest approach to parliamentary work in Sweden is apparent in anecdotes illustrating the rigor of expenses control such as the famous 'Tobelerone scandal' (Chapter 7).<sup>82</sup> Jean-Pascal Daloz attributes it to the *Law of Jante*, a set of informal norms that take their name from a satirical work of fiction by Aksel Sandemose that describe the Scandinavian egalitarian ideal and promotion of the collective over the individual.<sup>83</sup>

Looking at Britain, France and Sweden's different conceptions of democratic representation and, more concretely, at the material situation of parliamentarians allows us to draw a symbolic boundary between parliamentary work, the economic sphere and society at large. A detailed analysis of the British case, with its MPs long remunerated by outside activities and expected to represent

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<sup>80</sup> Council of Europe. Sweden Eval IV Rep (2013) 1E. Strasbourg: Council of Europe, 2013; Lag (1994:1065) om ekonomiska villkor för riksdagens ledamöter

<sup>81</sup> Council of Europe. Sweden Eval IV Rep (2013) 1E. Strasbourg: Council of Europe, 2013; p. 11-12

<sup>82</sup> KINZER, Stephen. The Shame of a Swedish Shopper (a Morality Tale). *The New York Times*, November 14th 1995

<sup>83</sup> DALOZ, Jean-Pascal. Sur la modestie ostensible des acteurs politiques au nord du 55e parallèle. *Revue internationale de politique comparée*. Vol. 13, n° 3, 2006, pp. 413-427.

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*pre-political* interests, helps us understand the original *raison d'être* of conflict of interest regulation, with interest declaration being motivated by the rules, written or not, that guided parliamentary work in this context. The adoption of similar instruments in France and Sweden responded to other impetus (Chapter 7 and 8) and required the policies to adapt to relatively different ideational and legal environments. The early remuneration of parliamentarians and attentiveness to the (in)compatibilities of certain outside activities in France created a situation in which the public and regulators were more concerned with the misuse of public funds than the potential impact of private interests.<sup>84</sup> In Sweden, the centrality of control mechanisms within the parliament and the predominant role of political groups in overseeing their members' conduct is apparent in the way conflicts of interest are regulated today. Transferred policy ideas thus need to adapt to the existing ideational and institutional framework (including the various actors involved in running of parliamentary institution) that shapes the social role(s) of parliamentarians and our expectations of them. Beyond the construction of the target population itself, institutions also contribute to shape the accountability system and control mechanisms that regulate parliamentary conduct and thus shape conflict of interest regulation, as next section will explain.

## 9.2. Adapting new instruments to the 'rules of the game'

Besides providing rules and incentives regarding whose interests parliamentarians represent, regulating conflicts of interest also relates to the integrity of political decision making and control over parliamentarians' conduct. Instruments dedicated to this purpose thus also need to be adapted to existing accountability and control mechanisms. While accountability is historically rooted in the practice of book-keeping and giving account of past actions, political accountability has come to be understood, with regards to the relationship between elected officials and voters, not only as a way to control trustees or delegates, but also as a form of sanction mechanism, to "throw the rascals out".<sup>85</sup> This section is interested in the institutions that shape the actual influence of parliamentarians over policy-making and the role of various actors in sanctioning politicians'

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<sup>84</sup> Section 9.3 illustrates this through the country's reform trajectory.

<sup>85</sup> BOVENS Mark, SCHILLEMANS Thomas, and GOODIN Robert E. Public Accountability. In BOVENS, Mark, GOODIN Robert E., SCHILLEMANS Thomas (eds.) *The Oxford Handbook of Public Accountability*. Oxford University Press, 2014; MANSBRIDGE, Jane. A Contingency Theory of Accountability. In BOVENS, Mark, GOODIN Robert E., SCHILLEMANS Thomas (eds.) *The Oxford Handbook of Public Accountability*. Oxford University Press, 2014.

misconduct, which transferred policies are translated into. These, indeed, contribute to explain why the convergence of conflict of interest regulation was not linear.

### **9.2.1. ‘Mezey’s question’ and the policy-making power of parliaments**

Parliamentarians’ roles are shaped by the rules organising the separation of powers and the electoral system, which determine the power of a parliament and the influence of parliamentarians over policy-making. This matters here not regarding the political origin of the reforms (Chapter 7) but rather because it is generally accepted that the level of control imposed on a political actors should depend on their political power.<sup>86</sup> Opponents to reform indeed often oppose the argument of the weakness of their individual influence to show the futility of conflict of interest regulation targeting them (Chapter 8). This section looks at the potential impact of relative policy-making power on the degree of control imposed on parliamentarians, associated with countries’ administrative tradition, which reflects, among other things, the role of the state in regulating their conflicts of interest.

In 1979, Michael Mezey developed a taxonomy of legislatures based on their policy-making power (relative to the government), distinguishing between three types of parliaments: those with strong, modest or little policy-making power. The British Parliament was presented as an example of a legislature with modest policy-making power, in contrast to the strong American Congress. Most parliaments in Western Europe are classified in this category of ‘reactive legislatures’.<sup>87</sup> Interestingly, early legislative studies focus heavily on the US Congress and on Westminster which influenced scholarly (and maybe popular) understanding of what a parliament ought to do,<sup>88</sup> echoing the influence of the Anglosphere (and its academic literature) in shaping policies regarding conflicts of interest. According to this typology, the Swedish Parliament is considered a “strong reactive parliament”, the UK Parliament a “medium reactive legislature” and the French Parliament a weak one.<sup>89</sup>

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<sup>86</sup> BOIS, Carol-Anne, PRESTON, Noel, and SAMPFORD, Charles J. G. *Ethics and Political Practice: Perspectives on Legislative Ethics*. London, Annandale: Routledge Federation Press, 1998.

<sup>87</sup> MEZEY, Michael. *Comparative Legislatures*. Durham, NC: Duke University Press, 1979; NORTON, Philip (ed.) *Parliaments and governments in Western Europe*. London: Cass, 1998.

<sup>88</sup> DOREY, Peter. Le Parlement en Grande Bretagne. In COSTA Olivier, KERROUCHE Éric et MAGNETTE, Paul (eds.) *Vers un renouveau du parlementarisme en Europe ?* Bruxelles : Ed. de l’Université de Bruxelles, 2004.

<sup>89</sup> MEZEY, Michael. *Op. cit.* 1998.

Since the constitutional reform of 1975, Sweden has become a full parliamentary system with the parliament at the centre of Swedish political life. The power of the Swedish *Riksdag* is not checked by any entity or control mechanism. The Council of State (Lagrådet) controls legislative bills ex ante for constitutionality, at the demand of the government or a parliamentary committee, but the parliament is free to reject its recommendations.<sup>90</sup> Sweden is one of the only European countries where parliamentary committees can propose bills on their own initiative, although the *Riksdag* rarely proposes committee bills.<sup>91</sup> In a country where minority governments are the rule rather than the exception, the Swedish *Riksdag* has generally been categorised as a ‘policy-influencing’ assembly.<sup>92</sup> Swedish scholars have argued however that, despite having policy-making power in relative terms, the *Riksdag* and its committee do not have a lot of influence over policy-making, as it generally approves government bills and rarely generates legislation.<sup>93</sup> The influence of the legislature on Swedish policies is thus strong in relative terms but quite weak in practice.

Britain is, like Sweden, a parliamentary system. The centralisation of power, majoritarian rule, to which we return in next section, and internal rules have made scholars categorise Westminster as having less influence over policy-making than the Swedish Parliament. The British Parliament has been described as a reactive and arena legislature,<sup>94</sup> given that legislative initiative is located with the government while the parliament’s legislative role involved scrutinizing the government’s proposals.<sup>95</sup> As David Judge and Alexandra Kelso argue, the parliament’s role has never involved developing the institution’s capacity to legislate independently from government.<sup>96</sup>

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<sup>90</sup> BERGMAN, Torbjörn and LARUE, Thomas. Le régime parlementaire en Suède. In COSTA Olivier, KERROUCHE Eric et MAGNETTE Paul. *Vers un renouveau du parlementarisme en Europe ?* Bruxelles : Ed. de l’Université de Bruxelles. 2004.

<sup>91</sup> ARTER, David. Conclusion. Questioning the ‘mezey question’: An interrogatory framework for the comparative study of legislatures. *The Journal of Legislative Studies*, Vol. 12; n°3-4, 2006, pp. 462-482.

<sup>92</sup> ARTER, David. The Swedish Riksdag: The Case of a Strong Policy-Influencing Assembly. In NORTON, Philip (ed) *Parliaments in Western Europe*. London and Portland, OR: Frank Cass, 1990, pp.120-142; PERSSON, Thomas. Policy Coordination under Minority and Majority Rule. In PIERRE, Jon (ed.) *The Oxford Handbook of Swedish Politics*. Oxford University Press, 2015.

<sup>93</sup> DAHLSTRÖM, Carl. Introduction: Policy-Making in Sweden. In PIERRE, Jon (ed.) *The Oxford Handbook of Swedish Politics*. Oxford University Press, 2015; MATTSON Ingvar. Parliamentary Committees: A Ground for Compromise and Conflict. In PIERRE, Jon (ed.) *The Oxford Handbook of Swedish Politics*. Oxford University Press, 2015.

<sup>94</sup> POLSBY, Nelson. Legislatures. In Greenstein, Fred and POLSBY, Nelson (eds.) *Handbook of Political Science* (Vol. V). Reading: Addison-Wesley Press, 1975; NORTON, Philip (ed.) *Parliaments and governments in Western Europe*. London: Cass, 1998.

<sup>95</sup> KELSO, Alexandra. Parliament. In FLINDERS, Matthew, Andrew, GAMBLE, Colin, HAY, Michael, KENNY (eds.) *The Oxford Handbook of British Politics*. Oxford University Press, 2009.

<sup>96</sup> JUDGE, David. *Political institutions in the United Kingdom*. Oxford, New York: Oxford University Press, 2005; KELSO, Alexandra. *Op. cit.* 2009.

This is not to say that British MPs have no influence over policy-making. They do indeed have opportunities to influence legislation in parliamentary committee. The government's backbenchers also have the capacity to influence policy through threatening to vote against the government's proposals.<sup>97</sup>

In France, the constitution of the Fifth Republic, a hybrid semi-presidential system, was designed to favour the executive branch of government over the legislature and a host of adopted measures resulted in what is called 'rationalised parliamentarism'.<sup>98</sup> The French Parliament has a weak committee culture (committees being too few and over-crowded) and the legislative period is too restricted for parliamentarians to deal with the growing legislative work. Despite parliamentarians' influence over the legislative process through the use of private bills and amendments<sup>99</sup> (as recently illustrated by the 22,000 amendments tabled by deputies from the opposition regarding the law reforming the pension system<sup>100</sup>), the French Parliament is considered as a weak reactive parliament, with relatively limited policy-making power.<sup>101</sup>

The influence of legislatures on policy-making might explain the early difference between the type of control imposed on parliamentarians in pioneer countries in the Anglosphere, since the United States (a strong and active legislature) institutionalised ethics regulation and control early, while Britain, with its weaker reactive legislature, maintained more informal rules until the 1990s. However, the strictness of regulation and control imposed on parliaments is no longer a function of the actual influence of parliament and parliamentarians on the policy-making process. The contrary seems to hold true, given that the parliament considered to have most influence of the three, the Swedish *Riksdag*, is also the one with the weakest institutionalised control on parliamentarians' conduct and conflicts of interest. This might not be as paradoxical as appears at first sight. For Swedish parliamentarians indeed had more influence on the formulation of conflict of interest regulation targeting them than their British and French counterparts, due both to the

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<sup>97</sup> *Ibid.*

<sup>98</sup> ELGIE, Robert, GROSSMAN, Emiliano. Executive Politics in France: from leader to laggard? In MAZUR, Amy G., ELGIE, Robert, and GROSSMAN, Emiliano (eds.) *The Oxford Handbook of French Politics*. Oxford University Press, 2016.

<sup>99</sup> KERROUCHE, Eric. The French Assemblée nationale: The case of a weak legislature? *The Journal of Legislative Studies*, Vol. 12, n°3-4, 2006, pp. 336-365.

<sup>100</sup> RESCAN Manon, BELOUEZZANE Sarah, SOULLIER Lucie, MESTRE Abel et ZAPPI Sylvia. Près de 22 000 amendements et une « obstruction assumée » : la bataille sur la réforme des retraites à l'Assemblée. *Le Monde*, February 3rd 2020.

<sup>101</sup> MAGONE, José M. *Contemporary European Politics: A Comparative Introduction*. Taylor and Francis, 2019, pp. 215-216.

structure of the political system but also the low level of public pressure for reform and the absence of extra-parliamentary elements in the process of policy formulation (Chapter 8).

### **9.2.2. Electoral systems, political accountability and sanctions**

The electoral system is also an important political institution to take into account, as it shapes individual parliamentarians' accountability and political influence. Electoral systems are here considered only in terms of what they can tell us about the perceived influence of individual politicians and the possibility of political sanction by voters. The focus is on contrasting the British first-past-the-poll, the French two-round majoritarian elections and the Swedish proportional open list system, and drawing some consequences regarding the personalisation of politics and the possibilities to politically sanction parliamentarians.

The electoral system contributed to determine the nature of parliamentarians' accountability, towards their party and their constituents. Existing research shows that systems that allow voters to cast their vote for individual candidates tend to cultivate a personalisation of politics.<sup>102</sup> This applies here, since the bond between parliamentarians and their constituents might be more direct in Britain and France than in Sweden.<sup>103</sup> In context of this research, it determines (at least theoretically) parliamentarians' perception of whom they are accountable to and voters' ability to politically sanction their representative(s). The focus of accountability in majoritarian single-seat systems is the individual parliamentarian, while in proportional system, the focus is rather on the political party.<sup>104</sup> In single-seat districts, as in Britain and France, constituents only need to monitor the actions of one representatives, which increases the name recognition of that parliamentarian and the risk that they could be caught acting improperly. In multi-seat districts where constituents elect several representatives, the costs of monitoring their conduct is higher, 'hiding' some of their actions from voters' view.<sup>105</sup> However, the political cost for voters in single-seat districts is higher,

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<sup>102</sup> CAREY, John M. and SOBERG SHUGART, Matthew. Incentives to cultivate a personal vote: A rank ordering of electoral formulas. *Electoral Studies*, Vol.14, n° 4, 1995, pp. 417-439; NORRIS, Pippa. *Electoral engineering: voting rules and political behavior*. Cambridge, UK New York: Cambridge University Press, 2004; USLANER, Eric M., and ZITTEL, Thomas. Comparative Legislative Behavior. In BINDER, Sarah A., RHODES, R. A. W., ROCKMAN, Bert A. (eds.) *The Oxford Handbook of Political Institutions*. Oxford University Press, 2008.

<sup>103</sup> Swedish voters are allowed to ignore the rank order determined by the party, but larger districts counterbalance this effect.

<sup>104</sup> FRANKLIN, Mark N., SOROKA, Stuart N., and WLEZIEN, Christopher. Elections. In BOVENS, Mark, GOODIN, Robert E., SCHILLEMANS, Thomas (eds.) *The Oxford Handbook of Public Accountability*. Oxford University Press, 2014.

<sup>105</sup> KUNICOV, Jana and ROSE-ACKERMAN, Susan. Electoral Rules and Constitutional Structures as Constraints on Corruption. *British Journal of Political Science*, vol.35, n° 4, 2005, pp. 573-606.

since they can only sanction a candidate by switching party or abstaining, while in a proportional system, voters can sanction a candidate by voting for her/his co-partisans.<sup>106</sup> The impact of electoral systems on voters' ability to sanction their representatives through the ballot box is thus not straightforward: proportional systems with open lists like in Sweden make it harder to monitor individual politicians but less costly to sanction them, while majoritarian closed systems inversely make it relatively easy to monitor conduct but costly to electorally sanction candidates.

Beyond mere electoral accountability, the different roles attributed to the parliamentary institution, political parties and groups, and the State in the three countries are worth paying attention to, in order to understand how conflicts of interest are regulated in practice. In Sweden, a proportional electoral system, political parties play a predominant role in selecting candidates and in monitoring their behaviour. Politics being relatively less personalised, political groups in parliament can easily encourage a parliamentarian accused (or suspected) of abuse to resign and replace him/her. This is indeed a common practice in Swedish politics.<sup>107</sup> Resignation has traditionally been less common in Britain and France, where politics are more personalised making the replacement of a parliamentarian a more symbolically-charged decision.

Britain, where MPs do not enjoy immunity from criminal prosecution,<sup>108</sup> relies on electoral accountability and on internal disciplinary measures for sanctioning misconduct, in cases not worthy of criminal prosecution, as detailed in Chapter 1. Through the House of Commons' adversarial politics, MPs themselves play a role in the regulation of each other's conduct. Through the establishment of a complaints mechanism (Annexe 6), policy-makers placed MPs are the centre of the regulatory system as they regularly use it as a political tool, MPs themselves reporting their peers to the internal ethics bodies.<sup>109</sup> An additional disciplinary measure was introduced in 2015 to reinforce the importance of electoral accountability, namely the Recall of MPs Act. This provides

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<sup>106</sup> MITCHELL, Paul. Voters and their representatives: electoral institutions and delegation in parliamentary democracies. *European Journal of Political Research*, Vol.37, n° 3, 2000, pp. 335-351; GROFMAN, Bernard. A taxonomy of runoff methods. *Electoral Studies*, Vol.27, n° 3, 2008, pp. 395-399.

<sup>107</sup> Member of the Swedish Parliament (SWMP1). Interview with author. May 17th 2017; Parliamentary clerks, Sveriges riksdag (SWPC1; SWPC2). Interview with author. May 19th 2017; WICKBERG, Sofia. Affaire Rugby : « Comment auraient réagi nos voisins européens ? » *Le Monde*, July 22d 2019.

<sup>108</sup> McGEE, Simon. *Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union*. Brussels: ECPRD, 2001.

<sup>109</sup> Professor of Anthropology, SOAS (UKEX2). Interview with author. November 15th 2017.

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the House with the ability to trigger the conditions for a recall petition in the case of an MP being suspended for more than 10 sitting days.<sup>110</sup>

In France, the disciplinary system is quite ambiguous, as the parliamentary institution plays a central role in disciplining deputies in non-criminal cases, and even in criminal cases the Assembly needs to vote to rid a deputy of her/his immunity. However, a prominent role is given to the state in regulating conflicts of interest, as an administrative body is tasked to control MPs declarations, sanction them for non-compliance and flag conflicts of interest to the parliamentary leadership (who is then responsible for making sure they are resolved), as detailed in Chapter 1. The recurring debates and campaign pledges on strengthening ineligibility sanctions and the requirement to have blank criminal record for participating in an election show the centrality of the state in the French accountability system and in policy-makers' core belief about how politicians should be controlled.<sup>111</sup>

Formal institutions organising the (s)election of parliamentarians affect the bonds between parliamentarians, voters, political parties and the state. The electoral system effect the personalisation and accountability of parliamentarians, but it is difficult to claim that the proportional open list system makes electoral accountability easier or more difficult than the majoritarian system. The broader ecosystem that they contribute to create does however have an impact on how public interest registers and codes of conduct are implemented, showing that the instruments are translated into existing institutions that they adapt to.

### **9.2.3. Administrative traditions and implementation capacities**

The institutional dimension of policy translation also matters with regards to how institutions shape implementation capacities.<sup>112</sup> While considering the 'rules of the game', one should thus pay attention to a country's administrative traditions to understand how conflicts of interest are regulated in practices and by whom. Britain is generally classified as being part of the Anglo-Saxon State tradition, where the state as such does not exist in the sense that it has no legal basis.<sup>113</sup> The government, which according to John Loughlin is the preferred term in this tradition,

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<sup>110</sup> GRECO. Greco RC4(2017)6, p. 6

<sup>111</sup> LAUWEREYS, Zoé. Grand débat : et si on exigeait des élus un casier judiciaire vierge ? *Le Parisien*, March 12th 2019.

<sup>112</sup> CAMPBELL, John. *Institutional Change and Globalization*. Princeton: Princeton University Press, 2004.

<sup>113</sup> LOUGHLIN, John, HENDRIKS, Frank and LIDSTRÖM, Anders. Introduction: Subnational Democracy in Europe: Changing Backgrounds and Theoretical Models. In *The Oxford Handbook of Local and Regional Democracy in Sofia Wickberg* – « Global instruments, local practices » - Thèse IEP de Paris – 2020

was historically dominated by society, giving prominent to social groups and civil society.<sup>114</sup> Britain, in contrast to its continental neighbours, does have a strong culture of administrative law.<sup>115</sup> This (lack of) administrative tradition partly justified parliamentary self-regulation and the development of soft law, such as transparency policy and codes of conduct, that include society in the oversight of parliamentarians' conduct.

In contrast, France has a strong administrative culture based on public law, influenced by Roman law and the legacy of the Napoleonic code.<sup>116</sup> The French administrative culture gives a prominent position to the State in the organisation of public life. The country's legalistic tradition creates a less favourable ground for soft law and self-regulation of parliamentary affairs. Indeed, until recently abuse of power (including corruption) was dealt with almost exclusively through criminal law (Section 9.3).<sup>117</sup> While the 'preventive/deontological turn' of the 2010s meant that France imported soft tools and introduced transparency policies, the Napoleonic administrative tradition is still reflected in how conflicts of interest are regulated, as French policy-makers chose to establish an independent administrative authority in charge of "promoting the integrity and exemplarity of public officials".<sup>118</sup> This trait was highlighted during parliamentary debates themselves, as illustrated by this quote from Patrick Devedjian (MP) who opposed the creation of a new administrative authority in charge of controlling declarations:

I do not see what justifies us solving this question [of interest declarations] with the creation of a High authority. I know that this is a French specialty: every time we face a problem, to solve it we create, a high commissary or another administration – never mind the type as long as it is « high »!<sup>119</sup>

The fact that the adoption of conflict of interest regulation targeting parliamentarians was rapidly integrated into a wider state reform, which also concerned civil servants, also contributed

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*Europe*. Oxford University Press, 2010; HUXLEY, Katy, RHYS Andrews, DOWNE, James, et al. Administrative traditions and citizen participation in public policy: a comparative study of France, Germany, the UK and Norway. *Policy and Politics*, Vol.44, n° 3, 2016, pp. 383-402.

<sup>114</sup> *Ibid.*

<sup>115</sup> MARIQUE, Yseult. Integrity in English and French public contracts: changing administrative cultures? In AUBY Jean-Bernard, BREEN Emmanuel and PERROUD Thomas. *Corruption and Conflicts of Interest A Comparative Law Approach*. Edward Elgar, 2014.

<sup>116</sup> LOUGHLIN, John, HENDRIKS, Frank and LIDSTRÖM, Anders. *Op. cit.* 2010; HUXLEY, Katy, RHYS Andrews, DOWNE, James, et al. *Op. cit.* 2016.

<sup>117</sup> MARIQUE, Yseult. *Op. cit.* 2014.

<sup>118</sup> HATVP. Indépendance. N.d. Online, available at: <https://www.hatvp.fr/la-haute-autorite/linstitution/independance/> (accessed on February 17<sup>th</sup> 2020).

<sup>119</sup> Assemblée nationale. Déb. parl. AN (CR) du 17 juin 2013, 1ère séance. Paris, 2013.

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to exacerbate this ‘legalistic approach’ to implementation, similarly to what Nicole Bolleyer et al. found concerning Belgium.<sup>120</sup>

The Swedish administrative tradition is normally classified within the Scandinavian administrative tradition, described as a hybrid, comprising elements of the Anglo-Saxon tradition of self-reliant communities with the organicist German tradition of a strong state, oriented towards consensus, corporatism and collective decision-making.<sup>121</sup> Yet it also includes elements of the Napoleonic tradition as control is usually centralised and the principle of uniformity of public service is important.<sup>122</sup> Administrative tradition had less of a clear impact on how conflicts of interest are regulated in the Swedish Parliament however, with the exception of the parliament’s own administration. The country’s long tradition of government openness and transparency, that Section 9.3 return to, is reflected in conflict of interest regulation however, with a central role attributed to civil society and the media.

Considering the differences between the formal institutions and the structures of meaning that shape the relative power of parliamentarians as well as their role(s) within and relation to society and the state helps us understand the *divergent* convergence of conflict of interest regulation. Political and electoral systems constitute ‘rules of the game’ that shape the relative influence of individual parliamentarians over policy-making as well as possibilities of political sanctions. This section has shown that the parliamentarians submitted to the less intrusive regulation are actually the ones who enjoy the most influence over policy-making (in Sweden). This might seem paradoxical, but the absence of external regulation can partly be explained by parliamentarians’ very influence over policy-making in this area as well. Moreover, when one considers this in light of the broader institutional context, one sees that Swedish MPs’ influence is collective rather than individual and that the lack of external control is compensated by the influence of political parties. Conflict of interest regulation thus adapts to existing control mechanisms, using adversarial politics in Britain and the power of the administration in France. Next section will demonstrate that these differences between formal and informal institutions shaping the role of parliamentarians and their relation to society and the state are reflected in the reform trajectories taken by the three countries.

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<sup>120</sup> BOLLEYER, Nicole, SMIRNOVA, Valeria, DI MASCIO, Fabrizio and NATALINI, Alessandro. Conflict of interest regulation in European parliament: Studying the evolution of complex regulatory regimes. *Regulation & Governance*, 2018.

<sup>121</sup> HUXLEY, Katy, RHYS Andrews, DOWNE, James, et al. *Op. cit.* 2016.

<sup>122</sup> LOUGHLIN, John, HENDRIKS, Frank and LIDSTRÖM, Anders. *Op. cit.* 2010.

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### 9.3. Adapting transferred ideas to past decisions

Conflict of interest regulation is a part of the broader institutionalisation of parliamentary ethics which followed different reform trajectories in Britain, France and Sweden. Philippe Bezes and Bruno Palier define a reform trajectory as “a long-term succession of reform sequences, each having an impact on the next, with a transformative effect on the public policy subject to reform”,<sup>123</sup> that is “marked by its initial moment”.<sup>124</sup> Having presented some significant differences between the countries’ institutions, this section zooms in on parliamentary ethics policies and looks at the impact of institutions on the different ‘initial moments’ of reform in Britain (the pioneer whose approach was later emulated), France and Sweden. The three cases have grown more similar over time, but some fundamental differences remain. These are partly explained by the steps taken towards formalising ethics in Parliament before it became a topic of international politicisation. The first steps taken in a policy domain tend to be sticky, and the three cases of this study confirm this founding idea of institutionalism.

#### **9.3.1. Britain: the slow erosion of self-regulation**

The British system of parliamentary standards of conduct has progressively moved away from a gentlemen’s agreement about the need to maintain the reputation of the House and a strong belief in Members’ honour and integrity, and thus in the appropriateness of self-regulation. Indeed, as phrased by David Hine and Gillian Peele, “until the cash-for questions scandal (...) the regulation of parliamentary behaviour has been largely dependent on MPs’ own code of honour, underpinned by a body of precedents and rules whose content was often unclear”<sup>125</sup>. Members of Parliament have traditionally been “marking their own homework”<sup>126</sup>. From the dusk of the Second World War, the perspective on the best system to regulate parliamentary standards of conduct slowly changed, one scandal and committee after the other, until the need to formalise and institutionalise existing conventions became ‘acceptable’ to MPs. The current system of standards

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<sup>123</sup> BEZES, Philippe and PALIER, Bruno. Le concept de trajectoire de réformes. *Revue française de science politique*, Vol. 68, n°6, 2018, pp. 1083-4.

<sup>124</sup> *Ibid.* p. 1093

<sup>125</sup> HINE, David and PEELE, Gillian. *Op. cit.* 2016, p. 67

<sup>126</sup> Lord Bew, the chairman of the Committee on Standards in Public Life used this expression during the collection of oral evidence by the Standards Review Sub-Committee, as cited in Committee on Standards. The Standards System in the House of Commons Sixth Report of Session 2014–15. 2015, p. 27

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of conduct consequently bears the mark of these conventions and of the British tradition of parliamentary sovereignty.

The regulation of MPs' conduct is rooted in the country's tradition of parliamentary privilege. Between 1995 and 2012, members' conduct was even overseen by the same Select Committee that was in charge of parliamentary privileges after the Committee on Privileges and the Committee on Members' Interests were merged into the Committee on Standards and Privileges. Parliamentary privileges are a pillar of British representative democracy, being "the ancient rights that the Parliament has to do its job unobstructed which comes from the time the King tried to interfere".<sup>127</sup> Erskine May's treatise on the Parliament defines parliamentary privileges as follows:

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively ... and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law.<sup>128</sup>

'Exclusive cognisance' is particularly relevant for understanding how the House of Commons dealt with – and still does to some extent – Members' misconduct and conflicts of interest. Exclusive cognisance is the 'archaic term' designating the fact that each House of Parliament enjoys sole jurisdiction over its own affairs and all matters subject to parliamentary privilege.<sup>129</sup> It is the right of each House to "regulate its own proceedings and internal affairs without interference from any outside body. This includes the conduct of its Members, and of other participants such as witnesses before select committees".<sup>130</sup> Until the creation of the function of Parliamentary Commissioner for Standards (in charge of investigations) in 1995, the question of members' conduct was purely a matter of privilege. When the function of Registrar, which should be held by a Clerk of the House, was created to coordinate Members' registration of interests and

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<sup>127</sup> Parliamentary clerk 1, House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>128</sup> ERSKINE MAY, Thomas. *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*. Butterworths Law. 23rd revised edition, 2004, p.75. The Parliament's glossary describes Erskine May's treatise as follows : "Thomas Erskine May's guide to parliamentary practice is properly entitled 'A treatise on the law, privileges, proceedings and usage of Parliament' but it is commonly referred to as Erskine May (or simply 'May'). It is generally held to be the most authoritative reference book on parliamentary procedure. First published in 1844, when May was Clerk of the House of Commons, it is now in its 24th edition." Parliament's Glossary. Online, available at: <https://www.parliament.uk/site-information/glossary/erskine-may/> (accessed on January 19<sup>th</sup> 2019)

<sup>129</sup> HL HC Joint Committee on Parliamentary Privilege. Report of Session 2013–14. HL Paper 30 HC 100, July 3rd 2013, p. 7

<sup>130</sup> HC Cm 8318. Parliamentary Privilege. Presented to Parliament by the Leader of the House of Commons and Lord Privy Seal by Command of Her Majesty. 2012, p. 8

receive complaints, it was made clear by the Select Committee appointed to consider the arrangements to be made pursuant to the 1974 Resolutions of the House, stating that “under no circumstance should the Registrar and his staff be seen as enforcement officers, with powers to enquire into the circumstances of Members...”<sup>131</sup> As detailed in Chapter 1, the standards system gradually introduced external elements, with the Committee on Standards in Public Life (CSPL), the Parliamentary Commissioner for Standards (PCS) and the lay members of the Committee on Standards and the statement agreed between the PCS, the Committee on Standards and the Metropolitan Police Service recognising that criminal proceedings against Members should always take precedence over the House's own disciplinary proceedings.<sup>132</sup> Despite the progressive move away from self-regulation, it is clear from rules as well as practice that the legacy of exclusive cognisance remains strong in the current standards' system.

As explained in the previous section, it has conventionally been expected that Members would have outside activities and thus interests to be able to sustain themselves, membership not being considered as a full-time activity requiring full-time remuneration. The freedom to enjoy outside interests has only been restrained by the rule prohibiting paid advocacy:

It is contrary to the usage and derogatory to the dignity of the House that any of its Members should bring forward, promote or advocate in this House any proceeding or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward.<sup>133</sup>

Disclosure of interests has thus always been the central element of the British standards system. It takes two forms: the oral declaration of interests relevant to a parliamentary debate/vote (subject to convention) and the registration of financial interests (institutionalised). The House of Commons has an unwritten rule forbidding members from voting on matters in which they have a personal pecuniary interest. The 1848 ruling of Speaker Abbot is often referred to as the origin of this tradition, limiting recusals to pecuniary interests and votes:

A personal interest in a question disqualifie[s] a member from voting. But this interest, it should be further understood, must be a direct pecuniary interest, and

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<sup>131</sup> GAY, Oonagh. Aspects of Nolan - Members' Financial Interests. House of Commons Library. Research Paper 95/62. 1995, p. 9

<sup>132</sup> This statement was first agreed in 2008 and became a protocol between the parties in 2013.

<sup>133</sup> House of Commons. HC Deb 22 June 1858 vol 151 cc176-209, cited in GAY, Oonagh. *Op. cit.* 1995, p. 2

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separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty's, or on a matter of state policy.<sup>134</sup>

The House of Commons has traditionally relied on the principle of transparency to regulate conflicts of interest, in the form of oral declarations of interests. The other historical practice of the House, which was associated with the practice of recusing oneself, indeed provides for Members to orally declare any interest “which might reasonably be thought to be relevant to the proceedings”, when making speeches in the House or in a standing committee or when examining a witness before a select committee.<sup>135</sup> The practice of recusing oneself from votes and debates in which one has monetary interests is not commonly used any longer,<sup>136</sup> which slightly changes the objective of the practice of declaring ones' interests, as it is now merely reduces an asymmetry of information.

Scholars and observers outside the House started to question the relevance of the oral declarations, after the Second World War, as the issue of public ethics emerged in the American Congress, with scholars such as Samuel Edward Finer, Peter G. Richards or American journalist Andrew Roth advocating for the introduction of a public register of MPs' interests.<sup>137</sup> As Chapter 7 showed, the initiative came from a political party (the Liberal Democrats) who introduced a voluntary public register for its MPs in 1967.<sup>138</sup> The issue was raised in the House following the revelation that a Labour MP, Gordon Bagier, had accepted a payment from a public relations firm working for the Greek military government in 1968.<sup>139</sup> The Strauss Committee was set up in May 1969 to consider the practices of the House regarding members' declaration of interests, which were considered rather vague and unclear. The select committee rejected the idea of a register of interests but recommended the adoption of two resolutions, which would comprise a parliamentary

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<sup>134</sup> ROGERS Robert and WALTERS Rhodri. *How Parliament Works*. Abingdon: Routledge, 2015 ; KAYE, Robert. *Regulating Pecuniary Interest in The United Kingdom: A Comparative Examination*. Paper prepared for ECPR joint sessions workshops, University of Grenoble 5th-11th april, 2001 ; House of Commons debate, HC Deb 22 May 1974 vol 874 cc391-513

<sup>135</sup> GAY, Oonagh. Aspects of Nolan - Members' Financial Interests. Research Paper 95/62. House of Commons Library. 1995, p. 16

<sup>136</sup> KNIGHTS, Mark. *Op. cit.* 2019.

<sup>137</sup> FINER, Samuel Edwards. *Anonymous empire: a study of the lobby in Great Britain*. London: Pall Mall Press, 1958; RICHARDS, Peter Godefrey. *Honourable members: a study of the British Backbencher*. London: Faber & Faber, 1959; ROTH, Andrew. *The Business Background of MPs*. London: Parliamentary Profile Services Ltd, 1959.

<sup>138</sup> GAY, Oonagh. Aspects of Nolan - Members' Financial Interests. Research Paper 95/62. House of Commons Library. 1995, p. 1

<sup>139</sup> The Telegraph. *Gordon Bagier Obituary*. April 17 2012, online. Available at : <http://www.telegraph.co.uk/news/obituaries/politics-obituaries/9209979/Gordon-Bagier.html> [accessed on February 6 2018]

code of conduct, on the formalisation of the declaration of interests and on the inappropriateness of paid advocacy.<sup>140</sup>

The Strauss Report was never debated, but the Poulson scandal brought the issue of Members' interests back on the agenda. In 1974, the newly elected Labour government tabled three motions for resolutions, the first replacing a long-standing convention of oral declarations with a written rule, the second concerning the principle of a compulsory public register of financial interests and the third providing for the creation of a select committee to decide on how these should be implemented. In 1975, a permanent Select Committee of Members' Interests was appointed to oversee the new register. These resolutions initiated the formalisation of parliamentary ethics in Britain, and despite their aim being to clarify the rules and avoid confusion, the respective role of the declaration and register of interest do not seem completely clear to MPs today, as a clerk of the House of Commons explained:

There is some confusion. MPs find it difficult to understand the difference between registration and declaration. The register is so rigid with complicated rules about categories etc. and Members are relieved when they have completed that. Declaration of interests is less easy to define and is on top of that. The point is to draw interests to people's attention. This might need to be made clearer in the guide that members get, that registration is there, on the record, but they need to understand how it actually applies. We have difficulties in that even when they declare, they do not declare what is relevant, they just declare 'an interest'. Which shows that they have not really thought about it. Certainly, some of them have not really taken on board why they make the declarations in some cases. A lot of people declare everything, and some realise when hearing others that they might have to do the same. It is not on top of their minds when they come to a meeting.<sup>141</sup>

Until the cash-for-questions scandal and the revision of the standards system, as recommended by the Nolan committee, the Parliament had retained full sovereignty over the regulation of the conduct of its members. The reforms that followed led Britain on the path of increasing external control, with the establishment of dedicated institutions within and outside the House and the presence of law members within the Standards Committee. Failing to clarify the rules that should guide MPs' conduct and the division of labour in the field, the turn taken with the Nolan reforms created a certain level of confusion. As a clerk of the House of Commons illustratively put it, having listed the various bodies in charge of standards and confused one of the

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<sup>140</sup> GAY, Oonagh. *Op. cit.* p. 2

<sup>141</sup> Parliamentary clerk 1, House of Commons (UKPC1). Interview with author. November 20th 2017.

acronyms: “there are too many, there are too many!”.<sup>142</sup> In practice however, with the exception of IPSA, the British parliamentary standards system still relies largely on a form of regulation that is internal to parliament. The successive reforms indeed build on an informal system to which the code of honour, exclusive cognisance and convention of oral declarations were the core.

### **9.3.1. From repression to regulation: hardening ‘soft’ regulations in France**

In its response to the problem of corruption, France has historically been rather reluctant to using soft law and has predominantly relied on formal rules and sanctions.<sup>143</sup> The country has developed quite an elaborate legislation criminalising various forms of corruption, treating the problem principally as an individual deviance to be sanctioned rather than a risk to manage. No concerned initially with conflicts of interest, the French public ethics system focussed on the misuse of public funds and unexplained variations in officials’ wealth. This required the establishment, in 1988, of an administrative agency charged with controlling such variations of wealth.

In the 2010s, policy-makers increasingly recognised the need to diversify the policy solutions available to deal with the problem of political misconduct, including through strengthening transparency requirements. In the 2010s the very conception of the problem changed from one of mere (il)legality of practices to a concern for appearance of exemplarity of the officials themselves.<sup>144</sup> The Sauvé Commission clearly states this shift in the introduction of its report:

France has a strong legislation on the issue of conflicts of interest (...) but this legislation [is] dated and mainly repressive, through the offence of illegal acquisition of interests for instance, and [is] rarely enforced, while the preventive side, through information and awareness raising for instance, is insufficiently developed. This unbalance between upstream – prevention – and downstream – repression, places France in a unique situation in comparison to other similar countries, which calls for a reform of the existing framework and the

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<sup>142</sup> *Ibid.*

<sup>143</sup> MARIQUE, Yseult. Integrity in English and French public contracts: changing administrative cultures? In AUBY Jean-Bernard, BREEN Emmanuel and PERROUD Thomas. *Corruption and Conflicts of Interest A Comparative Law Approach*. Edward Elgar. 2014.

<sup>144</sup> As can be taken from President Nicolas Sarkozy’s mission letter to Jean-Marc Sauvé, vice-president of the Council of State (*Conseil d’Etat*), who chaired the country’s first commission on conflict of interest prevention. Annexe 2 of the Rapport de la Commission de réflexion pour la prévention des conflits d’intérêts dans la vie publique, remis au Président de la République le 26 janvier 2011, pp. 107-108.

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introduction of preventive mechanisms adapted to the modern-day requirements.<sup>145</sup>

The current system of conflict of interest regulation has integrated soft law and transparency requirements. It is nevertheless retains the mark of the country's first policy initiatives to deal with the problem of illicit enrichment and embezzlement of public funds. Indeed, the idea of asset declaration and control of the variation of wealth dates back to the French Revolution. On May 14<sup>th</sup> 1793, the National Convention debates and adopts a proposal to print a detailed account of each parliamentarian's wealth and make it public, as a response to worries about representatives' enrichment through their activities in the Revolution. François Buzot, a Girondist at the National Convention, declared:

The motion proposed is evidently insufficient; how will you really know that a given member's wealth came from this or that cause. But there is another way: that of knowing if one of us acquired land or made investments? If he does not reveal the source of this wealth, it would mean that it is bad. I want the one who denounces to receive half the value and the one who had made a purchase in someone else's name to have his assets confiscated (...) With sentences that we know well since four years, it is very possible to fool the people (...) and to plunder the public purse to make a very big fortune. There are men that [live well], have a car and who, before the 10<sup>th</sup> August, before the Revolution, had nothing, absolutely nothing. I demand that you decree that [all elected officials] whose wealth increased be obliged to declare, within a month, the means by which they increased it, or they would be condemn to ten years in chains and see their assets confiscated.<sup>146</sup>

The National Convention adopted a text stating that "the representatives of the people are at all times accountable to the nation for the state of their wealth".<sup>147</sup> According to a 1988 legislative report, a committee was set up to examine the state of elected representatives' wealth before and after the Revolution to identify any variations which could suggest an enrichment from revolutionary activities and would thus require justification.<sup>148</sup> The idea of asset declaration and administrative control of these declarations date back to the early years of the French Republic but

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<sup>145</sup> Pour une nouvelle déontologie de la vie publique. Rapport de la Commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique (Commission Sauv ), remis au Pr sident de la R publique le 26 janvier 2011, p. 8. Author's own translation.

<sup>146</sup> MADIVAL, J r me and LAURENT,  mile (eds.) *Archives parlementaires de 1789   1860: recueil complet des d bats l gislatifs   politiques des Chambres fran aises*. Paris: Librairie administrative de P. Dupont, 1862, p. 676. Author's own translation.

<sup>147</sup> *Ibid.* p. 677

<sup>148</sup> Assembl e Nationale. Rapport fait au nom de la commission des lois (...) sur le projet de loi organique n 1214 (...) Document n 1216, annexe du proc s-verbal de la s ance du 2 f vrier 1988.

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were only enacted two centuries later. In 1972, the idea to institutionalise asset declarations for public officials indeed re-emerges through François Mitterrand's policy platform.<sup>149</sup> The issue of money and politics becomes a recurring theme in political debates, as the vote of no confidence against Prime Minister Pierre Mesmer in 1972 illustrates, with frequent references to the need to “moralise” public and political life.<sup>150</sup> This expression was used by Michel Rocard and the Socialist group in 1979 in their bill n°1453 and later by Alain Richard and the Socialist group in an identical motion. This idea also features as proposal 49 in François Mitterrand's political programme in 1981: “Public life will be moralised: candidates to the functions of president of the Republic, MP or senator as well as all ministers will have to declare their income and asset before and after their mandate.”<sup>151</sup>

Table 16. Chronology of legislative initiatives in France

Reference	Title	Presented by
PPL 23 (Sénat) 17 October 1979	Control of the integrity of elected officials at the national level	Radical Left
PPL 1453 (AN) 26 November 1979	Moralisation of the exercise of political life	Socialist group
PPL 64 (Sénat) 28 November 1979	Creation of a commission to verify the wealth and income of MPs and high civil servants	Pierre Marcilhacy (Democratic Left - <i>Gauche démocratique</i> )
PPL 935 (AN) 25 May 1982	Moralisation of the exercise of political life	Socialist group
PPL 60 (AN) 7 April 1986	Asset and income declarations for MPs, members of government and mayors	Jean-Pierre Delalande (conservative party - RPR)
PPL 1189 (AN) 16 December 1987	Transparency of elected officials' assets, equal access to universal suffrage, information pluralism and elected officials' status	Communist group

In the 1980s, a number of motions were tabled by various political groups, as listed in Table 16. These initiatives were mostly carried by MPs on the left of the political spectrum. The obligation for MPs and others to declare their assets was however enacted by Jacques Chirac's centre-right coalition government with the law of 1988 on the financial transparency of political life, which combines an obligation to declare assets with new rules regarding the financing of political parties

<sup>149</sup> PHELIPPEAU, Éric. *L'argent de la politique*. Paris: Presses de Sciences Po, 2018, p. 31

<sup>150</sup> Assemblée nationale. Première session ordinaire de 1972-1973 Compte rendu intégral - 3<sup>e</sup> SEANCE Séance du Mercredi 4 Octobre 1972.

<sup>151</sup> Parti socialiste (PS). 110 propositions pour la France Programme de gouvernement préparé par le Parti socialiste (PS) pour l'élection présidentielle d'avril-mai 1981, listed in *Manière de voir*, n°124, 2012. Author's own translation.

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and campaigns. Law n°88-227 introduced an obligation for members of government, MPs and certain other elected officials to declare their assets at the beginning and the end of their mandates. These declarations contained information on the movable and non-movable property and assets, and aimed at gauging any unjustified variation of wealth. For that purpose, the law created the Commission for the financial transparency of political life (*Commission pour la transparence financière de la vie politique*, CTFVP) in charge of receiving and verifying asset declarations. For parliamentarians, the system was however initially regulated by the parliamentary chambers themselves, declarations being submitted to the Bureau of each chamber. Law n°9563 introduced an element of external regulation with the obligation for parliamentarians to submit their declarations to the CTFVP. This law was adopted after the publication of a parliamentary report on the clarification of the relationship between money and politics.<sup>152</sup> Despite its name, Law n°88-227 does not provide for the publicity of parliamentarians' declarations, quite the contrary. It indeed provides for the possibility to condemn anyone who would publish information contained in these asset declarations.<sup>153</sup>

The current disclosure system in France is the offspring of this initial concern with the illicit enrichment of public officials and the misuse of public funds. The separation of asset and interest declarations is the result of the country's reform trajectory, where the initial problem to be tackled was not conflicts of interest. The remaining focus on property rather than interests, exemplified by Jean-Paul Delevoye's recent scandal presented in the introduction, stem from the system created in 1988, which operationalised an idea born under the French Revolution. Most provisions of the 1988 law were indeed taken up by legislators in 2013. The HATVP is the successor to the CTFVP, with which it shares the predominance of magistrates and officials from the *grands corps de l'État*. The need to control asset declarations for any unexplained variations of wealth explains the role of the HATVP in the regulation of conflicts of interest. The institution indeed took over the prerogatives of the CTFVP to which new functions were added. Similarly, the decision not to publish officials' asset declarations (but rather to make them available in *prefectures*) and the penal

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<sup>152</sup> Assemblée nationale. Groupe de travail sur la clarification des rapports entre la politique et l'argent, Président, présidé par Philippe Séguin, Paris, 1994. This report summarised the work of the parliamentary working group set up by the President of the National Assembly, Philippe Séguin, which studied the state of the legislative and institutional framework, in France and abroad, of various aspect of corruption prevention, such as political financing, public procurement, parliamentary incompatibilities and asset declarations.

<sup>153</sup> Law n°88-227 refers to article 368 of the Penal Code which is concerned with the violation of privacy. This article, together with most of the Penal Code, was modified by Law n°92-1336 on the entry into force of a new Penal Code.

sanction for unlawful publication can be considered legacies from the system set up in the 1980s in which transparency (to the general public) was foreign, despite the title of the law.

### **9.3.2. Sweden: a history of transparency**

Conflicts of interest regulation in Sweden is marked by the country's long history of transparency of public affairs of which it is a legacy, as an analysis of parliamentary debates and interviews with elected officials and parliamentary clerks suggest. As explained in Chapter 1, the Swedish system heavily relies on civil society and especially on the media to scrutinise elected officials, rather than on dedicated institutions like in Britain and France.

Sweden is famous for having adopted the world's first law on public access to information, two centuries before freedom of information became a norm in liberal democracies. Sweden's principle of access to information (*offentlighetsprincipen*) was adopted in 1766 as part of the law on freedom of the press (*tryckfrihetsförordning*) that abolished the censorship of printed publications. This innovation happened during a period known as the *Age of Freedom*, which saw the transition from absolutism to a parliamentary form of government. Following the death of king Karl XII, the monarchy declined with a series of weak kings while the *Riksdag* gained influence. The Parliament was composed of four estates (nobility, clergy, townsmen and peasants) and, during the Age of Freedom, two proto-parties were created, the hats and the caps.<sup>154</sup> In 1765, the hats lost the majority to the caps, who were strongly influenced by the philosophers of the Enlightenment.

According to Jonas Nordin, the change of political leadership played an important role for the adoption of the Freedom of the Press Act. The hats having been dominant for decades, they had placed their allies in public offices and politicised the nascent public administration. The caps, inspired by Anders Chydenius, the clergyman who drafted the Freedom of the Press Act, decided to pass a law that would allow the public to get an insight into the workings of the state and prevent the manipulation of the administration operated by their opponents.<sup>155</sup> The Freedom of the Press Act was adopted in 1766, providing for the publication of official documents. After Gustav III's coup and a temporary end of parliamentary rule, the 1809 Constitution which included the main principals of the 1766 law was adopted. Since then, official documents have been made available

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<sup>154</sup> The name nightcaps was the hats' nickname for their opponents whom they thought were promoting a weak foreign policy.

<sup>155</sup> NORDIN, Jonas. *1766 års tryckfrihetsförordning Bakgrund och betydelse*. Kungliga Biblioteket (National Library of Sweden), 2015, p. 24.

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to the public, making transparency one of the constitutional principles that has shaped public life in Sweden.<sup>156</sup> Moreover, the Swedish legal system provides for transparency of taxes and income, which was repeatedly used to argue against the need for a register of interests (Chapter 8).

The idea to make parliamentarians register their economic interests however made its way to the political agenda with a first parliamentary bill presented in 1977 by two liberal MPs, Per Gahrton and Bonnie Bernström (*Folkpartiet*) who proposed to introduce an official examination of the economic situation and sources of wealth through a system of declarations directed to board members of large companies, high level civil servants and political decision-makers.<sup>157</sup> The same two MPs moved another bill in 1979. In the following decades, there were many attempts to create such a financial disclosure system or to formalise ethics rules for parliament (Table 14). Yet the regulation of parliamentary behaviour remained the prerogative of political parties, as Chapter 7 showed, until the interest register was adopted in 1996 and the code of conduct in 2017. The current Swedish system of conflict of interest regulation is thus also a legacy of the country's tradition of party-based democracy, making political ethics an issue of personal responsibility and internal party affairs.

Based on the study of legislative archives, this section has shown that both historical events and recent policy initiatives have marked the reform trajectory in each country, leaving its trace in the way conflicts of interest are currently regulated. Sweden's long history of transparency maintained parliamentary ethics as an issue of low politicisation, making its reform trajectory more dependent on foreign events. The most distant trajectories are certainly the British and the French ones, the former institutionalising a system of interest declarations to maintain the Parliament's sovereignty and tradition of self-regulation while the latter externalised the control of officials' asset declarations from its first days as a Republic. When British policy makers were primarily concerned with sorting out different outside interest that could influence policy-making, their French counterparts understood parliamentary ethics first and foremost through the lens of embezzlement of public funds, rather than undue influence of private ones. This echoes Éric Phélippeau's observation that, "[the] first recommendations tend to restrain the possibilities to innovate, as if

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<sup>156</sup> PETERSSON, Olof. Constitutional History. In PIERRE, Jon (ed.) *The Oxford Handbook of Swedish Politics*. Oxford University Press, 2016.

<sup>157</sup> Riksdagen. Motion 1976/77:1007 av herr Gahrton och fru Bernström om en utredning rörande höginkomst- och maktavargruppernas levnadsförhållanden. 25 January 1977.

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memory left a mark on parliamentary work”,<sup>158</sup> the divergent convergence being a result of a transnational policy trajectory meeting different national ones.

## Conclusion

When importing policy ideas, in addition to being constrained by other actors and the political context, policy actors are also constrained by existing institutions that shape their ideational framework and to which policy ideas need to be adapted to ‘work’ at the local level. Looking at the countries’ different conception of political representation and elected representatives’ (evolving) sources of income allows us to draw a symbolic boundary between the political and economic spheres and society at large. This chapter has shown that conflict of interest regulation as invented in the Anglosphere reflects the British political system where MPs initially sustained themselves through outside activities and were expected to represent pre-political sectoral or geographical interests. Interest declaration were indeed motivated by the need to reduce the asymmetry of information between elected representatives holding private outside interests and voters. Consecutive scandals suggesting flaws in the system made British policy-makers institutionalise what was initially a mere convention, using the central place of constituency relations as well as adversarial politics to keep MPs in check. In France, the early remuneration of parliamentarians and the restrictions on outside activities imposed on parliamentarians gave policy-makers the impression that politics was (relatively) protected from parliamentarians’ private interests. They thus turned their attention to the risk of the misuse of public funds, which is reflected in the country’s reform trajectory, focussing heavily on administrative control and officials’ personal wealth. In contrast, the Swedish political system based on collective interest representation and a proportional electoral system placed political parties at centre stage. The traditional role of parties in overseeing their members’ conduct is indeed apparent in the way conflicts of interest are regulated still today. The long-standing tradition of government transparency contributed to make civil society, and the media principally, essential cogs in a system that remains self-regulated.

Writing about language and text, Paul Ricœur argued that translation can run into resistance from the target group because of the existence of ‘segments of untranslatability’.<sup>159</sup> Policies are

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<sup>158</sup> PHELIPPEAU, Éric. Genèse d’une codification. L’apprentissage parlementaire de la réforme du financement de la vie politique française, 1970-1987. *Revue française de science politique*. Vol. 60, n° 3, 2010, pp. 519-563.

<sup>159</sup> RICOEUR, Paul. *De la traduction*. Paris: Payot, 2004, p. 13.

indeed not simply transferable, especially when they were initially developed in a host polity with an institutional and cognitive framework that differs from the recipient country.<sup>160</sup> France and Sweden imported ideas about conflicts of interest developed in and for another political context. Policy actors progressively adapted them to the existing ideational and institutional framework that shape the ‘rules of the (political) game’. They did so both intentionally, as they perceive the differences between the importing and exporting systems, but most often they acted unwittingly as the same words in the source and target language can refer to different things. In France and Sweden, the import of these instruments has not resolved the interpretive ambiguity of what is acceptable and what isn’t (which is not to suggest that the ambiguity is fully resolved in countries in the Anglosphere), rather the opposite. The new instruments indeed generated debates, especially in France, about what conflicts of interest actually are, if they should include professional activities, non-for-profit activities or other public functions, as illustrated by the new president of the HATVP Didier Migaud’s call for clarification of terms: “this notion of conflict of interest remains difficult to apprehend”.<sup>161</sup> This chapter has demonstrated that it is necessary to take a long term perspective on parliamentary ethics reforms to understand the *divergent* convergence of conflict of interest regulation today, as imported ideas has to be transplanted into new contexts with their own political dynamics, history and existing institutions that guide the conduct of elected officials and sanction them when necessary. The instruments were developed to protect the integrity of decision-making in the Anglo-liberal political world, and are thus more ‘at home’ in the British House of Commons. The latter was however also influenced by the transnationalisation of the policy field, especially in terms of the increasing pressure to move away from self-regulation.

This convergence of conflict of interest regulation poses the question of a possible convergence of the meaning and practice of political representation. Interest registers and codes of conduct ask fundamental questions about the role of parliamentarians, legitimate influence on policy-making, relationships between elected officials and voters, and the broader understanding of the public interest. Considering that, despite their appearance of technical neutrality, policy instruments are in fact vehicles of values and meaning,<sup>162</sup> one can only wonder if the adoption of

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<sup>160</sup> HULME, Rob. Policy transfer and the internationalisation of social policy. *Social policy & society*, Vol. 4, n°4, 2005, pp. 417-425.

<sup>161</sup> Assemblée nationale. Audition de M. Didier Migaud en vue de sa nomination aux fonctions de président de la Haute Autorité pour la transparence de la vie publique. Paris, January 27th 2020.

<sup>162</sup> LASCOUTES, Pierre and LE GALES, Patrick. Introduction: Understanding Public Policy through Its Instruments—From the Nature of Instruments to the Sociology of Public Policy Instrumentation. *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 20, n° 1, 2007; LE GALES, Patrick. Chapter 10: Policy Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

policy instruments invented in the Anglosphere will not eventually affect how importing countries understand political representation. This suggestion echoes Guillaume Courty and Marc Milet's argument that the legal regulation of lobbying contributed to legitimise the practice of lobbying in France.<sup>163</sup> As we see a convergence towards the use of instruments carrying pluralist-liberal ideas, we might see a progressive harmonisation of conceptions of political representation, towards a normalisation of the conception of politics as the aggregation of individual interests.

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Instruments and Governance. In BEVIR, Mark (ed.). *The SAGE Handbook of Governance*. London: SAGE Publications Ltd, 2011, pp. 142-143.

<sup>163</sup> COURTY, Guillaume and MILET, Marc. La juridicisation du lobbying en France. Les faux-semblants de l'eupéanisation soft d'une politique de transparence. *Politique européenne*, Vol. 3, n° 61, 2018, pp. 78-113.

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## Conclusion to Part Three

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Transferred ideas about how to regulate conflicts of interests have been shown to have absorbed local colours through the active process of policy reception that has served to indigenise public interest registers and codes of conduct. The last part of the dissertation has demonstrated that the existence of international standards is not a sufficient condition for their adoption by national policy-makers, especially in the absence of any coercive form of transfer (and hence an agent of coercive transfer). The road for global anti-corruption solutions to be turned into national policy is long and winding, and requires the efforts of many skilful actors in interaction with one another to render new ideas understandable, acceptable and implementable in a new context. The sequencing of policy adoption means that the issue of conflict of interest reached the political agenda as the transnational anti-corruption community was emerging in Sweden, and after its emergence in France. Actors at the national level were thus (knowingly or otherwise) influenced by the ideas about corruption prevention promoted by international institutions, creating both opportunities (technical assistance and availability of solutions) and constraints (limiting the world of legitimate solutions). While policy actors' references to international standards and foreign practices confirm the transnationalisation of the policy field, they do not however make the same 'usage' of international standards. Largely ignored in British actors' discourse, they serve as an inspiration and a legitimation in the Swedish context, with French policy-makers prefer to discursively endogenise transferred ideas.

While French and Swedish policy actors imported instruments from abroad, they did not unreflexively copy-paste them in their original form into their respective parliament. They were essential elements of the transfer of these instruments, as they selected them from the menu of internationally-promoted solutions, re-problematised them to fit the political context and existing problems within, and translated them into the institutional framework. The institutional context contributed to shape policy actors' 'background ideational abilities'<sup>164</sup> through which they reinterpreted transferred ideas to make conflict of interest regulation fit their conceptions of the problem(s) but also their political representation, ideas about symbolic boundaries between the state, politics and society. France and Sweden indeed imported instruments to regulate conflicts of

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<sup>164</sup> SCHMIDT, Vivien A. *Op. cit.* 2010.

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interest designed in and for a pluralist-liberal political system, to reduce the asymmetry of information between elected representatives expected to hold outside activities and voters. French policy-makers adapted these instruments to a reform trajectory that had been largely focussed on the administrative control of officials' personal wealth and the misuse of public funds, while their Swedish counterparts translated them into a political ethics system centred on regulation by political parties, civil society and the media. Inscribing these instruments in a long-term perspective highlight the importance of past events and policy choices that shape a country's reform trajectory. Ideational and institutional factors interact in the process of adapting imported policy elements to a new context. Indeed, actors' discursive efforts to translate transferred ideas into a new symbolic and cultural landscape goes beyond mere legal transposition, as it involves making them understandable, acceptable and desirable to a new audience, with its existing norms, practices and ideational repertoires.<sup>165</sup>

The political context also contributes to explain the differences between practices of conflict of interest regulation in the three countries. The immediate (institutional/cultural) environment indeed influences policy promoters' legitimisation strategies, modifying opportunities and constraints. In none of the three countries did policy-makers willingly impose new regulation on themselves. External pressure of different types was a necessarily condition for these policy instruments to be adopted: public pressure following political scandals (Britain and France) or international pressure to harmonise national legislation (France and Sweden). Focusing events that led to high degrees of politicisation, such as political scandals in Britain and France, pushed policy-makers to adopt more intrusive policies than the incremental process of policy change in Sweden. Through the increased public (and political) pressure they put on governments to be seen as 'doing something', moments of crisis led to the involvement of external actors in the policy-making process which made it more difficult to maintain a tradition of self-regulation. By partially externalising regulation to independent institutions, policy-makers respond to the public belief that MPs are not well placed to regulate their own conduct. High levels of politicisation also made it harder for political opponents to oppose or (excessively) water-down reforms. The context in which policy-making happens thus contributes to explain the divergence in conflict of interest regulation in practice, France and Britain responding to 'crises' by depoliticising regulation while Swedish parliamentarians maintained regulation in their own hands.

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<sup>165</sup> BELAND, Daniel. *Op. cit.* 2019, p. 28.

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This dissertation has shown that policy actors engaged in the transfer of policy ideas because of the uncertainty regarding how to handle the ‘wicked problems’ that relate to political corruption and the growing public distrust in political institutions. This uncertainty combined with the existence of policy solutions ‘floating’ in a transnational policy stream contributed to turn policy actors’ attention to whomever demonstrates practical experience or thematic expertise.<sup>166</sup> It also demonstrated that policy ideas do not “[transit] intact between jurisdictions”, but are transformed as they are transferred.<sup>167</sup> Paying attention to the reception of transferred policies and the actors that translate solutions across institutions and polities serves to explain why policy transfer does not necessarily lead to linear convergence (and probably rarely does do). There is indeed a risk of misunderstanding in translation and the notion of translation captures the possible blurring of ideas, as Sophia Coppola depicts in her 2003 film *Lost in translation*, from which I borrow the title of Part Three. Translation is however what makes ideas understandable across cultural, linguistic or cognitive contexts, and what makes policy ideas acceptable in new settings. The dissertation thus argues that, despite some confusions, translation works as a protection against or a correction of failed transfers, through appropriation and indigenisation over time. As Umberto Eco wrote regarding literary translation: “knowing that we cannot ever say the same thing, how we can say *almost* the same thing. At this point, the interesting problem is no longer the conception of the same thing, not that of the thing itself. It is the conception of *almost*.”<sup>168</sup>

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<sup>166</sup> CRESAL. Situations d’expertise et socialisation des savoirs. *Actes du colloque organisé par le CRESAL*. Saint-Étienne, 1985, pp. 3-9.

<sup>167</sup> CZARNIAWSKA-JOERGES, Barbara and SEVÓN Guje. *Translating Organizational Change*. New York, Berlin: Walter de Gruyter, 1996; PEDERSEN, Lene Holm. Ideas are transformed as they transfer: a comparative study of eco-taxation in Scandinavia. *Journal of European Public Policy*, Vol.14, n°1, 2007, pp. 59-77.

<sup>168</sup> ECO, Umberto. *Dire quasi la stessa cosa. Esperienze di traduzione*. Milano: Bompiani, 2003, p. 9. The translation of this excerpt from Umberto Eco’s work is a combination of Yves Gambier, Miriam Shlesinger, Radegundis Stolze. *Doubts and Directions in Translation Studies: Selected Contributions from the EST Congress, Lisbon 2004*. John Benjamins Publishing, 2007, p. 16, and my own translation, the section (ironically) not having been included in the English translation of the original book.



## General conclusion

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Preventing political corruption has become a major policy challenge all over the world. This dissertation has sought to provide an insight into how policy actors at various levels of governance have responded to what became a global public problem in the 1990s. Studying this case of ‘divergent convergence’ has led to a number of conclusions that contribute to (anti-)corruption research and, more broadly, to the study of public policy-making in the 21<sup>st</sup> century. In addition to providing a detailed analysis of how parliamentarians’ conflicts of interest are regulated in the three countries, the dissertation shows how corruption came to be understood as a problem of incentives and how this in turn rested on an understanding of corruption as arising from politicians’ private interests. Its findings regarding transnational actors’ mediating role in the transfer of policy ideas expand policy transfer literature’s understanding of these actors. Their diffusion of common policy templates indeed helps national governments in search of policy ideas, whilst also limiting the landscape of possibilities. Governments do not choose from a plethora of options, picking the solutions that are closest to their system. They might simply prefer to turn to existing international recipes.

Tracing the origin of the policy idea through two instruments that ‘materialise’ it (public interest registers and codes of conduct), the dissertation has found that when designing common templates, international institutions tend to follow the pioneers and leaders of the policy field rather than entering in a process of searching for actual ‘best practices’. This suggests that experiencing and responding to a problem early constitute a source of power in global policy-making, especially if a country is already in a position of structural power. This research has presented a case of policy convergence that results from a form of ‘soft’ (cognitive) coercion proceeding from a certain construction of corruption that became dominant, making it hard to conceive of the problem outside this frame. It has shown that policy ideas are translated as they travel into new political contexts and institutions. Intermediaries and national policy-makers indeed transform international templates as they put flesh on them, leading not to a linear process of convergence (of conflict of interest regulation) but to a more complex ‘divergent convergence’.

This general conclusion summarises the main findings of the dissertation and its contribution to contemporary debates in political science and public policy analysis concerning the

boundaries between levels of governance, and ideational and material dimensions of political analysis. It uses some of the findings of this research to suggest a way forward for future policy work in the field of political ethics and corruption prevention. Lastly, it reflects on some of the limitations of the present study, raising some caveats regarding its conclusions that the very last section builds on to present some viable directions for future research.

## I. Understanding the divergent convergence of conflict of interest regulation

On the basis of the comparison of conflict of interest regulation in Great Britain, France and Sweden, this dissertation set out to understand how this policy became a case of what I have termed ‘divergent convergence’.<sup>1</sup> Indeed, while conflict of interest regulation in the three countries grew increasingly alike between the 1990s and the 2010s with the adoption of similar instruments (public interest registers and codes of conduct), these instruments were actually implemented in strikingly different ways in the three contexts, resulting in significant divergence in practice.

Using the innovative methodology of tracing ‘policy mobility’, borrowed from geographers and urban scholars,<sup>2</sup> the dissertation has traced the circulation and transformation of ideas about political corruption and ways to prevent it by following two policy instruments (public interest registers and codes of conduct) along their journey across jurisdictional boundaries and levels of governance. Scholars have indeed argued that policy transfer studies ought to pay more attention to policy instruments.<sup>3</sup> Combining an empirical interest in instruments and a theoretical grounding in constructivist institutionalism, I considered instruments as useful transfer tools due to their

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<sup>1</sup> HAY, Colin. Common Trajectories, Variable Paces, Divergent Outcomes? Models of European Capitalism under Conditions of Complex Economic Interdependence. *Review of International Political Economy*, Vol. 11, n° 2, 2004, pp. 231-262; LEVI-FAUR, David and JORDANA, Jacint. Regulatory Capitalism: Policy Irritants and Convergent Divergence. *Annals of the American Academy of Political and Social Science*, 2005, vol. 598, p. 191-197; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. Convergence, transferts et traduction. Les apports de la comparaison transnationale. *Gouvernement et Action Publique*, Vol. 3, n° 3, 2013, pp. 377-393.

<sup>2</sup> PECK, Jamie. Geographies of Policy: From Transfer-Diffusion to Mobility-Mutation. *Progress in Human Geography*, Vol. 35, n° 6, 2011, pp. 773-797; McCANN, Eugene and WARD, Kevin. Assembling urbanism: following policies and ‘studying through’ the sites and situations of policy making. *Environment and Planning A*, Vol. 44, 2012, pp. 42-51; PECK, Jamie and THEODORE, Nik. Follow the Policy: A Distended Case Approach. *Environment and Planning A*, Vol. 44, n°1, 2012, pp. 21-30; PECK, Jamie and THEODORE, Nik. *Fast Policy: Experimental Statecraft at the Thresholds of Neoliberalism*. Minneapolis, London: University of Minnesota Press, 2015.

<sup>3</sup> DUMOULIN, Laurence and SAURUGGER, Sabine. Les policy transfer studies : analyse critique et perspectives. *Critique internationale*, Vol. 48, n° 3, 2010, pp. 9-24; BELAND, Daniel, HOWLETT, Michael and MUKHERJEE, Ishani. Instrument constituencies and public policy-making: an introduction. *Policy and Society*, Vol. 37, n°1, 2018, pp. 1-13; FOLI, Rosina, BELAND, Daniel and BECK FENWICK, Tracy. How instrument constituencies shape policy transfer: a case study from Ghana. *Policy and Society*, Vol. 37, n°1, 2018, pp. 108-124.

seeming neutrality but also as vehicles of social meaning and political ideas.<sup>4</sup> With Barbara Czarniawska and Guje Sevón, I have argued that ideas travel across borders more easily when materialised in policy instruments,<sup>5</sup> here public interest registers and codes of conduct.

Tracing the diffusion of these instruments allows one to “track the interactions between actors and institutions across space and time (...) retroactively from the adoption process back to the initial learning”<sup>6</sup> and “interrogating how the policy has mutated or been transformed along the way”.<sup>7</sup> Following the instruments further along the journey into new national contexts shows how the very ideas they carry are transformed through the reinterpretation and negotiations among policy actors, resulting not in convergence but in *divergent* convergence (Chapter 1). This is certainly not specific to anti-corruption policy, and one can safely assume that the same could be observed in many other policy fields in which (transnational) third parties are involved in the development of policy templates (such as inclusive growth, neoliberalism, public governance, rule of law, drug policy or industrial policy).<sup>8</sup> The following sections summarise the main findings of my dissertation and the contributions it makes to a range of specific literatures concerning policy transfer and convergence, (anti-)corruption, as well as the instrumentation and transnationalisation of public policy.

### **a) Seeing the local in the global: emulation of the Anglo-American approach to conflicts of interest**

While there are several factors that contribute to explaining the convergence of anti-corruption policy in Europe, this dissertation has established that the emulation of early movers is

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<sup>4</sup> LASCOUMES, Pierre and LE GALES, Patrick. *Gouverner par les instruments*. Paris: Presses de Sciences Po (P.F.N.S.P.), 2005.

<sup>5</sup> CZARNIAWSKA-JOERGES Barbara, and SEVÓN Guje. Translation is a vehicle, imitation its motor, and fashion sits at the wheel. In CZARNIAWSKA-JOERGES Barbara, and SEVÓN Guje (eds.) *Global ideas: How ideas, objects and practices travel in the global economy*. Malmö: Malmö: Liber & Copenhagen Business School Press, 2005.

<sup>6</sup> WOOD, Astrid. Tracing Policy Movements: Methods for Studying Learning and Policy Circulation. *Environment and Planning A: Economy and Space*, Vol. 48, n° 2, 2016, p. 395.

<sup>7</sup> McCANN, Eugene and WARD, Kevin. *Op. cit.* 2012, p. 46.

<sup>8</sup> DJELIC, Marie-Laure. *Exporting the American model: the postwar transformation of European business*. Oxford: Oxford University Press, 1998; LEVI-FAUR, David and JORDANA, Jacint. Regulatory Capitalism: Policy Irritants and Convergent Divergence. *Annals of the American Academy of Political and Social Science*, 2005, vol. 598, p. 191-197; ALIMI, Deborah. ‘Going Global’: Policy Entrepreneurship of the Global Commission on Drug Policy. *Public Administration*, Vol.93, n° 4, 2015, pp. 874-889; BAN, Cornel. *Ruling Ideas. How Global Neoliberalism Goes Local*. Oxford: Oxford University Press, 2016; ZIMMERMAN, Lisbeth. *Global Norms with a Local Face. Rule-of-Law Promotion and Norm Translation*. Cambridge University Press, 2017; SCAPIN, Thomas. *La circulation transnationale de l'éthique publique. Socio-histoire d'un répertoire océanien du bon gouvernement et de ses réceptions au Québec et en France (années 1990-années 2010)*. Doctoral dissertation, Sciences Po Lyon, defended on December 11<sup>th</sup> 2019.

key to understanding the growing resemblance of conflict of interest regulation in Great Britain, France and Sweden. Comparing the moments of adoption of public interest registers and codes of conduct across countries provides evidence of the sequential adoption of the same instruments by different countries. It also sheds light on the origins of the instruments in the Anglosphere and on the mechanisms of diffusion. In British politics, interest disclosure originally served to ensure that, in a context in which MPs typically relied financially on outside activities, political decisions were taken with the public interest, often understood as the interest of one's constituency, in mind. Public interest registers and codes of conduct are the offspring of this practice and have been adopted in and adapted to different political systems. The United States adopted its code of conduct and financial disclosure obligation for parliamentarians in 1968 and Britain followed shortly with an obligation for MPs to register their interests in 1974. The adoption of the British code of conduct in 1995 set in motion the international trend towards codifying parliamentary ethics. Interest registers rapidly spread across borders in the late 1990s, followed by a similar diffusion of codes of conduct from the 2010s on – Sweden adopted the instruments respectively in 1996 and 2016, France adopting both in 2011 but implementing the interest register only since 2013 (Chapter 2).

Temporality needs to be considered here as the order in which countries adopted these instruments matters. The concern about external influence on political decisions is not new, but, depending on national contexts, the notion of 'conflicts of interest' and the need for their regulation are. Resolving certain situations that political actors find themselves in by labelling them 'conflicts of interest' has indeed been more common in the Anglo-liberal world than in continental and Northern Europe. As William Sewell suggests "what happens at an earlier point in time will affect the possible outcomes of a sequence of events occurring at a later point in time".<sup>9</sup> By developing targeted solutions first, the United States and Britain durably influenced, if indirectly, policy-making in the area beyond their national borders.

While the early adoption of interest registers and codes of conduct in these countries was a necessary condition for France and Sweden to later adopt the same instruments, it is not in itself sufficient as an explanation. International politics as well as the ambition and status of the early movers played a crucial role in the diffusion of these instruments. Countries in the Anglosphere,

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<sup>9</sup> SEWELL, William H. Three temporalities: toward an eventful sociology. In MCDONALD, Terrence J. (ed.) *The Historic Turn in the Human Sciences*. Ann Arbor, MI: University of Michigan Press, 1996, pp. 262-263.

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and more particularly the United States and Britain, became pioneers of conflict of interest regulation, being ahead of others in this policy domain and serving as exemplars. They progressively turned into policy leaders, with an ambition to export their model and shape the international agenda. Successive American governments played a role of agenda entrepreneur at the international level in the 1980s and 1990s, organising policy events, funding advocacy coalitions and promoting the topic of corruption in various international forums, while Britain took over that role in the 2000s. While not a policy leader to the same extent, Canada (and the Francophone region of Québec) functioned as a translating platform for disclosure instruments and ethics codification to travel into the French political system. As Duncan Liefferink and Rüdiger Wurzel put it, “leaders and pioneers come and go”.<sup>10</sup> With its accumulation of anti-corruption reforms, I have shown how France recently turned into a policy leader in the field, through the establishment of an international policy network, its support to international institutions and the transformation of its participation in the Open Government Partnership, initially focussed on internal reform, into a platform for exporting its policy model through development aid (Chapter 3).

The temporal dimension is thus an essential element of the convergence of conflict of interest regulation. So too is power. Joseph Nye argues that a country cannot lead without power,<sup>11</sup> and it is not coincidental that the Anglosphere was influential in promoting the anti-corruption agenda as part of the wider coordination of a liberal world order and its principles of governance.<sup>12</sup> The order of policy adoption and countries’ structural power (rather than evidence of the success of their policy model) constructed the United States and Britain as policy leaders in the field of anti-corruption policy. Indeed, international indicators usually rank other countries, often Nordic ones, as the ‘least corrupt’. It is nevertheless policies invented in the Anglosphere that inspired policy actors at the domestic level in France and Sweden, and at the international level. The authority of ‘pioneers’ and ‘leaders’ in the field of anti-corruption is rather odd given that it stems from the recognition of them having a problem to solve. They indeed adopted innovative means to regulate conflicts of interest as a reaction to problems made visible by scandals. Being early movers in a policy field can be an incentive to shape the international policy agenda accordingly, thus making sure that they already comply with future standards. The dissertation thus makes the

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<sup>10</sup> LIEFFERINK, Duncan and WURZEL, Rüdiger K.W. Environmental leaders and pioneers: agents of change? *Journal of European Public Policy*, Vol.24, n° 7, 2017, p. 955.

<sup>11</sup> NYE, Joseph. *The Powers to Lead*. Oxford: Oxford University Press, 2008, p. 27.

<sup>12</sup> DEZALAY, Yves and GARTH, Bryant G. (eds.) *Global Prescription: The Production, Exportation, and Importation of a New Legal Orthodoxy*. Ann Arbor: University of Michigan Press, 2002.

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case that when resolving shared problems, governments and international institutions follow policy ‘pioneers’ (first adopters) and ‘leaders’ (influential players) rather than (actual) ‘best practices’, especially in policy field in which evaluation proves particularly challenging.

The internationalisation of the anti-corruption agenda and the emergence of international policy brokers facilitated the transfer of public interest registers and codes of conduct from the Anglosphere to other countries. Policy pioneers, turned leaders, contributed to put corruption on the agenda of the United Nations, the OECD and the Council of Europe, among others. They influenced the global anti-corruption agenda through funding dedicated civil society organisations, international secretariats and events, by making use of their diplomatic resources, and, more indirectly, through placing national issue experts within these organisations. This created a fertile ground for the dissemination of their policy preferences, turning international institutions into policy brokers legitimising their preferred approaches to corruption prevention, having internalised their worldview and diffusing it autonomously. Their status as early movers provided them with a cognitive advantage to influence international institutions in search of solutions to a problem they recently ‘discovered’.

The multiplication of international actors involved in anti-corruption work contributed to circulate policy ideas and instruments to regulate conflicts of interest, through their constitution of a transnational policy community, composed of intergovernmental organisations, transnational coalitions, experts and academics. The circulation of policy ideas was indeed facilitated by the homogeneity of the policy message on conflict of interest regulation forged by their collaboration, common membership, frequent exchanges and the circulation of people and ideas between them. While international institutions exist autonomously of states and contribute, once seized with an issue, to the dynamism of policy work, their policy message often reflects the ideas and values of powerful leaders in the policy field. Through their involvement in “the diffusion of ideas, standards and policy practice”<sup>13</sup>, the actors of this transnational policy community became international policy brokers promoting disclosure systems and codes of conduct as *anti-corruption* policies.

While the multiplication of international policy actors and the emergence of a transnational policy community led to increasing efforts to generate common solutions to the problem of corruption, the part of the agenda that concerns conflict of interest regulation was originally shaped

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<sup>13</sup> STONE, Diane. *Op. cit.* 2013, p. 31.

by the emulation of policy pioneers. Policy convergence in this area is thus best seen as an indirect consequence of national political scandals in Britain, the United States and Canada, which led to policy innovation with regards to conflict of interest regulation. These innovations in turn shaped the path that international and national policy-making in the policy area would later follow.

## **b) Conflict of interest regulation as part of the global anti-corruption agenda**

Using Kingdon's language, the anti-corruption policy stream, in which public interest registers and codes of conduct float, was largely constituted transnationally.<sup>14</sup> Understanding the convergence of conflict of interest regulation requires one to look at the transnationalisation of the anti-corruption agenda. Public interest registers and codes of conduct were indeed promoted by policy pioneers and then diffused internationally as anti-*corruption* instruments, after international issue entrepreneurs constructed corruption as a *global* problem requiring *global* solutions, or rather the globalisation of existing policy solutions developed by policy pioneers in the Anglosphere. With the preventive turn of the anti-corruption agenda, international actors moved the focus from corruption itself to causes (and causes of causes) of corruption and sought to make corruption governable. This increased focus on corruption *risks* helped couple conflicts of interest to the problem of corruption, the former being defined as creating opportunities for the latter (Chapter 4).

With the support of policy-makers and experts from the United States and others countries in the Anglosphere, the World Bank and Transparency International, an NGO founded by former World Bank officials, made corruption a legitimate problem for international intervention (and made it illegitimate not to regard it as a problem), constructed its 'globalness' and imposed an economic perspective on corruption as an opportunity problem stripped of cultural or political dimensions. Through their efforts to propose and normalise a definition of corruption as an individual violation of public office they shaped the cognitive context of policy-making, while contributing to build anti-corruption as a transnational policy field. Intergovernmental organisations found it harder to reach a consensual definition of corruption, suggesting that the problem was far more political than implied by the World Bank or Transparency International. Instead they resolved the interpretive ambiguity of what constitutes corruption by establishing lists of practices to be labelled 'corruption' in the several international conventions adopted between

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<sup>14</sup> KINGDON, John W. *Op. cit.* 1984.

the mid-1990s and the mid-2000s. To accommodate the diversity of national perspectives and of their own agendas, international institutions involved in anti-corruption made a strategic use of ambiguity, leaving room for state and non-state actors to interpret ‘corruption’, and for themselves to extend their activities labelled ‘anti-corruption’. As Jacqueline Best puts it, international organisations create global rules to make the world governable, but to truly understand how they function scholars need to pay attention to their use of ambiguity as a way to circumvent the limits of making global rules in a complex and uncertain world.<sup>15</sup>

Against this background, several intergovernmental organisations developed international policies and tools, including nine dedicated international conventions, with the objective to, on the one hand, facilitate international cooperation to ‘fight’ transnational forms of corruption and, on the other, to harmonise national policy. Through the development of international legal and quasi-legal instruments against corruption, public interest registers and codes of conduct were legitimised as ways to make corruption less likely. A long-term perspective shows that these instruments are the outcome of a process that originally had little to do with the systematic regulation of elected officials’ conduct. From post-Cold War concerns about fraud in international trade, misuse of development aid, democratisation, and transnationalisation of organised crime, the construction of consensus around these instruments led to an external pressure for defining appropriate standards of political conduct in ‘old’ democracies as well, through a form of international feedback (Chapter 5).

International anti-corruption instruments are indeed accompanied by implementation review mechanisms based on peer-review that serve as tools to pressure governments to comply with international standards. Through effectively ‘naming and shaming’ countries, international institutions developed a form of ‘passive-aggressive’ transfer that contributed to the convergence of conflict of interest regulation in Britain, France and Sweden. The Council of Europe’s Group of States against Corruption (GRECO) proved particularly efficient in encouraging reforms, through pressure and guidance. Moreover, the dissertation has also shown that, while exposed to the same pressure, national actors and institutions do not mediate this input in a similar manner and do not make the same ‘usage’ of international standards. As discussed further in Section c,

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<sup>15</sup> BEST, Jacqueline. Ambiguity and Uncertainty in International Organizations: A History of Debating IMF Conditionality. *International Studies Quarterly*, Vol.56, n° 4, 2012, p. 687.

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national actors and institutions mediate the transfer of policy ideas from international to national politics, resulting in a form of institutional heterogeneity.

International policy brokers created institutional tools to encourage anti-corruption reforms reflecting their policy preferences in member-states. They also shaped the cognitive framework of domestic policy-making through knowledge production and argumentation. Borrowing John Kingdon's quasi-Darwinian conception of ideational selection,<sup>16</sup> international policy brokers constructed the technical feasibility and value acceptancy of public interest registers and codes of conduct. Using a rhetoric of evidence-based policy-making, they rationalised their discourse and legitimised the policies they promoted as technical solutions to a governable problem. Similarly, the use of a technical vocabulary (benchmarks, toolkits...) contributed to strip policy instruments of the political ideas and values they carry from their 'place of birth' (reflecting the Anglo-liberal conception of politics). Despite their recognition that there is no 'one-size-fits-all' solution to corruption, international policy brokers presented these anti-corruption instruments as 'best practices' (basing their legitimacy on their application elsewhere), and as easily applicable, neutral tools. Combining technicisation of policy with a more normative discourse on the consequences of corruption, they also contribute to the instruments' value acceptancy, presenting registers and codes as viable solutions to a recognised 'public bad' (Chapter 6).

While the policy translation literature generally focusses on the transformation of policy ideas as they are transferred between (and adapted to fit) national contexts,<sup>17</sup> this dissertation adds a perspective to this scholarship by bringing forth a case of two-way translation of policy, from the international to the national but also from the national to the international. Existing research on global governance has pointed to international institutions' depoliticisation tactics.<sup>18</sup> My approach

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<sup>16</sup> CONSIDINE, Mark, LEWIS, Jenny M. and ALEXANDER Damon. Networks, innovation and public policy: politicians, bureaucrats and the pathways to change inside government. Basingstoke New York: Palgrave Macmillan, 2009.

<sup>17</sup> CZARNIAWSKA-JOERGES, Barbara and SEVÓN Guje. *Translating Organizational Change*. New York, Berlin: Walter de Gruyter, 1996; LENDVAI, Noémi and STUBBS, Paul. Policies as translation: situating transnational social policies. In HODGSON, Susan H. and IRVING, Zoë (ed.) *Policy reconsidered Meaning, politics and practices*. Bristol: The Policy Press. 2007, pp. 173-189; STONE, Diane. Transfer and Translation of Policy. *Policy Studies*, Vol. 33, n° 6, 2012, pp. 483-499; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. Convergence, transferts et traduction. Les apports de la comparaison transnationale. *Gouvernement et Action Publique*, Vol. 3, n° 3, 2013, pp. 377-393; DELCOUR, Laura and TULMETS, Elsa. *Policy Transfer and Norm Circulation: Towards an Interdisciplinary and Comparative Approach*. New York: Routledge, 2019.

<sup>18</sup> STONE, Diane. *Knowledge Actors and Transnational Governance*. London: Palgrave Macmillan, 2013; NAY, Olivier. International Organisations and the Production of Hegemonic Knowledge: how the World Bank and the OECD helped invent the Fragile State Concept. *Third World Quarterly*, Vol. 35, n°2, 2014, pp. 210-231; STONE, Diane. Global Governance Depoliticized. In FAWCETT, Paul, FLINDERS, Matthew, HAY, Colin and WOOD, Matthew Sofia Wickberg – « Global instruments, local practices » - Thèse IEP de Paris – 2020

has been to combine this literature with the study of policy transfer and translation to elucidate the mechanisms through which policy ideas are selected to be transferred and the role of international institutions as key actors in the process. Translating policy ideas into the international sphere involves decontextualising them and (partly) erasing their origin to create neutral ‘good practices’ that can be applied in all political systems and contexts.

### **c) Understanding divergence: translating imported ideas into national policy**

If the convergence of conflict of interest regulation can be explained by the emulation of policy instruments developed in the Anglosphere and their promotion by international policy brokers, how can we explain that British, French and Swedish parliamentarians’ conflict of interest are not regulated similarly in practice (with varying levels of transparency and degrees of external regulation)? Despite the anti-corruption policy field being highly internationalised, the circulation and transfer of ideas and instruments to regulate conflicts of interest has not led to a simple linear convergence, but to a more complex *divergent* convergence. Adapting Cornel Ban’s words, “rather than a mass-produced off-the-rack suit, [anti-corruption policy] is a bespoke outfit made from a dynamic fabric that absorbs local colour”.<sup>19</sup> To absorb local colours, ideas about conflicts of interest and how to regulate them had to be indigenised by national policy actors to fit local institutions and context. It is nothing new for public policy scholars or practitioners that hybridisation of transferred policy is the rule rather than the exception, but this dissertation contributes to our knowledge about the mechanisms through which this hybridisation happens. My findings echo existing research showing the mediating role of policy actors reinterpreting ideas along the policy cycle and of the institutions into which they are translated.<sup>20</sup> One can thus reasonably expect to find similar results in most policy fields that are somewhat transnationalised. The consequences of the level and type of politicisation on the hybridisation of policy ideas might be more specific to public problems susceptible to generate scandals and crises putting policy-makers under pressure, such as political corruption as studied here, or organised crime, drug consumption or public health (as currently exemplified by responses to the Covid 19 pandemic).

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(ed.) *Anti-Politics, Depoliticisation and Governance*. Oxford University Press. 2017; SENDING, Ole Jacob. Knowledge Networks, Scientific Communities, and Evidence-Informed Policy. In STONE, Diane and MOLONEY Kim. *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.

<sup>19</sup> BAN, Cornel. *Ruling Ideas. How Global Neoliberalism Goes Local*. Oxford: Oxford University Press, 2016, p. 5.

<sup>20</sup> CZARNIAWSKA-JOERGES Barbara, and SEVÓN Guje. *Op. cit.* 2005; HASSENTEUFEL, Patrick, BENAMOUZIG, Daniel, MINONZIO, Jérôme and ROBELET, Magali. Policy Diffusion and Translation The Case of Evidence-based Health Agencies in Europe. *Novos Estudos CEBRAP*, Vol. 36, n°1, 2017.

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The transnational policy stream is both a resource (making solutions available) and a constraint (limiting the world of possibilities) for local actors, and does not play the same role in different national contexts. While international pressure and foreign references served to open the policy window and legitimise particular policy solutions in Sweden, French policy-makers endeavoured to discursively endogenize imported policy ideas, invariably legitimising them through references to past historical events rather than foreign examples. Swedish policy-makers reacted to pressure from abroad and introduced a public interest register and a code of conduct as relatively costless reforms. In contrast, their British and French counterparts adopted these instruments in response to pressure from the public, as part of a broader, more politicised, anti-corruption reform. The policy process in Sweden was kept largely internal, with mostly parliamentarians and clerks interacting, while it involved actors external to the parliament in Britain and France, with a strong engagement of the government, public administration and civil society (Chapter 8). Policy-making in this field appears quite paradoxical: high levels of initial politicisation, following moments of crisis (triggered by scandals involving members of the governing party), leading to a subsequent depoliticised regulation as governments respond to (their perception of) the public belief that politicians are not well-placed to regulate their own behaviour, as is increasingly the case in Britain and France. The governments of these countries used anti-corruption policy to manage the crisis and safeguard their legitimacy, whereas Swedish parliamentarians took the initiative to regulate conflicts of interest themselves, albeit after several decades of failed attempts. In moments of crisis, governments are thus more inclined to follow international recommendations to externalise control, which suggests that the transnationalisation of the policy field also has a feedback effect on pioneers.

Contingency matters for understanding the divergent dimensions of conflict of interest regulation in the three cases because context affects policy actors' understanding of their own interests in adopting or accepting more intrusive and externalised regulation. Against a view of policy-making as a purely rational process, the dissertation has suggested that contingency and ambiguity are important features to acknowledge and to take into account in making sense of policy-making in practice. There might be a reality 'out there', but it lends itself to institutionally embedded social actors' interpretation in reaction to a changing context.<sup>21</sup> Interests similarly do not

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<sup>21</sup> BELAND, Daniel and COX, Robert Henry (eds.) *Ideas and politics in social science research*. Oxford, New York: Oxford University Press, 2011.

have an existence outside of the actors' interpretation of the context: "interests do not exist, but constructions of interests do".<sup>22</sup> Against this background, policy-making is contingent as it depends on social actors' agreement in a given context.<sup>23</sup> It is ambiguous as the context can also lend itself to a variety of interpretations and narratives, which in turn influence how actors understand a problem, its causes and solutions.

The adoption of public interest registers and codes of conduct in France and Sweden did not happen overnight, following their inclusion in the international anti-corruption toolbox. On the contrary, it followed a winding road and required a relatively long process involving different groups of skilful actors, over several years in France and decades in Sweden, to make the instruments acceptable to local actors. Policy intermediaries were particularly important in enabling ideas about conflict of interest regulation to circulate between the public and private sectors, public administration and politics, the national and international levels. Government officials and parliamentarians, often acting as individual policy entrepreneurs, were key to turn ideas into policy. But the choice and design of instruments often resulted from the work of secondary actors, behind the scenes, such as parliamentary clerks and officials working within institutions regulating political ethics. The actors themselves were instrumental in helping ideas cross borders but only through their interactions with each other, with their counterparts abroad and with actors operating within the international policy community. It is through exchanges and interactions that they build an inter-subjective consensus that a situation or practice is problematic and should be labelled 'conflict of interest'. It is through interactions that disclosure obligations and ethics codification progressively became understandable and acceptable to (a sufficient portion of) the target population (Chapter 7).

While contingency and mediation partly explain the divergence of conflict of interest regulation in practice, more structural factors also contributed to put the three countries on different implementation paths. If policy actors are constrained by the national and international contexts, they are also constrained by existing institutions, such as conceptions of politics and representatives' role(s), the political system, the internal workings of the parliament and past policy choices. Public interest registers and codes of conduct were originally designed as soft tools to regulate conflicts of interest, an informally defined problem. Through a process of institutional

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<sup>22</sup> HAY, Colin. Ideas and the Construction of Interests. In BÉLAND, Daniel and COX, Robert (eds.) *Ideas and Politics in Social Science Research*. Oxford University Press, 2011, p. 79.

<sup>23</sup> *Ibid.*

translation, they were adapted to France's statist and legalistic tradition, relying on administrative control and hard law. As a first attempt to regulate officials' conduct through 'softer' preventive tools, public interest registers and codes of conduct had to be adapted to the anti-corruption reform trajectory based on administrative control of officials' wealth, incompatibilities and the detection of illicit enrichment. In contrast, in Sweden, they were translated into a political system based on collective interest representation and party-based democracy, where political sanction and resignation are preferred over administrative or legal sanctions, putting political parties at centre stage of the management of parliamentary ethics. The long-standing tradition of government transparency contributed to make outside actors (the media principally) essential elements of conflict of interest regulation. Adapting policy instruments to new political contexts therefore means that their formulation, reach and theory of change might be different from the 'original' and that other actors and institutions be tasked with their implementation (Chapter 9).

Through their reinterpretation of imported policy ideas, domestic actors (knowingly or otherwise) contribute to make them fit the national political system, thus avoiding the risk of what Dolowitz and Marsh call a risk of 'inappropriate transfers' where "insufficient attention [has been] paid to the differences between the economic, social, political and ideological contexts in the transferring and the borrowing country".<sup>24</sup> They can do so both intentionally, as they perceive the differences between the transferring and borrowing countries, and unconsciously as they interpret new ideas through their ideational background. This research has found that intentionality decreases as the idea moves deeper into a country's political system, the first transfer agents being conscious of the origin of the policy ideas they import while actors further up the decision chain are less perceptive to their international sources. Policy translation is thus a way to mitigate friction between imported ideas and existing institutions, which encourage us to revise expectations about convergence.<sup>25</sup> Despite elements being *lost* in translation, I argue that much is actually to be gained, as translation is not (necessarily) a watering-down of international norms but rather a way to mitigate failure.<sup>26</sup> Translation indeed allows us to say *almost* the same thing.<sup>27</sup>

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<sup>24</sup> DOLOWITZ, David P. and MARSH, DAVID. Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making. *Governance: An International Journal of Policy and Administration*. Vol. 13, n° 1, 2000, p. 17.

<sup>25</sup> LEVI-FAUR, David and JORDANA, Jacint. *Op. cit.* 2005, pp. 193-194.

<sup>26</sup> In France, the adoption of purely soft self-regulatory measures might have had little effects or caused public ridicule as political actors and the public are used to more top-down approaches. While in the Swedish case, what could be seen as a watering down of international standards given that no official control mechanisms have been put in place, is instead a means to reinforce existing control mechanisms through the media and political parties.

<sup>27</sup> ECO, Umberto. *Op. cit.* 2003.



#### **d) Harmonisation of conceptions of political corruption**

This dissertation has shown that applying a constructivist institutionalist perspective on political corruption has opened new terrains of research. Putting (intersubjective and institutionally-embedded) ideas at the centre of the analysis, it has borrowed Carol Bacchi's approach to problematisation through policy (known as the WPR approach)<sup>28</sup> to study how political corruption was represented through a specific subset of anti-corruption policy, namely conflict of interest regulation. Taking a constructivist institutionalist perspective has also served to draw attention to interpretive ambiguity, the politically contingent nature of problem definition and the politics of its (partial) resolution through policy-making. Combined with a focus on policy instruments as vehicles of meaning (including problem definition), this dissertation brings a new perspective to the literature on political corruption.

This research has sought to understand the *divergent* convergence of a type of anti-corruption policy. One of the main implications of the convergence of policies is that relevant actors increasingly resolved the ambiguity of what constitutes ethical/corrupt conduct in political life (and the risks thereof) in a similar manner across borders. The translation of conflict of interest regulation has led, especially in France, to a broadening of the concern for the abuse of public resources with an anxiety about the influence of private interests on political decision-making, through the emergence of this 'new' problem (illustrated by the Delevoye scandal for instance). While conflicts of interest were seen as a risk of political corruption in the Anglosphere, the spread of policy instruments requiring politicians to resolve such situations (and helping them to do so) implies that politicians themselves are forced to look at their private activities and connections differently while citizens are encouraged to scrutinise politicians through a new lens. While the circulation of policy ideas is not a "borderless game"<sup>29</sup> as this dissertation has shown, it is clear that the transfer of conflict of interest regulation blurs the boundaries between conceptions of (un)ethical conduct across jurisdictions and sectors.

The instrumentation of the anti-corruption policy field contributed to the convergence of national policy and the harmonisation of problem definition. As established in the empirical

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<sup>28</sup> BACCHI, Carol L. *Analysing Policy: What's the Problem Represented to be?* French Forest, N.S.W: Pearson, 2009; BACCHI, Carol. Introducing WPR. n.d. Online, available at: <https://carolbacchi.com/about/> (accessed on February 25<sup>th</sup> 2020).

<sup>29</sup> VAUCHEZ, Antoine. Le prisme circulatoire. Retour sur un leitmotiv académique. *Critique internationale*, Vol. 59, n° 2, 2013, pp. 9-16.

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chapters, this instrumentation happened at two levels: concerning the recommended policies (since anti-corruption instruments have become increasingly popular) and the means used to transfer them (with the development of compliance mechanisms, benchmarks and toolkits). The very language of instruments has become increasingly common, with an interest in toolkits, benchmarks and indicators, a focus on new technologies and a search for techniques that *work*. The instrumentation of the policy area is not without consequences. The instrumentation of the policy field facilitated the transfer both of policies, presented as easy-to-use solutions to political corruption, and of the definition of the problem itself, ‘encapsulated’ in the instruments. It thus helped harmonise conceptions of political corruption across borders. By putting focus on these technologies of government, this instrumentation also resulted in the imposition of a ‘minimalist approach’ to political ethics, narrowing it down to an issue of individual misconduct and financial conflicts of interest,<sup>30</sup> to which we turn in the next section. Using the literature on policy instruments and instrumentation not only is an valuable and innovative choice from a methodological perspective, but it also makes visible new dimensions of global policy-making.

## II. Anti-corruption policy in an era of anti-politics sentiment

It was not the aim of this dissertation to provide a policy answer to the problem of political corruption. Indeed, with respect to corruption prevention, it may even raise more questions than it answers. The research questions and design did not set out to measure the success or failure of existing anti-corruption policies and provide targeted advice to policy-makers on one of the most important questions of our time. Through the narrow window of two policy instruments, it does however tell the story of how political corruption and political ethics are currently conceived of by policy-makers within the multi-level transnational community that has developed around this issue. As such, it does have potential implications for understanding the perceived failure of anti-corruption policies,<sup>31</sup> even if this was not its direct ambition. It tells the story of how a problem

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<sup>30</sup> PRESTON, Noel. Legislative Ethics. Challenges and Prospects. In BOIS, Carol-Anne, PRESTON, Noel, and SAMPFORD, Charles J. G. *Ethics and Political Practice: Perspectives on Legislative Ethics*. London, Annandale: Routledge Federation Press, 1998, pp. 143-152.

<sup>31</sup> PERSSON, Anna, ROTHSTEIN, Bo and TEORELL, Jan. Why Anticorruption Reforms Fail – Systematic Corruption as a Collective Action Problem. *Governance*, Vol. 26, n°3, 2013, pp. 449-471; HEYWOOD Paul (ed.) *Routledge Handbook of Political Corruption*. Abingdon: New York: Routledge. 2015; MARQUETTE, Heather and PEIFFER, Caryn. Grappling with the “real politics” of systemic corruption: Theoretical debates versus “real-world” functions. *Governance*, Vol. 31, n°3, 2018, pp. 499-514; MARQUETTE, Heather, and PEIFFER, Caryn. Thinking Politically about Corruption as problem-solving: A Reply to Persson, Rothstein, and Teorell. *Governance*, Vol. 32, n° 4, 2019, pp. 811-820; MASON, Phil. *Twenty years with anticorruption. Part 4 Evidence on anti-corruption – the struggle to understand what works*. U4 Practitioner Experience Note 2020:4. Bergen : Chr. Michelsen Institute, 2020.

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that is fundamentally political progressively became presented as technical. Despite not studying the performance of anti-corruption policy, my dissertation gives me an opportunity to suggest a way forward for policy-makers concerned with the problem of political corruption and its consequences. Here, I firstly discuss the frustration generated by the difficulty to evaluate these policies and the potential dangers of instrumentation of this agenda. Secondly, I make the case for a contextually embedded approach to political ethics that takes the nature of politics seriously. This is arguably made even more necessary in a time of growing anti-politics sentiment.<sup>32</sup>

### **a) Solving wicked problems?**

While public anxiety over political corruption and the fear of politics serving the interest of the few is rife, existing policies presented as solutions to the problem are notoriously difficult to evaluate (Chapter 6). The difficulty to know what works to prevent political leaders from abusing their power can generate frustration among both policy-makers seeking (to be seen) to ‘do something’ and citizens. Beyond the imperfection of indicators and the challenges of evaluating preventive policy, the difficulty to evaluate policy performance also lies in the multiple (and sometimes contradictory) objectives attached to policy instruments in the field. In addition to the promise that they will make corruption less likely, interest registers and codes of conduct are presented as solutions to public distrust and disaffection in political actors and institutions, the crisis of representation and the decline of democracy.

Despite the problem-solving rhetoric characteristic of this policy field, there is a vagueness regarding the problems that these instruments are presented as solutions to. What’s more, all of the objectives listed above can arguably be defined as wicked problems, in Horst Rittel and Melvin Webber’s sense, given that (i) they are complex and interpretively ambiguous, (ii) multiple perspectives on the nature of the problem and possible solutions co-exist, (iii) actors’ viewpoints on the problem and solutions are shaped by different values and assumptions, (iv) their severity and intractability are high, and (v) they are interconnected and can be symptoms of each other.<sup>33</sup>

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<sup>32</sup> FAWCETT, Paul, FLINDERS, Matthew, HAY, Colin and WOOD, Matthew (ed.) *Anti-Politics, Depoliticisation and Governance*. Oxford University Press. 2017; CLARKE Nick, JENNINGS, Will, MOSS, Jonathan and STOKER, Gerry. *The good politician: folk theories, political interaction and the rise of anti-politics*. Cambridge: Cambridge University Press, 2018.

<sup>33</sup> RITTEL, Horst and WEBBER, Melvin. Dilemmas in a general theory of planning. *Policy Sciences*, Vol.4, n° 2, 1973, pp. 155-169; HEAD, Brian W. Problem Definition and the Policy Process: Wicked Problems. *Oxford Research Encyclopedia of Politics*, 2017; CROWLEY, Kate and HEAD, Brian. The enduring challenge of ‘wicked problems’: revisiting Rittel and Webber. *Policy Sciences*, Vol.50, n° 4, 2017, pp. 539-547.

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Wicked problems cannot easily be tamed or fixed by rational problem-solving and instrumental policy-making, nor can the performance of policy instruments be measured against the prevalence of such wicked problems. The vagueness of ends and the ‘wickedness’ of the problems to solve indeed present serious challenges for the evaluation of policy solutions.

While measuring success is a challenging task (what *is* success when the objective is vague or unattainable?), every new political scandal can be interpreted as an anecdotal evidence of failures of anti-corruption policy and imperfection of the system. These scandals sometimes lead to corrective reforms (though these are always responsive rather than proactive), as discussed in Chapter 8. More recently, the scandal involving François Fillon (candidate in the French presidential election, former Prime Minister and parliamentarian) similarly exposed flaws in the institutional framework, showing that it was possible for a parliamentarian to provide (allegedly) sham employment to close relatives and to set up a consultancy firm shortly before leaving the premiership and being elected to parliament.<sup>34</sup> While scandals serve to expose governance failures, they can also be made possible by anti-corruption policies themselves, defining new practices as unacceptable or providing the public and the media with new information and new ways of scrutinising political actors’ conduct. While these might eventually reduce certain forms of abusive conduct, there is little chance that they foster public trust, at least in the short term.<sup>35</sup>

Evaluating the performance of anti-corruption instruments is made challenging by the conflicts among policy objectives as framed by reformers. If we want to counter political disaffection and the consequences of growing distrust in political institutions, anti-corruption instruments might not only be inefficient, but counter-productive. Even in the absence of tools to measure the performance of anti-corruption policy, one can quite easily come to the conclusion that the adoption of dedicated policies did not (re-)ignite public trust in political institutions and personnel. Political disaffection seems to be going up, not down. In their recent book, Nick Clarke et al. argue that, in the 21<sup>st</sup> century, citizens grew cynical about politics, breeding growing contempt for political actors.<sup>36</sup> The anti-corruption agenda, especially transparency-based reforms, count on

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<sup>34</sup> DAVET, Gérard and LHOMME, Fabrice. Sur la piste des revenus de Penelope et François Fillon. *Le Monde*, February 18<sup>th</sup> 2020; DAVET, Gérard and LHOMME, Fabrice. François Fillon et son très cher carnet d’adresses. *Le Monde*, February 19<sup>th</sup> 2020.

<sup>35</sup> SOLE-OLLE, Albert and SORRIBAS-NAVARRO, Pilar. Trust no more? On the lasting effects of corruption scandals. *European Journal of Political Economy*, Vol. 55, 2018, pp. 185-203; BAUHR, Monika and GRIMES, Marcia. Indignation or Resignation. *Governance*, Vol. 27, 2014, pp. 291-320.

<sup>36</sup> CLARKE Nick, JENNINGS, Will, MOSS, Jonathan and STOKER, Gerry. *The good politician: folk theories, political interaction and the rise of anti-politics*. Cambridge: Cambridge University Press, 2018, p. 116.

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critical enlightened citizens to hold their leaders to account. Thus, growing cynicism about politics might hamper the effectiveness of initiatives against political corruption by turning citizens away from politics altogether.

Political disaffection and disengagement have been explained by the growing individualisation of society (Robert D. Putnam), improved education levels making citizens less deferent (Pippa Norris) and the appeal of post-materialist values (Ronald Inglehart).<sup>37</sup> The argument here echoes Colin Hay's call for shifting our attention to the motives projected onto public officials by public choice theory and new public management (NPM).<sup>38</sup> Our tendency to assume the worse of our representatives has indeed spread in our societies, to the point that it informs public policy. I argue that such critiques, often directed towards NPM, extend to the anti-corruption regime, built on the idea that political actors are instrumental interest-maximisers and justified by the assumption that it is rational to expect the worst of them. Far from neutral technical instruments, anti-corruption policies resolve the interpretive ambiguity surrounding the motivation of political conduct by encouraging citizens to scrutinise politicians in a certain way, suggesting that selfish motives (susceptible to generate corruption if acted upon) are the norm rather than the exception (the proof of which is yet to be found).

We need to be aware that any and all *anti*-policies tend to draw attention to the problem that they seek to solve.<sup>39</sup> Designing policies that construct the target population in this way and inciting citizens to look critically at their representatives is not a bad thing *per se*, but it is important to embed this policy work in the broader political landscape. The dissertation has shown that anti-corruption instruments developed with an Anglo-American conception of politics have spread to other systems, together with the associated assumptions about political representation and human nature. While public trust is at the heart of all democratic systems, the liberal-pluralist conception of politics as an aggregation of interests might be less dependent on public trust, since politics are

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<sup>37</sup> INGLEHART, Ronald. Modernization and postmodernization: cultural, economic, and political change in 43 societies. Princeton, N.J : Princeton University Press, 1997; PUTNAM, Robert D. and PHARR, Susan J. (eds.) Disaffected democracies: what's troubling the trilateral countries ? Princeton, N.J : Princeton University Press, 2000; NORRIS, Pippa. Democratic deficit: critical citizens revisited. Cambridge New York Melbourne: Cambridge University Press, 2011.

<sup>38</sup> HAY, Colin. *Why we hate politics*. Cambridge Malden MA: Polity Press, 2007.

<sup>39</sup> WALTERS, William. Anti-policy and Anti-politics. Critical Reflections on Certain Schemes to Govern Bad Things. *European Studies of Cultural Studies*, 2008, Vol 11 n°5, p 267–288; STONE, Diane. Global Governance Depoliticized. In FAWCETT, Paul, FLINDERS, Matthew, HAY, Colin and WOOD, Matthew (ed.) *Anti-Politics, Depoliticisation and Governance*. Oxford University Press. 2017.

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indeed conceived of as a playing field where individual or factional interests enter in competition.<sup>40</sup> The republican conception of politics on the other hand is based on the notion of deliberation towards a common good, where the collective, embodied by the state, is centre stage.<sup>41</sup> The question of the sustainability of the republican contract in a context of growing cynicism ought to be a concern when formulating policies to prevent political corruption and protect the public interest.

The instrumentation of this policy field contains the danger of shaping a cognitive framework that makes citizens (and politicians themselves) think of political actors as instrumental actors motivated mainly by their own interests, fuelling further distrust and justifying contempt, itself reinforced by a scrutiny of their disclosed interests. The other risk of this instrumentation, that we turn to in next section, concerns the redefinition of political ethics as something that concerns only power-holders' conduct and financial conflicts of interest. Whilst policies such as those presented in this dissertation are certainly necessary, they are far from sufficient. The argument here is not one glorifying an imagined past and calling for more deference to political authority. It is rather one in favour of a perspective on corruption that takes into account the structural factors that might influence political decision-making and the 'reality' of contemporary politics in an era of growing cynicism and anti-politics sentiment.

## **b) Toward a contextually-embedded political approach to political ethics**

Observers have called this general approach to conflicts of interest in politics a 'minimalist approach' to politics ethics.<sup>42</sup> At the national and international levels, political ethics has indeed been equated, in terms of the policy adopted, with the prevention of political corruption understood as politicians' individual misconduct. Not only is the policy agenda currently focussing on individual conduct, existing instruments also overwhelmingly target financial abuses and conflicts of interest. More recently, the realm of codes of conduct has been extended to the problem of

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<sup>40</sup> PITKIN, Hanna. *The Concept of Representation*, Berkeley and Los Angeles: University of California Press. 1967; GETMAN Karen and KARLAN Pamela S. Pluralists and Republicans, Rules and Standards: Conflicts of Interest and the California Experience. In TROST, Christine and GASH, Alison L. *Conflict of Interest and Public Life*. Cambridge University Press, 2008; DÉLOYE, Yves and IHL, Olivier, *L'acte de vote*. Paris: Presses de Sciences Po, 2008; ROTHSTEIN, Bo and VARRAICH, Aiysha. *Making Sense of Corruption*. Cambridge University Press, 2017.

<sup>41</sup> GETMAN Karen and KARLAN Pamela S. *Op. cit.* 2008; LEVY, Jacob T. *The Oxford Handbook of Classics in Contemporary Political Theory*. Oxford University Press, 2015; ROTHSTEIN, Bo and VARRAICH, Aiysha. *Op. cit.* 2017.

<sup>42</sup> BOIS, Carol-Anne, PRESTON, Noel, and SAMPFORD, Charles J. G. *Ethics and Political Practice: Perspectives on Legislative Ethics*. London Annandale: Routledge Federation Press, 1998.

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sexual and moral harassment. While individual abuse should obviously be prevented, I argue, like others before me,<sup>43</sup> that to reach the ambitious objectives set out by policy promoters, we need a broader approach to political ethics that takes the nature of contemporary politics rather more seriously.

There are two immediate problems with this narrow perspective on political ethics. Firstly, policy instruments into which we build assumptions about public officials' self-interested motives are flawed as there is in theory no 'principled principals' to hold agents to account.<sup>44</sup> Indeed, if humans are naturally self-centred interest-maximisers, who should then oppose corruption and uphold high ethical standards? All one can do is to incentivise behaviour (including lay citizens') that, while remaining self-interested, would contribute to public good provision, which is essentially what the current framework seeks to do, especially since the OECD's turn to a 'whole-of-society' approach (Chapter 4). Designing such policies also contains a risk of denying the very possibility of a public service ethos. They could then turn into a self-fulfilling prophecy incentivising instrumental behaviour as they risk becoming a political weapon used to undermine the legitimacy of political opponents, or, in the worst case, get rid of them altogether. To overcome such risks, we should take the political context, institutions and practices, through which (and into which) anti-corruption policies will ultimately be translated, more seriously. The same policies might have quite different outcomes in a consensus-based, an adversarial or an authoritarian system, as accusations of corruption could result in negative campaigns, personal attacks or politicised anti-corruption campaigns (or purges).<sup>45</sup> Taking the political context seriously is rendered even more important in the current context of anti-politics, polarisation and post-truth.<sup>46</sup>

As this dissertation has sought to show, the anti-corruption regime has a tendency to group all 'public officials' together, creating a large target population comprised of executive officials, legislators, civil servants and judicial officials, inter alia. Blurring the boundaries between these

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<sup>43</sup> *Ibid.*; HUBERTS, Leo (ed.) *The Integrity of Governance What It Is, What We Know, What Is Done, and Where to Go*. Basingstoke, New York: Palgrave Macmillan, 2015.

<sup>44</sup> MARQUETTE, Heather, PEIFFER, Caryn. Grappling with the "real politics" of systemic corruption: Theoretical debates versus "real-world" functions. *Governance*, Vol. 31, 2018, pp. 499– 514.

<sup>45</sup> SHIH, Gerry. In China, investigations and purges become the new normal. *The Washington Post*, October 22<sup>d</sup> 2018; LANG, Bertram. *China and global integrity-building: Challenges and prospects for engagement*. U4 Issue 2019:7. Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute, 2019.

<sup>46</sup> MUDDE, Cas and KALTWASSER, Cristobal Rovira. *Populism in Europe and the Americas: threat or corrective for democracy?* Cambridge: Cambridge University Press, 2012; FAWCETT, Paul, FLINDERS, Matthew, HAY, Colin and WOOD, Matthew (ed.) *Op. cit.* 2017; MCINTYRE, Lee C. *Post-truth*. Cambridge, Mass: The MIT Press, 2018; MUDDE, Cas. *The far right today*. Cambridge, UK Medford, Massachusetts: Polity Press, 2019.

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groups does not serve the policy agenda. In particular, political ethics needs to consider the reality of politics to make sure politics serves who representatives claim to serve. The nature of conduct considered unethical will not be the same in all parts of the public sector and the functions that corruption fulfils will not be the same.<sup>47</sup> Politics is also about conflict, compromise and might involve ‘getting one’s hands dirty’.<sup>48</sup> Politics is not compatible with the impartiality claims, common in the anti-corruption discourse.<sup>49</sup> Political practice is thus not an individual practice; many actors and social groups seek to influence political decision-making. Political ethics should thus also not consider solely individual conduct. Political ethics has little hope of being effective if it does not consider the realities of politics in a given context.<sup>50</sup> The respective influence of different social groups on political decision-making, the interests a political actor is expected to represent as well as the boundaries of what is considered self-serving are themselves political decisions, making political ethics fundamentally political.

Preventing individual financial abuse is the tangible dimension of political ethics. As an interviewee said: “this, with money and travels, it is concrete, you can do something about it, while the things you say, what you promise, populism, is much harder”.<sup>51</sup> This perspective is also quite a *negative* approach to ethics, as it mainly focusses on highlighting unbecoming conduct. As another interviewee warned: “rules-based approaches make us concentrate on these rules, but the rest is free. Consequently, MPs can see the standards system as being there to make sure that these rules are not broken rather than to make sure that the whole system works with integrity beyond those rules”.<sup>52</sup> There is thus a case for a broader, more *positive* approach to political ethics as a supplement to the existing one (and maybe as a replacement in the long run). Laudable efforts to shift the agenda have come from the OECD, which proposed a more positive narrative on government and promotes a ‘whole-of-society’ approach to integrity promotion. These efforts however remain largely focussed on preventing unethical individual behaviour, albeit through new means inspired by behavioural economics which integrates the role of social norms and cognition.

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<sup>47</sup> *Ibid.*

<sup>48</sup> BOIS, Carol-Anne, PRESTON, Noel, and SAMPFORD, Charles J. G. *Ethics and Political Practice: Perspectives on Legislative Ethics*. London Annandale: Routledge Federation Press, 1998.

<sup>49</sup> PHILP, Mark and DAVID-BARRETT, Elizabeth. Realism About Political Corruption. *Annual Review of Political Science*, Vol.18, n° 1, 2015, p. 393.

<sup>50</sup> BOIS, Carol-Anne, PRESTON, Noel, and SAMPFORD, Charles J. G. *Op. cit.* 1998.

<sup>51</sup> Former member of the Swedish Parliament (SWMP2). Phone interview with the author. May 23<sup>rd</sup> 2018.

<sup>52</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20<sup>th</sup> 2017.

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Political ethics ought not to focus solely on regulating the behaviour of instrumental agents. As Paul Heywood and Jonathan Rose argue, integrity should not be seen as just the opposition, the absence of corruption.<sup>53</sup> It should instead be oriented towards social justice and the social ideals that we strive towards as a society, regarding local and national politics, and as humanity, regarding the supranational level. In an increasingly complex world, the emergence of ‘new’ existential risks linked to our environment and the multiplication of (sometimes distant) centres of decision-making generate anxieties that can only be worsened by the sentiment that our representatives are incapable of responding to new challenges. Pierre Rosanvallon sees the integrity of political leaders as a compensation for their perceived lack of capacity to actually steer our future, and thus understands transparency as a protection against the clouds of suspicion.<sup>54</sup> Agreeing with his initial observation, this dissertation argues that, reflecting on political ethics, we ought to consider the possibility that our diagnosis of political disaffection was flawed or incomplete, and that our focus on individual corruption might be a function of our perception that our representatives have lost political agency. Its conclusion however differs from those of Rosanvallon.

In a time of growing anti-politics sentiment,<sup>55</sup> we need a responsible and reflexive approach to political ethics, in order to prevent anti-corruption policies from becoming irrelevant at best, riskily counter-productive at worst. The future of political ethics might be well informed by a reflection on what we actually expect from politics and how we could reach the social goals we set out for ourselves. It is widely agreed that ‘you do not fight corruption by fighting corruption’,<sup>56</sup> yet channelling individual self-serving behaviour through incentives (so that it does not damage the public good) remains the mainstream approach to the problem. Moving beyond this suboptimal situation might require us to broaden our scope of reflection on political ethics. And to do so, we ought to clarify where political decisions are taken to adapt regulations to the actual influence of political actors, how different groups access decision-makers and what resources they use to do so, how power-holders (think they) reach their decisions, the obstacles met by that those who feel like their voice is not being heard, among many other things. If the objective of political ethics is to

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<sup>53</sup> HEYWOOD, Paul M. and ROSE, Jonathan. *Debates of Corruption and Integrity Perspectives from Europe and the US*. London: Palgrave Macmillan, 2015.

<sup>54</sup> ROSANVALLON, Pierre. *Le bon gouvernement*. Paris: éditions du Seuil, 2016, p. 355.

<sup>55</sup> FAWCETT, Paul, FLINDERS, Matthew, HAY, Colin and WOOD, Matthew (ed.) *Op. cit.* 2017; CLARKE Nick, JENNINGS, Will, MOSS, Jonathan and STOKER, Gerry. *Op. cit.* 2018.

<sup>56</sup> KAUFMANN Daniel and KHAN Mushtaq. Does corruption cause poverty, or is it the other way round? Development Drums Podcast, November 4<sup>th</sup> 2009.

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avoid duplicitous exclusion from politics,<sup>57</sup> then we ought to include individual conflicts of interest into a wider conception of conflict of *interests* as the opposition of social ideals and worldviews, in which certain interests might have gained excessive influence over politics, not due to individual conduct but due to the way power is distributed and concentrated in society. Echoing Rosanvallon's conclusion of his book on *The good government*, re-thinking the relationship between political leaders and those they govern should "open the way to a clearer understanding of what must be done to bring about at last a society of equals".<sup>58</sup> The key to public trust in political institutions might be found in the organisation of interest representation rather than in the control of individual politicians.

Either way, we need to make sure to embed out thinking about political ethics in political practice. The existence of a transnational policy community able to circulate ideas about corruption prevention and integrity promotion is undeniably an asset. Policy translation is a way to combine ideas promoted by international actors with local realities. More efforts are thus needed to involve national actors and scholars, with knowledge of political institutions and practice, in the reform process, to achieve a contextually-embedded politically-informed approach to political ethics.

### III. Limitations, omissions and extensions

#### a) Limitations and omissions

There are limitations to the analytical scope of any study and caveats concerning and generalisability of its conclusions. This dissertation is of course no exception and it is valuable to reflect on such limitations – both to counter any bias they might engender and to consider how they might be rectified in future work.

The first limitation of my dissertation relates to the research design and more specifically to the country case selection. As I sought to identify the mechanisms of policy transfer and translation of two anti-corruption instruments, I selected the countries to compare on the basis of their adoption of these instruments. While this strategy fits in with the objective of the research project, it prevents me from drawing conclusions about the reasons why policy-makers might choose *not* to regulate conflicts of interest this way, or not to regulate them at all, since such examples were

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<sup>57</sup> WARREN, Mark E. The Meaning of Corruption in Democracies. In HEYWOOD, Paul. *Routledge Handbook of Political Corruption*. Abingdon, New York: Routledge, 2015.

<sup>58</sup> ROSANVALLON, Pierre. *Op. cit.* 2016, p. 392 (translation taken from ROSANVALLON, Pierre. *Good Government: Democracy Beyond Elections*. Harvard University Press, 2018).

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not integrated in the research design. The second limitation that relates to case selection concerns the choice of instruments to follow. The international anti-corruption regime was strongly influenced by the Anglo-American world. Conflict of interest regulation is thus a relevant illustration of how instruments developed in the United States and the United Kingdom became international 'best practices' and were then transferred across jurisdictions. Identifying other policy instruments 'invented' elsewhere to include in the research design would have prevented the risk of some of my conclusions seeming tautological. Moreover, the conclusion regarding the mediating forces of actors and institutions would be relevant primarily for countries with political systems that are relatively distant to the Anglo-liberal one.

Beyond limitations that relate to methodological choices, I wish to draw the reader's attention to the ones that relate to my position as an 'embedded researcher'. Indeed, my previous professional experience and continuous engagement within the anti-corruption policy community, described in the introduction, necessarily imply analytical biases. Mainly, my experience and proximity with international actors made me approach the topic of anti-corruption policy as a field that was strongly internationalised and top-down (from the international to the national). While this bias undeniably influenced the way in which I collected material, from the selection of interviewees to the development of interview guide(s), I strived to systematically reflect on this bias and put the analytical process and conclusions in question. My intuitions regarding the role of transnational factors in policy change in France and Sweden was confirmed by the interviewees and written material. It is nevertheless possible that single-case study research or more conventional comparative analysis, treating them as separate unit, would have given more prominence to the differences between national institutions and policy processes. The question is not one of rigour or validity of research findings, but rather one of research questions. I was certainly drawn to the concept of transnational multi-level comparison by my analytical bias, but adopting the analytical framework of policy translation encouraged me to ask different questions, on the transformation of policy ideas as they are transferred for instance, which makes the bias less of a risk for the validity of my conclusions.

## **b) Extensions**

Keeping in line with the thematic focus of the dissertation, I see four possible extensions of this research agenda: two are directly related to the limitations identified above and two go beyond the framework of the dissertation to explore anti-corruption policy at the micro-level of their

reception by the target population and the future of the global anti-corruption agenda in a changing world order.

(i) Firstly, the theoretical framework of policy translation could be enriched by being applied to countries with different historical backgrounds and political systems. I chose to study the transfer of anti-corruption policy to wealthy advanced democracies in order to understand non-coercive forms of transfer (or more subtle, soft, forms of coercion). It would be interesting to extend the analysis to countries in the ‘periphery’ and ‘semi-periphery’ such as Latin American countries that were long in the US sphere of influence, Commonwealth countries that share elements of the British political system, which could be compared, for the African continent, with their Francophone neighbours, or finally recent members of the European Union who had to undertake many anti-corruption reforms as part of their accession to the EU. Including countries with different political systems and cultural/linguistic backgrounds would allow one to better understand (and explain) different degrees of policy translation (some countries literally copy-pasting text produced by international institutions).

(ii) My dissertation found that the EU played quite an unusual role of in this policy area, which enticed my curiosity to explore the matter in more detail in a postdoctoral project on the Europeanisation of anti-corruption policy.<sup>59</sup> This project would examine a compelling case in which the EU has strengthened its authority ‘by stealth’ as anti-corruption measures fall in areas in each the EU has limited competences and in which member states are reluctant to empower supranational institutions.

Taking one step away from the design and findings of my dissertation, two other research questions regarding anti-corruption policy could be explored. (iii) The first is grounded in political sociology and wants to explore parliamentarians’ reception of anti-corruption policies and their conception of political ethics. Given the frustration generated by existing instruments both among the population and representatives themselves, I think extending Maureen Mancuso’s seminal work on *The Ethical World of British MPs* to other polities would be a relevant and important contribution to the literature on corruption but also to legislative studies and the study of political representation. As the dissertation shows, there is a certain level of ambiguity and vagueness regarding the

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<sup>59</sup> There is a gap in the literature of the role of the EU in promoting anti-corruption policy, of which this new publication is an exception: HOXHAI, Andi. *The EU Anti-Corruption Report: A Reflexive Governance Approach*. London: Routledge, 2020.

objectives and role of policies labelled ‘anti-corruption’, and as to how these fit with the practices of political actors, creating misunderstandings and circumvention schemes. A more reflexive and contextual approach to political ethics would certainly contribute to policy efforts to prevent political corruption.

(iv) Lastly, my dissertation finds that the global anti-corruption agenda was constructed on the basis of the liberal world order, promoting democratisation, human rights and free trade in a rules-based international order guarded by the United States and its allies. Scholarly attention to the future of the global anti-corruption agenda in the new (post-liberal?) world order would be interesting and necessary, as new world powers and venues for corruption are emerging, including through the digital revolution, and anti-corruption discourse is increasingly used as a political weapon. It would be interesting to analyse the evolution of international norms, instruments and discourse on corruption within different institutions and forums to identify a change in those in which Chinese influence has grown, with regards to the association of anti-corruption policy to human rights for instance. This would allow one to gauge the autonomy of international institutions vis-à-vis influential member-states.

While this dissertation sheds light on the mechanisms and actors behind the transfer and translation of anti-corruption policy, it also would be an interesting contribution to the literature on policy transfer to see if my findings hold true in other policy areas. One could envisage designing a research project which compares policy transfer in different countries but also in different policy areas to understand how policy transfer unfolds. This research project could identify how contexts and issue salience affect the dynamics between exogenous and endogenous factors of policy change. It could also shed light on factors that motivate international institutions or transnational actors to play a mediating role in policy transfer and policy-making. It could contribute to the emerging literature on policy translation, to better appreciate the conditions under which the translation of policy is possible and/or necessary. Applying this analytical framework would allow one to test the relevance of a focus of policy instruments as traces of the circulatory process. Overall, such an extension of my dissertation would hopefully be a contribution to current efforts to clarify the meaning and usefulness of the concept of ‘transfer’ and to reconsider the literature on institutions in an interconnected world.<sup>60</sup>

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<sup>60</sup> DUMOULIN, Laurence and SAURUGGER, Sabine. Les policy transfer studies : analyse critique et perspectives. *Critique internationale*, Vol. 48, n° 3, 2010, pp. 9-24; SIMEANT, Johanna (ed.) *Guide de l'enquête globale en sciences sociales*. Sofia Wickberg – « *Global instruments, local practices* » - Thèse IEP de Paris – 2020

The last extension of my dissertation is more theoretical in nature and concerns the boundaries between the private and the public realms. Studying conflicts of interest is in essence posing the question of the boundaries of public life. As we have seen in previous chapters, the limit of disclosure and public intrusion in the life of political representatives is not always clear, the existing providing for their right to have a private life whilst at the same time usually demanding that they follow higher ethical standards than ordinary citizens *even* in their private life. The recent withdrawal of Benjamin Griveaux from the race to become mayor of Paris after revelations about his sex life generated debates about the ‘Americanisation’ of French political life and politicians’ right to privacy. While this is a legitimate debate, it deserves to be extended to all citizens in the era of digital revolution, surveillance and counter-terrorism. Are the concepts of public and private life still operational when ordinary citizens have so little control over (the use of) their personal data?

The dichotomy between the public and private spheres also needs to be examined in light of recent developments regarding politics and the private sector. While the use of private management tools in public administration is decades old, the reach of corporate ideas into political discourse and the popularity of private-goods providers in political competition are a relatively new development. An increasing number of political leaders are building their legitimacy on their non-political careers and alleged successes in the corporate world, Emmanuel Macron and Donald Trump especially, being examples of this tendency. Another change that blurs the boundaries between what was traditionally considered the public and private sectors is the growing recognition of private companies’ social and environmental missions, beyond mere profit-seeking (through initiatives such as the triple bottom line, corporate social responsibility or the newly adopted French law on the Action Plan for Business Growth and Transformation).<sup>61</sup> As the dissertation has suggested, there is a convergence of ethical rules between the public and private sectors. However, while we experience a continuous ‘corporatisation’ of political life and a publicisation of economic life, we continue to judge the public and private sector according to quite different standards.

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Paris: CNRS editions, 2016; STONE, Diane and MOLONEY, Kim (Eds.) *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019; DELCOUR, Laura and TULMETS, Elsa. *Policy Transfer and Norm Circulation: Towards an Interdisciplinary and Comparative Approach*. New York: Routledge, 2019; Special issue on transnational policy transfer coordinated by STONE, Diane, PORTO DE OLIVEIRA, Osmany and PAL, Leslie A. *Policy and Society*, Vol. 39, n°1, 2020.

<sup>61</sup> Gouvernement. PACTE, the Action Plan for Business Growth and Transformation. n.d. Online, available at : <https://www.gouvernement.fr/en/pacte-the-action-plan-for-business-growth-and-transformation> (accessed on April 13<sup>th</sup> 2020)

In light of these changes blurring the lines between what is ‘public’ and what is ‘private’, it is a needed endeavour to re-examine the public/private dichotomy on which political modernity is built. Indeed, the modern social contract exists on the premise that there can be no freedom if everything is public nor can political freedom exist in a society where everything is private. Feminist political theory questioned the distinction between the public and private *spheres* decades ago,<sup>62</sup> showing that the private sphere is fundamentally political. While this claim remains topical, today one could argue that the private sphere not only is political, but has progressively become public, as the space in which one is unseen shrinks. Likewise, the boundary between the public and private *sectors* is becoming harder to draw as public goods providers and private good providers become growingly undistinguishable. These fundamental changes, turning what has been thought of a dichotomy into a continuum, need to be considered more seriously to imagine the future of anti-corruption policy (how should corruption be understood in a system where the boundary between public and private on which it relies is blurred?) and of state-society relations and democracy at large.

Among the many existential threats that have emerged in the last decades, corruption remains a significant source of public anxiety, which is certainly not detached from these emerging threats. Paradoxically, our expectations of public office-holders (and increasingly even holders of private office) appear to be rising as we face new challenges, while our dissatisfaction and distrust grow proportionally.<sup>63</sup> Despite the multiplication of initiatives against corruption, we have not gotten rid of it. The discourse of the policy community has even evolved, from reflecting the ambition to eliminate the problem to the more modest project of managing its risks, as this dissertation has shown. As Phil Mason recently wrote: “there has been no shortage of thinking done about corruption”,<sup>64</sup> and we live in a world rich of research, expertise and policy innovations targeting the intractable problem of corruption. A consequence of the global movement, regime or industry is the growing specialisation of the field and the focus on targeted and technocratic solutions to corruption, increasingly seen as a case of policy failure. While most agree today that we “cannot fight corruption by fighting corruption”,<sup>65</sup> or at least that that alone will not be

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<sup>62</sup> PATEMAN, Carole. *The Sexual Contract*. Cambridge: Polity Press, 1988.

<sup>63</sup> HINE, David and PEELE, Gillian. *Op. cit.* 2016, p. 303.

<sup>64</sup> MASON, Phil. *Op. cit.* 2020.

<sup>65</sup> KAUFMANN Daniel and KHAN Mushtaq. Does corruption cause poverty, or is it the other way round? Development Drums Podcast, November 4<sup>th</sup> 2009.

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enough,<sup>66</sup> much is yet to be learned about the political, technical and intellectual efforts of the last thirty years, and we should not throw the baby out with the bathwater. This dissertation has sought to show how international anti-corruption tools are constructed, legitimised and diffused, and how they transform as they are assimilated by national actors and institutions, turning global instruments into local practices. From its conclusions, we can imagine at least one possible way forward for future anti-corruption policy work: better integrating anti-corruption work within a broader consideration for existing political and social dynamics, thus taking the politics of anti-corruption policy-making rather more seriously. There are now a plethora of global anti-corruption instruments available, and while certainly not sufficient on their own, a better understanding of their genesis and context of origin could still make them more relevant by reducing the risk of 'inappropriate transfer'. This could help us clarify how, to paraphrase Umberto Eco,<sup>67</sup> policy transfer can only lead us to do *almost* the same thing.

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<sup>66</sup> ROTHSTEIN, Bo. Anti-corruption: The Indirect 'big Bang' Approach. *Review of International Political Economy*, Vol. 18, n° 2, 2011, pp. 228-250; MUNGIU-PIPPIDI, Alina. *The quest for good governance: how societies develop control of corruption*. Cambridge: Cambridge University Press, 2015.

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## Annexe 1. List of interviews

Country / Organisation	Title, institution	Coding	Date	Place of interview
France	Former ethics commissioner, National Assembly	FREC1	December 6 <sup>th</sup> 2017	Phone
France	Parliamentary clerk 1, National Assembly	FRPC1	May 7 <sup>th</sup> 2018	National Assembly
France	Parliamentary clerk 2, National Assembly	FRPC2	April 5 <sup>th</sup> 2019	National Assembly
France	Professor of Public law 1	FREX1	December 20 <sup>th</sup> 2017	Paris Sorbonne
France	Professor of Public law 2	FREX2	February 28 <sup>th</sup> 2018	National Assembly
France	Former French Minister of Economy and Finance	FRMIN1	January 10 <sup>th</sup> 2019	His/her office
France	Public official 1, High Authority for Transparency in Public Life (HATVP)	FRPO1	October 27 <sup>th</sup> 2017	HATVP
France	Public Official 2, High Authority for Transparency in Public Life (HATVP)	FRPO2	November 30 <sup>th</sup> 2017	HATVP
France	Public Official 3, High Authority for Transparency in Public Life (HATVP)	FRPO3	November 30 <sup>th</sup> 2017	HATVP
France	Former chair of Transparency International France	FRCS1	April 14 <sup>th</sup> 2017	Café, Paris.
France	Former general delegate, Transparency International France	FRCS2	November 2 <sup>d</sup> 2016	Transparency International France
France	Former general delegate, Transparency International France	FRCS3	November 7 <sup>th</sup> 2017	Transparency International France
France	Employee, Transparency International France	FRCS3	March 2 <sup>d</sup> 2018	Transparency International France
France	President, Anticor	FRCS4	October 29 <sup>th</sup> 2016	Café, Nice
France	Vice-president, Anticor	FRCS5	October 11 <sup>th</sup> 2017	Café, Paris
United Kingdom	Parliamentary clerk 1, House of Commons	UKPC1	November 20 <sup>th</sup> 2017	UK Parliament

United Kingdom	Parliamentary clerk 2, House of Commons	UKPC2	March 15th 2018	UK Parliament
United Kingdom	Parliamentary clerk 3, House of Commons	UKPC3	November 20th 2017	UK Parliament
United Kingdom	Parliamentary clerk 4, House of Commons	UKPC4	November 21st 2017	Email exchange.
United Kingdom	Public official, Committee on Standards in Public Life	UKPO1	March 12th 2018	CSPL
United Kingdom	Journalist, The Daily Telegraph	UKJOUR1	March 13th 2018	Coffeeshop London
United Kingdom	Journalist, BBC	UKJOUR2	November 15th 2017	UK Parliament
United Kingdom	Professor of political science, University of Warwick.	UKEX1	November 14th 2017	University of Warwick
United Kingdom	Professor of history, University of Warwick.	UKEX2	November 14th 2017	University of Warwick
United Kingdom	Former lay member of the Committee on Standards, House of Commons	UKLM1	March 13th 2018	Coffeeshop London
United Kingdom	Employee, Transparency International UK	UKCS1	December 15th 2016	Transparency International UK
United Kingdom	Employee, Transparency International UK	UKCS2	November 13rd 2017	Transparency International UK
United Kingdom	Employee, Transparency International UK	UKCS3	June 24th 2019	Transparency International UK
United Kingdom	Employee, Unlock Democracy	UKCS4	November 13th 2017	Unlock Democracy
Sweden	Parliamentary clerk 1, Swedish Parliament	SWPC1	May 19th 2017	Swedish Parliament
Sweden	Parliamentary clerk 2, Swedish Parliament	SWPC2	May 19th 2017	Swedish Parliament
Sweden	Parliamentary clerk 3, Swedish Parliament	SWPC3	May 30th 2017	Phone
Sweden	Parliamentary clerk 4, Swedish Parliament	SWPC4	January 15th 2018	Email
Sweden	Member of the Swedish Parliament	SWMP1	May 17th 2017	Swedish Parliament
Sweden	Former member of the Swedish Parliament.	SWMP2	May 23rd 2018	Phone
Sweden	Journalist, Dagens Nyheter	SWJOUR1	May 17th 2017	DN office
Sweden	Journalist, Dagens Nyheter	SWJOUR2	June 5th 2017	Phone



Sweden	Former employee, Institutet mot motor	SWCS1	May 18th 2017	Skanska office
Sweden	Board member, Transparency International Sweden	SWCS2	May 18th 2017	Coffeeshop, Stockholm
Sweden	Employee, Transparency International Sweden	SWCS3	May 17th 2017	Transparency International Sweden
International	Employee 1, Transparency International Secretariat	TIS1	March 2d 2017	Transparency International Secretariat, Berlin.
International	Employee 2, Transparency International Secretariat	TIS2	March 2d 2017	Transparency International Secretariat, Berlin.
International	Employee 3, Transparency International Secretariat	TIS3	March 2d 2017	Transparency International Secretariat, Berlin.
International	Official 1, OECD	OECD1	April 3 <sup>rd</sup> 2018	OECD
International	Official 2, OECD	OECD2	May 3 <sup>rd</sup> 2018	OECD
International	Official 2, OECD	OECD2	May 23 <sup>rd</sup> 2018	Phone
International	Official 3, OECD	OECD3	May 23 <sup>rd</sup> 2018	Phone
International	GRECO Official 1, Council of Europe	CoE1	December 11 <sup>th</sup> 2017	Council of Europe
International	GRECO Official 2, Council of Europe	CoE2	June 26 <sup>th</sup> 2018	Council of Europe
International	Professor of History, Technische Universität Darmstadt.	INTEX1	November 17 <sup>th</sup> 2016	Café, Aix-en-Provence.
International	Professor of Political Science, University of Sussex	INTEX2	November 27th 2017	Skype

## Annexe 2. Archives and documents

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### **FRANCE**

#### **Legal documents**

1789 Declaration of the Rights of Man and the Citizen

1791 Constitution

1793 Constitution

1795 Constitution of year II

1848 Constitution of the 2d Republic

1875 Constitutional laws of the 3rd Republic

1946 Constitution of the 4th Republic

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### Annexe 3. International instruments' provisions on conflict of interest regulation

	Council of Europe 1997 Twenty Guiding Principles for the Fight Against Corruption	OECD 1998 Recommendation on Improving Ethical Conduct	2005 United Nations Convention Against Corruption
Introduction	Aware that corruption represents a <b>serious threat</b> to the basic principles and <b>values</b> of the Council of Europe, undermines the confidence of citizens in <b>democracy</b> , erodes the <b>rule of law</b> , constitutes a denial of human rights and hinders social and economic <b>development</b> .	Considering that increased public <b>concern</b> with <b>confidence</b> in government has become an important public and political challenge for OECD Member countries.	Concerned about the <b>seriousness</b> of problems and <b>threats</b> posed by corruption to the stability and security of societies, undermining the institutions and <b>values</b> of <b>democracy</b> , ethical values and justice and jeopardizing sustainable <b>development</b> and the <b>rule of law</b> .
Ethics and integrity	To take effective measures for the prevention of corruption and, in this connection, to raise <b>public awareness</b> and promoting <b>ethical</b> behaviour.	Developing and regularly reviewing policies, procedures, practices and institutions influencing <b>ethical</b> conduct in the public service.	Each State Party shall (...) develop and implement or maintain effective, coordinated anti-corruption policies that promote the <b>participation</b> of society and reflect the principles of the rule of law, proper management of public affairs and public property, <b>integrity</b> , transparency and accountability.
Code of conduct	Promote further specification of the behaviour expected from public officials by appropriate means, such as <b>codes of conduct</b> .	A concise, well-publicised statement of core ethical standards and principles that guide public service, for example in the form of a <b>code of conduct</b> , can accomplish this by creating a shared understanding across government and within the broader community	In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, <b>codes or standards of conduct</b> for the correct, honourable and proper performance of public functions.
	To encourage the adoption, by elected representatives, of <b>codes of conduct</b> and promote rules for the financing of political parties and election campaigns which deter corruption.		
Disclosure requirements		Transparency should be further enhanced by measures such as <b>disclosure systems</b> and recognition of the role of an active and independent media.	Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make <b>declarations</b> to appropriate authorities regarding, inter alia,



			their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.
<b>Disciplinary measures</b>	To ensure that the rules relating to the rights and duties of public officials take into account the requirement to fight corruption and provide for appropriate and effective <b>disciplinary measures</b> .	It is necessary to have reliable procedures and resources for monitoring, reporting and investigating breaches of public service rules, as well as commensurate administrative or <b>disciplinary sanctions</b> to discourage misconduct.	Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, <b>disciplinary or other measures</b> against public officials who violate the codes or standards established in accordance with this article.
<b>Training</b>		Professional socialisation should contribute to the development of the necessary judgement and skills enabling public servants to apply ethical principles in concrete circumstances.	Each State Party shall (...) endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials (...) that promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions. (does specifically not concern elected officials)

## Annexe 4. GRECO's recommendations to France, Sweden and the UK

	France	Sweden	United Kingdom
Recommendations regarding MPs	<p>1. that the conditions relating to the use of parliamentary assistants and collaborators, the operational expenses allowance and the parliamentary reserve facility be thoroughly reformed in order to ensure the transparency, accountability and supervision of the resources concerned;</p> <p>2. that a body of rules of conduct/professional ethics applying directly to Senators be adopted, as is already the case for Members of the National Assembly;</p> <p>3. that the system for dealing with conflicts of interest of members of the National Assembly and Senators be supplemented by rules and guidance on when there may be an individual obligation, depending on the case, to declare a potential conflict of interest or to abstain from participation in parliamentary activities;</p> <p>4. that the parliamentary regulations on gifts and other benefits be revised and supplemented to improve consistency, lay down prohibitions in principle and cover the various forms of benefits; that declarations be published, especially in cases where those of a particular value remain permitted</p>	<p>1. that a code of conduct for members of parliament be adopted and made easily accessible to the public; and that it be complemented by practical measures for its implementation, such as dedicated training and counselling;</p> <p>2. that written (public) clarification of the meaning of the disqualification rules of the <i>Riksdag Act</i> and guidance on the interpretation of those rules be provided to members of parliament; and that a requirement of ad hoc disclosure be introduced when, in the course of parliamentary proceedings, a conflict between the private interests of individual members of parliament may emerge in relation to the matter under consideration;</p> <p>3. that rules on gifts and other advantages – including advantages in kind – be developed for members of parliament and made easily accessible to the public; they should, in particular, determine what kinds of gifts and other advantages may be acceptable and define what conduct is expected of members of parliament who are given or offered such advantages;</p> <p>5. that the existing regime of asset declarations be further developed, in particular (i) by including quantitative data of the financial and economic involvements of members of parliament as well as</p>	<p>1. that, pending any introduction of an accountability system for staff conduct, it should be made clear that Members of the House of Commons and Members of the House of Lords can be responsible for the conduct of their staff when carrying out official duties on behalf of the Member and that, unless otherwise specified, the conduct of the staff should be judged against the standards expected of the Members. The devolved institutions of Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation;</p> <p>2. that consideration be given to lowering the thresholds for reporting financial holdings (such as stocks and shares). The devolved institutions of Scotland, Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation;</p> <p>3. providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and that consideration be paid to lowering the current thresholds for registering accepted gifts. The devolved institutions of Scotland, Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation;</p>

	<p>and are subject simply to a declaration (including invitations and travel); that declarations of assets by Members of the National Assembly and Senators be made easily accessible to the public at large;</p> <p>v. that the range of criminal-law measures be supplemented by internal disciplinary measures in the assemblies, in relation to possible breaches of the rules on the integrity of the members of the National Assembly and Senators (paragraph 64).<sup>1</sup></p>	<p>data on significant liabilities; and (ii) by considering widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public);</p> <p>5. that appropriate measures be taken to ensure supervision and enforcement of the existing and yet-to-be established rules on conflicts of interest, gifts and asset declarations by members of parliament.<sup>2</sup></p>	<p>4. that the Codes of Conduct and the guidance for both the Commons and the Lords be reviewed in order to ensure that the Members of both Houses (and their staff) have appropriate standards/guidance for dealing with lobbyists and others whose intent is to sway public policy on behalf of specific interests. The devolved institutions of Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation;</p> <p>5. reviewing the available disciplinary sanctions for misconduct of Members of the House of Commons and Members of the House of Lords in order to ensure that they are effective, proportionate and dissuasive; and better describing in the relevant guidance to the Codes of Conduct the applicable sanctions for breaches of the rules.<sup>3</sup></p>
Level of compliance	GRECO concludes that the current level of compliance with the recommendations at present is “globally unsatisfactory”. It decides to apply Rule 32 concerning members failing to comply with the recommendations contained in the mutual evaluation report and asks the Head of the French	GRECO concludes that Sweden has implemented satisfactorily or dealt with in a satisfactory manner six of the eight recommendations contained in the Fourth Round Evaluation Report. The adoption of the Second Compliance Report terminates the	GRECO concludes that the United Kingdom has implemented satisfactorily or dealt with in a satisfactory manner seven of the eight recommendations contained in the Fourth Round Evaluation Report. The adoption of the

<sup>1</sup> Council of Europe. Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report France. Greco Eval IV Rep (2013) 3E. Strasbourg, January 27th 2014.

<sup>2</sup> Council of Europe. Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report Sweden. Greco Eval IV Rep (2013) 1E. Strasbourg, November 12th 2013.

<sup>3</sup> Council of Europe. Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report United Kingdom. Greco Eval IV Rep (2012) 2E. Strasbourg, March 6<sup>th</sup> 2013.

	delegation to submit a report on its progress in implementing the recommendations still pending (as soon as possible and at the latest by 30 June 2019). <sup>4</sup>	Fourth Round compliance procedure in respect of Sweden. <sup>5</sup>	Second Compliance Report terminates the Fourth Round Compliance procedure in respect of the United Kingdom. <sup>6</sup>
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<sup>4</sup> Council of Europe. Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors. Second Compliance Report France. GrecoRC4(2018)7. Strasbourg, September 18th 2018.

<sup>5</sup> Council of Europe. Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors. Second Compliance Report Sweden. Greco RC4(2017)21. Strasbourg, October 24th 2017.

<sup>6</sup> Council of Europe. Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors. Second Compliance Report United Kingdom. Greco RC4(2017)6. Strasbourg, November 10th 2017.

## Annexe 5. OECD Model of Interest Register

TOOL SPECIFICATION NO. 10

### Registration of Private Interests for Public Official and Immediate Family

#### 1. Real estate/immovable property

Real estate in which a beneficial interest is held (excluding the principal family home):

Owner:	Location:	Nature of interest held:	Purpose (e.g. investment, domicile, etc.):
--------	-----------	--------------------------	--

.....  
.....

#### 2. Shareholdings

Indicate all holdings of shares and like instruments, including holding companies and subsidiary companies if applicable: exclude nominal shareholdings by way of qualification for membership of a credit union, building society or other co-operative society:

Name of company:	Owner of shares:
------------------	------------------

.....  
.....

[Registrant to complete details.]

#### 3. Trusts/nominee companies

a) Identify any **beneficial interest** held in a family or business trust or a nominee company:

Trust or nominee company:	Nature of interest:	Nature of operations of trust or company:
---------------------------	---------------------	---

.....  
.....

Name of person holding interest:	Date commenced:
----------------------------------	-----------------

.....  
.....

b) Identify any interest held as a **trustee** of a family or business trust established under a law:

<b>Trust name:</b>	<b>Name of trustee:</b>	<b>Beneficiaries:</b>	<b>Type of activities commenced:</b>	<b>Date commenced:</b>
.....				
.....				

#### 4. Directorships, appointments and ancillary employment in other enterprises:

Indicate all directorships currently held, whether a director's fee is paid or not:

<b>Name(s) of directors:</b>	<b>Name of company [whether public or private]:</b>	<b>Activities of company:</b>	<b>Date commenced:</b>
.....			
.....			

#### 5. Partnerships, etc.

Identify all current business and professional partnerships and similar arrangements:

<b>Person holding interest:</b>	<b>Type of activities:</b>	<b>Type of business:</b>	<b>Date commenced:</b>
.....			
.....			

#### 6. Investments

Identify all investments in bonds, debentures, savings or investment accounts with banks or other financial institutions. Where the cumulative value of such investments is less than the threshold [€x,000] no registration is required:

<b>Person holding investment:</b>	<b>Type of investment:</b>	<b>Body in which investment is held:</b>	<b>Date commenced:</b>
.....			
.....			

## 7. Other assets

Identify each asset valued at over [€x,000]: [principal family home, household contents, personal effects and motor vehicles for personal use could be excluded]:

Owner of asset:	Type of asset:	Source:	Date obtained:
.....			
.....			

## 8. Other significant sources of income

Identify current salary and income from all appointments/employment including those identified in Item 4: salary from primary public service/official position is to be excluded:

Person receiving income:	Source/nature of income:
.....	
.....	

## 9. Reportable gifts, (including substantial travel, hospitality or other forms of valuable benefit)

Identify all “reportable gifts” [see definition – such as provided in Tool No. 9] of current market value exceeding [€ 00], received in the past financial year:

Person receiving gift:	Nature of gift:	Market value of gift:	Donor:	Date received:
.....				
.....				

## 10. Liabilities

Identify current financial liabilities, loans, mortgages etc. (minor debts such as ordinary short term credit arrangements, charge cards, etc. are to be excluded):

Person liable:	Nature of liability (loan, mortgage etc.):	Creditor:
.....		
.....		

**11. Other personal interests which could constitute a potential conflict-of-interest situation**

Include for example, previous relevant employment or positions held, (for example in business ventures, professional bodies/unions, NGOs, or community organisations), continuing rights of return to previous employment or position, and standing offers or agreements about future employment, etc. (NOTE: political and religious affiliations, etc. are not required to be notified unless they could reasonably constitute a specific conflict-of-interest situation relevant to the position held by the person making this declaration.)

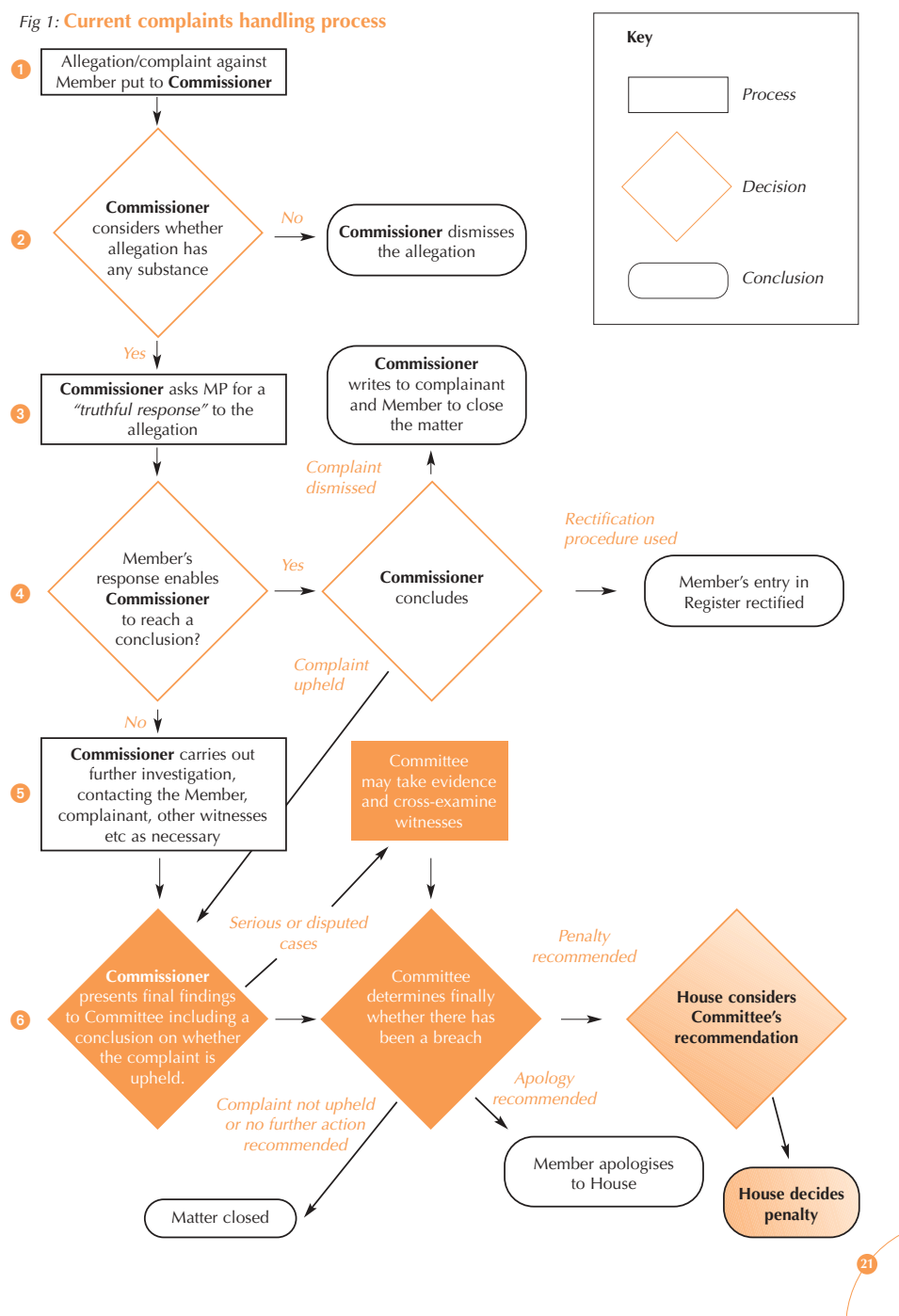
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## Annexe 6. House of Commons' procedure for handling complaints

The current system

Fig 1: **Current complaints handling process**



Source : CSPL. *Standards of Conduct in the House of Commons*. Eighth Report, Cm 5663. Norwich, 2002, p. 21.

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**Institut d'études politiques de Paris**

**ECOLE DOCTORALE DE SCIENCES PO**

**Programme doctoral de science politique, mention sociologie politique comparée**

**Centre d'études européennes et de politique comparée (UMR 8239)**

**Doctorat en science politique, spécialité sociologie politique comparée**

## **Instruments globaux, pratiques locales**

*La 'convergence divergente' des politiques de prévention de la corruption en Europe*

**Résumé long de la thèse en français**

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La corruption politique n'est pas un problème nouveau.<sup>1</sup> En revanche, la volonté de prévenir ce problème en régulant les conflits d'intérêts des responsables politiques est un phénomène plus récent.<sup>2</sup> Cette thèse part du constat que les politiques de prévention de la corruption ont suivi un processus de 'convergence divergente' en Europe depuis les années 1990 et se penche particulièrement sur l'exemple de la régulation des conflits d'intérêts des parlementaires. Elle analyse les mécanismes, processus et configurations d'acteurs et d'organisations qui ont conduit la France, la Suède et le Royaume-Uni à adopter des instruments de régulation similaires (registre de déclarations d'intérêts et code de conduite), tout en les mettant ensuite en œuvre de manière différente, générant ainsi une divergence des pratiques de régulation. Ce sont ces deux processus de changements simultanés et (en apparence) contradictoires que nous appellerons 'convergence divergente'.<sup>3</sup> S'appuyant sur une enquête auprès des principaux acteurs de ce processus dans les trois pays et au sein des institutions internationales qui se sont saisies du sujet, sur une analyse documentaire et sur l'observation directe de forums internationaux, le présent travail de recherche suit ces deux instruments dans leur circulation depuis le monde anglo-saxon où ils ont été imaginés jusqu'en France et en Suède où, après avoir traversé les frontières et niveaux de gouvernance, ils se sont traduits par une hybridation du modèle originel. Une perspective non-fonctionnaliste des instruments d'action publique nous permet de voir les effets de ces derniers sur la représentation que l'on se fait du problème public.<sup>4</sup> En cela, étudier la convergence (divergente) d'instruments de prévention de la corruption permet également de comprendre l'évolution de notre représentation de la corruption et l'homogénéisation de sa définition par-delà les frontières nationales. Cette thèse

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<sup>1</sup> ALATAS, Hussein S. *The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption*. Singapore: D. Moore Press, 1968; MENDILOW, Jonathan and PHÉLIPPEAU, Eric. *Political corruption in a world in transition*. Wilmington, Delaware: Vernon Press. 2019; Council of Europe. About GRECO. Online, available at: <https://www.coe.int/en/web/greco/about-greco> (accessed on July 3rd 2018); KNIGHTS, Mark. Explaining Away Corruption In Pre-Modern Britain, Vol.35, n° 2, 2018, pp. 94-117.

<sup>2</sup> Le conflit d'intérêts est défini en droit français comme « toute situation d'interférence entre un intérêt public et des intérêts publics ou privés qui est de nature à influencer ou à paraître influencer l'exercice indépendant, impartial et objectif d'une fonction » (loi n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique). Pour l'OCDE, un conflit d'intérêts implique « un conflit entre la mission publique et les intérêts privés d'un agent public, dans lequel l'agent public possède à titre privé des intérêts qui pourraient influencer indûment la façon dont il s'acquitte de ses obligations et de ses responsabilités » (OCDE. *Gérer les conflits d'intérêts dans le service public : lignes directrices de l'OCDE et expériences nationales*. Paris: éditions OCDE, 2005)

<sup>3</sup> LEVI-FAUR, David and JORDANA, Jacint. Regulatory Capitalism: Policy Irritants and Convergent Divergence. *Annals of the American Academy of Political and Social Science*, 2005, vol. 598, p. 191-197; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. Convergence, transferts et traduction. Les apports de la comparaison transnationale. *Gouvernement et Action Publique*, Vol. 3, n° 3, 2013, pp. 377-393.

<sup>4</sup> BACCHI, Carol L. *Analysing Policy: What's the Problem Represented to be?* Frenchs Forest, N.S.W: Pearson, 2009; ZITOUN, Philippe. *La fabrique politique des politiques publiques: Une approche pragmatique de l'action publique*. Paris: Presses de Sciences Po, 2014 ; HALPERN, Charlotte, LASCOUTES, Pierre and LE GALES, Patrick (eds.) *L'instrumentation de l'action publique Controverses, résistances et effets*. Paris: Presses de Sciences Po, 2014.

s'intéresse à la question de l'émergence du conflit d'intérêts comme problème public et à celle de la circulation des instruments visant à le réguler.

## Questions et objectifs de recherche

L'objet de ce travail de recherche est de comprendre la 'convergence divergente' des politiques de régulation des conflits d'intérêts en France, au Royaume-Uni et en Suède, ces pays ayant adopté les mêmes instruments de régulation (registres de déclarations d'intérêts et codes de conduite) mais n'ayant pas mis en place les mêmes pratiques de régulation. Les questions de recherche centrales de la thèse sont ainsi :

- v. Comment le conflit d'intérêts a-t-il émergé comme problème public en France, au Royaume-Uni et en Suède, et comment a-t-il été défini ? Comment les trois pays ont-ils été amenés à adopter les mêmes instruments pour réguler les conflits d'intérêts des parlementaires malgré les différences de contexte, de systèmes et d'institutions politiques ?
- vi. Comment les trois pays ont-ils développé des pratiques de régulation des conflits d'intérêts si différents malgré la similitude des instruments qu'ils ont adoptés ?

Partant de la littérature existante, cette thèse fait l'hypothèse que la convergence des politiques publiques est le résultat de pressions extérieures pour une harmonisation internationale.<sup>5</sup> L'absence d'une véritable asymétrie de pouvoir entre les trois pays suggère que la convergence n'est pas le résultat d'une imposition des choix de l'un aux autres. En outre, la transnationalisation du champ de la lutte contre la corruption suggère également que la convergence ne peut être seulement le résultat d'une recherche parallèle et indépendante de solutions à un même problème (*independent problem solving*).<sup>6</sup> Cette thèse part de l'hypothèse que cette transnationalisation n'aura pas le même effet sur les trois pays, les pays pionniers étant théoriquement moins affectés que les pays dans lesquels un problème émerge du fait, entres autres, de l'émergence du problème au niveau international. Les travaux utilisant la notion de traduction des politiques publiques font l'hypothèse que les éléments divergents de la 'convergence divergente' sont le fait des acteurs de la réception (en interaction entre eux ainsi qu'avec leurs homologues étrangers et les acteurs transnationaux)

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<sup>5</sup> BENNETT, Colin J. What is policy convergence and what causes it? *British Journal of Political Science*, Vol. 21, n°2, 1991, p. 218; KNILL, Christoph. Introduction: Cross-national policy convergence: concepts, approaches and explanatory factors. *Journal of European Public Policy*, 2005, vol. 12, n°5, p. 764; DE SOUSA, Luís. Anti-Corruption Agencies: Between Empowerment and Irrelevance. *Crime, Law and Social Change*, Vol. 53, n°1, 2010, pp. 5-22; MARSH, David and EVANS, Mark. Policy transfer: coming of age and learning from the experience. *Policy Studies*, Vol. 22, n°6, 2012, pp. 477-481; MUNGIU-PIPPIDI, Alina. *The Quest for Good Governance: How Societies Develop Control of Corruption*. Cambridge University Press. 2015; COLE, Wade M. Institutionalizing a Global Anti-Corruption Regime: Perverse Effects on Country Outcomes, 1984–2012. *International Journal of Comparative Sociology*, Vol. 56, n° 1, 2015, pp. 53–80; HASSENTEUFEL, Patrick. Convergence. In BOUSSAGUET Laurie et al., *Dictionnaire des politiques publiques*. Presses de Sciences Po (P.F.N.S.P.), 2019, p. 177-185.

<sup>6</sup> BENNETT, Colin J. *Op. cit.* 1991; HOLZINGER, Katharina and KNILL, Christoph. Causes and conditions of cross-national policy convergence. *Journal of European Public Policy*, Vol. 12, n°5, 2005, pp. 775-796.

qui réinterprètent les idées importées pour les rendre compréhensibles, compatibles et acceptables au sein des institutions nationales et du contexte dans lequel ils opèrent.<sup>7</sup>

- vii. Comment étudier l'élaboration des politiques publiques dans un monde interdépendant ? Comment les acteurs nationaux font-ils usage des savoirs et des idées venus d'ailleurs ? Quel est aujourd'hui le rôle des acteurs internationaux et transnationaux dans l'élaboration des politiques publiques ? Par quels mécanismes ces acteurs parviennent-ils à influencer les décisions des acteurs nationaux ?

Cette thèse met en relation l'approche institutionnaliste, qui tend à insister sur la particularité des trajectoires nationales, et les études portant sur la diffusion des politiques publiques qui considèrent au contraire que les pressions internationales ont un effet mécanique sur les politiques publiques nationales.<sup>8</sup> Elle interroge ainsi la manière dont la recherche peut faire état des interactions entre politique nationale et internationale, et étudier de manière pertinente l'élaboration transnationale de politiques publiques. Elle s'appuie sur les travaux récents qui associent les sous-disciplines de la science politique pour adapter les outils d'analyse à la réalité de l'action publique contemporaine et comprendre les mécanismes permettant la circulation des idées entre pays, secteurs et niveaux de gouvernance.<sup>9</sup> Elle cherche ainsi à identifier les acteurs clés de l'élaboration des politiques publiques en dehors des frontières nationales, à comprendre les mécanismes de transferts et à redéfinir la notion de pouvoir au-delà des acteurs étatiques et de la coercition.

- viii. Quel est le rôle des idées dans l'élaboration des politiques publiques ? Comment associer, dans une même analyse, les dimensions matérielles et idéelles des politiques publiques ?

Cette dernière interrogation se situe à l'intersection des réflexions théoriques et méthodologiques, et porte sur la manière dont nous étudions les facteurs idéels-discursifs en science politique et leur rôle dans la sociologie de l'action publique. Le cadre théorique de cette thèse associe en effet le néo-institutionnalisme discursif, qui propose une approche idéale de l'analyse du monde politique, et une entrée par les instruments d'action publique, qui, au contraire,

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<sup>7</sup> HAY, Colin. Common Trajectories, Variable Paces, Divergent Outcomes? Models of European Capitalism under Conditions of Complex Economic Interdependence. *Review of International Political Economy*, Vol. 11, n° 2, 2004, pp. 231-262; CZARNIAWSKA-JOERGES Barbara, and SEVÓN Guje. Translation is a vehicle, imitation its motor, and fashion sits at the wheel. In CZARNIAWSKA-JOERGES Barbara, and SEVÓN Guje (eds.) *Global ideas: How ideas, objects and practices travel in the global economy*. Malmö: Liber & Copenhagen Business School Press, 2005; STONE, Diane. Transfer and Translation of Policy. *Policy Studies*, Vol. 33, n° 6, 2012, pp. 483-499; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. Convergence, transferts et traduction. Les apports de la comparaison transnationale. *Gouvernement et Action Publique*, Vol. 3, n° 3, 2013, pp. 377-393.

<sup>8</sup> LEVI-FAUR, David and JORDANA, Jacint. Regulatory Capitalism: Policy Irritants and Convergent Divergence. *Annals of the American Academy of Political and Social Science*, 2005, vol. 598, p. 191-197; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. *Op. cit.* 2013.

<sup>9</sup> STONE, Diane, and MOLONEY, Kim. *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019; DELCOUR, Laura and TULMETS, Elsa. *Policy Transfer and Norm Circulation: Towards an Interdisciplinary and Comparative Approach*. New York: Routledge, 2019.

s'intéressent à la dimension matérielle des politiques publiques. Ce travail de recherche questionne les mécanismes causaux liant les idées aux instruments : l'adoption de nouveaux instruments d'action publique peut-elle précéder la diffusion des idées ? Les chapitres empiriques de cette thèse montrent ainsi comment les instruments de régulation des conflits d'intérêts ont servi de véhicules de représentations dans les pays importateurs, transférant une nouvelle conception de la corruption et de ses causes (et de la représentation politique dans une moindre mesure) en important ces instruments de régulation. Cette thèse suggère ainsi qu'il est possible d'étudier la circulation des idées par l'analyse de la mobilité des instruments.<sup>10</sup> Si l'analyse des instruments d'action publique a été critiquée pour sa tendance à réifier les dimensions matérielles des politiques publiques,<sup>11</sup> une entrée par les instruments évitant l'écueil fonctionnaliste peut néanmoins être utile à une analyse de la circulation des idées, *a minima* comme méthode de collecte de données empiriques.

## Cadre théorique et méthodes de recherche

Le cadre théorique de cette thèse combine une approche fondée sur le néo-institutionnalisme discursif (ou constructiviste), branche la plus récente du néo-institutionnalisme qui explique le changement des politiques publiques par des facteurs à la fois idéels-discursifs et institutionnels,<sup>12</sup> et une analyse de la transnationalisation des politiques publiques centrée sur les processus de traduction.<sup>13</sup>

<sup>10</sup> CZARNIAWSKA-JOERGES, Barbara and SEVÓN Guje. *Translating Organizational Change*. New York, Berlin: Walter de Gruyter, 1996; PEDERSEN, Lene Holm. Ideas are transformed as they transfer: a comparative study of eco-taxation in Scandinavia. *Journal of European Public Policy*, Vol.14, n°1, 2007, pp. 59-77; WOOD, Astrid. Tracing Policy Movements: Methods for Studying Learning and Policy Circulation. *Environment and Planning A: Economy and Space*, Vol. 48, n° 2, 2016, pp. 391-406.

<sup>11</sup> BENAMOUZIG, Daniel. Des idées pour l'action publique Instruments ou motifs cognitifs ? In HALPERN, Charlotte, LASCOUMES, Pierre and LE GALES, Patrick (eds.) *L'instrumentation de l'action publique Controverses, résistances et effets*. Paris: Presses de Sciences Po, 2014, pp. 95-118; BAUDOT, Pierre-Yves. Le temps des instruments Pour une socio-histoire des instruments d'action publique. In HALPERN, Charlotte, LASCOUMES, Pierre and LE GALES, Patrick (eds.) *L'instrumentation de l'action publique Controverses, résistances et effets*. Paris: Presses de Sciences Po, 2014, pp. 193-236.

<sup>12</sup> SCHMIDT, Vivien A. Discursive Institutionalism: The Explanatory Power of Ideas and Discourse. *Annual Review of Political Science*. Vol. 11, 2008, pp. 303-326; HAY, Colin. Constructivist Institutionalism. In BINDER, Sarah A., RHODES, R. A. W. and ROCKMAN, Bert A. *The Oxford Handbook of Political Institutions*. Oxford University Press, 2008; SCHMIDT, Vivien A. Taking ideas and discourse seriously: explaining change through discursive institutionalism as the fourth 'new institutionalism'. *European Political Science Review*, Vol. 2, n°1, 2010; HAY, Colin. Good in a crisis: the ontological institutionalism of social constructivism. *New Political Economy*, Vol. 21, n°6, 2016, pp. 520-535; CRESPIY, Amandine and SCHMIDT, Vivien A. Néo-institutionnalisme discursif. In BOUSSAGUET Laurie (éd.) *Dictionnaire des politiques publiques*. 5e édition entièrement revue et corrigée. Presses de Sciences Po, 2019, pp. 367-375.

<sup>13</sup> STONE, Diane. Transfer and Translation of Policy. *Policy Studies*, Vol. 33, n° 6, 2012, pp. 483-499; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. Convergence, transferts et traduction. Les apports de la comparaison transnationale. *Gouvernement et Action Publique*, Vol. 3, n° 3, 2013, pp. 377-393; DELCOUR, Laura and TULMETS, Elsa. *Policy Transfer and Norm Circulation: Towards an Interdisciplinary and Comparative Approach*. New York: Routledge, 2019; MUKTHAROV, Farhad. Rethinking the travel of ideas: policy translation in the water sector. *Policy & Politics*, Vol. 42, n° 1, 2020.

Le néo-institutionnalisme discursif s'intéresse aux acteurs qui élaborent les politiques publiques, qu'il considère comme libres de définir des stratégies, de faire des choix et de se mobiliser dans le cadre des configurations institutionnelles particulières dans lesquelles ils agissent.<sup>14</sup> Ce cadre théorique porte une attention aux intérêts des acteurs, mais considère que ceux-ci ne sont pas définis d'avance et évoluent de manière contingente, en fonction des changements de l'environnement institutionnel et des prédispositions normatives et idéelles des acteurs.<sup>15</sup> Les idées sont définies comme les croyances et les perceptions, socialement et historiquement construites, de ces acteurs.<sup>16</sup> Il existe des idées d'ordres différents : depuis paradigmes et idéologies jusqu'aux représentations de problèmes publics et aux cadrages de politiques publiques.<sup>17</sup> C'est à cette deuxième catégorie d'idées que s'intéresse cette thèse. Plus concrètement, elle cherche à comprendre la diffusion de la représentation de la corruption comme un problème de coût d'opportunité pouvant être régulé en changeant les structures incitatives (par des obligations de transparence et une codification des règles éthiques) et celle des intérêts privés des acteurs politiques comme risque de corruption.

Si l'on définit les institutions comme un ensemble de règles et de pratiques relativement stables s'inscrivant dans des structures de sens et de ressources qui ne dépendent que peu des changements individuels, contextuels ou des préférences des acteurs,<sup>18</sup> on devine que les idées peuvent être des institutions. Une fois institutionnalisées, les idées façonnent ainsi le comportement des acteurs d'une manière plus significative.<sup>19</sup> Celles qui ne sont pas institutionnalisées sont néanmoins influencées par l'environnement institutionnel, qui encadre la concurrence entre idées.

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<sup>14</sup> MULLER, Pierre. Chapitre III. Expliquer le changement : l'analyse cognitive des politiques publiques. In MULLER, Pierre (ed.) *Les politiques publiques*. Presses Universitaires de France, 2018, pp. 50-86 ; CRESPIY, Amandine and SCHMIDT, Vivien A. *Op. cit.* 2019.

<sup>15</sup> BLYTH Mark, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century*. Cambridge, Cambridge University Press, 2002.

HAY, Colin. Ideas and the Construction of Interests. In BÉLAND, Daniel and COX, Robert (eds.) *Ideas and Politics in Social Science Research*. New York: Oxford University Press, 2011.

<sup>16</sup> BELAND, Daniel. *Op. cit.* 2019, p. 4.

<sup>17</sup> HALL, Peter A. Policy paradigms, social learning and the state: The case of economic policymaking in Britain. *Comparative Politics*, Vol. 25, n°3, 1993, pp. 275-296; SCHÖN, Donald A. and REIN, Martin. *Frame reflection: toward the resolution of intractable policy controversies*. New York : Basic Books, 1994; ROE Emery M. *Narrative policy analysis: theory and practice*. Durham, N.C : Duke University Press, 1994; CAMPBELL, John L. *Institutional Change and Globalization*. Princeton: Princeton University Press, 2004; JONES, Michael D. and RADAELLI, Claudio M. The narrative policy framework's call for interpretivists. *Critical Policy Studies*, Vol. 10, n° 1, 2016, pp. 117-120; VAN HULST, Merlijn and YANOW, Dvora. From Policy "Frames" to "Framing": Theorizing a More Dynamic, Political Approach. *The American Review of Public Administration*, vol.46, n° 1, 2016, pp. 92-112; METHA, Jal. The varied roles of ideas in politics: From "whether" to "how." In BÉLAND, Daniel and COX, Robert (eds.) *Ideas and Politics in Social Science Research*. New York: Oxford University Press, 2011; BELAND, Daniel. *Op. cit.* 2019.

<sup>18</sup> BINDER, Sarah A., RHODES, R. A. W., ROCKMAN, Bert A., MARCH, James G., and OLSEN, Johan P. Elaborating the "New Institutionalism". In *The Oxford Handbook of Political Institutions*. Oxford University Press, 2008.

<sup>19</sup> PARSONS, Craig. *Op. cit.* 2007 ; BELAND, Daniel. *Op. cit.* 2019.

Cette thèse s'intéresse particulièrement aux systèmes politiques et électoraux, à l'organisation interne des parlements et à leurs routines, aux trajectoires de réformes et de choix politiques passés ainsi qu'aux conceptions de la représentation politique et de la corruption. Elle s'intéresse ainsi au processus d'institutionnalisation de la représentation de la corruption comme calcul de coût-bénéfice et sa matérialisation dans des instruments d'action publique, définis par Patrick Le Galès et Pierre Lascombes comme des « dispositifs à la fois techniques et sociaux qui organisent des rapports sociaux spécifiques entre la puissance publique et ses destinataires en fonction des représentations et des significations dont ils sont porteurs ».<sup>20</sup>

Les trois cas nationaux étudiés dans la thèse ont été sélectionnés parce que ces trois pays ont tous adopté les mêmes instruments de régulation des conflits d'intérêts et qu'ils les mettent en œuvre différemment. Ils ont également des caractéristiques institutionnelles et contextuelles (détaillées dans le tableau 1) qui rendent la comparaison pertinente, notamment du fait de l'influence des parlementaires sur la décision publique, des conceptions de la représentation politique et de l'importance du problème de la corruption dans le débat public.

Tableau 1. Caractéristiques des pays étudiés

	<b>Royaume-Uni</b>	<b>France</b>	<b>Suède</b>
Système politique	Monarchie parlementaire	Semi-présidentiel	Monarchie parlementaire
Système électoral (chambre basse)	Majoritaire à un tour	Majoritaire à deux tours	Proportionnel
Relations État-société <sup>21</sup>	Pluraliste	Antagoniste	Organique
Confiance (parlement) <sup>22</sup>	37%	25%	60%
Confiance (personnel politique) <sup>23</sup>	10% (niveau très bas et en déclin)	21,5% (niveau bas et en déclin)	38% (niveau moyen et stable)

<sup>20</sup> LASCOUMES, Pierre and LE GALES, Patrick. Introduction: Understanding Public Policy through Its Instruments—From the Nature of Instruments to the Sociology of Public Policy Instrumentation. *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 20, n° 1, 2007; LE GALES, Patrick. Chapter 10: Policy Instruments and Governance. In BEVIR, Mark (ed.). *The SAGE Handbook of Governance*. London: SAGE Publications Ltd, 2011, pp. 142-143.

<sup>21</sup> HENDRIKS, Frank, LIDSTRÖM, Anders and LOUGHLIN, John. Introduction: Subnational Democracy in Europe: Changing Backgrounds and Theoretical Models. In *The Oxford Handbook of Local and Regional Democracy in Europe*. Oxford University Press, 2010.

<sup>22</sup> The percentage corresponds to the respondents choosing answers 6 to 10 to the question “do you trust your country’s parliament?” (0 being no trust at all and 10 complete trust) (European Social Survey. Dataset: ESS8-2016, ed.2.1, 2016).

<sup>23</sup> The percentage corresponds to the respondents choosing answers 6 to 10 to the question “do you trust your country’s politicians?” (0 being no trust at all and 10 complete trust) (European Social Survey. Dataset: ESS8-2016, ed.2.1, 2016).

Perception de la probité du secteur public <sup>24</sup>	77/100	69/100	85/100
'World of compliance' (rapport aux normes internationales) <sup>25</sup>	Politique nationale prépondérante	Négligence	Respect

L'analyse institutionnaliste ne s'est que peu intéressée aux acteurs et aux mécanismes transnationaux,<sup>26</sup> dépassant rarement les limites du « nationalisme méthodologique ».<sup>27</sup> Une analyse comparative de politiques publiques ayant pour objet un domaine d'action publique internationalisé se doit de prendre en compte le fait que les sociétés ne sont pas des « conteneurs hermétiquement fermés, mais plutôt des systèmes ouverts où les flux de capitaux (...) d'idées et de technologies (...) sont la norme ».<sup>28</sup> En outre, les institutions existent en dehors des frontières nationales, et les institutions internationales et les acteurs transnationaux se multiplient avec l'émergence de nouveaux problèmes mondiaux.<sup>29</sup> Les changements et les événements advenant hors des frontières nationales doivent ainsi être pris en compte pour appréhender la convergence des politiques de régulation des conflits d'intérêts. Cette thèse, cherchant à comprendre la 'convergence divergente' de celles-ci, opère un déplacement depuis une approche comparative internationale vers une approche comparative transnationale, qui prend en compte les acteurs transnationaux ainsi que les interactions entre acteurs nationaux dans l'analyse comparative.<sup>30</sup> Les travaux s'appuyant sur la notion de traduction des politiques publiques s'avèrent particulièrement utiles pour étudier un tel cas de convergence complexe non-linéaire, car ils permettent de dépasser les oppositions entre international et national, externe et interne ou encore exportation et importation.<sup>31</sup> Appliquée à l'analyse des politiques publiques, la traduction correspond au « processus de reformulation des

<sup>24</sup> Transparency International. *Corruption Perceptions Index 2019*. Online, available at : <https://www.transparency.org/cpi2019> (accessed on February 7th 2020).

<sup>25</sup> FALKNER, Gerda and TREIB, Oliver. Three Worlds of Compliance or Four? The EU-15 Compared to New Member States. *JCMS: Journal of Common Market Studies*, Vol.46, n° 2, 2008, pp. 293-313.

<sup>26</sup> BELAND, Daniel. *Op. cit.* 2019, p. 26.

<sup>27</sup> SPERANTA, Dumitru. Qu'est-ce que le nationalisme méthodologique ? *Raisons politiques*, vol.54 no 2, 2014, pp. 9-22 ; STONE, Diane, and MOLONEY, Kim. *Op. cit.* 2019.

<sup>28</sup> MORGAN, Glenn, CAMPBELL, John L., CROUCH, Colin, PEDERSEN, Ove Kaj, and WHITLEY, Richard. Introduction. In *The Oxford Handbook of Comparative Institutional Analysis*. Oxford University Press, 2010. Traduction de l'autrice.

<sup>29</sup> STONE, Diane, and MOLONEY, Kim. The Rise of Global Policy and Transnational Administration. In *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.

<sup>30</sup> HASSENTEUFEL, Patrick. De la comparaison internationale à la comparaison transnationale. Le déplacement de la construction d'objets comparatifs en matière de politiques publiques. *Revue française de science politique*, Vol. 55, n°1, 2005, pp. 113-132.

<sup>31</sup> HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. *Op. cit.* 2013.

problèmes, des orientations et solutions d'une langue à l'autre, d'un contexte à l'autre », <sup>32</sup> à une « opération cognitive de recreation d'un modèle, soit comme produit de négociations et d'interaction avec d'autres acteurs ». <sup>33</sup> Elle s'intéresse aux acteurs (dont les intermédiaires) en interaction, et permet ainsi de voir le global dans le local, et le local dans le global. <sup>34</sup>

Cette thèse utilise une approche méthodologique qualitative. S'appuyant sur une enquête auprès des acteurs clés de ce processus dans les trois pays et au sein d'institutions internationales, sur une analyse documentaire et sur l'observation directe de forums internationaux, elle s'inspire de la méthode du *process-tracing*, définie par Bruno Palier et Christine Trampusch comme « une méthode consistant à produire, identifier, tester, pondérer et/ou contextualiser des mécanismes causaux, étudiés 'en action', afin d'établir et d'éprouver les relations qui existent entre un ensemble de facteurs explicatifs et des 'résultats' (ou entre des 'inputs' et des 'outputs') ». <sup>35</sup> Plus spécifiquement, elle utilise la méthode du *process tracing* inductif, qui part des données empiriques collectées pour identifier et caractériser les mécanismes d'élaboration des politiques de régulation des conflits d'intérêts et leur 'convergence divergente'. Plus qu'un processus, cette recherche trace la mobilité des instruments de régulation des conflits d'intérêts étudiés (registre de déclaration d'intérêts et code de conduite), s'inspirant d'une approche méthodologique innovante popularisée par la géographie et les études urbaines qui encourage le chercheur à suivre les politiques publiques (ou leurs instruments) pour analyser la circulation des idées et leur transformation au cours des processus d'import-export et de traduction. <sup>36</sup>

<sup>32</sup> HASSENTEUFEL, Patrick, BENAMOUZIG, Daniel, MINONZIO, Jérôme and ROBELET, Magali. Policy Diffusion and Translation The Case of Evidence-based Health Agencies in Europe. *Novos Estudos CEBRAP*, Vol. 36, n°1, 2017, p. 81. Traduction de l'autrice.

<sup>33</sup> HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. *Op. cit.* 2013, p. 377.

<sup>34</sup> MUKTHAROV, Farhad. Rethinking the travel of ideas: policy translation in the water sector. *Policy & Politics*, Vol. 42, n° 1, 2020, p. 76.

<sup>35</sup> TRAMPUSCH, Christine and PALIER, Bruno. Between X and Y: how process tracing contributes to opening the black box of causality. *New Political Economy*, Vol. 21, n° 5, 2016, pp. 437-454.

<sup>36</sup> DUMOULIN, Laurence and SAURUGGER, Sabine. Les policy transfer studies : analyse critique et perspectives. *Critique internationale*, Vol. 48, n° 3, 2010, pp. 9-24; PECK, Jamie. Geographies of Policy: From Transfer-Diffusion to Mobility-Mutation. *Progress in Human Geography*, Vol. 35, n° 6, 2011, pp. 773-797; McCANN, Eugene and WARD, Kevin. Assembling urbanism: following policies and 'studying through' the sites and situations of policy making. *Environment and Planning A*, Vol. 44, 2012, pp. 42-51; PECK, Jamie and THEODORE, Nik. Follow the Policy: A Distended Case Approach. *Environment and Planning A*, Vol. 44, n°1, 2012, pp. 21-30; PECK, Jamie and THEODORE, Nik. *Fast Policy: Experimental Statecraft at the Thresholds of Neoliberalism*. Minneapolis, London: University of Minnesota Press, 2015; BELAND, Daniel, HOWLETT, Michael and MUKHERJEE, Ishani. Instrument constituencies and public policy-making: an introduction. *Policy and Society*, Vol. 37, n°1, 2018, pp. 1-13; FOLI, Rosina, BELAND, Daniel and BECK FENWICK, Tracy. How instrument constituencies shape policy transfer: a case study from Ghana. *Policy and Society*, Vol. 37, n°1, 2018, pp. 108-124.



## Conclusions

Ses conclusions soulignent que la convergence de ces politiques anti-corruption est le résultat, d'une part, de l'émulation des instruments élaborés par des États 'pionniers' de l'institutionnalisation et de l'instrumentation de la régulation des conflits d'intérêts (États-Unis et Royaume-Uni), qui ont fortement contribué à l'internationalisation de la lutte contre la corruption. D'autre part, elle est une des conséquences de l'émergence d'une communauté transnationale de lutte contre la corruption, composée d'institutions internationales publiques et privées, ayant construit la corruption comme un problème global et traduit ces instruments d'action publique en 'bonnes pratiques' internationales de lutte contre la corruption. Cette communauté a contribué à la légitimation de ces instruments, en les inscrivant dans des conventions internationales, et à leur diffusion, en produisant des rapports, des boîtes à outils et des *benchmarks*. La convergence de la régulation des conflits d'intérêts est ainsi le résultat de l'action volontaire de gouvernements respectant une forme de conformisme normatif ou se servant de solutions légitimées par la communauté internationale pour répondre aux conséquences de scandales politiques. La liberté des gouvernements est néanmoins à nuancer du fait de la construction d'un paradigme de la lutte contre la corruption au niveau transnational, qui limite le champ des (solutions) possibles, et de l'existence de mécanismes de suivi de la mise en œuvre des normes internationales, qui conduit à une harmonisation des politiques publiques dans ce domaine. Enfin, cette thèse s'appuie sur la notion de traduction des politiques publiques pour expliquer les dimensions divergentes de la régulation des conflits d'intérêts. Ces dernières sont en effet le résultat de la réinterprétation du problème de conflit d'intérêts et des deux instruments de régulation par les acteurs nationaux et les intermédiaires impliqués dans ce processus d'import/export. Le contexte de politisation (les moments de crise menant à une plus importante externalisation du contrôle) et les agencements institutionnels (système politique, conception de la représentation politique, fonctionnement du parlement et statut des élus) façonnent également la manière dont les registres de déclaration d'intérêts et les codes de conduite ont été traduits dans les trois pays étudiés.

### **a) Voir le local dans le global : l'émulation de l'approche anglo-saxonne de régulation des conflits d'intérêts**

Plusieurs facteurs peuvent expliquer la convergence des politiques de lutte contre la corruption en Europe. Cette thèse souligne que la convergence des instruments de régulation des conflits d'intérêts est le résultat de l'émulation des instruments élaborés par des États 'pionniers' de la régulation des conflits d'intérêts (États-Unis et Royaume-Uni), qui ont fortement contribué à l'internationalisation de la lutte contre la corruption. Une approche par séquences chronologiques

centrée sur l'adoption des registres de déclarations d'intérêts et des codes de conduite permet d'identifier l'origine anglo-saxonne de ces instruments. La déclaration d'intérêts au Royaume-Uni est en effet une tradition ancienne liée à l'absence de rémunération des parlementaires qui devaient ainsi maintenir une activité professionnelle pour subvenir à leurs besoins. Cette déclaration devait garantir que les décisions politiques n'étaient pas prises aux dépens de l'intérêt public (compris comme celui des électeurs de la circonscription), en assurant une symétrie d'information entre les élus et leurs électeurs. Les registres de déclarations d'intérêts et les codes de conduite sont les héritiers de cette pratique et ont depuis été adaptés à différents systèmes politiques. Les États-Unis ont adopté un registre et un code de conduite en 1968, suivis de près par le Royaume-Uni qui formalise cette pratique informelle par l'introduction d'un registre obligatoire en 1974. L'adoption du code de conduite de la chambre des communes britannique en 1995 marque le début d'une vague de régulation des conflits d'intérêts. Les registres de déclarations d'intérêts se répandent à la fin des années 1990, suivis par une diffusion internationale des codes de conduite à partir des années 2010. La Suède adopte ces instruments respectivement en 1996 et en 2016, la France en 2011 (bien que l'obligation de déclaration des intérêts ne soit instaurée qu'en 2013). La temporalité est donc un facteur explicatif important, notamment l'ordre dans lequel ces instruments ont été adoptés.<sup>37</sup> En étant les premiers à proposer des instruments de régulation des conflits d'intérêts, les États-Unis et le Royaume-Uni ont durablement marqué ce domaine de politique publique au-delà de leurs frontières nationales (chapitre 2).

L'invention de ces instruments dans le monde anglo-saxon est une condition nécessaire pour que soient adoptées des solutions similaires en France et en Suède, mais elle n'est pas suffisante en soi. L'ambition de ces 'pionniers' de la régulation des conflits d'intérêts d'exporter leur représentation du problème ainsi que leurs solutions a fait d'eux des 'chefs de file' (*'leaders'*) ou 'systèmes modèles' en la matière. À partir de la fin des années 1970, les gouvernements américains successifs ont cherché à faire de la lutte contre la corruption un enjeu international légitime, par l'organisation d'événements internationaux dédiés au sujet de la corruption, le financement d'organisations non-gouvernementales spécialisées et les négociations diplomatiques au sein de différentes enceintes internationales (Nations Unies, OCDE, Conseil de l'Europe). Le Royaume-Uni s'est joint à cette entreprise de 'mise à l'agenda' dans les années 2000. Le Canada (et notamment la région francophone du Québec) n'a pas cherché à se faire une image de 'système modèle' mais a néanmoins servi de plateforme de traduction vers le monde francophone, et vers la France en

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<sup>37</sup> SEWELL, William H. Three temporalities: toward an eventful sociology. In MCDONALD, Terrence J. (ed.) *The Historic Turn in the Human Sciences*. Ann Arbor, MI: University of Michigan Press, 1996, pp. 262-263.

particulier. Les pays faisant office de ‘chefs de file’ peuvent changer avec le temps,<sup>38</sup> et, après sa vague de réformes anti-corruption des années 2010, la France cherche maintenant à son tour à influencer ce domaine de politique publiques au niveau international (chapitre 3).

Si le fait d’être pionnier dans la résolution d’un problème public donne une forme d’autorité cognitive à un État sur la scène internationale, tous ne sont pas égaux. Comme le dit Joseph Nye, un État ne peut être ‘chef de file’ sans pouvoir.<sup>39</sup> Ce n’est donc pas une coïncidence si les États-Unis, et le Royaume-Uni dans une moindre mesure, parviennent à imposer la lutte contre la corruption comme enjeu international grâce à leur rôle d’hégémon et de gardien de l’ordre libéral international. La transnationalisation de la lutte contre la corruption a transformé certaines organisations internationales en courtiers de la régulation des conflits d’intérêts ‘à l’anglo-saxonne’. En façonnant les recommandations internationales grâce à leur capacité de négociation, au financement du travail anti-corruption d’ONG et d’OI, et à leurs experts nationaux au sein des OI, ils ont créé un terrain fertile à la diffusion internationale de leur représentation du problème et de leurs solutions.

L’influence du monde anglo-saxon sur ce domaine de politique publique n’est cependant pas le résultat de l’émulation d’une politique publique réussie. Les indicateurs de mesure de la corruption classent en effet généralement les pays nordiques en haut du rang des pays les ‘moins corrompus’, au-dessus des pays anglo-saxons. Les solutions préconisées par ces derniers sont néanmoins celles qui ont été imitées en France et en Suède et au sein des organisations internationales. Ces instruments ayant été développés en réponse à des scandales et suite à la prise de conscience de l’existence d’un problème à régler, on peut dire que ces pionniers jouissent d’une forme assez particulière de légitimité. L’ambition de se constituer en ‘système modèle’ s’explique néanmoins par la volonté de façonner une politique publique internationale et d’aligner les futurs standards internationaux sur sa proche approche du problème. Cette thèse montre ainsi que, mis face à un ‘nouveau’ problème, les gouvernements et les organisations internationales ont tendance à suivre les pionniers en la matière et ceux qui ont su se constituer en ‘système modèle’ plutôt que de s’inspirer des véritables ‘bonnes pratiques’, ce qui est d’autant plus vraisemblable dans un domaine de politique publique où l’évaluation s’avère compliquée (chapitre 6).

La multiplication d’acteurs transnationaux engagés dans la lutte globale contre la corruption, mais surtout leur constitution en communauté transnationale de politique publique, a permis la

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<sup>38</sup> LIEFFERINK, Duncan and WURZEL, Rüdiger K.W. Environmental leaders and pioneers: agents of change? *Journal of European Public Policy*, Vol.24, n° 7, 2017, p. 955.

<sup>39</sup> NYE, Joseph. *The Powers to Lead*. Oxford: Oxford University Press, 2008, p. 27.

circulation de l'approche anglo-saxonne de la régulation des conflits d'intérêts. La collaboration de ces acteurs, la présence des mêmes États-membres dans les différentes enceintes internationales et la circulation des individus et des savoirs ont construit un paradigme de la lutte contre la corruption (basé sur l'idée que la corruption est un problème de coût d'opportunité), qui a facilité cette diffusion. Bien que les organisations internationales puissent agir de manière autonome, ce travail de recherche montre que, dans le domaine de la lutte contre la corruption, leurs recommandations tendent à refléter les idées et les valeurs de leurs États-membres les plus influents. Leur travail de diffusion d'idées, de standards et de pratiques ont fait des membres de cette communauté transnationale des courtiers de l'approche anglo-saxonne de la prévention de la corruption, et donc des registres de déclarations d'intérêts et des codes de conduite.

La multiplication d'institutions internationales engagées dans la lutte contre la corruption et l'émergence d'une communauté transnationale dédiée à cette cause ont permis une recherche de solutions communes au problème de la corruption. L'origine de la circulation transnationale d'instruments de régulation des conflits d'intérêts est néanmoins à chercher du côté de l'émulation de pays pionniers. La convergence dans ce domaine peut ainsi être conçue comme une conséquence indirecte de scandales américains, canadiens et britanniques des années 1970 à 1990, à l'origine de ces innovations, qui ont tracé le sentier que suivront ensuite d'autres acteurs nationaux et transnationaux cherchant des solutions au problème.

### **b) L'intégration de la régulation des conflits d'intérêts dans la lutte globale contre la corruption**

Comme le formule John W. Kingdon, le flux des politiques publiques,<sup>40</sup> dans lequel circulent les registres de déclaration d'intérêts et les codes de conduite, s'est constitué de manière transnationale. Comprendre la convergence des politiques de régulation des conflits d'intérêts exige de s'intéresser à la transnationalisation de la lutte contre la corruption. Ces instruments ont en effet été diffusés par des courtiers et des organisations internationales comme des outils de lutte contre la *corruption*, après que des entrepreneurs de cause en ont fait un problème *global* appelant des solutions *globales*, ou, plus exactement, nécessitant la globalisation de solutions existantes inventées par les pionniers anglo-saxons. Avec le tournant préventif de la lutte globale contre la corruption des années 2000, les acteurs transnationaux se sont penchés sur les causes de la corruption (et sur les causes de ces causes), et ont cherché à rendre le problème 'gouvernable'. Cet intérêt croissant

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<sup>40</sup> KINGDON, John W. *Op. cit.* 1984.

pour les *risques* de corruption a attiré leur attention sur le problème des conflits d'intérêt, 'zone grise' à l'origine de tels risques (chapitre 4).

La Banque mondiale et Transparency International (une ONG transnationale fondée par des anciens fonctionnaires de la Banque mondiale), avec le soutien de dirigeants et experts anglo-saxons, ont contribué à faire de la corruption un problème nécessitant l'intervention de la communauté internationale (rendant par la même occasion l'inaction indésirable). Par leur entreprise de définition de la corruption (comme violation des règles d'une fonction publique) et de diagnostic (coût d'opportunité), ces organisations ont construit le référentiel de la lutte contre la corruption<sup>41</sup> en réduisant la complexité du problème, le rendant ainsi compréhensible et gouvernable. D'autres organisations internationales ne sont pas parvenues à définir le concept de corruption, préférant lister des pratiques étiquetées comme 'corruption' (pots-de-vin, trafic d'influence, détournement de fonds etc.) dans le cadre de conventions internationales (neuf conventions anti-corruption ont été adoptées entre les années 1990 et les années 2000, dont celles de l'OCDE de 1997, du Conseil de l'Europe de 1999 et des Nations Unies en 2003). Cette thèse montre que ces conventions ont fait un usage stratégique de l'ambiguïté, laissant une marge de manœuvre aux États et aux acteurs transnationaux pour interpréter les termes du débat et étendre les frontières de ce nouveau domaine d'action publique si nécessaire, permettant ainsi d'atteindre un consensus international. Comme le dit Jacqueline Best, les organisations internationales créent des règles internationales pour rendre le monde gouvernable, mais il est nécessaire, pour comprendre véritablement leur fonctionnement, de s'intéresser à leur usage de l'ambiguïté comme moyen de contourner les limites de l'élaboration de ce type de règles dans un monde complexe et incertain.<sup>42</sup>

Ces conventions internationales ont pour objectif de faciliter la coopération internationale face à un problème devenu transnational, mais également d'harmoniser les législations nationales dans ce domaine. En les intégrant à ces accords internationaux, les négociateurs ont fait des registres de déclarations d'intérêts et des codes de conduite des instruments légitimes de régulation des conflits d'intérêts et de prévention de la corruption. L'analyse du contexte dans lequel ces conventions ont été élaborées montre que l'objectif premier des négociateurs n'était pas de réguler de manière systématique la conduite des élites politiques. Les conséquences de la fin de la guerre froide et de la libéralisation des échanges ont initialement encouragé les gouvernements et les

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<sup>41</sup> MULLER, Pierre. Esquisse d'une théorie du changement dans l'action publique. Structures, acteurs et cadres cognitifs. *Revue française de science politique*, Vol. 55, n°1, 2005, pp. 155-187.

<sup>42</sup> BEST, Jacqueline. Ambiguity and Uncertainty in International Organizations: A History of Debating IMF Conditionality. *International Studies Quarterly*, Vol.56, n° 4, 2012, p. 687.

organisations internationales à s'intéresser à la criminalité des entreprises, à la fraude dans le commerce international et l'aide au développement et à la transnationalisation du crime organisé. La recherche d'un compromis entre pays riches (voulant lutter contre la corruption par des réformes institutionnelles dans les pays récipiendaires de l'aide au développement) et pays en développement (en faveur d'une politique internationale de recouvrement des avoirs volés) a eu pour résultat de pousser tous les pays à adopter des instruments de régulation de leurs élites politiques, y compris la France, le Royaume-Uni et la Suède (chapitre 5). Les conventions internationales contre la corruption sont généralement accompagnées de mécanismes de suivi de leur mise en œuvre par les pairs, servant à inciter les gouvernements à respecter leurs engagements en traduisant les normes internationales dans le droit national. Cette technique de *'name and shame'* a ainsi facilité la convergence des politiques de régulation des conflits d'intérêts en France, au Royaume-Uni et en Suède. Le Groupe d'États contre la corruption du Conseil de l'Europe (GRECO) s'est avéré particulièrement efficace pour guider ses États-membres dans leurs trajectoires de réforme.

En plus des normes internationales et des mécanismes de suivi mis en place par les Nations Unies, le Conseil de l'Europe et la Commission européenne pour harmoniser les législations nationales en lien avec la répression et la prévention de la corruption, les acteurs transnationaux ont cherché à inciter les gouvernements à importer leur modèle de régulation des conflits d'intérêts par la production de savoirs. Par la construction d'un discours de légitimation basé sur la science, ils ont fait des registres de déclaration d'intérêts et des codes de conduite des outils techniques, facilement transposables et efficaces pour prévenir un problème présenté comme gouvernable. L'utilisation de la rhétorique de l'efficacité et des données probantes (*evidence-based policy-making*) contribue en effet au processus de rationalisation de l'action publique dans ce domaine et de légitimation de ces instruments, présentés comme des 'bonnes pratiques', malgré le fait que les acteurs eux-mêmes reconnaissent que l'évaluation des politiques de prévention de la corruption reste difficile. En utilisant un vocabulaire technique (*benchmark, toolkits* etc.), les acteurs transnationaux effacent la dimension politique de ces instruments ainsi que les représentations et significations (issues de leur origine anglo-saxonne) dont ils sont porteurs. Associant une technicisation du domaine d'action publique à un discours plus normatif sur les conséquences de la corruption (rendant l'inaction inacceptable), ils fabriquent à la fois la faisabilité technique des

registres de déclaration d'intérêts et des codes de conduite et leur compatibilité avec les valeurs dominantes (chapitre 6).<sup>43</sup>

La sociologie de la traduction des politiques publiques s'est principalement intéressée à la transformation des idées et des instruments d'action publique transférés (et adaptés) d'un contexte national à l'autre, ou lors de la réception d'idées issues d'enceintes internationales.<sup>44</sup> Cette thèse ajoute une perspective analytique à cette littérature en montrant que le processus de traduction s'opère en deux temps, de l'international vers le national, mais également du national vers l'international. Plusieurs études ont mis au jour les méthodes de dépolitisation des organisations internationales.<sup>45</sup> En combinant cette perspective avec les études portant sur le transfert et la traduction des politiques publiques, cette thèse clarifie la manière dont les 'modèles' sont sélectionnés par les acteurs transnationaux qui ensuite les décontextualisent pour les présenter comme des instruments neutres et des 'bonnes pratiques' transposables à n'importe quel système politique et à n'importe quel contexte.

### **c) Comprendre la divergence : traduire des idées importées en instruments d'action publique**

La transnationalisation de la lutte contre la corruption et la circulation des idées portant sur la régulation des conflits d'intérêts n'ont pas entraîné une convergence parfaite et linéaire des politiques publiques britannique, française et suédoise. Elles ont produit une forme plus complexe de 'convergence divergente'. La recherche existante a fait le constat qu'il n'est pas rare de voir se mêler des éléments convergents et d'autres qui ne convergent pas, voire qui divergent ; l'hybridation est en effet la règle et non l'exception.<sup>46</sup> Cette thèse s'appuie sur la notion de traduction de politiques publiques pour mieux comprendre les mécanismes de cette hybridation.

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<sup>43</sup> KINGDON, John W. *Agendas, Alternatives, and Public Policies*. Essex: Pearson 2<sup>d</sup> edition, 2014.

<sup>44</sup> CZARNIAWSKA-JOERGES, Barbara and SEVÓN Guje. *Translating Organizational Change*. New York, Berlin: Walter de Gruyter, 1996; LENDVAI, Noémi and STUBBS, Paul. Policies as translation: situating transnational social policies. In HODGSON, Susan H. and IRVING, Zoë (ed.) *Policy reconsidered Meaning, politics and practices*. Bristol: The Policy Press. 2007, pp. 173-189; STONE, Diane. Transfer and Translation of Policy. *Policy Studies*, Vol. 33, n° 6, 2012, pp. 483-499; HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. Convergence, transferts et traduction. Les apports de la comparaison transnationale. *Gouvernement et Action Publique*, Vol. 3, n° 3, 2013, pp. 377-393; DELCOUR, Laura and TULMETS, Elsa. *Policy Transfer and Norm Circulation: Towards an Interdisciplinary and Comparative Approach*. New York: Routledge, 2019.

<sup>45</sup> STONE, Diane. *Knowledge Actors and Transnational Governance*. London: Palgrave Macmillan, 2013; NAY, Olivier. International Organisations and the Production of Hegemonic Knowledge: how the World Bank and the OECD helped invent the Fragile State Concept. *Third World Quarterly*, Vol. 35, n°2, 2014, pp. 210-231; STONE, Diane. Global Governance Depoliticized. In FAWCETT, Paul, FLINDERS, Matthew, HAY, Colin and WOOD, Matthew (ed.) *Anti-Politics, Depoliticization and Governance*. Oxford University Press. 2017; SENDING, Ole Jacob. Knowledge Networks, Scientific Communities, and Evidence-Informed Policy. In STONE, Diane and MOLONEY Kim. *The Oxford Handbook of Global Policy and Transnational Administration*. Oxford University Press, 2019.

<sup>46</sup> MARSH, David and EVANS, Mark. Policy transfer: coming of age and learning from the experience. *Policy Studies*, Vol. 22, n°6, 2012, pp. 477-481.

Cette notion permet en effet de dépasser les oppositions entre international et national, interne et externe, et met en lumière les facteurs nationaux des transferts internationaux et, par conséquent, de convergence.<sup>47</sup> Cette recherche met en avant le rôle de médiation des acteurs qui réinterprètent les idées lors des différentes étapes de leur circulation, mais aussi des institutions vers lesquelles ces instruments de régulation sont transférées.<sup>48</sup> Les conclusions de la présente étude sont certainement transposables à d'autres domaines d'action publique transnationalisés. Les conclusions portant sur le rôle du contexte politique de la 'mise à l'agenda' pourraient cependant ne concerner que les problèmes publics susceptibles de provoquer des scandales ou des crises, comme la criminalité ou la santé publique.

Le flux de politiques publiques transnational est à la fois une ressource (car il met des solutions à disposition des acteurs nationaux) et une contrainte (car il limite le monde des possibles aux 'bonnes pratiques' internationales). Cette thèse montre néanmoins qu'exposés à la même pression internationale de mise en conformité, les institutions et acteurs nationaux ne réagissent pas de manière identique. Même lorsqu'ils décident d'importer ces instruments d'action publique promus par les organisations internationales, ils les réinterprètent pour les adapter à leur contexte politique et institutionnel. En France, les organisations internationales ont servi de ressource aux acteurs de l'administration publique, en temps de crise, pour trouver des 'solutions' aux problèmes soulevés par les scandales. Les acteurs politiques ont cependant cherché à 'endogéniser' les idées transférées d'ailleurs en les inscrivant dans l'histoire nationale. En Suède, la pression internationale a parfois servi à ouvrir une fenêtre politique et les entrepreneurs politiques s'appuient sur les 'bonnes pratiques' internationales pour légitimer leurs choix. Ces derniers ont cependant adopté leur registre de déclaration d'intérêts et leur code de conduite en n'y allouant que peu de ressources, à l'inverse de leurs homologues britanniques et français qui ont répondu à la pression populaire par la création de nouvelles institutions en charge de réguler les conflits d'intérêts et de « promouvoir la probité et l'exemplarité des responsables publics ».<sup>49</sup> En Suède, l'élaboration des politiques de régulation des conflits d'intérêts est demeurée un processus interne au parlement, centré autour des élus et des administrateurs parlementaires, à l'inverse de la France et du Royaume-Uni, où le pouvoir exécutif, l'administration et la société civile ont joué un rôle d'impulsion et de conseil (chapitre 8).

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<sup>47</sup> HASSENTEUFEL, Patrick and DE MAILLARD, Jacques. *Op. cit.* 2013.

<sup>48</sup> CZARNIAWSKA-JOERGES Barbara, and SEVÓN Guje. *Op. cit.* 2005; HASSENTEUFEL, Patrick, BENAMOUZIG, Daniel, MINONZIO, Jérôme and ROBELET, Magali. Policy Diffusion and Translation The Case of Evidence-based Health Agencies in Europe. *Novos Estudos CEBRAP*, Vol. 36, n°1, 2017.

<sup>49</sup> HATVP. Indépendance. N.d. [En ligne] <https://www.hatvp.fr/la-haute-autorite/linstitution/independance/> (consulté le 13 avril 2020).



Le contexte de forte mobilisation autour du problème de la corruption en France et au Royaume-Uni, provoquée par les scandales politiques impliquant des membres de la majorité, ont entraîné une dépolitisation progressive de la régulation des conflits d'intérêts, conséquence de la perception par les gouvernants d'une opinion publique défavorable à l'autorégulation des questions d'éthique politique. Les gouvernements britannique et français ont fait de ces réformes déontologiques des outils de gestion de crise, alors que les parlementaires suédois, ayant pris l'initiative de ces réformes en dehors de tout moment de crise, ont plutôt adopté une politique des petits pas, après plusieurs décennies de tentatives de réforme avortées. La contingence et le contexte politique nous permettent ainsi de comprendre les éléments divergents de la régulation des conflits d'intérêts, les facteurs de politisation n'étant pas les mêmes, ils produisent des pressions différentes sur les acteurs politiques, poussés (ou non) à externaliser la régulation des conflits d'intérêts, et modifient la manière dont ceux-ci interprètent le problème lui-même ainsi que leurs intérêts.

L'adoption d'un registre de déclarations d'intérêts et d'un code de conduite en France et en Suède n'est donc pas seulement le résultat de leur introduction dans la 'boîte à outils' internationale contre la corruption. La réception de ces instruments d'action publique est plutôt un processus actif au cœur duquel se trouvent de nombreux intermédiaires capables de les faire circuler des idées sur le problème et les solutions mises en œuvre ailleurs entre différents niveaux de gouvernance, pays et groupes professionnels, et les rendre pertinentes au regard des enjeux nationaux.<sup>50</sup> Bien que les acteurs gouvernementaux et les parlementaires aient permis d'intégrer ces idées importées à l'action publique nationale, les fonctionnaires, et les administrateurs parlementaires plus spécifiquement, ont joué un rôle central dans ce processus de réception, en sélectionnant les informations présentées aux décideurs politiques et en les adaptant à leur contexte institutionnel. Par leurs négociations et leurs interactions, avec leurs pairs à l'étranger et les membres de la communauté transnationale, les intermédiaires et les acteurs nationaux ont joué un rôle actif dans ce processus de transfert, en important des solutions venues d'ailleurs et en les rendant compréhensibles et acceptables dans le contexte national et pour le public cible (chapitre 7).

La problématisation et la réinterprétation de la régulation des conflits d'intérêts par des acteurs en interaction dans un contexte politique défini permet de rendre compte de la complexité de ce processus de convergence. Certains facteurs explicatifs de cette 'convergence divergente' sont néanmoins d'ordre plus structurel. Le travail des traducteurs de politiques publiques est en effet

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<sup>50</sup> CLAVIER, Carole. Les causes locales de la convergence. La réception des transferts transnationaux en santé publique. *Gouvernement et action publique*, Vol. 2, n° 3, 2013, pp. 395-413.

contraint par le cadre cognitif, les agencements institutionnels et les rapports de pouvoirs existant dans leur contexte respectif. Ceux-ci définissent les relations entre institutions, le pouvoir relatif des parlementaires, les conceptions de la politique et du rôle du parlement et des élus, et les représentations du problème. Au-delà de l'appropriation d'idées importées par certains acteurs, le transfert de politique publique nécessite de les intégrer aux politiques existantes et à la trajectoire de réforme sur laquelle se trouve un pays.<sup>51</sup> Les registres de déclaration d'intérêts et les codes de conduite, élaborés comme des outils incitatifs de '*soft law*' au sein de la tradition politique anglo-saxonne, ont ensuite été traduits dans le système français de tradition fortement étatique où la question de la corruption des élites est principalement prise en compte de manière répressive. Ils ont ainsi été intégrés dans une trajectoire de réforme marquée par la place importante donnée aux incompatibilités, au contrôle administratif du patrimoine et à la sanction. En Suède, ils se sont adaptés à un système politique basé sur la représentation collective des intérêts et à la forte place des partis politiques, notamment dans le contrôle du comportement individuel des élus, et dans lequel les sanctions politiques et la démission sont préférées aux sanctions pénales. Dans le cas suédois, la tradition d'accès aux données publiques (datant du XVIII<sup>e</sup> siècle) a fait jouer un rôle important à la société civile, et notamment aux médias d'information, dans la régulation des conflits d'intérêts (chapitre 9). Adapter des politiques publiques à un nouveau contexte implique ainsi une reformulation des problèmes et une transformation du 'système modèle' avec de nouvelles institutions et de nouveaux acteurs chargés de leur mise en œuvre.

En adaptant les idées importées sur la régulation des conflits d'intérêts au contexte cognitif, politique et institutionnel national, les acteurs évitent ce que David Dolowitz et David Marsh appellent le risque de 'transferts inadéquats' qui ne prendraient pas suffisamment en compte les différences entre les contextes politiques et idéologiques des pays importateurs et exportateurs.<sup>52</sup> Ce processus de traduction est à la fois conscient, lorsque les acteurs perçoivent les sources internationales des politiques publiques qu'ils importent, et involontaire, car ils interprètent celles-ci à travers leur univers cognitif. Cette thèse montre d'ailleurs que, dans le cas français où de nombreux acteurs ont participé à l'élaboration des politiques de régulation des conflits d'intérêts, plus on monte dans la chaîne décisionnelle, moins les acteurs sont conscients que les idées ont été importées. La traduction des politiques publiques minimise les frictions entre les idées importées et les institutions existantes. En effet, certains éléments se perdent dans ce processus de traduction,

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<sup>51</sup> CLAVIER, Carole. *Op. cit.* 2013.

<sup>52</sup> DOLOWITZ, David P. and MARSH, DAVID. Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making. *Governance: An International Journal of Policy and Administration*. Vol. 13, n° 1, 2000, p. 17.

mais celui-ci doit être compris comme une manière de réduire le risque d'échec d'une politique publique.

#### **d) Harmonisation des conceptions de la corruption politique**

En utilisant la perspective du néo-institutionnalisme discursif, cette thèse ouvre de nouveaux champs de recherche sur la corruption politique. Elle étudie la représentation du problème de la corruption politique contenue dans un type particulier de politiques de prévention de la corruption, la régulation des conflits d'intérêts.<sup>53</sup> Le néo-institutionnalisme discursif prête une attention particulière à l'ambiguïté interprétative des pratiques, à la nature contingente de la définition du problème et à la dimension politique de la résolution partielle de cette ambiguïté par l'adoption de nouvelles politiques publiques. En étudiant les instruments d'action publique comme des vecteurs de représentations, ce travail de recherche offre une nouvelle perspective à l'étude de la corruption politique, s'intéressant à l'harmonisation internationale des conceptions de la corruption politique.

La convergence des politiques de régulation des conflits d'intérêts a progressivement amené les acteurs nationaux des différents pays étudiés à tracer les mêmes frontières entre pratiques acceptables et risques de corruption dans le monde politique. La traduction de cette approche de la régulation des conflits d'intérêts dans le contexte français (tout comme l'encadrement du financement des partis et des campagnes politiques auparavant)<sup>54</sup> a élargi la conception des atteintes à la probité de l'inquiétude initiale, portant principalement sur le détournement de fonds publics, au risque que représente l'influence de l'argent privé sur la décision politique (que les acteurs pensaient avoir diminuée par une séparation plus ou moins stricte entre secteur économique et monde politique). Les conflits d'intérêts sont considérés depuis longtemps comme un risque de corruption dans le monde anglo-saxon, où une telle séparation n'a jamais été envisagée. La diffusion d'instruments de régulation des conflits d'intérêts encourage les gouvernants à penser différemment leurs intérêts privés et l'influence qu'ils peuvent avoir sur leurs décisions, et les gouvernés à surveiller leurs représentants sous un nouvel angle. Si la circulation des idées n'est pas un « jeu sans frontières » comme le souligne cette thèse,<sup>55</sup> le transfert de politiques de régulation des conflits d'intérêts a néanmoins conduit à réduire les frontières entre les différentes conceptions (nationales ou sectorielles) de la corruption et de ses risques.

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<sup>53</sup> BACCHI, Carol L. *Analysing Policy: What's the Problem Represented to be?* French Forest, N.S.W: Pearson, 2009; BACCHI, Carol. Introducing WPR. n.d. Online, available at: <https://carolbacchi.com/about/> (accessed on February 25<sup>th</sup> 2020).

<sup>54</sup> PHELIPPEAU, Éric. *L'argent de la politique*. Paris: Sciences Po Les Presses, 2018.

<sup>55</sup> VAUCHEZ, Antoine. Le prisme circulatoire. Retour sur un leitmotiv académique. *Critique internationale*, Vol. 59, n° 2, 2013, pp. 9-16.

L'instrumentation de ce champ d'action publique a facilité la convergence des politiques nationales et l'harmonisation de la représentation du problème. Cette instrumentation s'est établie à deux niveaux : celui des politiques publiques elles-mêmes (la lutte contre la corruption s'appuyant de plus en plus sur des instruments, des outils techniques et de nouvelles technologies) et celui du transfert de ces politiques (avec le développement de mécanismes de suivi, de *benchmarks*, d'indicateurs et de 'boîtes à outils'). Cette instrumentation n'est pas sans conséquence. Elle a en effet permis le transfert de politiques de prévention de la corruption présentées comme des solutions accessibles et simples d'utilisation à la corruption politique, et indirectement, de la représentation du problème dont ces instruments sont porteurs, harmonisant ainsi les conceptions et les diagnostics nationaux de la corruption politique.

### **e) Vers une approche politique de l'éthique politique ?**

L'action de la communauté transnationale a permis de développer et diffuser des politiques innovantes pour tenter de contenir un problème devenu une préoccupation majeure pour les citoyens partout dans le monde. La diffusion de politiques anti-corruption, comme toute « politique anti » (*anti-policy*), contribue néanmoins à attirer l'attention du grand public sur le problème qu'elles cherchent à résoudre.<sup>56</sup> De plus, la représentation du problème et de la population cible (présentées comme des *homo economicus* cherchant à maximiser leur intérêt personnel) dont ces instruments sont porteurs incitent les gouvernés à être suspicieux des gouvernants. Bien que ce ne soit pas un mal en soit, il est important d'inscrire ces politiques publiques (et leurs conséquences) dans un paysage politique plus large. En rendant les risques de corruption (et la corruption elle-même) plus visibles, ces instruments peuvent en effet renforcer la défiance des gouvernés envers les gouvernants et les institutions politiques. Les systèmes libéraux-pluralistes, concevant la politique comme l'agrégation des intérêts particuliers,<sup>57</sup> peuvent peut-être mieux s'accommoder d'une telle défiance. En revanche, les systèmes construits sur la conception républicaine de la recherche collective d'une volonté générale peuvent être d'autant plus mis à mal qu'ils reposent (plus que les autres) sur la confiance des gouvernés en la capacité des gouvernants à incarner cette volonté générale. La survie de ce contrat républicain doit ainsi être prise en considération dans l'élaboration des politiques

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<sup>56</sup> WALTERS, William. Anti-policy and Anti-politics. Critical Reflections on Certain Schemes to Govern Bad Things. *European Studies of Cultural Studies*, 2008, Vol 11 n°5, p 267–288; STONE, Diane. Global Governance Depoliticized. In FAWCETT, Paul, FLINDERS, Matthew, HAY, Colin and WOOD, Matthew (ed.) *Anti-Politics, Depoliticization and Governance*. Oxford University Press. 2017.

<sup>57</sup> PITKIN, Hanna. *The Concept of Representation*, Berkeley and Los Angeles: University of California Press. 1967; GETMAN Karen and KARLAN Pamela S. Pluralists and Republicans, Rules and Standards: Conflicts of Interest and the California Experience. In TROST, Christine and GASH, Alison L. *Conflict of Interest and Public Life*. Cambridge University Press, 2008; DÉLOYE, Yves and IHL, Olivier, *L'acte de vote*. Paris: Presses de Sciences Po, 2008; ROTHSTEIN, Bo and VARRAICH, Aiysha. *Making Sense of Corruption*. Cambridge University Press, 2017.

visant à promouvoir l'intégrité de la vie publique. Il est important que la recherche de solutions à la corruption politique, pour ne pas devenir contre-productive, prenne en considération les rôles sociaux des acteurs politiques dans les différents contextes nationaux, le quotidien des représentants et les différentes pressions qui s'exercent sur eux, pour les différencier d'autres agents publics et concevoir des politiques adaptées aux réalités du monde politique.<sup>58</sup> Un enjeu d'autant plus important que les idées populistes et le cynisme politique ne cessent de croître.<sup>59</sup>

Cette thèse retrace l'histoire de la redéfinition d'une question profondément politique et morale en un problème technique. L'instrumentation de la prévention de la corruption a en effet eu pour conséquence la diffusion d'une 'approche minimaliste' de l'éthique politique,<sup>60</sup> la réduisant à des problèmes d'abus individuels et à une question d'argent. Cette dimension est en effet la plus 'tangibile', comme le souligne une enquêtée suédoise : « Tout ça, l'argent, les voyages, ce sont des choses concrètes sur lesquelles nous pouvons agir, alors que le reste, les promesses irréalistes, le discours populiste, c'est bien plus difficile ». <sup>61</sup> Une autre enquêtée britannique formule le problème de cette approche minimaliste un peu différemment : « Avec ces approches basées sur des règles [par opposition à celles basées sur les principes et les valeurs], nous nous concentrons sur ces règles, mais le reste est libre. Par conséquent, les parlementaires voient la déontologie [*standards system*] comme un système en place pour veiller au respect de ces règles et non comme un système cherchant à promouvoir l'intégrité au-delà de ces règles ». <sup>62</sup> L'OCDE a récemment opéré son « tournant de l'intégrité » en proposant un nouveau discours plus positif à l'égard des agents publics et des acteurs politiques, cherchant à inclure l'ensemble de la société (*whole-of-society*) dans la promotion de l'intégrité publique. Ces efforts louables de réorientation continuent néanmoins à chercher à prévenir les abus individuels, en s'appuyant sur de nouvelles disciplines scientifiques comme l'économie du comportement et la psychologie sociale. Comme le soulignent Paul Heywood et Jonathan Rose, l'intégrité est plus que l'absence de corruption.<sup>63</sup> Cette question devrait en effet avoir un objectif de justice sociale et prendre en considération les idéaux que nous

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<sup>58</sup> PHILP, Mark and DAVID-BARRETT, Elizabeth. Realism About Political Corruption. *Annual Review of Political Science*, Vol.18, n° 1, 2015, pp. 387-402.

<sup>59</sup> FAWCETT, Paul, FLINDERS, Matthew, HAY, Colin and WOOD, Matthew (ed.) *Anti-Politics, Depoliticization and Governance*. Oxford University Press. 2017; CLARKE Nick, JENNINGS, Will, MOSS, Jonathan and STOKER, Gerry. *The good politician: folk theories, political interaction and the rise of anti-politics*. Cambridge: Cambridge University Press, 2018.

<sup>60</sup> PRESTON, Noel. Legislative Ethics. Challenges and Prospects. In BOIS, Carol-Anne, PRESTON, Noel, and SAMPFORD, Charles J. G. *Ethics and Political Practice: Perspectives on Legislative Ethics*. London, Annandale: Routledge Federation Press, 1998, pp. 143-152.

<sup>61</sup> Former member of the Swedish parliament (SWMP2). Phone interview with the author. May 23<sup>rd</sup> 2018.

<sup>62</sup> Parliamentary clerk, UK House of Commons (UKPC1). Interview with author. November 20th 2017.

<sup>63</sup> HEYWOOD, Paul M. and ROSE, Jonathan. *Debates of Corruption and Integrity Perspectives from Europe and the US*. London: Palgrave Macmillan, 2015.

cherchons à atteindre en tant que communauté humaine, nationale ou mondiale. Dans un monde de plus en plus complexe, l'émergence de nouveaux risques existentiels alors même que les centres de pouvoir nous semblent de plus en plus éloignés génère une anxiété qui ne peut qu'être renforcée par l'impression que nos dirigeants sont incapables de répondre à ces nouveaux défis. La réflexion sur l'éthique politique se doit de prendre en compte la possibilité que notre diagnostic de la désaffection politique soit erroné ou incomplet, et que la perception d'une corruption grandissante soit finalement liée à cette impression d'incapacité des gouvernants à nous protéger.

Pour dépasser les limites de la situation actuelle en matière de la lutte contre la corruption, nous pourrions élargir le champ de réflexion, en clarifiant les lieux et la manière dont sont prises les décisions politiques dans différents contextes nationaux. Cela permettrait d'adapter les politiques publiques, entre autres, à l'influence véritable des acteurs et institutions politiques, à l'accès de différents groupes sociaux à la décision publique et aux obstacles que rencontrent ceux qui ont l'impression de n'être ni entendus, ni représentés. Si l'objectif final de la lutte contre la corruption est d'éviter que certains groupes sociaux soient injustement exclus de la décision politique,<sup>64</sup> alors il nous faut inscrire la régulation des conflits d'intérêts dans une conception plus large des conflits entre intérêts sociaux, où certains intérêts ont pu gagner une influence excessive sur les gouvernants, non du fait des abus individuels mais de la concentration du pouvoir dans la société. Le renouveau de la confiance est peut-être à chercher dans la réorganisation de la représentation politique des intérêts sociaux plutôt que dans le contrôle des individus. Il est ainsi important d'inscrire la réflexion sur la corruption et sur l'éthique politique dans une réflexion plus large sur les pratiques politiques. L'existence d'une communauté transnationale facilitant la circulation d'idées et de solutions à la corruption politique est indéniablement un atout. Une plus grande implication des praticiens et des chercheurs nationaux, disposant d'une connaissance de ces normes et pratiques, dans l'élaboration de ces politiques permettrait d'inscrire véritablement la lutte contre la corruption et la promotion de l'intégrité dans les différents contextes politiques et sociaux.

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<sup>64</sup> WARREN, Mark E. The Meaning of Corruption in Democracies. In HEYWOOD, Paul. *Routledge Handbook of Political Corruption*. Abingdon, New York: Routledge, 2015.