The Design and Implementation of Ethics-Related Administrative Law in Eastern Europe

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Abstract

How can senior policymakers use data in the design of ethics (anti-corruption) related legislation and regulations? In this paper, we describe how to draft subsidiary legislation (mainly executive agency regulations) based on explicit or implied competencies given by national legislation. We then discuss how to conduct the organisational, legal, economic and audit analysis needed to allocate ethics-related rights and obligations across-government and within the Agency. We illustrate with an example from Romania and use the tools we have presented to make recommendations for Hungary. We describe the roles that the human resource managers and internal auditors play in implementing the provisions of Agency-level ethics-related regulations. We conclude by encouraging policy makers to make greater use of ethics-related regulations.

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Introduction

Hungary represents a peculiarity among countries – being part of a group of countries lacking a whole-of-government code of conduct. Not all countries need ethics-related (or code of conduct specific) laws. OECD Member States exhibit wide variation in the way they regulate public officials' ethics and implement governmental codes of conduct. Such variation (mostly) reflects each administration's optimal organisational response to its ethics-regulatory needs. In other words, OECD Member States (usually) give authority over ethics-related rulemaking to the official and agency which can make the most impact on government probity. In some cases like in the US, rulemaking powers focus strongly in the Office of Government Ethics and centres around very legalistic methods. In other cases like Sweden, very decentralised ethics-related rulemaking occurs at the agency (or sub-agency) level -- with rather loose codes of conduct. The optimal public sector ethics programme "fits" with the public sector's needs.[1]

This paper argues for the design of executive regulations based on empirical data rather than simply gut-feeling. We use the Hungarian Ministry of Public Administration and Justice as an example, arguing in this case, they should prepare an executive order (signed by the Prime Minister) which provides the legal basis for agency-level and sub-national government ethics regulations. Such a regulatory strategy (in our view) places the authority for ethics-related lawmaking at the optimal level of government – the agency/regional level. Our recommendation stems from the best "contingent fit" between the Hungarian government's needs (as assessed using empirical methods) and administrative rulemaking.

Our paper is organised as follows. The first part of this paper provides an overview of such evidence-based ethics-regulation – and provides the evidence leading to our recommendation. The second section describes the method of drafting agency-level regulations around existing legislation (specifically the 2012 Public Servants Act). The section also describes the link between observed data and the optimal locus for ethics-related rulemaking authority. The section also provides specific elements needed for Hungarian rulemaking. The third section talks more about the institutions involved in ethics-related law – showing when data call for the role of each institutions and reviews drafting issues. The next sections describe the role of human resource departments and

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[1] Such a contingency-based view of government's adaptation of ethics-related laws and regulations reflects only one possible view of regulation in OECD Member State government agencies. We adopt the contingency-based view as such an approach provides a clear method of analysis allowing for clear recommendations related to regulatory drafting and desired administrative conduct.

internal audit departments in implementing ethics-related regulations. The final section concludes.

## Using Empirics to Define the Ethics Programme

The older OECD Member States have used empirical methods to guide their public sector ethics programmes. Experience earned through decades (and sometimes through centuries) of debate, administrative conflict and adjustment have served as the basis for an evolutionary approach to public sector ethics-related rulemaking.[2] In contrast, the new democracies of Central Europe have not had the time to engage in such learning-by-doing. Their legislation, regulation, and ways of working in the office represent clear breaks with their pre-1989 administrations. Yet, by gathering statistics about existing ethical norms and preferred behaviours, Central European governments (like Hungary) can bypass the years of data-collection-through-experience of their Western European peers. Such data can answer three questions. First, how much agreement exists among public officials on specific aspects of public sector ethics? Second, how much regulation should be done at the central level versus local (or agency) level? Third, how general (non-specific) should ethics-related legislation, regulation and non-binding admonitions (like codes of conduct and posers on walls) be?

Even a simple example shows the importance of gathering statistics before engaging in any ethics-related lawmaking. Figure 1 provides an example of simulated survey results across Hungary to the question "do you have direct experience with a conflict of interest as a civil servant?" We provide simulated data because OECD governments do not share with the public the results of their survey work and analysis of their ethics-related regulation. The wide variance of experiences shown in the Figure leads to two possible (and conflicting) conclusions. First, the Hungarian parliament (and/or Prime Minister) should devolve authority to engage in ethics-related regulation to the local level. In that way, local agency directors can adopt regulations appropriate for the level of conflict of interest in their administration. Second, such disparity signals the need for a strong, central law in order to reduce the variance of outcomes shown in the data. An analyst with advanced training in organisational theory will be able to present the best outcome based on further data collection and analysis.[3] We present this example to help convince the reader that **policymakers considering legislative, regulatory and other work on public sector ethics should base their analysis on data before deciding questions like where to place the authority for ethics-related rulemaking**.

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[2] Hubert *et al.* (2008) provide an excellent overview of ethics in codes of conduct, administrative law and in practice across government and in specific agencies (like the police) in a variety of countries.

[3] We can not teach the reader how to conduct an organisational analysis in this policy brief anymore than we can teach how to analyse regulation. At this point, the senior policymaker only needs to know that ethics-related policymaking requires these skills in many OECD administrations. For the curious reader interested in learning the basics of organisational analysis, we recommend Mary Jo Hatch's *Organization Theory: Modern, Symbolic, and Postmodern Perspectives*, Oxford University Press, 2006.

**Figure 1: Simulation of Survey Results: Geographical or Function Heterogeneity
Can Determine Optimal Allocation of Rulemaking Competencies**
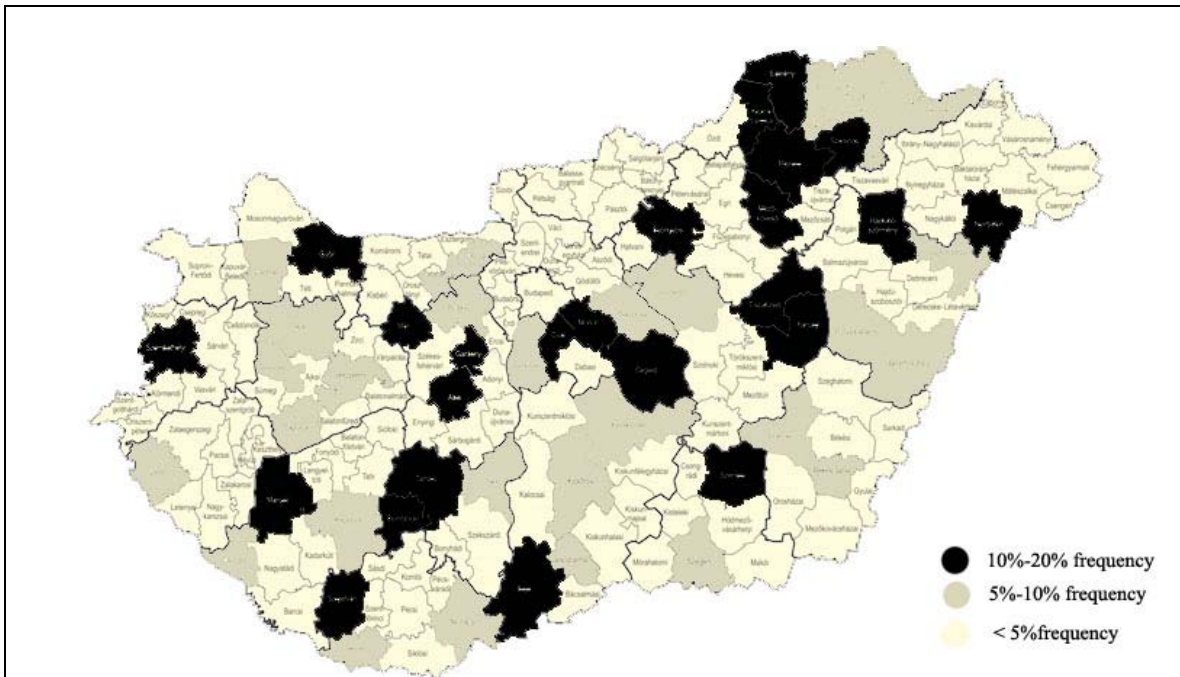
The data clearly show that senior policymakers craft their ethics-related regulations and practices in response the environments they work in. Figure 2a shows the relationship between the extent of unethical behaviour in a country's public administration and the extent of formal ethics-related law and rulemaking. The Figure shows the extent of unethical behaviour (on the *y*-axis) as measured by the practice of 12 unethical practices in EU member states. A score of 1 means the practice virtually does not exist while a score of 4 means the practice represents "a major problem."[4] The *x*-axis represents an index of the extent to which EU Member States have adopted formal measures to reduce unethical behaviour.[5] No relationship appears in these data to suggest that using formal ethics-related regulations increases the extent to public officials behave ethically. Figure 2b shows the relationship between the extent to which governments in the EU rely on formal rules for regulating ethics as opposed to informal practices.[6] The reader will notice that this charts also looks like a cloud – that no discernable pattern existing in these data. Further statistical analysis can help find correlations and other patterns in

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[4] The specific types of misconduct Moilanen and Salminen (2006) look at include sexual harassment, ethnic discrimination, gender discrimination, private misconduct, abuse of information, fraud, grand corruption, improper lobbying, conflict of interest, petty corruption, waste, and favouritism.

[5] These formal measures include introducing disciplinary mechanisms, penal sanctions, formal reporting procedures, informal reporting procedures, existence of ethics bodies, protection of whistle-blowers and confidential integrity counsellors. A score of 1 means the country's administrative agencies use such a measure and 3 means they do not use that measure. Thus, lower average country scores means that a country employs more formal measures.

[6] The authors look at informal practice like the use of leadership, training, communication, recruitment, and mobility.

these data. We do not do this analysis because we do not wish to turn this brief into a PhD dissertation on ethics. Instead, we want the reader to accept that ethics-related legislation, regulation and practice responds (in part) to the externally imposed needs of the administration.

Figure 2a: Different Governments Adapt Differing Levels of Formal Ethics Regulations
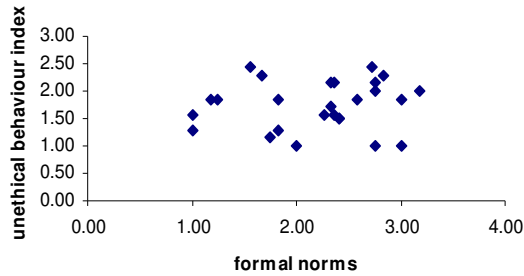
Source: Moilanen and Salminen (2006). See text for description.

Figure 2b: No Relation Between Formal and Informal Ethics Measures
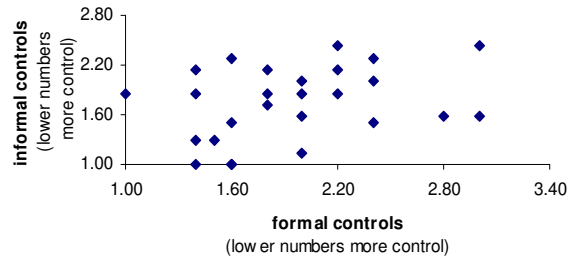
Source: Based on a Index from Moilanen and Salminen (2006).

We provide one more example to help prove that data can help guide policymakers in their design of ethics-related law. Figure 3 shows the correlation between the number of administrative levels of government and a country's reliance on formal and informal ethics-related rulemaking. For example, EU Member States with one level of government averaged 2.05 on the index of unethical behaviour (the lowest and thus best score out of the three groupings of countries).[7] These single-tier governments did not seem to rely excessively on either informal ethics regulations and practices, or on codified formal ethics-related laws. Governments with three (or more) levels of administration had the most unethical governments (according to these data) and the most extensive use of informal ethics regulations. These data do not suggest that informal ethics regulations provide the least protection against unethical behaviour. Instead, these data suggest that factors – like the number of levels in government – importantly determine the best mix for formal and informal ethics-related regulation.

Figure 3: Two-Tier Governments in EU Tend to Rely on Formal Ethics Regulations and Multi-Tiered Governments on Informal Ethics Regulation

	Index of Unethical Behaviour	Index of Extent of Informal Regs.	Index of Extent of Formal Regs.
	lower numbers "better"		
one level government	2.05	1.96	1.85
two levels	2.27	2.07	1.61
three levels	2.32	1.76	1.76

Source: Based on analysis from Moilanen and Salminen (2006). Our indices represent arithmetic averages of each country's informal ethics regulations (from Table 10) and formal regulations (from Table 9).

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[7] We provide these indices to show the importance – and potential usefulness – of statistical data in guiding decisions about the design of national-level ethics rulemaking. Our consolidation and averaging of Moilanen and Salminen's data suffers from the usual drawbacks. For example, we take unweighted arithmetic averages of scores these authors assigned to various aspects of each EU Member State's ethics-related laws and practices.

We argue for evidence-based (empirically-based) whole-of-government ethics regulation over other methods. First, data – such as those shown in Figure 3 – provide insights that simple focus groups and "participative methods" can not find. The fad of "participative-methods" greatly influenced the ethics programmes of the early 2000s (when many Central European countries designed their public sector ethics programmes). Such programmes included organizing workshops, writing ideas on white-boards and simply throwing all ideas presented into a code of conduct. The resulting ethics programmes reflected the most active (loud) workshop members and members who read the same literature as the experts writing up the workshop results into codes of conduct. These workshops would never find the deeper linkages between well-designed ethics programmes and actual needs which data find. Second, survey data reduce disputes over the best type of ethics programme to implement. Data serve as an objective basis for rulemaking (though the interpretation of those data will still remain highly subjective). Third, empirically-based ethics regulations prevent the wide spread practice of simply copying other countries' codes of conduct and ethics laws. In early 2000s, many public administrations engaged consultants to help them write their ethics regulations and codes of conduct. These consultants usually copied similar codes from their own countries – or used "toolkits" provided by the UNDP, USAID and other donors. Few commentators can claim that these approaches have resulted in positive outcomes. Countries whose public officials exhibit harmful behaviours clearly have a more pressing need to adopt ethics-related legislation, regulation and codes of conduct than countries that do not.

Designing Ethics Legislation, Regulation and a Primer for Legal Drafters

Hungary needs to engage in a directed programme of ethics rulemaking because its public administration does not have time to wait decades for these norms to emerge spontaneously through evolution. OECD Member States – like the US, France and the UK – have developed their ethics-related administrative law over centuries. The Americans have opted for a highly legalistic approach to regulating public sector ethics. The French have relied on principles in administrative law (enforceable through internal and external tribunals). For some governments in Central Europe, they do not have the time to evolve these ethics-related regulations. OECD Members like the Czech Republic and to a lesser extent Hungary --- and particularly countries like Bulgaria and Romania -- lose millions of euro every year due to unethical behaviour. **If unethical behaviour cost the Hungarian government even 1% of its annual operating budget, the amount lost would equal €350 million**.[8]

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[8] We provide this simple example to show the scale of losses due to unethical behaviour. We did not present a more rigourous cost analysis of unethical behaviour because we do not want to detract attention away from our main point – how to implement ethics programmes. For an example of a more rigourous estimation (for the particular ethics-theme of corruption), see Ani Matei and Lucica Matei. (2010). Assessing the Anti-corruption Strategies: Theoretical and Empirical Models, *Journal of Management and Strategy* 2(1):23-40.

In general, OECD Member States – particularly at the Agency level – engage in one of three approaches to ethics rulemaking. Figure 4 shows these approaches as soft-law ethics programmes (including non-binding codes of conduct), moral reasoning and the hard law approach.[9] The soft ethics approach basically uses advertising methods.[10] Codes of conduct, posters, and other information material remind public officials of their ethical and moral obligations as agents of the electorate. The moral reasoning approach aims to move beyond the typical good-and-evil view of ethics. The moral reasoning approach tries to show that ethical dilemmas have two sides and that no right answer often exists to moral problems. Instead, the solution to moral problems involves finding creative middle-way or out-of-the-box solutions. The hard law approach starts from the premise that all relationships – whatever the level or agency – revolve around rights and obligations. Right and obligations do not exist unless enforced by tacit or explicit means. **The hard law approach lets public agency directors focus on contractually and administratively founded rights and obligations to help support even the most vague of codes of conduct and ethical admonitions.**

Figure 4: Three Major Approaches to Implementing a Public Sector-wide Ethics Reform

Description	Conditions	Suggestive data
Soft Law ethics		
Uses traditional advertising approach to ethics by 'selling" ethical behaviour through posters, radio ads, and so forth. Also consists of codes of conduct taped to walls.	Little knowledge of requirements Little agreements on definition of ethics	Survey results show low understanding of ethics requirements. Survey data show low agreement on limit for defining something "unethical."
Moral Reasoning		
Understanding both sides of an ethical dilemma Teaching to find constructive third-solutions rather than simply see right-and-wrong.	1. Cultural homogeneity 2. Inability to use administrative rewards and/or sanctions 3. Non-legalistic culture	1. Excessively high or low variance in data about what is ethical course 2. Importance attached to relationships rather than law
Hard Law Approach		
Uses legislation, executive orders and director-level instructions to regulate on ethics. Computer-programmer mentality – focus on behaviour rather than mindsets or deeper ethics.	1. Diffuse cultural norms made common ethical understanding impossible 2. Rights and obligations only definable in law 3. Available institutions for asserting and disputing rights. 4. Flexibility of common law to create ethical doctrines	1. Importance of formal regulations in behaviour 2. Ability to control from centre or to delegate rule-making coherently.

Source: authors – based on Van Blijswijk *et al.* (2004).

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[9] Literally hundreds of typologies and taxonomies exist for categorising public sector ethics programmes. We chose these descriptions to keep our analysis simple. See Sampford and Connors (2006) for more.
[10] A number of authors criticise soft law approaches to regulating government ethics on the grounds that public officials using soft law do not face the same scrutiny from legal scholars, courts and other administrators face. See Sossin and Smith (2003) for more on these critiques.

For countries engaging in the hard law approach, legal drafters must consider two simple questions. First, what provisions should ethics-related rulemaking contain? Second, who should have the competency for ethics-related lawmaking? Policymakers in Central Europe tend to prefer the hard law approach when deciding these questions. Such an approach matches their administrative system – whereby civil servants are assumed not to possess a right unless explicitly granted in law.[11] We have already talked about the first question – how to match data about ethics-related needs with popular ethics-related provisions. Regarding the second question, Figure 5 shows the major levels for assigning competency for ethics regulation. Legislation (laws passed by parliament) will create and impose certain rights and obligations on public officials – such the obligation to treat citizens equally or the right to decide which citizens may receive preferential treatment based on need or other factors. Agency directors interpret that law in light of their administrative traditions and create secondary (or delegated) legislation according to the principles contained in the relevant legislation and their national administrative legal traditions. Even at the agency-level, public officials already possess administrative rights and obligations given by legislation and (sometimes like in the UK) tradition. **Codes of conduct, ethics regulations and disciplinary actions revolving around administrative ethics should merely reflect those pre-existing rights and obligations**.

Figure 5: Levels of Ethics-Related Lawmaking

Level of rulemaking	Description
Legislative level	National law passed by the legislature – such as the US ethics law and recently Romanian law. Legislation should (in theory) conform to the values enshrined in the Constitution and in country's jurisprudential tradition.[12]
Executive agency (ministry or department level)	These regulations reflect explicitly (or implied) delegated rulemaking powers. Each section of the agency instruction, regulation or order refers to the article in legislation defining the relevant rights and obligations.
Independent agency (like customs) and sub-national level	Because these agencies already have devolved competencies assigned under national law, aw drafter can refer to these competencies when drafting ethics regulations.
Work unit, division level	Even vague codes of conducts pasted on walls contain implicit rights and obligations. Agency directors have a range of rewards and punishments they use to enforce implicit norms.

Source: authors.

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[11] Such an approach contrasts with a system like the UK – where public officials exercise considerable discretion over the operation of their department. As long as they work in the interests of their agency, they do not need to formally pass instructions and orders. Such a difference has led to numerous frustrations among British consultants working in Central Europe!

[12] Contrasting France and the US provides a clear illustration of how basic Constitutional values translate into low-level ethics regulations. US Constitutional values place strong emphasis on the rule of law and individual rights. As such, ethics has evolved into a highly legalistic system based on rights and obligations. In contrast, the French constitution focuses on equality and reflects the idea of society and the body politic. These core values have translated into much stronger protections for civil servants acting in the public interest.

Legal drafters – particularly at legislative level – need to link ethics-related provisions to data. Figure 6 shows the example of Romania's Code of Conduct Law. We choose the law from a non-OECD Member because the US law is too complex for the simple example we want to provide. Other countries' ethics law lie mostly in administrative law rather than in a single Act. Article 5 focuses on providing high quality services. Yet, survey data by McGee (2005) shows – in the case of tax payers – that they consider tax evasion completely unethical (on a scale of 1 to 7).[13] Such evidence suggests that Romanian tax collectors impel tax payers to avoid taxes through coercion. As such, loyalty to public authorities should have been a higher priority – and received more legislative attention.[14] In some cases, issues like loyalty to the law seem completely misplaced.[15] A survey question like "do you think its important to obey the law" would have shed some light on the importance (or lack of importance) of Article 6 of the Romanian Code of Conduct law.

Figure 6: Law on Civil Servants' Code of Conduct

Chapter I: Field of Application and General Principles
Article 1: Field of Application   Article 2: Purpose
Article 3: General Principles   Article 4: Terms

Chapter II: General Norms of Moral and Professional Conduct for Civil Servants
Article 5: To provide a high quality public service   Article 6: Loyalty to the law
Article 7: Loyalty to public authorities and institutions   Article 8: Freedom of opinion
Article 9: Public activity   Article 10: Political activity
Article 11: The use of image   Article 12: Relationships
Article 13: International relations   Article 14: Restrictions on gifts
Article 15: Participation in decision making   Article 16: Objectivity
Article 17: The use of political prerogatives   Article 18: The use of public resources
Article 19: Restricted participation in public contracts

Chapter III: Institutional Arrangements
Article 20: The public institution in charge   Article 21: Notification
Article 22: Settling the case   Article 23: Publicity on reported cases

Chapter IV: Final provisions
Article 24: Accountability   Article 25: Harmonization of internal rules
Article 26: Publicity   Article 27: Enforcement
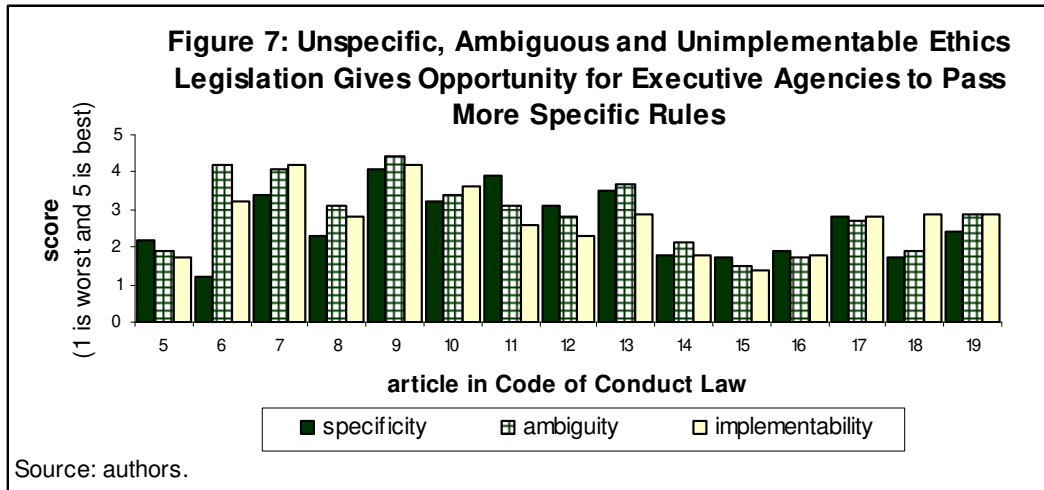
Source: Romanian Code of Conduct Law

Legal drafters at the legislative level will also need to decide on the ambiguity and specificity of provisions which create certain rights and obligations – choosing the level

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[13] Robert W. McGee, *The Ethics of Tax Evasion: A Survey of Romanian Business Students and Faculty*, available online.

[14] We do not want to make any strong claims about Romania or its tax collection practices. We want to provide a public and easy-to-understand example to the reader so he or she will learn how to do this type of analysis for him or herself.

[15] We have always been amused about provisions in ethics laws requiring public officials to obey the law. Such a tautological provision in effect creates a law which requires civil servants to follow laws. If they ignore other laws, why would they suddenly decide to obey the ethics law?

of ambiguity based on the amount of subsidiary rulemaking legislators want. Figure 7 shows the specificity, ambiguity and implementability of each article in Romania's Code of Conduct law (which we use because the Romanian law has more public commentary and analysis than other ethics-related laws in the region). Very vague provisions (like those in 5, 6, 15 and so forth) may provide a large amount of wiggle-room for agency-level rule-makers. In practice, leaving articles ambiguous may not result in regulation if agency-level regulation drafters do not consider that ambiguity provides the administrative right to engage in regulation to clarify the legislative provision.
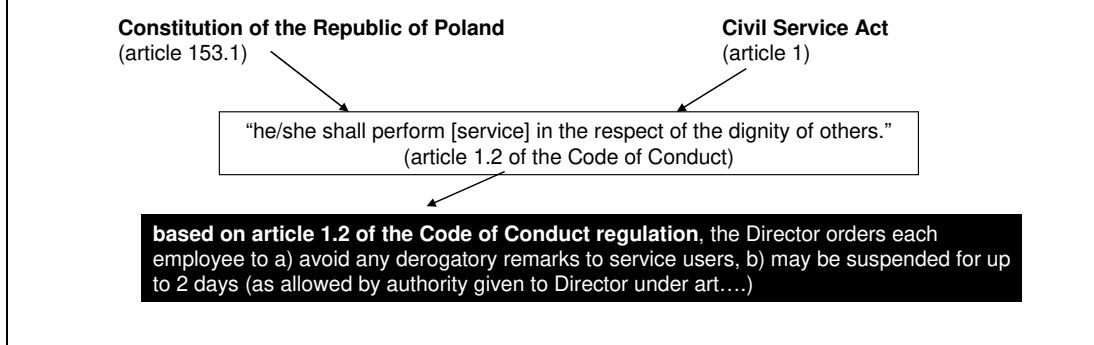

Figure 7: Unspecific, Ambiguous and Unimplementable Ethics Legislation Gives Opportunity for Executive Agencies to Pass More Specific Rules

Source: authors.

Legal drafters **at the executive agency level** need to "tie" provisions in legislation to provisions they write in their regulations.[16] Figure 8 shows how advisors to an agency-level director would tie these regulations to legislation in the case of Poland.[17] The Code of Conduct's drafters explicitly "tied" the authority for article 1.2 of the executive order to article 153.1 of the Constitution and article 1 of the Civil Service Act. Similarly, lower-level regulators would tie the authority of their agencies' ethics-regulations to the relevant article from the Code of Conduct Law (article 1.2 in our example). The agency-level executive order would instruct staff how to "respect the dignity of others" in their specific agency. For example, they may ask for permission to enter a person's premises. They may require public service users to queue in an orderly fashion and so forth. Notice "respect for dignity" represents a legal principle defined across the law and contains a clusters of rights and obligations. Likely places to look for the legislative basis for passing agency-level codes of conduct and ethics regulations include the anti-corruption law (or prevention of corruption law), conflict of interest law, civil service law, constitution (for emerging nation-states), and/or organic regulation of the executive government. **Public officials' advisors use the same legal drafting skills that they use for regulating other government activities**.

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[16] Michael (2012) shows how a national civil service agency might tie regulatory-level provisions to national legislation using the example of the Romanian Code of Conduct law.

[17] *The Civil Service Code of Ethics*, Prime Ministerial Order 114/2002, available online.

**Figure 8: How to Tie Administrative-Level Ethics Regulations
to Legislation Using Poland as an Example**

Constitution of the Republic of Poland
(article 153.1)

Civil Service Act
(article 1)

"he/she shall perform [service] in the respect of the dignity of others."
(article 1.2 of the Code of Conduct)

based on article 1.2 of the Code of Conduct regulation, the Director orders each employee to a) avoid any derogatory remarks to service users, b) may be suspended for up to 2 days (as allowed by authority given to Director under art….)

Writing an entire code of conduct or ethics regulation entails tying the relevant articles from law to agency-level procedures. Figure 9 shows an example of an ethics regulation for a customs agency.[18] In this example, the Customs Director issued an instruction aimed at implementing the Conflict of Interest Law, the Prevention of Corruption Law and the World Customs Organisation's Model Code of Conduct.[19] The regulation cites (in every single article) the legislative provision that provides the right to regulate. The regulation describes what actions customs officials must perform in implementing the ethics-related policy, their rights and obligations and sanctions for non-compliance. Agency-directors can not simply "make up" codes of conduct or ethics they want. Their public administration must work according to the rule of law. **Directors must tie ethics admonitions in administrative law – otherwise they will not have recourse to disciplinary/enforcement actions and may become liable in an administrative court for *ultra vires* action.**

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[18] We provide these abstract examples because OECD (and other governments) tend to treat matters of ethics as extremely confidential. Such confidentiality stems from fear of political consequences if survey data became public and director's uncertainty about whether they possess the authorities they used in some of their rulemaking. While we can crate generalisation based on survey data and regulations we remember, we can not provide names and places. We strongly encourage public agencies to publicly share information about their ethics programmes so that analysts like us do not need to provide general, abstract examples.
[19] We can not provide details about the identity of the country due to confidentiality. We hope more customs directors – and agency directors – make information like this public in the future.

Figure 9: Example Regulation of the Customs Agency Director in Implementing the Ethics-Related Measures Contained in National Law and International Recommendations

ANTECEDENTS

Chapter 1: Legal authority and interpretation of rulemaking powers
Chapter 2: Terms used in this text
Chapter 3: Transfer of Competencies from DG to Deputy Directors-General

IMPLEMENTATION OF WCO MODEL CODE OF CONDUCT

Chapter 4: Tests for Ethical Behaviour, Rights and Obligations for Personal Responsibility
Chapter 5: Procedures for obtaining binding advice on points of law
Chapter 6: Interpreting Legislative Principles in Relations with the Public
Chapter 6: Internal Procedures for Dealing with Gifts
Chapter 7: Public Interest, Conflict of Interest test, and Remedies
Chapter 8: Political Activities: Reporting, Denouncing and Exemptions
Chapter 9: Confidentiality and Use of Official Information
Chapter 10: Use of Official Property and Services
Chapter 11: Own Rights, Rights of Others and Balancing Test

MEETINGS OF THE ETHICS DISCIPLINARY COMMITTEE

Chapter 12: Procedures for Summary Judgement
Chapter 13: Procedures for Internal Hearing
Chapter 14: Remedial Measures and Defences
Chapter 15: Procedures for Issuing Ethics-Related Decisions and Amendments to the Present DG Instruction

PROCEDURES FOR COLLECTING AND DISSEMINATING DATA ON ETHICS ENVIRONMENT

Chapter 16: Surveys of Customs Service Users
Chapter 17: Internal Surveys Administered by Human Resources Department
Chapter 18: Procedures for External Reporting on Ethics Proceedings to Commission for Stopping Corruption and Annual Report
Chapter 19: Dealing with the Media and Reporting Cases

TYING ETHICS INTO THE HUMAN RESOURCES DEPARTMENT

Chapter 20: Collecting and Using Information about Officers' Integrity
Chapter 21: Use of Ethics Evaluation in Career Development
Chapter 22: Disseminating Information about Present Instruction

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The quality of regulatory drafting matters for the success of agency-level ethics regulations. Legal drafters need to keep several principles in mind when drafting ethics-related regulations. As modern ideas from economics, legal theory, and public administration filter into legal drafters' attentions, the performance of their regulations has increased. Figure 10 provides a glossary of some of drafting concepts from the 1990s and 2000s which have found their way into design philosophies of ethics regulations. The "carrot and stick" approach uses several of the concepts mentioned in the Figure. For every stick (obligation, punishment or negative admonition), regulation drafters should define a "carrot" (a right, reward or positive ability to perform). Ethics regulations should provide incentives to public officials to follow these regulations without relying on expensive inspectors, enforcement officers and checks. In economics language, these represent incentive-compatible, self-enforcing, equilibrium ethics institutions.

Figure 10: A Glossary for Would-Be Ethics Regulation Drafters

incentive compatibility – when public officials have incentives to follow new regulation. The use of promotion (based on demonstrated ethics performance), bonuses (based on *qui tam*-like rewards for denouncing unethical behaviour), ethics awards, and other policies held create positive incentives for public officials to follow ethics-based regulations.

self-enforcing regulation – regulations which do not require having an enforcer or inspector. Such self-enforcing regulations create incentives for other market or administrative actors to denounce unethical behaviour. A free complaints hot-line, the ability to use multiple public service providers and other provisions make ethics-related regulations self-enforcing. Potentially destructive tournaments (like in planned economies' administrations) create strong incentives to denounce unethical behaviour of rivals working in the same department.

equilibrium (conduct) – a series of behaviours exhibiting no incentives or pressures for change. Many of the codes of conduct in Eastern Europe passed in the 2000s were not in equilibrium. Their vagueness encouraged further work on changing them. Besides being poorly designed and written, economic, political and social change can also create forces for change.

cost-neutrality – a design philosophy whereby ethics regulations do not impose more costs on the Agency (or the Agency can recoup additional expenditures with more attractive appeals for budgetary funds or user fees).

ethics institutions – the "rules of game" that ethics regulations create. Economists can calculate the impact these institutions have on Agency's members, gains and losses, and strategic reactions to these new rules. They can also estimate the likely survival of new rules over time.

delegated authority – the authority specifically given by parliament to executive agencies and/or local legislatures to make more specific regulations. Interestingly, most Western European administrative law traditions give the right to managers to make regulations (unless forbidden or later appealed). By contrast, in most Eastern European countries, administrative tradition forbids managers from making rules unless specifically authorised by law to do so.

implied regulatory authority - the right to make agency-level regulations unless prohibited by law. Many constitutions outside Eastern Europe devolve authorities not taken by the central (or federal) level.

information costs – the cost of gathering information about unethical behaviour and acting on it. The best ethics regulations encourage administrative actors to generate and release information about the Agency's ethics. Information costs also create a wedge between de jure regulation and de facto regulation.

Which level should Hungarian law focus on? The Hungarian Ministry of Public Administration and Justice should prepare an executive order (regulation) from the Prime Minister which specifically gives government ministers, agency directors, and regional mayors (governors) the right and obligation to engage in ethics-related regulation. We refer to four pieces of information which provide a flavour of the way that empirical analysis links into organisational strategy. First, we assume that the government will not pass another piece of legislation. Thus the 2012 Public Service Act must provide the relevant rights and obligations. Yet, the provisions remain so broad that only regional-level directors can provide the necessary details for any code of conduct or ethics-related regulation. Second, the Hungarian civil service ranks relatively well in terms of ethical conduct (and corruption). Thus, informal norms work relatively well already. As such, formal rules should add-to, rather than replace, existing norms. Third, Hungarian public administration delegates a fair amount of competencies to the regional level. Thus, regional level work will prove more effective than work centred in Budapest or at the city level. Fourth, Hungarian public administration thrives on democracy – though performs relatively poorly.[20] Thus, a fair amount of consultation suggests a devolved approach to ethics-related rulemaking. Of course, we would prefer more rigorous and complete data.

The Institutions In Charge of Implementing Ethics-Related Law

No model ethics arrangement or categorisation of ethics institutions could ever exist. Over 7,000 possible configurations of ethics-related institutions exist in a small country like Hungary alone.[21] If the roughly 10 ethics-related topics reflected in Figure 6 generate the creation of one right and one obligation, and legal drafters could assign these rights and obligations to each of the 7 institutions listed in Figure 11, then law drafters would have 120 possible divisions of rights and obligations to choose from. Some particular patterns seem more prevalent among OECD countries than others – particularly those leaving ethics-related regulation to the agencies involved.[22] However, the actual – rather than possible -- combinations of ethical arrangements in OECD member states have made any generalisations about the "best" ethics regulations impossible. Appendix I shows the way that EU Member States have allocated the responsibility for regulating ethics between the central and agency-level.

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[20] Richard Wike, *Hungary Dissatisfied with Democracy, but Not its Ideals*, Pew Research, available online.
[21] The formula for combinations Q(n!/(n-r)!r!) where *n* equals the number of institutions to choose from (such as installing ethics related obligations in an Ombudsman, an agency director, civil service agency, and the other institutions listed in the Figure). The variable *r* represents the number of possible institutions each institution works with (for example, a ministry relying on the civil service agency and courts would represent a total of three institutions). If we include each possible sub-national government institution, ministry and agency, we have *Q* organisations. For even a small estimate of the number of these organisations (roughly 200), we would have roughly 2,000 unique ethics arrangements enshrined in their own ethics-related rulemaking.
[22] See OECD, *Trust in Government: Ethics Measures in OECD Countries*, OECD, 2000, available online.

In general, legal drafters at the legislative and regulatory levels have 7 institutions to choose from. Figure 11 presents and describes these institutions. Across OECD Member States, anecdotal evidence suggests that certain types of public sector organisations choose certain arrangements over others. For example, law enforcement agencies – like the police and customs – tend to regulate members' ethics more strictly. Directors of these agencies spend considerable more amounts of time overseeing the ethical behaviour of their sub-ordinates. Human resource departments often screen applicants based on ethics considerations and place notes about unethical conduct in employees' files.[23] Internal affairs units often conduct investigations on ethics related matters – for offences that sometimes do not engender administrative, civil or criminal liability. These ethics-related investigations pertain to professional ethics. Judiciaries and parliaments often impose ethical standards on themselves through standards-setting committees. Public service oriented ministries and agencies often oversee employees' ethics by collecting complaints from the public via hotlines.

Figure 11: Generalisations about the Legal Mandates of Various Agencies in Creating and Enforcing Ethical Norms

Institution	Potential Role	Target agencies
Ombudsmen	Accepts complaints – usually related to human rights. However, in some jurisdictions, also takes complaints about government's actions generally. Unethical behaviour usually not illegal, so naming-and-shaming only recourse.	Law enforcement (with more coverage in Scandinavia).
Agency Director	Serve as *de facto* ethics legislators, judge, and jury in most jurisdictions. They pass decisions and instructions related to ethical (and operational) topics. Main deciders of ethical dilemmas. Ultimately accountable (in theory) for ethical breeches.	Most Ministries and Agencies (wider coverage in Continental Europe, Japan)
Civil Service Agency	In countries with stronger civil service agencies, they can pass ethics related instructions. They also can hear cases involved in ethical dilemmas. In practice, they rarely play a strong role (except in jurisdictions with stronger civil service unions).	Focuses often on disputes or wide-spread problems. France and some former FSU
Legislatures	Pass laws on ethics, codes of conduct and specific pieces of legislation (like in US) within their jurisdiction.	More important for multi-tiered small countries.
Administrative Courts	In jurisdictions like US, UK and France, these cases set important precedents and examples. Resolution of fuzzy gray ethics clashes become codified into administrative law.	Important in common law jurisdictions (US, UK, not Hong Kong).

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[23] Maximilian Ederbacher and Sanja Ivkovic. (2004). Ethics and the Police: Studying Police Integrity in Austria. In Carl Klockars, Sanja Ivkovic, Maria Haberfeld. *The Contours of Police Integrity*. London: Sage.

Standards-Making Body	These professional bodies regulate behaviour in general. Important for parts of the State like the judiciary, state-regulated press and even state-owned enterprises.	Most all OECD countries.
Press (with freedom of information law)	The press is where disagreements about ethics are given vent. Attracts attention of legislatures and usual way ethics change across whole-of-government.	US and EU.

Source: Based on OECD (2000) and other sources where available. The summaries we provide represent very broad generalisations because of the high variety between institutions even in a single country.

Most legislatures will not create administrative relations between these organisations from a *tabula rasa*. In many of the Western OECD Member States, relations between agencies have rigidified into very strict (and sometimes very complex) relationships. In Central Europe, many of these administrative relationships remain fluid and ill-defined. **Senior policymakers and parliamentarians looking to "mix and match" the organisations presented above into a coherent system can rely on four techniques**. First, senior policymakers can accept the economic losses from inefficiency concomitant with an evolutionary approach. Such an option basically accepts the status quo – and hopes for change later. Second, ministries and agencies enter into Memoranda of Understanding (within the executive itself). Such an Memorandum – for example between a National Institute of Public Administration, the Civil Service Agency, a Ministry and a national standards-setting (self-regulating) body -- can set out the services that the body and civil servants agencies will provide to the Ministry (such as conducting surveys on ethics). The Ministry – for its part – can agree to consider recommendations and codify them as director's instructions or orders (where allowed). The third technique involves using tribunals, administrative courts and even Ombudsman and Civil Service Agencies to create ethical doctrine. Each agency creates policies and practices – some of which employees and citizens disagree with. They challenge these policies in tribunals or courts (depending on the jurisdiction). Judgements over time accumulate and form the basis for creating a broader jurisprudence in administrative ethics (especially in the common law jurisdictions). The fourth (and most broad) technique revolves around involving parliamentarians, senior politicians and senior civil servants in a big bang style reform. These senior politicians negotiate on defining legal relations between the legislative, judicial and executive branches through the country's political process. These relations allocate rights and obligations to each organisation for specifying ethical standards as well as monitoring and enforcing them. Some issues – like bioethics – lend themselves to such a whole-of-government approach.[24] Yet, for governments in Central Europe still struggling with ethics and corruption problems, such a fundamental rethink of the basic constitutional law hurriedly made in the early 1990s may be just what the doctor ordered.

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[24] http://ec.europa.eu/bepa/european-group-ethics/index_en.htm

Hungary should follow an organic, evolutionary approach (with each agency making its own ethics-related regulations) due to the fractionalisation of the Hungarian political process. Hungary has the greatest political polarisation among the advanced economies.[25] The optimal allocation of rights and obligations inherent in ethics-related regulation follows four principles. First, assigning authorities and obligations must conform to constitutional values, legislation and existing administrative law. Tracing the way rights translate from legislation into agency-level regulation requires expert legal drafting.[26] Second, legal drafters – particularly when writing national legislation – allocate rights and obligations to each tier of government and agency -- based on empirically-assessed needs. Such work requires the skills of organisational theorists who know how to match the needs from the organisational environment to the creation of formal institutional rules. Third, drafters should engage in ethics-related rulemaking – and allocate responsibilities for the enforcement of those rules – based on the social costs and benefits. A half-decent economist can determine the optimal allocation of responsibilities which would generate the greatest amount of social benefits (in most amount of ethical behaviour) at the least cost (in terms of salaries, disputes and monitoring). Government agencies in countries like Hungary can design a set of effective ethics laws with a four person team comprised of an organisational theorist, a legal drafter, an economist and an auditor.

What Do Human Resources Departments Do in Promoting Government Ethics?

Public agency directors – where allowed by law – enlist human resource departments in implementing ethics-related regulations. In short, human resource directors represent the only person in an agency able to integrate ethics into each part of the human resource management process. Figure 12 shows – in bullet point form – the main ways that human resource managers can weave ethics-related regulations and the provisions of a code of conduct into the agency's operations.

Figure 12: Human Resource Managers' Role in Implementing Ethics-Related Regulations

- check the previous conduct of new hires and transfer staff
- collect information on ethical and unethical conduct
- recommend pay and promotion policies based on ethics
- monitor risks and returns of the ethics programme like any other human resources investment
- provide counselling on ethics issues (based on HRM staff's competencies)
- collect feedback on conduct during performance appraisals
- recommend staff-wide changes to ethics programmes
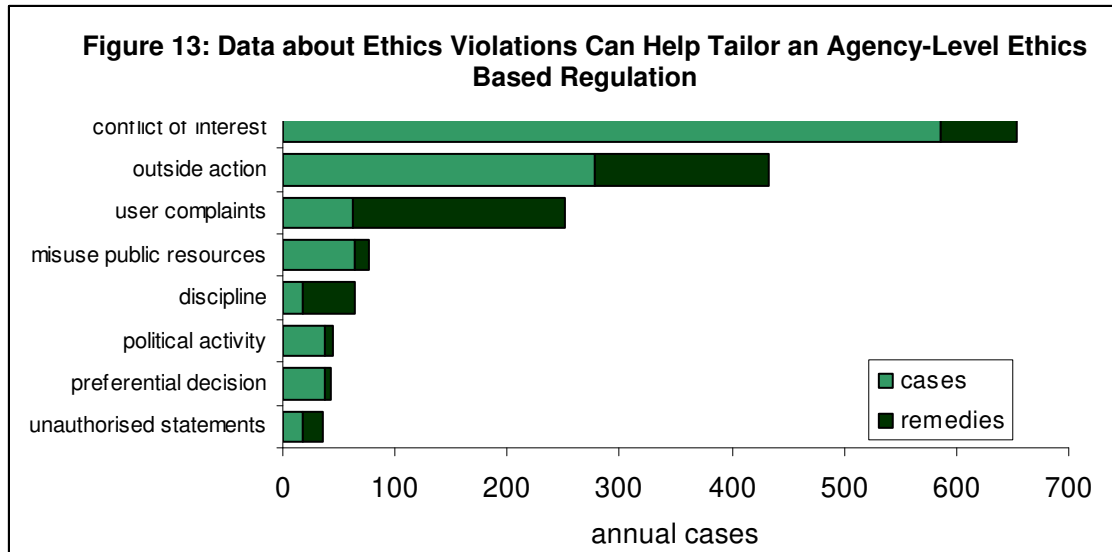- conduct advertising of ethics-related regulations and codes of conduct

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[25] Political scientists use a Polarisation Index which (like a standard deviation) measures the extent of party fractionalisation. For more on these data, see Russell Dalton. (2008). The Quantity and the Quality of Party Systems: Party System Polarization, Its Measurement, and Its Consequences. *Comparative Political Studies 41*(7). See Appendix II for the data on political fractionalisation.

[26] Like with the example from organisational theory, we can not teach drafting skills in this short brief. For the curious reader looking to learn a bit more about interpreting legislation, regulation and the rules of drafting, we highly recommend James Holland and Julian Webb's *Learning Legal Rules: A Student's Guide to Legal Method and Reasoning*, Oxford University Press, 2003.

Human resource departments order, conduct and/or receive background checks and employment records. In some jurisdictions, they can ask specific questions related to the applicant's (or transferee's) ethical conduct during previous employment. Because ethics represents a contentious area where different person's values diverge, a negative observation about an applicant's ethical conduct should not necessarily disqualify the person from employment. A public service orientation which gets an employee in trouble in one department may represent the ideal quality for a reform-minded minister or agency director. The results of thousands of these checks across government provide useful epidemiological information about broader changes in ethical principles.[27]

Within the agency, data on unethical (and ethical) behaviour by the agency's staff can provide the empirical basis for writing and revising ethics-related regulations. Figure 13 shows an example of the way that ethics data can help fashion ethics-related regulations and codes of conduct. For example, in this example, the department took remedial action on 10% of all conflict of interest cases. In contrast, the department took steps to fix problems in 75% of cases involving complaints by the public. These large differences have important implications for the creation and implementation of ethics-related regulation. Either conflict of interest rules are too vague to allow for enforcement, or the rules are too broad (thus encouraging too many cases to be opened). The other point to note revolves around the number of cases. One might expect far more cases of user complaints than conflict of interest. These data suggest that service users do not know how to complain (though we need to investigate such a hypothesis further).

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[27] With a simple Excel spreadsheet, the HR department can stratify ethics-related data of applicants by geographical area, former employment, gender, job category and so forth (if allowed by the country's data retention and privacy laws). Because these data provide a larger sample, analysing data from all applicants (rather than only those taking employment with the department) provides more reliable and comprehensive information. Because analysts can manipulate aggregate data, information identifying particular individuals can be discarded. The complexity of emerging privacy and date retention laws make competent legal counsel an absolute requirement before providing the HR department with the competence to analyse these types of data.

Figure 13: Data about Ethics Violations Can Help Tailor an Agency-Level Ethics Based Regulation

The volume of cases also suggests a couple of things about ethics-related regulation in this agency. Engaging in unauthorised political activity and the exercise of preferential discretion do not appear to represent serious problems for this agency. We draw this conclusion because the number of these cases represents only a fraction of the other cases involving conflict of interest and outside interests.[28] In contrast, conflict of interest and outside interests represent a larger area of concern. Based on these data, the agency's ethics-related regulations should focus heavily on more detailed procedures designed to regulate conflict of interest. Many countries – based on the threat conflict of interest poses -- have moved conflict of interest from an ethics-related issue to an issue of black letter law.[29]

Information collected by human resource personnel may also include incident reports. These incident reports add details to the aggregate data providing details about staff's negative (and positive) ethics-related behaviour. Such details assist human resource managers and agency directors when they review ethics-related regulations each year or biannually. If several incident reports show similar problems (or if a couple of incidents pose a significant risk to the agency), these details can provide the basis for agency-level rulemaking. Managers and staff can also use incident reports during their annual performance assessment meetings. Human resources staff can obtain an agency-wide view of ethics – taking into account staff's views (rather than only relying on the views of the mangers which discipline staff for ethics-related problems).

Human resources staff also has other functions in dealing with the agency's ethics-related policies and practices. If local law allows for discretionary rewards and/or changes in a civil servant's pay (within his pay grade), human resources staff can help write agency-specific regulations governing the conditions under which staff may receive annual pay

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[28] Such a statement naturally requires further examination – taking into account the usual caveats about the use of statistics. Many agency directors unwisely summarily dismiss statistics as "lies, damn lies and statistics" without giving thought to the potential uses of data like these.

[29] See Demmke *et al.* (2007) for a detailed overview of such legislation in a European context.

increases (or discretionary rewards) for ethics-related behaviour. They may also contribute to regulations setting ethics-related conditions related to promotion, assignments requiring the supervision of sub-ordinate staff and so forth. Human resource department staff usually also have the mundane responsibility for ethics "advertisements."[30] Such advertisements include posters, regular emails to staff, graphical and easy-to-read manuals and other reminders. Human resources staff should have colour printers and the same kinds of materials other advertising staff have – so the agency's staff receives the message.

Ethics-related communications should reflect news the viewer can use rather than simple propaganda. Figure 14 shows the difference between modern ethics advertising and the old-style propaganda approaches. The poster on the left represents a propaganda approach (which in fairness the designer made to show a design technique rather than to change moral norms). Yet, most ethics posters in the Central European region still reflect the propaganda-based approach. In contrast, the poster on the right reflects the Ogilvy marketing approach to social advertising.[31] The poster informs the viewer how to report ethics-related problems and provides a valuable service (advice). The poster builds rapport with its intended audience – and contain eye-catching and professional colours which draw the viewer to the poster.

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[30] Ethics departments should adopt a marketing approach to ethics rather than an advertising approach. Marketing entails the discovery (through surveys, interviews, focus groups) of needs and providing the needed information or services. We prefer Ogilvy -style advertisements because they inform the reader rather than push propaganda-type messages. Propaganda can led to cynicism – making staff less willing to pay attention to future ethics-related messages.

[31] The Ogilvy approach focuses on creating text-heavy advertisements which inform the reader rather than simply try to evoke emotions. For a primer on using this technique in social marketing, see David Ogilvy, *Ogilvy on Advertising*, New York: Vintage, 1985.

Figure 14: Colour Ogilvy-style marketing more effective than black and white ads

In some countries, human resource managers also serve as counsellors to staff – providing advice on labour-related issues. Counselling on finding the golden mean in an ethical problem provides an important skill which human resource managers can use to help the agency's staff. Figure 15 shows an example of the way that a ministry's or agency's human resources staff can assist with ethics-related dilemmas. Human resource managers will understand labour laws and administrative regulations better than staff. Therefore, these managers can propose creative compromise solutions which do not expose staff to liability for administrative or disciplinary punishments. These managers also understand the personalities of the managers involved. So, they can propose solutions which superiors and sub-ordinates would find personally acceptable.

Figure 15: Human Resource Departments and their Role in Ethical Arbitrage

In the mid 2000s, we worked with a government agency in a Central European country. The Agency's director had decided to run for parliament, and ordered certain staff to help the director campaign for office. The staff felt uncomfortable doing this. However, the director had helped many of them in the past, and they felt indebted to the director. The human resource manager had an idea how staff could both obey the director without compromising their mandate to avoid politicisation of the Agency. They should "klutz it up." They did not have to perform to the high standards of their civil service job while putting up signs and posters. Such a middle course avoided a confrontation with the director. The solution also avoided the harmful effects of politicisation (as agency staff's work did not contribute to the unofficial objectives given by the director).

In some jurisdictions, human resource managers participate in internal hearings and disciplinary proceedings in cases of alleged unethical behaviour. Human resource managers serve on these tribunals, panels, and committees because senior managers will have conflicts of interest in judging their own sub-ordinates (often having given them unethical orders in the first place). **Agency directors' regulations must define the role of human resource staff in ethics-related hearings through clarifying government-wide regulations, defining particular offences and so forth**. Ethics counsellors can also be used. We do not provide more information because legislation (not present in Central Europe) must endow them with certain rights and obligations.[32]

Conclusions

The design and implementation of ethics-related regulations mirrors the design of any regulation. Important skills in organisational theory, legal drafting, economics, and audit serve to design and implement ethics-related regulations in exactly the same way they serve to implement other kinds of agency-level regulation. Such an insight will disappoint the clients of ethics gurus selling nostrums for managing ethics in the public sector. In this paper, we have looked at the way legislators and regulators can draft ethics-related law. We have discussed how to choose and draft particular provisions in national and sub-national legislation and in agency-level regulation. We have shown agency directors how to work with internal auditors, economists and human resource managers to ensure the most effective, least cost implementation of ethics-related regulation.

We have used Hungary as an example to show how agency directors can apply some of the skills presented in this paper. We have used Hungary because the country does not have (nor necessarily strongly need) national ethics-related legislation. We have argued that the Ministry of Public Administration and Justice should draft a whole-of-government regulation enacted by the Prime Minister as an executive instruction (order). Legal advisors to Hungarian public sector agency directors should draft regulations which implement the relatively general provisions of the Prime Ministerial decree. Internal auditors should assess the performance of these regulations (to the extent that unethical behaviour poses a risk for that particular agency).

We strongly urge all officials reading this brief to disagree with our data, findings and advice. Our paper aimed at showing the reader how to apply many of the tools that ethics-regulation drafters use in their daily work. The reader will probably have better access to data, national legislation and internal regulations than we had. Many readers will argue that their legal and administrative systems do not allow them to practice many of the tips we provide. They will argue that their internal auditors do not know how to do the types of audits that we present – and that they are too busy to think about abstract issues like government ethics.

We hope this paper provides Hungarian officials (and their brethren in other OECD Member administrations) with three things. First, we hope to have convinced you that

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[32] See Michael (2012) for a description of a way to operate an ethics counsellor system in Romania.

ethics-related regulation should rely on data rather than copying and personal feelings about the right thing to do. Second, we hope to have provided enough information to agency directors about the organisational theory, law, economics and audit practices used to make and enforce ethics-related regulations. Government agency directors must sign the regulations their advisors propose to them. They must understand the audit findings and charts their auditor put in front of them. They must also know when to assume certain obligations and delegate others. We hope we have given enough information for them to take these decisions sensibly. Third, we hope to have shown that ethics regulation – like any other area of public policy – focuses on social costs and benefits. Enforcing ethical behaviour has costs and benefits – which extend beyond the narrow "rights and obligations" based discourse used in many administrations. Ethics regulations really represent "business as usual" for government agencies. We hope that government agency directors will make the regulation of ethics in their department more of their business.

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Appendix I: The Choice of Administrative Level for EU Codes of Conduct

In this paper, we described each of the steps from transforming national law into Agency-level ethics or code of conduct regulation. We mentioned that the optimal division of ethics-regulating depends on the costs and benefits of having central level as opposed to agency-level regulation. Some EU administrations prefer to regulate ethics at the agency-only level (at least in 2006). These countries include Estonia, Romania and Ireland (for value declarations) and Finland, France, Germany, Hungary, Latvia and Lithuania (for codes of conduct). We hope readers will consider the costs and benefits, fit with their legal system and the others factors we mentioned, instead of choosing a method of ethics regulation based on popular perceptions about the model country.

Figure 29: Comparison of Level of Ethics Regulation in EU Countries' Administrations

	Core values declarations	Code of Ethics
Agency only	**EST, RO, IE**	**FI, FR, DE, HU, LV, LT**
General Only	BE, FR, GR, HU, LV, NL, SLO, SE, UK	CZ, DE, GR, IT, PL, SLO, ES,UK, BG, RO.
General and Agency	AU, FI, DE, LT, MT, BG	EST, IE, MT, NL
Neither General or Agency	CY, CZ, DE, IT, LU, PL, PT, SK, ES.	AU, BE, CY, LU, PT, SK, SE.

Source: Moilanen and Salminen (2006). The authors provide a third category called the branch-level. Some of the countries with neither general nor agency-level ethics regulations may have branch-level regulations.

Appendix II: Data on Political Fractionalisation

Political heterogeneity reflects differences in values and preferences between sub-groups in a nation-state. Political heterogeneity reflects many differences – including differences over ethics (or behaviours that groups find acceptable and/or unacceptable). We show these data in order to provide a glimpse at the kinds of data that organisational theorists use when assessing the design of an administrative structure for implementing ethics-related policies. As shown, Hungary has the highest amount of political polarisation of any of the countries listed. Such polarisation suggests significant disagreement over basic political and ethical values and norms.

Figure 30: Political Polarisation in Select Countries

Country	score	Country	score
Australia	1.96	Mexico	2.10
Belgium	2.46*	Netherlands	3.64
Brazil	2.00	New Zealand	3.35
Bulgaria	4.37	Norway	3.75
Canada	2.06	Peru*	0.84
Czech Republic	5.43	Philippines	0.46
Denmark	3.57	Poland	4.92
Finland	2.85	Portugal	3.44
France	3.29	Romania*	2.13
Germany	2.70	Russia*	4.01
Hungary	**5.85**	Slovenia*	2.15
Iceland	4.08	Spain	4.33
Ireland	2.20	Sweden	4.07
Isreal	2.20	Switzerland	4.01
Japan	3.30	Taiwan	1.14
South Korea	3.55	UK	2.37
Lithuania*	3.41	USA	2.43

The Polarisation Index (which ranges between 1 and 10) represents a measure similar to a standard deviation – such that higher figures represent more polarisation. Data for latest time period available. Countries with asterisks denote older measurements.
Source: http://www.cses.org/datacenter/download.htm