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ISBN 978-963-08-4037-8

A KUTATÁS TÁMOGATÓJA:



Ministry of Foreign Affairs of the
Netherlands



With financial support from the Prevention of and Fight against Crime Programme
of the European Union

European Commission – Directorate-General Home Affairs

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INTRODUCTION

The movement of individuals between the public sector and the private sector is an absolutely natural phenomenon in all open societies. While such mobility has its advantages on an individual, organisational and societal level, it constitutes risks as well. The public is often confronted with conflicts of interest or even corruption phenomena in connection with the turn of the revolving door. Those who crossed over from one sector to another or have close ties to others who went through the revolving door may sketch the issue out in more detail and may point out advantages and profits of a benign and beneficial character that are produced by this movement. The National Integrity Study published in 2012 indicated that the missing or non-functioning regulation on the revolving door phenomenon presents a significant weakness of the Hungarian anti-corruption system.¹ Our study thoroughly elaborates this issue and presents every aspect of the phenomenon to the reader, but as an anti-corruption organisation we dealt first and foremost with corruption resulting from the revolving door phenomenon and the prevention thereof.

For the purposes of the present research we have reviewed national and international legislation, including national judicial practice, certain foreign legal regulations and related legal literature as well. We have requested public information from ministries, central governmental offices and autonomous administrative organs; altogether from 29 institutions, 24 of which responded to our request. In March and April 2012 we conducted one to one and a half hour long interviews with 15 persons who gained experience in different fields and levels of the private and public sector.² The research was closed on 19 April 2012.

1 Petra Burai-Péter Hack (eds.), Corruption Risks in Hungary 2011 – National Integrity Study 2011, Transparency International. http://www.transparency.hu/uploads/docs/Corruption_Risks_in_Hungary_NIS_2011.pdf (Accessed on 24 March 2012)

2 From the interviewees, the current general secretary of the Hungarian Competition Authority and the chief officer of the division of the Ministry of Public Administration and Justice are referred by their names, while the other interviewees remain in anonymity. Among the latter there are people who work or worked in a period of their lives as senior managers of state-owned companies, senior managers of a private companies, personnel advisors, attorneys, state secretaries, legal rapporteurs in the central public administration, middle-ranking officers in the central public administration, municipal lawyers and journalists. Our interviewees have, among others, experience in the energy, financial and telecommunication sector. In case of each quotation, we designate the profession of the anonym interviewees if the content of the quotation requires so.

1. WHAT ARE THE REASONS OF THE REVOLVING DOOR PHENOMENON IN HUNGARY?

“An aspiring manager cannot fulfil his ambition in the Hungarian private sector. Following the significant economic changes of the early 1990s (appearance and merger of new enterprises, privatization, appearance of foreign investors, etc.), this market sector presents less challenging opportunities, there is no movement and competition for the better positions, while there are still several interesting tasks in the public sector. However, people do not move from the private sector to the public sector because the latter is better, but due to the fact that something is wrong in the private sector,” – said one of the interviewees who gained experience as a senior manager in the private sector as well as in the circle of state-owned companies. The public sector provides interesting tasks and, for many people, invokes a psychological factor: they hope that, having rendered their services in the interest of the public, their names will go down in history. For others, the aspiration to exchange their financial capital raised in the private sector to political capital may be motivating, thus allowing them to create a market for their private interests, or use the public sector as a springboard for their individual career.

When crossing the threshold in the other direction, it may be motivating that, on one hand, in the private sector there is more to earn, on the other hand, it is more consistent, i.e. the set of expectations does not change week by week, which makes for better working conditions. In the case of the Hungarian Competition Authority (hereinafter: “HCA”), “there is a strong competition among the graduates for the positions at the HCA, because they can gain knowledge and experience that is useful in the private sector. Accordingly, several investigators leave the HCA after 7-8 years.”³ However, as an ex-governmental chief official interviewee said, “from the level of the middle-ranking officials upwards, there is no career-model, and if someone loses his or her job, he may have nothing left to do but switch over to the private sector.”

Institutions in the public sector may profit from a new point of view that the employee brings from the private sector and the higher his or her position, the greater the impact of his or her novel knowledge, provided that he or she grasps the operation of the public sector and is able to introduce his or her point of view brought from the private sector. “When handled in a well-considered way at a systemic level, public administration would be able to mobilize outward knowledge through access to the network of the newcomers. Additionally to the knowledge possessed within the organisation, there may be a need for outward knowledge in certain special fields and the movement between the two sectors would provide the opportunity to include outward expertise free of charge”.⁴ However, only in theory is the matter quite so easily settled. Many of the interviewees voiced that the inflow from the private sector is not advantageous, since the 80% of the incomers cannot be used for public administrative tasks, as the aspects prevailing in the private sector are much different. If someone does not socialize into the public administration, it is rare that he or she becomes a successful chief official. One may frequently see careers in which someone works for four years in the public administration then tries himself in the world of the market sector and subsequently returns to the public administration. In contrast, those who can fully adapt to the new mentality and become efficient managers in the public administration are few and far between. The public sector hardly allows for changes in its »working culture«, maximum at a micro-environmental level, but this does not affect the behaviour of the whole organisation. In case of both organisations, the problem is that their institutional logic does not allow adjustment of their evolved practice at a fundamental level.”

³ Tevanné dr. Annamária Südi, Hungarian Competition Authority, general secretary

⁴ Viktor Horváth, Ministry of Public Administration and Justice, chief officer of the Division of Public Administration-development and Strategy-planning

When employees move from the public sector to the private sector, the advantage is the employer's. "It is easier to keep the contact with the state through people who know the operation of the state well and this knowledge is incomparably more valuable than that of an attorney or a procurement expert who might know only a fragment of the decision making process. This is a knowledge that will not become obsolete even if governmental reforms are implemented, because they do not change the system significantly and the daily routine is established according to the statutory alterations," – said the interviewed prior governmental chief official. At lower levels of the management it is advantageous that employees who gained experience in the public administration have relevant legal knowledge, yet are more affordable in the private sector than an attorney. "It may be an advantage for the state that experience and expertise can be involved from the private sector and well-considered and complex projects can be completed cost-effectively, however, over-emphasized political aspirations bog down the grey matter." In a strictly regulated state like Hungary, business associations benefit the experience of their employees gained in the public administration, as it aids orientation even in the private sector. "If the state weren't so regulated, this kind of knowledge would be less important." The movement of employees from the public sector to the private sector creates the possibility of informative exchange. The state receives direct feedback on dysfunctional forms of operation, while the private sector may hope that these dysfunctions will be eliminated.

2. CORRUPTION AND CONFIDENTIALITY RISKS

The public and the legislator mostly deal with conflicts of interest when the decisions of a public official or a decision maker handling public funds are influenced or potentially influenced by certain private interests. It is almost always situations in which the conflicting interests arise simultaneously that get publicity, e.g. someone prefers his or her relative at the distribution of the public funds or hires or promotes his or her friend or relative to a certain position albeit there would have been a more eligible candidate for that position. Rarely highlighted are cases in which the interests of an ex-employer or a future employer or client overcome the public interest. However, situations of conflicting interest that drag on carry as great a risk of corruption as the faster ones and ruin the trust in the institutions concerned just the same. According to one of our interviewees, political trustworthiness, the intellect, the knowledge and management expertise are the four weightiest factors one seeks in a manager. The question of the order of priority remains – according to him, political trustworthiness matters the most in Hungary.

2.1 What Kind of Corruption Risks are Inherent in the Revolving Door Phenomenon?

Liz David-Barrett distinguishes among five types of the revolving door phenomenon.⁵ Under the term 'employers' we refer to clients as well, since the situations mentioned below could favour the clients or employers of an attorney, a lobbyist or an advisor. When examining the phenomenon of the revolving door a further aspect besides influence on decision-making through contacts or prestige may be considered, where the person who goes through the revolving door takes or discloses information unlawfully from the public sector to his or her prior or posterior employer in the private sector.

⁵ Transparency International UK: Cabs for Hire?: Fixing the Revolving Door between Government and Business. May 2011, <http://www.transparency.org.uk/publications/140-cabs-for-hire-fixing-the-revolving-door-between-government-and-business> (Accessed on 24 March 2012)

Abuse of office: a senior official abuses the official power vested in him to favour a company and thus establish his or her future position at the favoured company. The provision on the breach of official duties of the Criminal Code (hereinafter: the "CC") covers the following situations concerning officials: "The official person who, with the aim of causing unlawful disadvantage or obtaining unlawful advantage, breaches his or her official duty, transgresses his or her competence or otherwise misuses his or her official position, commits a felony, and shall be punishable with imprisonment of up to three years."⁶ What is meant by official persons is exactly defined by the CC and the revolving door phenomenon concerns a wider scope of officials – e.g. the definition of the CC does not involve the chief officials of the state-owned and municipal companies – we do not use the definition of the CC herein.⁷ According to our municipal lawyer interviewee, it happens that „someone pushes for an order or additional work for the company in the last minute before the failure at the elections and ensures a job he doesn't even need to attend in return." The faction leaders at the municipalities or the "balance" factions and the members of the Parliament are in such situations. A similar bargain may arise when the mayor resigns far before the elections, knowing for sure that the opposition faction will be able to provide a new mayor and the ex-mayor receives an alibi-position in return.

Undue influence: a former state official who works for a business association may try to influence his or her former colleagues in order to receive a decision which is favourable to his or her current employer. This person exercises his or her influence through his or her prestige gained at this former work place or he or she may have obliged colleagues among his or her former inferiors who now accordingly render a favourable decision to his or her new employer. In these cases, the influence is not necessarily intentional, because it is possible that the former colleagues render a decision favourable to him though his or her conduct is totally neutral. Lobbyists frequently face this kind of situation of conflict of interest.

The situation is similar when the public sector official serves the interests of his or her former employer in his or her new position. Again, such behaviour is not necessarily intentional, but the organisational culture may so permeate him that he or she continues to live guided by it. If the contact with his or her former employer remains strong, the former employer may influence the formation of policy or legislation on public authority or public funds. In these cases, we face a particular form of what can be dubbed state capture: so called regulatory capture.

According to a former governmental chief official, "inconsistent decisions rendered by a member of an office of authority may be achieved through social networking (it is more difficult to influence regulatory/normative decisions, excluding the field of construction), the modification of the legal regulations and semi-official interpretation of the law work in the same way. It is the height of corruption when a law firm employs a former governmental official by way of bribery from whom it is required to keep access to the governmental decision makers. The law firm pays a decent salary for years for which he or she does not have to work, and upon his or her return to the public sector, he or she will be sure to answer the telephone if his or her former employer calls him. A later, lawful job

⁶ Section 225 of Act Nr. IV of 1978 on the Criminal Code

⁷ Pursuant to Section 137 of Act IV of 1978 on the Criminal Code: "1. official: a) the member of the parliament; b) the President of the Republic; c) the prime minister; d) the member of the government, the state secretary, the state secretary of public administration and the deputy state secretary; e) the judge of the Constitutional Court, the judge, the prosecutor, the judge of the arbitration court; f) the commissioner of fundamental rights and his deputy; g) member of the local government body; h) the public notary and the deputy public notary; i) the bailiff and deputy bailiff; j) person working for the Constitutional Court, the courts, the public prosecutor's offices, the public administration organs, the municipal organs, the State Audit Office of Hungary, the President of the Republic's Office, the Parliament Office and the Office of the Commissioner of the Fundamental Rights, whose activity supports the proper operation of the relevant organ; k) [repeated point]; l) the person who performs public and public administrative activity at the public administrative organs or bodies under the relevant law."

order from the state is more expensive than a gift job, because it is more expensive to obtain an engagement following regulation than to influence the regulation. The engagement is costly, because that is a direct payment, while the decision of public authority requires less struggle and energy.” This phenomenon is not common on a municipal level, because “once you leave the municipality, you have no influence.” This category covers the phenomenon mentioned in the introduction, i.e. when the former middle- or high-ranking public sector officials, changing to the private sector and upholding their old contact network, return into a high-ranking position in the public sector after a few years, a decade at the most. They could do so due to their public sector connections exercising undue influence.

Profiteering: a public official gains financial advantage from his or her knowledge related to public functions and his or her official position. This situation may occur during the time he or she spends in his or her office or later. One end of this spectrum is absolutely legal, e.g. it is legal when someone receives salary in return for his or her work as a public official, while on the other end, one may find unlawful disclosure of inside information or qualified information, which may entail criminal consequences. We may encounter these kinds of situation in the field of tax administration.

Switching sides emerges when someone moves to the private sector from the public sector and he or she continues work in precisely the same field as he or she had done before; however, while formerly he or she negotiated in the name of the government on the same questions, following his or her move, he or she now represents a company or an industry. By way of switching sides, the employee can have governmental information that may render the enforcement of the specific policy decisions difficult. “Such a situation arises when an energy company lures an official from the Energy Authority, one of the select few that understand the regulation of the energy prices in detail. Or, in case of an EU information technology project, it may be worth for an IT company to bribe out a project manager who knows the distribution and the time of the public procurements in advance.” One of our interviewees told us about a rare form of switching sides at the municipal level: “the public procurement bidder won the municipal elections later on and demanded explanation why he or she did not win in the public procurement procedure.”

Regulatory capture means that the decision makers of the public authority responsible for regulation and supervision are unduly understanding with the actors of their field of responsibility. This situation may arise e.g. when the public administration hires decision makers due to their specific expertise, who formerly worked for the companies operating in the specific regulated sectors. These experts may prefer the claims and interests of their former employers and colleagues to the public interests and they may be overly permissive when faced with their infringements. The more specialized the branch of industry we review, the hardest it is to find persons who are able to fulfil a public function with proper expertise and due distance at the same time. “Let’s put Józsi from the private to the public so that he or she favours us – this is done by politics and seems to be forgivable, because he or she is an associate and seems to be innocent. Certain clans hold certain economic spheres or a part of them in the palm of their hands. This does not seem to be an economy-based question, because on the surface it is political, therefore, interestingly, everybody forgives it”, if it is done by the supported party, explained a person questioned who worked as a senior manager in the private corporate sector and in the public sector as well. In less sharp situations, “it is also a requirement that if someone moves from a company to the regulating authority because of his professional knowledge, he or she must not keep up a good connection with that company. For this, setting down the rules of the game is necessary and if there were no legal regulations, this would still be reproachable. Rules must be set for the reconciliation of the profit and the risk; however ethical conduct is not fashionable in this country.” We see a case of regulatory capture on the level of municipal regulation when “a man who

formerly worked for a company which was familiar at the municipality becomes the chief architect in the town” and enforces the interests of that company.

A former governmental chief official drew up the sixth and seventh type of the revolving door phenomenon, which could be called **indebtedness**: “make obliged as many people as you can on the basis that “It will come in handy yet!” while no good position or other advantage may be foreseeable in that given moment. Later a favour may be demanded in return for the obligation. A special type of the revolving door operates in the police sector, as the police elite is continuous, has a very strong internal cohesion and there is a continuous revolving door operating there. Colleagues who stay within the police body can somehow control the outsider preventing the purchase of the outsider through the revolving door, but outsiders may perform even illegal activity which cannot be done by the colleagues in the public sector” – this type of the revolving door is called the **police revolving door**.

2.2 What Kinds of Positions are at Risk?

There was no common viewpoint among our interviewees on what positions may be identified as particularly risky. They rather connected the revolving door phenomenon to the distribution of public funds and official decision-making processes, but such positions may be found on several levels of the public administration. If we tried to identify the precarious positions, it could be stated that allocation of EU funds is a difficult area, not only at the level of decision-making, but already at preparing the decision in its content is risky. In the process of the latter, tenders are evaluated the granting of funds is prepared by the (non-administrative) officials of the supervising authorities. In the strictly regulated sectors (e.g. energy), the preparation of legislation may also be risky. “At higher levels, close colleagues of the public administration, state secretaries, ministers (political leaders) and sectorial chief officials of governmental offices are those in case of whom the personal consent to decisions favourable to a given company may be rewarded by a high-ranking position at that company in return. It is more difficult to convince a lower-ranking official who has spent time and energy making preparations for the case to render a decision which prefers private interests over the public interests, while winning the confidence of that close colleague of the chief official who merely takes the decision to him to be signed may be priceless, his or her two sentence remark may mean a lot. Of course, it depends on the personality of the chief official to what extent he considers the remarks of the close colleagues.”⁸ According to one of the interviewed persons, the revolving door phenomenon may be encountered in the regulating authorities above the level of the middle-ranking officials (Hungarian Financial Supervisory Authority, National Media and Infocommunications Authority, Public Procurement Authority, Hungarian Energy Office, Hungarian Competition Authority, Hungarian National Bank).

2.3 What Sectors are at Risk?

All of the interviewees agreed that the strictly regulated sectors are the riskiest with respect to the revolving door phenomenon. In these fields the market shares may be increased only with difficulty and only to the detriment of other market players. There are only a few market players, the threshold of entry is high, the market is strongly regulated and it is more inexpensive to increase the market shares by the revolving door than by investment. The revolving door phenomenon is irrelevant only in those areas where the state is not a procurer. The vast majority considers the energy sector and the

⁸ Viktor Horváth, Ministry of Public Administration and Justice, head of department 'Public Administration Development and Strategy Planning'

telecommunication market risky and there were some persons who also considered the financial sector to be fraught with risk. Everyone mentioned the allocation of the EU funds, where intimate knowledge of the mechanism of money-distribution is necessary, similar to the property distribution, i.e. the privatization at the beginning of the 1990s. The information and the connections are appreciated in these fields, but the information alone is often enough. One of our interviewees drew our attention to the fact that when occupying a market, it counts for the foreign investors that they are able to bribe out local officials not only for their local knowledge but also because they may simplify the processes where export restrictions are applied. This method was typical in Hungary in the early 1990s, while it is currently applied also by the Hungarian companies on foreign markets.

3. INTERNATIONAL AND FOREIGN REGULATIONS

Hungary joined the anti-corruption conventions of the Organisation for Economic Co-operation and Development, the United Nations' Organisation and the Council of Europe; furthermore, it is a member of the European Union. Below we present the relevant regulations and recommendations of these organisations concerning the revolving door phenomenon, and finally we describe the regulation and recommendations of three countries that may be set as good examples in this field.

3.1 Organisation for Economic Co-operation and Development

The aim of the Organisation for Economic Co-operation and Development (hereinafter: OECD) is to harmonize the economic, commercial and financial activity of the member states and to support the development and evaluation of the best economic and social politics. Hungary joined the organisation in 1996.

The OECD handles the abuses caused by the revolving door phenomenon as a priority problem and deals with the issue in several documents. These documents highlight that the revolving door phenomenon is connected with the issue of the expropriation of legislation for private interests (so-called regulatory capture). We speak of expropriation of the legislation when legislators are influenced by those who are concerned by the resulting legal regulations, because it is their elementary interest that the provisions be favourable to them.⁹ Although one of the fundamental aims of the OECD is to remove all barriers hindering participation in the labour market, it admits that the use of the information gained while working in the public sector, which is confidential in many cases and significantly strengthens the competitive position of the party possessing such information, may cause serious problems in the business and civil sector.¹⁰ The problem of the revolving door may arise not only after changing working places, but also before, since the official may favour his or her possible future employer so that he or she may receive a new position there.¹¹

9 According to certain opinions, both the expropriation of the legislation and the lobby for the forceful deregulation of the financial regulation contributed to the development of the economic recession. David Miller, Revolving doors, accountability and transparency: Emerging regulatory concerns and policy solutions in the financial crisis. <http://www.oecd.org/dataoecd/22/15/43264684.pdf> (Accessed on 24 March 2012) pages 4 and 5

10 Post-Public Employment: Good Practices for Preventing Conflict of Interest – Post-public employment: practices and concerns. OECD, Paris, 2010. http://www.keepeek.com/Digital-Asset-Management/oecd/governance/post-public-employment/post-public-employment-practices-and-concerns_9789264056701-4-en (Accessed on 24 March 2012) page 2

11 Same source, page 3

Moreover, OECD points out that conflict of interest post-public employment appears in practice to be tightly knit together with lobbying. Those just hired by lobby companies return to their former employer in the public sector to lobby. Their former government colleagues may feel pressured or obliged to grant them sympathetic treatment. This special treatment can take forms such as privileged access to decision makers, private or secret consultations, improper access to precious internal information or even biased decisions. These special opportunities are not available to the lobbyist's competitors. As a result, fairness and transparency in government decision-making come into question.¹²

Considering the above, in 2004 OECD compiled a set of principles for public sector aiming at the elimination of incompatible interests. According to the study, it is to be expected from public officials, in the name of the public interest, not to undue use of the advantages of their position after leaving their office in the public sector, including the information gained in the course of their former work, especially when searching for a new job. Additionally, public officials should restrict all the private interests that could sway their decision-making while in the service of the public. Where that is not feasible, a public official should abstain from involvement in official decisions.¹³ The latter principle may also cover those cases when, as indicated above, public officials are about to leave their position.

In 2007 the OECD monitored the extent of the implementation of the 2004 principles in each country. The survey indicates that although the vast majority of countries set general rules for preventing conflict of interest post-public employment, there are few mechanisms to help apply these rules in practice.¹⁴

In 2010 the OECD laid down its principles on requirements of post-public employment. These principles cover several issues, including those commendations that highlight problems arising primarily **while officials are still working in government**:

1. Public officials should not enhance their future employment prospects in their private and non-profit sectors by giving preferential treatment to potential employers.
2. Public officials should, in a timely manner disclose their seeking or negotiating of employment and offers of employment that could constitute a conflict of interest.
3. Public officials should in a timely manner, disclose their intention to seek and negotiate employment and the acceptance of an offer of employment in the private and non-profit sectors that could constitute a conflict of interest.
4. Public officials, who have decided to take up employment in the private and non-profit sectors, should, where feasible, be excused from those current duties that could constitute a conflict of interest with their future set of responsibilities at the new working place.
5. Before leaving the public sector, public officials who are in a position to become involved in a conflict of interest should have an exit interview with the appropriate authority to examine possible conflict of interest situations and, if necessary, determine appropriate measures for remedy.

12 Post-Public Employment: Good Practices for Preventing Conflict of Interest – Post-public employment problem areas. OECD, Paris, 2010. http://www.keepeek.com/Digital-Asset-Management/oecd/governance/post-public-employment/post-public-employment-problem-areas_9789264056701-5-en (Accessed on 24 March 2012) page 3

13 Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences. OECD, Paris, 2004. http://books.google.hu/books/about/Managing_Conflict_of_Interest_in_the_Pub.html?id=FDKCsREN4xEC&redir_esc=y (Accessed on 24 March 2012) pages 25 and 26

14 OECD Guidelines for Managing Conflict of Interest in the Public Service – Report on Implementation. OECD, Paris, 2007. <http://www.oecd.org/dataoecd/18/35/39691164.pdf> (Accessed on 24 March 2012) page 13

The OECD determined principles preventing problems arising primarily **after public officials have left government** as follows:

6. Public officials should not use confidential or other „insider” information after they leave the public sector.
7. Public officials who leave the public sector should be checked in their efforts to lobby their former subordinates and colleagues in the public sector. An appropriate subject matter restriction, time limit or “cooling-off” period may be imposed.
8. Policy on the post-public employment time period should take into account appropriate measures to prevent and manage a conflict of interest where public officials accept job offers from entities with which they had significant official dealings before they left the public sector. An appropriate subject matter restriction, time limit or cooling-off period may be required.
9. Public officials should be prevented from “switching sides” and representing their new employer in an on-going procedure on an issue or in a specific case for which they were responsible during their public service.

OECD’s principles on post-public employment propose the following behaviour to officials currently in duty when contacted by their former colleagues who are now in service of a private company.

10. Current public officials should be prohibited from granting preferential treatment, special access or privileged information to anyone, including former officials.
11. Current public officials who engage former public officials on a contractual basis to perform essentially the same task as they did formerly, while working for a public organisation, should ensure that the hiring process has been appropriately competitive and transparent.
12. The post-public employment system should give consideration on how to handle severance payments received by former public officials when they are re-employed.

The OECD principles prescribe the responsibilities of organisations that employ former public officials:

13. Private firms and non-profit organisations should be restricted in taking advantage of those formerly employed in the public sector or in encouraging those who are seeking to leave or who left government to engage in activities that are prohibited by law or regulation.

Through the latter recommendation OECD emphasizes that the business sector and the civil organisations as well as the public sector have to take all steps necessary to prevent conflict of interest situations, specifically regarding the regulation of the revolving door phenomenon.¹⁵

In the meantime, the 2004 OECD conflict of interest principles have become an established practice and served as a basis of several regulations and solutions in the business sector. The document “OECD risk management tool for investors in weak governance zones” sees a potential risk in lacking regulation for priority conflict of interest cases, including cases arising after public officials leave the government, or lacking acute focus on the side of the management on the solution of such problems.¹⁶ These principles, along with the assessment of the level of economic and democratic development, are also

15 Post-Public Employment: Good Practices for Preventing Conflict of Interest – Post-public employment problem areas – Principles for managing post-public employment problems. OECD, Paris, 2010. http://www.keepeek.com/Digital-Asset-Management/oecd/governance/post-public-employment/principles-for-managing-post-public-employment-problems_9789264056701-6-en (Accessed on 24 March 2012) pages 6 and 7

16 The OECD Risk Management Tool for Investors in Weak Governance Zones. OECD, Paris, 2005. <http://www.oecd.org/dataoecd/54/42/35562068.pdf> (Accessed on 24 March 2012) pages 12 and 16

included in the “OECD Policy Framework for Investment” document, which examines how apt the investment environment ensured for commercial organisations is in any given country through a detailed questionnaire.¹⁷

3.2 United Nations Convention against Corruption

The United Nations Convention against Corruption was promulgated by Act CXXIV of 2005 in Hungary.¹⁸ Section 2 of Article 5 of the Convention provides that each member state shall endeavour to establish and promote effective practices aimed at the prevention of corruption. Pursuant to the Convention, each member state shall, in accordance with the fundamental principles of its domestic law, seek to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest (Section 4 of Article 7). The Convention deals with the revolving door phenomenon as part of the effort to prevent corruption in the private sector. Participating countries, including Hungary, undertake preventing conflicts of interest by imposing restrictions, “by appropriate measures and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure.” (Point e of Section 2 of Article 12) Thus this article states that it is the task of each country to properly provide for restrictions concerning the unambiguous movements through the “revolving door”, regardless whether such move happens due to resignation or retirement of the public official.

Concerning the public sector, the Convention emphasizes that each member state shall take note of the “relevant initiatives of regional, interregional and multilateral organisations” (Section 3 of Article 8). The Convention mentions for instance the International Code of Conduct for Public Officials contained in the annex to the General Assembly resolution 51/59 of 12 December 1996. The Code of Conduct does not deal separately with conflict of interest cases in post-public employment; however, in Section 3 it elaborates that “public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.”¹⁹ This fairly wide restriction may be applicable to the part of the revolving door phenomenon where public officials try to obtain a new job by way of securing favours for a private company while still employed in the public sector done or secure undue benefits for their former employer or client in exchange for any past or future advantages.

3.3 Council of Europe and the Group of States against Corruption

The Council of Europe also takes significant efforts to eliminate corruption in its member states. For this purpose, it adopted conventions and recommendations; and established the Group of States against Corruption (hereinafter: „GRECO”) in order to monitor its member states’ use of anti-corruption measures. With respect to the revolving door phenomenon, the “Code of Conduct for Public Officials” adopted by the Committee of Ministers of the Council of Europe has particular

¹⁷ Policy Framework for Investment. OECD, Paris, 2006. <http://www.oecd.org/dataoecd/1/31/36671400.pdf> (Accessed on 24 March 2012) page 22

¹⁸ Act CXXXIV of 2005 on the publication of the United Nations Convention against Corruption of 10 December 2003, Merida

¹⁹ <http://www.issafrica.org/cdct/mainpages/pdf/Corruption/International%20Instruments/Resolutions%20and%20Declarations/UN%20Resolution%2051-91%20Action%20against%20Corruption.pdf> (Accessed on 24 March 2012)

importance.²⁰ Articles 26 and 27 of the Code deal with the situation following the termination of the legal relationship of the public officials in detail and provide guidelines for the regulation of the revolving door phenomenon by laying down elementary principles. Pursuant to the reasoning of the Code, it is “extraordinarily important” that a new position do not “lead to objectionable office administration”.²¹

Pursuant to the recommendation of the Council of Europe, regulation of the revolving door is to be provided for the prevention of the following two anomalous situations:

- a) the opinion, the decision and the activity of the official is influenced by the opportunity or the promise of a future job;
- b) the new employer obtains unlawful advantage against competitors, because through the employment of a new colleague who gained business secrets or classified information while working in the public sector.

Pursuant to Section 1 of Article 26, the public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service. Section 2 adds that the public official should not accept a job offer that creates an actual, possible or probable partiality. Additionally, he or she is obligated to disclose immediately to his or her supervisor any concrete offer of employment that could create a conflict of interest. Furthermore, he or she must disclose to his or her superior his or her acceptance of any offer of employment.

Based on Section 3, in accordance with the law, for an appropriate period of time, the former public official should not act for any person or body with whom he or she had dealt or whom he or she had advised in his capacity as a public servant and which would result in a particular benefit for that person or body. Section 4 says that the former public official should not use or disclose confidential information acquired as a public official unless lawfully authorized to do so.

As a general rule, Section 5 emphasizes that the public official should comply with any legal requirements that apply to him or her regarding the acceptance of appointments upon leaving the public service. Article 27 contains a general prohibition pertaining to keeping in touch with former colleagues and emphasizes that the former public official should be not given preferential treatment or privileged access.

In the second round of evaluation of the participating countries’ efforts against corruption GRECO framed the problem of the revolving door as a separate question. This evaluation took place between 2003 and 2005. Point 4.5 of the pertaining questionnaire, which monitored and analysed governmental measures, examined “whether there are any measures in place to limit the phenomenon of public officials moving to the private sector where they can abuse their contact networks and knowledge of administrative mechanisms and decision-making processes?”²²

In Hungary’s case, GRECO assessed in the closing document of the evaluation at issue that despite the targeted recommendations, there is no substantive progress regarding the regulation of the revolving

20 Recommendation Nr. Rec(2000)10 and its reasoning adopted by the Committee of Ministers of the Council of Europe on 11 May 2000. Council of Europe Information and Documentation Centre, Budapest, 2001.

21 Same source, page 41

22 Second Evaluation Round – Questionnaire for the Second Evaluation Round (2003-2005). Adopted by GRECO at its 12th Plenary Meeting, Strasbourg, 9-13 December 2002. http://www.coe.int/t/dghl/monitoring/greco/documents/2002/Greco%282002%2928_EN.pdf (Accessed on 24 March 2012)

door phenomenon. The international organisation recommended in vain the “introduction of clear rules/guidelines for situations where public officials move to the private sector, in order to avoid instances of conflicting interests”.²³ Although, in the course of the evaluation round, the government promised to solve the problems in a code of conduct for the entire public administration, this was not realized. GRECO regretted to note that “the adoption of a comprehensive code of conduct for the entire public administration continues to be an unresolved matter,” thus the anomalous situation typical of the revolving door phenomenon remained unaltered in Hungary.²⁴

3.4 Institutions of the European Union

The EU institutions recently began to put more emphasis on finding policy solutions to the revolving door phenomenon, primarily due to the serial scandals.²⁵ Since the overall institutional reform of 2004, a detailed, more than 150 page-long staff regulation applies to the officials of the institutions of the union.²⁶ Article 16 (96) provides that an official shall, after leaving the service, continue to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. Officials intending to engage in an occupational activity within two years of leaving the service shall inform their institution thereof, whether they receive a salary or not. Should this activity be related to the work carried out by the official during the last three years of service and thus lead to a conflict with the legitimate interests of the institution, the appointing authority may, in interests of public service, either forbid him to undertake the task or give its approval subject to any conditions it thinks fit. Article 17 (96) obliges the public officials to refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public. An official shall continue to be bound by this obligation after leaving the service.

Certain provisions of the Staff Regulation are currently being re-negotiated. The Commission, in pursuit of primarily economic and cost-saving considerations, phrased certain recommendations on those elements in need of reform. These recommendations primarily concern a decrease in the number of employees and an increase in the number of working hours at EU institutions. The Commission establishes in its press release that salaries should continue to remain high. It advocates “not to forget that EU institutions have to compete for highly trained staff with other international organisations, national diplomatic services, multinational companies, law firms and consultancies. ... Unfortunately, the race for these talents is an ever closer one.”²⁷ This is the point where the organisations working for the transparency of the EU identify an opportunity for the amendment of the effective revolving door regulation. The rules contain several weaknesses which create loopholes for EU officials. The following may be considered as such loopholes:

- Temporarily appointed officials (sometimes working for several years) at an EU institution are not automatically covered by the rules;

23 Second evaluation round – addendum to the Compliance Report on Hungary adopted by the GRECO on its 47th General Assembly (Strasbourg, 7-11 June 2010) (Accessed on 24 March 2012) point 12 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2%282008%294_Add_Hungary_HU.pdf (Accessed on 24 March 2012)

24 Same source, point 16

25 For such cases, several examples are mentioned by the ALTER-EU, civil campaign for lobbying transparency, website: <http://www.alter-eu.org/revolving-doors> (Accessed on 24 March 2012)

26 Staff Regulation of Officials of the European Communities. 1.05.2004. http://ec.europa.eu/civil_service/docs/toc100_en.pdf (Accessed on 24 March 2012)

27 <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/907&format=HTML&aged=1&language=HU&guiLanguage=en> (Accessed on 24 March 2012)

- there is no ban on officials moving directly into lobby jobs;
- there is no culture of sanctioning breaches in the rules;
- EU staff can take a sabbatical and there is no outright ban on them becoming lobbyists or senior industry leaders during that period.²⁸

ALTER-EU, the coalition of civil organisations, outlined its recommendations to improve the effectiveness of the rules in the following five points:²⁹

1. A mandatory cooling-off period of at least two years for all EU institution staff members entering lobbying or lobby advisory jobs, or any other change of position which could provoke a conflict of interest with their work as an EU official;
2. Solution of the defects of the current rules, including regulation of the private sector employment of officials on fix-term contracts;
3. Screening new officials at EU institutions to discover any possible issues of conflicting interest. Where conflict of interest may arise between the former position and the new EU position, the official concerned has to resolve this problem.
4. Sufficient funds must be granted for the investigation and tracking of the revolving door cases.
5. A complete and updated list on revolving door cases is to be published on the websites of EU institutions.

3.5 Regulations of the Revolving Door Phenomenon in Other Countries

United States of America

Several researches pointed out that a significant proportion of the employees of the American lobbying firms have formerly worked as chief governmental officials.³⁰ These lobbying firms need employees who have formerly built up a relevant and useful network of contacts in their former position, which they can capitalize throughout the course of their lobby activity. For instance, 48% of all legislators have become lobbyists between 1988 and 2004.³¹ Therefore the Obama administration has considered the revolving door phenomenon a priority problem. Pursuant to the effective regulation, the officials working in the federal public administration take an oath which handles the revolving door cases in detail and in a quite strictly.³²

- Within two years of their appointment, those entering public office may not be involved in cases, including legislation and conclusion of contracts, in which the parties concerned are in a direct and substantial connection with former employers or clients of the appointed official.

28 Vicky Cann, Reforming the revolving Door – A once in a Decade Opportunity. Social Europe Journal, 10/02/2012. www.social-europe.eu/2012/02/reforming-the-revolving-door-a-once-in-a-decade-opportunity (Accessed on 24 March 2012)

29 Blocking the revolving door: why we need to stop EU officials becoming lobbyists. Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), November 2011, Brussels. http://www.alter-eu.org/sites/default/files/altereu_revolving_doors_report.pdf (Accessed on 24 March 2012)

30 David Miller, Revolving doors, accountability and transparency: Emerging regulatory concerns and policy solutions in the financial crisis. <http://www.oecd.org/dataoecd/22/15/43264684.pdf> (Accessed on 24 March 2012)

31 Door still revolving between Capitol, lobbyists. USA Today, 22 April 2009. http://www.usatoday.com/news/washington/2009-04-21-lobbying_N.htm (Accessed on 24 March 2012)

32 Executive Order 13490 – Ethics Commitments by Executive Branch Personnel. January 21, 2009. <http://www.whitehouse.gov/the-press-office/ethics-commitments-executive-branch-personnel> Section 1 (Accessed on 24 March 2012)

- Additionally to the above restriction, any official who has been a registered lobbyist within two years prior to his or her appointment to a governmental position is subject to the following regulations in the subsequent two years:
 - he or she may not work on a case in his or her new capacity which he or she lobbied within two years prior to his or her appointment,
 - he or she may not deal with the range of cases in which the given case is included, or
 - he or she may not seek or accept any offer for service at a governmental institution at which he or she acted as a lobbyist within two years prior to his or her appointment.
- For two years after the termination of their contract, officials who left their governmental position may not contact the current officials and employees of their former work place, if the aim of the communication is to influence them.³³ Should the officials violate this prohibition, they may be punished as follows:
 - Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined, or both.
 - Whoever wilfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined, or both.³⁴
- The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense.

Beyond the obligations detailed above, former officials, who changed their governmental position to a lobbyist job, may not act as a lobbyist at the governmental institutions where they formerly worked or for public administration chief officials who do not have a career position.

Canada

The detailed “Policy on Conflict of interest and Post-employment” regarding public officials came into force on 2 April 2012.³⁵ Pursuant to Point 3.1 of appendix B of the policy, before leaving their employment with the public service, all public servants are to disclose their intentions regarding any future employment or activity outside the public sector that may pose a real, apparent or potential risk of conflict of interest with their current responsibilities. They must discuss potential conflicts with their manager or their heads of department or his or her delegate.

Point 3.2 sets forth the restrictions of post-employment. Deputy heads are responsible for designating positions of risk for post-employment conflict of interest situations. Public servants in these designated positions are bound by certain limitations for a one-year period after leaving office. Before leaving office and during this one-year limitation period, these public servants are to report to their deputy head all firm offers of employment or proposed activity outside the public service that could place them in a real, apparent or potential conflict of interest with their public service employment. They must immediately disclose the acceptance of any such offer.

³³ United States Code title 18, § 207(c)

³⁴ United States Code title 18, § 216(a)

³⁵ Policy on Conflict of Interest and Post-Employment. Government of Canada, 2012. <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25178§ion=text#cha2> (Accessed on 24 March 2012)

In addition, during this one-year period these public servants may not, without their deputy head's authorisation:

1. accept appointment to a board of directors of, or employment with, private entities with which they had significant official dealings in the year prior to the termination of their service. The official dealings in question may either be directly on the part of the public servant or through their subordinates;
2. may not, when negotiating with any government organisation, represent any entity outside of the public service with which they had significant official dealings in the year prior to the termination of their service. The official dealings in question may either be directly on the part of the public servant or through their subordinates; or
3. give advice to their clients or employer using information that is not publicly available concerning programs or policies of the departments or organisations with which they were employed or with which they had a direct and substantial relationship.

Point 3.3 of the appendix contains provisions on the possibilities of reducing the limitation period. A public servant or former public servant may request of the deputy head a written waiver concerning the reduction of the limitation period. The public servant is to provide sufficient information to assist the deputy head in determining whether or not to grant the waiver, taking into consideration the following criteria:

1. the circumstances under which the termination of their service occurred;
2. the general employment prospects of the public servant or former public servant;
3. the significance of the information possessed by the public servant or former public servant to the government, based on his or her position in the public service;
4. the desirability of a rapid transfer of the public servant's or former public servant's knowledge and skills from the government to private, non-governmental sectors;
5. the extent of unfair commercial or private gain the new employer can expect by hiring the public servant or former public servant;
6. the authority and influence possessed by that individual while in the public service; and/or
7. any other consideration at the discretion of the deputy head.

Pursuant to Point 5, a public servant who does not comply with the requirements set out in this appendix may be subject to disciplinary measures, including potential termination of employment.³⁶

The Netherlands³⁷

Since 1999, a specific guideline regulates revolving door prevention for all Ministries of the Netherlands. In order to eradicate the very appearance of conflicts of interests, a former public servant cannot be outsourced to work for the ministry. If the ministry wants to hire a consultancy company where a former public servant is employed, the former public servant may not be active in the realization of the project. This provision applies for two years after the discharge. It is also not possible for the former public servant to be part of activities involving public procurement. The only exception from the rule is the possibility of a temporary transition period. After his or her discharge, a public servant can work for an indicated time for the ministry in order to simplify the changeover. This rule, however, only applies to public servants, and not for example, to the members of the government, except for the Defence Minister.³⁸

³⁶ The meaning of the latter point may be quite questionable in the case when the public servant concerned is contemplating leaving the public sector anyway.

³⁷ Content on the Netherlands was added after the publication of the Dutch National Integrity System Study on 22 May 2012

³⁸ National Integrity System Assessment Netherlands, 2012. Transparency International Netherlands. http://issuu.com/transparencyinternational/docs/2012_netherlandsnis_en (Accessed on 22 May 2012)

In private law controversy, Article 7:653 of the Civil Code regulates the revolving door phenomenon under the so-called 'non-competition clause.' The policy provides a more dominant role for the courts.³⁹ According to the clause a contractual provision between the employer and the employee restricting the employee's right to work in a certain way after the end of the employment agreement is only valid if the employer has agreed to it in writing with an adult employee. The court may nullify such a contractual provision entirely or partially on the ground that the employee is unfairly disadvantaged by that provision in proportion to the interest of the employer protected by that provision. The clause adds that when the employer is liable for damages derived from the termination of the contract, he or she cannot make use of his or her contractual rights.

The clause also stipulates that if a contractual provision constitutes a major obstacle for the employee to perform work other than in service of the employer, the court may at any point order the employer to pay compensation to the employee for the duration of the restriction. The court determines the amount of this compensation in fairness and in view of the circumstances of the case; it may also permit the employer to pay the compensation in instalments to be set by court. The employer cannot be charged with said compensation if the employee is liable for damages derived from the termination of the contract.

Norway

In Norway, multiple guidelines deal with the regulation of the revolving door phenomenon, which constitute a framework that takes into account both politicians and officials and which may be supplemented by the internal guidelines of each institution and employer. Although the Norwegian Act on Public Services does not apply to the post-employment conflict of interest cases, pursuant to the guidelines regulating post-employment situations, a special clause may be attached to employment contracts in certain cases:⁴⁰

- *The need to protect internal information:* The State must seek to prevent other organisations from gaining knowledge about an administrative agency's strategies and plans (e.g. on the formulation of policies, rules, etc.). Such knowledge could result in illegal competitive advantages.
- *The need to protect other organisations trade secrets:* The State must seek to prevent one organisation from gaining access to confidential information about another, including trade secrets, etc. as such knowledge could result in illegal competitive advantages.
- *The need to safeguard the general public's confidence in the public service:* State administrative agencies must seek to prevent suspicions that a civil servant has taken advantage of his or her position to gain special advantages for an organisation. Such suspicions could impair the general public's confidence in the administration's integrity and impartiality.

Should the nature of his or her position require a public official prohibit, or require him to abstain from involvement in certain cases, such a clause must be stated in the labour contract from the commencement of the public service.

„*Temporary disqualification*” refers to a ban for up to six months after leaving office, on employment by, or performing services for, an organisation outside the public service that has or can have contact

³⁹ Title 7.10 Employment Agreement. <http://www.dutchcivillaw.com/civilcodebook077.htm> (Accessed on 24 March 2012)

⁴⁰ Post-Employment Guidelines for the Public Service, 2005. Quoted by: Post-Public Employment: Good Practices for Preventing Conflict of Interest – The case of Norway. OECD, Paris, 2010. http://www.keepeek.com/Digital-Asset-Management/oeed/governance/post-public-employment/the-case-of-norway_9789264056701-8-en page 5 (Accessed on 24 March 2012)

with the employee's former sphere of responsibilities as a civil servant or politician. The same applies to organisations outside the public service that, for other reasons, have or could have special advantages due to the employee's position as a civil servant or politician.

"Abstinence from involvement in certain cases" refers to a ban for up to one year after leaving office, for an employee to become involved in cases or areas that involve the employee's spheres of responsibilities as a civil servant or politician.⁴¹

The clause in the contract requires the employee to inform the employer of any offer of new positions that he or she might consider. The employer may grant full or partial exemption from temporary disqualification and/or abstinence from involvement in certain cases based on an application from the employee. The employee has the right to remuneration during the period of temporary disqualification. The remuneration shall correspond to the salary on leaving the position plus holiday pay. An employment contract also covers agreed damages if the employee behaves at variance with the temporary disqualification or abstinence from involvement in certain cases, or breaches the obligation for mandatory reporting.⁴²

At least two weeks before starting the new position, the politician is required to voluntarily inform the committee on starting a new job or accepting a position outside the public service within one year of leaving the political position or starting a business.⁴³

4. THE EFFECTIVE HUNGARIAN REGULATION AND PRACTICE IN THE PUBLIC SECTOR

The regulation of the revolving door phenomenon must at least cover the following two fields: firstly, it must ensure that in a given conflict of interest situation (see 2.1) the person going through the revolving door cannot transfer information in an unauthorized way from the public sector to his or her former or future employer and client in the private sector; secondly, regulations must be provided on how the persons passing the revolving door use their network of contacts or prestige to influence the public authority's decision-making.

In the effective Hungarian regulation, the issue of information is well regulated in Act XXII of 1992 on the Labour Code being currently in effect (hereinafter: "Labour Code"), Act CLV of 2009 on the Protection of Qualified Data (hereinafter: "Qualified Data Protection Act") and Act CXCIX of 2011 on the Public Officials (hereinafter: "Public Officials Act").

Pursuant to Subsection 3 of Section 10 of the Public Officials Act, *"The public official shall protect the qualified data. Moreover, the public official shall not inform unauthorized persons and organs about facts of which he or she became aware in the course of his or her activity and the disclosure of which would be detrimental to the state, the public administration organ, any colleagues or citizens or would entail unlawfully favourable consequences."* The breach of the Qualified Data Protection Act entails criminal sanctions as well, while the policy of the Public Officials Act is merely an obligation that pertains during the term of the public service.⁴⁴ Still, it may have significance in the judgment of cases

⁴¹ Same source, page 6

⁴² Same source, page 6

⁴³ Same source, page 7

⁴⁴ When notifying on the acknowledgment of leaving office, the Hungarian Competition Authority separately draws the attention of the official to his or her confidentiality obligation beyond the termination of service.

involving leaking information to the future employer in hope of a new job (abuse of authority). Pursuant to Subsection 3 of Section 103 of the Labour Code, *“employees shall not disclose any business secrets obtained in the course of their work, with consideration of the provision of Section 81 of the Hungarian Civil Code, nor any information of fundamental importance pertaining to the employer or its activities. Furthermore, employees shall not convey any information learned in connection with the fulfilment of their position to unauthorized persons, the disclosure of which would result in detrimental consequences to the employer or other persons.”* This provision of the LC may be relevant in case of abuse of authority when the person who went through the revolving door disclosed business secrets of the employer or its business partners. This rule remains in effect in Subsection 4 of Section 8 of the new Labour Code entering into effect on 1 July 2012 (Act I of 2012 on the Labour Code).

While the abuse of authority is made somewhat difficult by the above rules with respect to the unauthorized transfer of information, it is facilitated by Subsection 4 of Section 68 of the Public Officials Act: *“The governmental official shall be exempted from the public service obligation at least for half of the notice period and he or she shall be entitled to salary. The conflict of interest rule determined in Subsection 2 and 3 of Section 85 of the Public Officials Act may not apply to the government officials exempted from public service obligation. The governmental official shall be relieved from his or her duties, at least for the duration of half of the notice period, in a maximum of two parts, at his or her choice.”* This means that governmental officials may establish further employment during the exemption period beyond the otherwise permitted pedagogic, artistic, authorial, etc. employment and the governmental office need not be notified (Subsection 2 of Section 85 of the Public Officials Act).

Pursuant to Subsection 1 of Section 45 of the Public Official Act, *“Governmental officials may be appointed through restricted or tendering procedures based on the relevant legal regulations or the decision of the governmental organ.”* Restricted procedure provides an excellent opportunity for the revolving door type “regulatory capture”, because there are no prescriptions concerning the invitation process or the time of tendering and the cases where invitation is possible. On the contrary, pursuant to Subsection 1 of Section 20/A of Act XXXIII of 1992 on the Legal Status of Public Servants, *“service of public servants may be established by tenders. Only those may be appointed as a public servant who submitted a tender and met the tender specifications”.* Therefore stricter and more transparent rules apply the recruitment of the public servants.

In case of all moves from the public sector to the private sector, revolving door phenomenon becomes simplified by the prescriptions concerning termination of the service contained by Section 74 of the Public Officials Act according to which *“(1) At the termination of his or her service, the governmental official shall hand over his or her position in accordance with the prescribed order and shall account with the governmental office. The governmental office shall ensure the conditions of such handover and accounting. (2) Upon cessation (termination) of the service, the governmental official shall receive his or her due salary and other allowances on the last day of service but at latest within fifteen days and shall be supplied with the statements and certificates prescribed by regulations pertaining to the service and other legal regulations.”* However, there are no prescriptions on conflict of interest risks that may arise thereafter.

During the governmental service, it is a general rule (Subsection 1 of Section 86) that *“The governmental officials shall notify the governmental office in writing without any delay if any grounds for conflict of interests may arise in connection with him or her and/or if he or she got in a conflict of interest situation while working as a governmental official. The person who exercises the employment rights*

shall call upon the governmental official to eliminate the grounds for conflict of interests in writing without any delay. Should the governmental official fail to eliminate the grounds for conflict of interests within thirty days of the delivery day of the notification, the service of the governmental official will be terminated." This may be relevant regulation for multiple types of revolving door phenomena, but it only pertains to the duration time in which the contract is in effect.

Section 3 of the Labour Code contains an express revolving door restriction as follows: "(5) *While under employment, employees shall not engage in any conduct by which they jeopardize the rightful economic interests of the employer, unless so authorized by a legal regulation. (6) Employees shall remain subject to the obligation set forth in Subsection (5) above following termination of the employment only on the basis of an agreement concluded for such purpose in return for appropriate consideration, and for no more than a period of three years. The provisions of civil law shall apply to such agreements.*" However, provisions relating to the termination of employment (Section 97) do not deal with potential risks of the conflict of interest, which may arise after the termination of employment. Section 5 remains in effect in Subsection 1 of Section 8 of the new Labour Code, while Subsection 2 prescribes therein that "*the employee shall not, even outside working hours, engage in a conduct which may, especially due to the nature of the scope of activities and the position of the employee at the employer's organisation, directly and actually jeopardize the good reputation and lawful economic interests of the employer or the aim of employment.*" Subsection 1 of Section 228 of the new Labour Code contains the above quoted Subsection 6 of Section 3 of the effective Labour Code with the difference that non-competition agreements may be concluded for no more than a period of two years. Further details of this rule will be presented in the next chapter

We have also reviewed the regulations on the three legal professions. Act CLXXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXIV of 2011 on the Legal Status of the Chief Prosecutor, the Public Prosecutors and Other Employees of the Public Prosecutor's Offices and the Career Aspects of the Public Prosecutors regulate the conflict of interests arising during the public service of judges and prosecutors. Furthermore, involvement in former procedures may constitute a ground for exclusion in certain procedures, but the two acts do not otherwise regulate the revolving door issues concerning judges and prosecutors. Pursuant to Section 7 of Act XI of 1998 on Attorneys, "an attorney shall not proceed for a period of two years at the courts, public prosecutor's offices or investigative authorities at which he or she has worked as a judge, a public prosecutor or a member of the investigative authority before he or she was admitted as a member of the Bar Association."

We have examined the regulations of the sectors that were considered the most risky by our interviewees. Act LXXXVI of 2007 on Electricity does not contain any provisions concerning the President and the Vice-President of the Hungarian Energy Office that would handle the revolving door phenomenon. In the field of communication, the rules of Act C of 2003 on the Electronic Communication continue to prevail in Act CLXXXV of 2010 on the Media Services and Mass Media (hereinafter: "Media Act") and revolving door rules apply to the President and the Vice-President.⁴⁵ Act CLVIII of 2010 on

⁴⁵ Pursuant to Section 113, "(8) For one year after the termination of their mandate, the President and the Vice-President

a) may not be engaged in any form of employment or other work-related relationship with a company,

b) may not establish regular business relationship in the capacity of company executive or company owner with a company, and

c) may not acquire an ownership stake in a company,

the rights or lawful interests of which were affected by his or her decisions while serving as President or Vice-President.

(9) With respect to the prohibition on employability concerning the sector of expertise as per Section 8, upon termination of their mandate, the President and the Vice-President are entitled to an indemnification equivalent with their 12 months' net, i.e. decreased with the amount of the personal income tax, salary received from the Office. The indemnification shall be paid from the budget of the Office. The liquidated damages determined accordingly are free of tax in the scope of the indemnified damages. This rule also applies to the President and the members of the Media Council in connection with the prohibition concerning the termination of their mandate set forth in Subsection 9 of Section 129."

the Hungarian Financial Supervisory Authority also contains provisions concerning the revolving door.⁴⁶ From the provisions regulating conflict of interest situations in other procedural rules, the frequently applied clause “the person from whom objective judgment of the case cannot be expected due to any reason (partiality)” may be the one to affect against the revolving door phenomenon in certain cases. Naturally, the application of the clause would require that those who are biased recognize themselves as such.

The financial side of the revolving door regulation is also important and therefore the relevant statutory provisions must also be mentioned. Although the Constitutional Court annulled the provisions concerning the windfall tax of 98% twice (Decision 184/2010 (X.28.) and Decision 61/2011 (VII.13.) of the Constitutional Court), this is still a part of the effective law in a new form.⁴⁷ The Prime Minister sketched the aim of this special tax in his speech before the agenda on 8 June 2010 as one of the 29 measures of the government as follows: “Action Nr. 18: taxation at the rate of 98% of severance payments over 60 days and other allowances, such as the redemption of holidays and confidentiality payments in the budget sphere. ... By presenting this proposal, the Government commits itself toward the Members of Parliament to establishing its constitutional basis.”⁴⁸ However, confidentiality payments do not mean that persons going through the revolving door comply with the above-mentioned confidentiality obligations in return for the payment, but it is the compensation for all prohibitions on employability. Although the Media Act and the Act on the Hungarian Financial Supervisory Authority fully or partially exempt the important decision-makers of both Authorities of this tax, it still remains in effect in other fields. “It is not realistic to presume, regardless of position, that if someone cannot work for one or two years in the area of his expertise and this is not be compensated by his former employer, he will withstand the revolving door type conflicts of interest. It is not surprising that if someone does not believe that the special tax will be repealed by the time he changes jobs, he will build exit ways out of the public sector while he is still in it,” – said one of our interviewees.

In our questionnaire sent to the ministries, central government bodies, and autonomous public administrative organs, we presented the following two questions: “1. Does the public administrative organ managed by you have any effective code of conduct or other internal regulation, which controls or somehow considers the revolving door effect? If the organ has any such regulation, please send the text of these regulations and the governing legal provisions or other regulation to us via email. 2. If not, do you pay attention in any way to the above phenomenon when the recruiting chief employees and employers in the practice (e.g. in employment contracts or in contracts of labour-related legal relationships)?”

There is no overall regulation at any of the state bodies interviewed, but sporadically interesting and useful approaches appear. In the practice, in case of several public administrative organs, including the *Ministry of Interior* “when recruiting employees, it is considered whether, in respect to the scope

46 Pursuant to Section 20 „(4) For six months after termination of their mandate, the President and the Vice-President of the Authority and the President of the Council of Financial Dispute Resolution

a) may not be engaged in any form of employment or other work-related relationship with a company,

b) may not establish regular business relationship in the capacity of company executive or company owner with a company, and

c) may not acquire an ownership stake in companies, excluding the public limited-liability companies,

the rights or lawful interests of which were affected by the decisions of the Authority within three years of the termination of their mandate.

(5) With respect to Subsection 4, allowances mentioned in Subsection 2 and 3 are to be considered as a salary serving exclusively as the basis of the social security contributions, health insurance contributions and pension contributions.”

47 Act XLVI of 2011 on the amendment of Act XC of 2010 on the adoption and amendment of certain economic and financial statutes

48 Parliamentary Journals, 13th sitting (8 June 2010), speech Nr. 2 to 4, see: http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=13&p_felsz=2&p_szoveg=&p_felszig=4 (Accessed on 24 March 2012)

of activities, there is any connection with the former working place which may give rise to conflict of interest pursuant to the act.” The Ministry of National Development applies the Code of Conduct of its legal predecessor, the Ministry of Transport, Communication and Energy, (Instruction Nr. 25/2009 (IV. 15.)) which does not deal with the phenomenon in detail.

The *National Tax and Customs Administration* referred to the significance of disciplinary and criminal liability and “it takes into account among the general aspects of scrutiny prior to recruitment, if it becomes aware that the business association employed a former employee of the National Tax and Customs Administration (or the legal predecessors thereof) within a year of the termination of the proceeding, who was involved in the supervision on behalf of the tax authority.”

The *Hungarian Intellectual Property Office* answered that “there had been a regulation before, which contained special prescriptions on the scope of questions at issue, i.e. the “revolving door effect” and it said that persons who were employed by the industrial property office may not proceed for a year. Currently, there are no such special legal provisions in the case of the authorial activity, these prevail only in cases when judges proceed in the industrial property cases /Section 14 (the effective text of Section 29)/, because this kind of special regulation was repealed following the relevant decision of the Constitutional Court as of 1 April 2003 /Act VI od 2003/.”

According to the *Public Procurement Authority*, “Examining former legal relationships and the contact network acquired there and considering these a condition of recruitment prior to finalizing recruitment and establishing a legal relationship qualify as unlawful conduct of the employer pursuant to the currently effective legal regulations. This type of conduct is contrary to Act CXXV of 2003.” We disagree with this statement, because the former working place is not a characteristic or a typifying factor, in connection with which one could talk about discrimination.

The *Equal Treatment Authority* drew the attention to a direction less explored in the current study so far, and that is the move between the public and civil sector: “lawyer colleagues committed to the defence of rights, which is an important aspect in the course of their recruitment, come from the state public service and return there or step forward to the civil sphere pursuing similar activities. Thus they make good use of their worthy knowledge obtained at the Authority partly in the public service, partly in the field of the civil defence of rights.”

5. THE REVOLVING DOOR PHENOMENON AND THE BUSINESS SECTOR

The aim of this chapter is, on the one hand, the presentation of the effective legal background of the revolving door phenomenon concerning the business sector, and on the other hand, the examination of the capability of these legal regulations to manage the risks and the presentation of the special practices prevailing in Hungary. Additionally, this chapter wishes to analyse the regulations and the practical application of the regulations concerning movement within the business sector itself; i.e. the move between competitors, so that such experiences may serve as patterns to be followed when regulating the state-side of the revolving door phenomenon.

5.1 The Characteristics of the Hungarian Business Sector

Transparency International Hungary's National Integrity Study (NIS)⁴⁹ of 2011 pointed out that the business sector's integrity was among the lowest of all the subsystems of society. The main reasons for this are the following: the sector is exposed to politics, legislation and application of the law are unpredictable and these factors worsen the possibilities of fair competition and hinder the ability of ethical business practices to stand their ground in the competition. Although only a small part of Hungarian enterprises is able to enter into business relationship with the state (e.g. to win a public procurement tender), the management of every Hungarian enterprise is dependent on political powers. One of the most important conclusions of the NIS was that the interlocking of the business and political sector has developed such a complicated network of contacts and a system of dependencies, in which legislation does not serve the public interest anymore, but rather serves certain private interests in a visible way. Moreover, the state favours certain companies or business owners not only in its role as legislator but also through the authorities supervising or licensing certain activities, which leads to undermining fair competition and creating overwhelming competitive disadvantages to other enterprises.

Political factors count even more when a company does business with the state, e.g. when it tries to submit a bid in a public procurement procedure, where almost three quarter of the tenders are touched by corruption.⁵⁰ It is not the aim of the present research to provide an in-depth examination of the interlocking between the public and the private sector; however, for the sake of understanding the operation of the revolving door phenomenon in Hungary, it is indispensable to outline the context. Namely, the above reasons result in a business environment strongly exposed to politics, this is the circumstance to which the enterprises need to respond somehow. Among many lawful, but mostly unlawful responses, it may be reassuring for the company if it employs a person who understands the often incomprehensible ways of political operation, keeps in touch with the decision-makers or gets wind in due time of changes in the legislation that may affect the operation of the company. Accordingly, the need of the business sector for professionals experienced in the public sector or in politics arises from this context, and creates market demand for the revolving door phenomenon.

5.2 Legislation Background and Judicial Practice

As we explained in the previous chapter, the revolving door phenomenon may be realized through several different procedural actions and these may be categorized in different ways when analysing the relevant laws. On the one hand, one may differentiate between these actions based on whether or not the moves happen from the business sector to the public sector or the moves take places within the business sector, i.e. between competitors. On the other hand, a difference may be made based on whether someone abuses the possibilities given by his or her employment after the termination of his or her employment or during the term, hoping to gain some advantage from his or her future employer. The international literature on anti-corruption lists this latter case also as a type of the revolving door phenomenon.⁵¹ The former is also provided for in Subsection 5 of Section 3 of the currently effective Labour Code⁵² (Act XII of 1992 on the Labour Code; hereinafter: "Labour Code"),

49 Petra Burai-Péter Hack (eds.), Corruption Risks in Hungary 2011 – National Integrity Study 2011, Transparency International. http://www.transparency.hu/uploads/docs/Corruption_Risks_in_Hungary_NIS_2011.pdf

50 Dr. Papanek, Gábor D.Sc.: The corruption and the public procurement in Hungary (*A korrupció és a közbeszerzési korrupció Magyarországon*), Gazdaságkutató Intézet Zrt., 2009.

51 Transparency International Working Paper No 06/2010: Regulating the Revolving Door

52 Effective until 30 June 2012

according to which during the term of the employment, employees shall not engage in any conduct that would jeopardize the rightful economic interests of the employer.⁵³ As one of the relevant judgments of the Supreme Court established, this rule is also violated when a former employee uses information gained while fulfilling the duties falling within his or her scope of work at his or her former employer for the purposes of his or her own enterprise.⁵⁴ The new Labour Code (Act I of 2012 on the Labour Code)⁵⁵ unifies the former case law and goes further in providing that when the conflicting rights of employee and employer clash, the employee shall not exercise his or her right to free expression in a way that seriously violates or jeopardizes the employer's reputation and rightful economic and organisational interests. Right after this provision, the new Labour Code contains rules regarding the protection of business secrets. The new rules correspond to the currently effective ones according to which the employee shall treat as confidential the business secrets obtained in the course of his or her work. The act establishes that employees shall not disclose any data learned in connection with the fulfilment of their work to unauthorized persons, the revealing of which would result in detrimental consequences for the employer or other persons. For the abuse of business secrets obtained in the above way, the Prohibition of Unfair and Restrictive Market Practices (hereinafter: "Competition Act")⁵⁶ is also applicable. The Competition Act provides that it shall be prohibited to acquire or make use of business secrets in an unfair manner or disclose them to third parties or the public in an unauthorised way. Pursuant to the act, the manner of acquiring a business secret shall also be deemed unfair if access was obtained without the consent of the holder and with the assistance of a person who was, at the time of the acquisition of the business secret, or in a period prior to it, in a confidential relationship or business relationship with him. The Competition Act explicitly sets out that relations of employment and labour shall be considered confidential relationships.

The protection of business secrets is also prescribed by the Act on Business Associations⁵⁷, but here this obligation applies exclusively to executive officers. Thus, for persons not qualifying as executive officers, the obligation to keep business secrets prescribed by Subsection 3 of Section 103 of the Labour Code remains without any legal ground after the termination of the employment. In this case the aforementioned Subsection 1 of Section 4 of the Competition Act will apply together with the statutory provisions protecting business secrets of Act IV of 1959 on the Civil Code (hereinafter: "Civil Code"). Furthermore, the threat of criminal consequences set forth by Section 300 of Act IV of 1978 on the Criminal Code also persists in the cases determined by the act.

In these cases it must be proved that the employee has not kept the business secrets and that the (former) employer has suffered detrimental consequences, furthermore that there was a causal link between the aforesaid two factors. Since, on the one hand, it is hard to prove the above in practice and, on the other hand, it is a fair need of the enterprises that their employees be restricted in taking up a position at their competitors' companies, the institution of non-competition agreements has come to existence. This institution restricts the possibilities of the employee even after the termination of the employment. Referring back to the previous rule according to which the employee shall not jeopardize the lawful economic interests of the employer, Subsection 6 of Section 3 of the Labour Code provides that after the termination of the employment such an obligation may only apply on the basis of an agreement concluded for such purpose in return for an appropriate compensation. Further, a temporal restriction is prescribed by the act according to which the non-competition agreement

53 See judicial case Nr. BH 64/1996

54 Judicial case Nr. BH 666/1996

55 Effective as of 1 July 2012

56 Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices

57 Subsection 1 of Section 27 of Act IV of 2006

may not be binding for a period longer than 3 years. The Supreme Court pointed out in a judgment⁵⁸ that pursuant to the correct interpretation of the above rule, it is a validity criterion of the non-competition agreement to provide for a compensation that is proportionate to the extent of the restriction of the employee's conduct. Further, it is also a validity criterion that the condition set out by the agreement do not disproportionately and exaggeratedly restrict the fair and free market competition and the employee's ability to earn a living. The non-competition agreement may not result in a restriction so severe that it stifles competition within a certain activity or a certain area instead of protecting information and avoiding the jeopardy of the rightful economic interests of the employer. However, in the reasoning of the new Labour Code one may also read that non-competition agreements may not be contested based on civil law on the ground of conspicuous disproportionateness, since, instead of the Civil Code, the new Labour Code will apply to such agreements. The new Labour Code is different also regarding the term of non-competition agreements since it allows such agreements only for 2 years. Moreover, the new act is more precise, because it prescribes that upon the determination of the amount of the compensation, the extent in which the employee, considering primarily his or her qualifications and experience, is hindered in entering into a new labour-related relationship must be taken into account. The amount of the compensation to be paid for the term of the agreement shall not be less than one third of the base salary payable for the same period.

Based on relevant legal precedent it may be established that in general "appropriate compensation" must reach fifty per cent of the annual average salary with regard to each year concerned by the non-competition obligation.⁵⁹ It is also an important judicial practice that, pursuant to the Supreme Court, it is not obligatory to determine an exact restriction in the non-competition agreement, but based on the agreement; the employee is only subject to a notification obligation after accepting a new position.⁶⁰ This practice may be important guidance to the regulation on the state's side.

5.3 Opinions From the Business Sector

The majority of the persons interviewed evidently agreed that it must be ensured and encouraged that professionals working in the business sector use their accumulated knowledge in the public sector and in the public interest. However, as long as the public sector is not able to provide competitive income, the risks of the revolving door will remain great; thus the transferred players have to seek additional sources of income, which, in the majority of the cases, motivates people to earn revenues illegally. Accordingly, the mobility required for improving the public administration and for acquiring know-how cannot prevail until a career in the public administration becomes attractive to a successful professional employed in the business sector.

They Switch Over out of Necessity

Headhunters interviewed stated that most people go through the revolving door out of necessity. Since lobby operates in a separate channel in Hungary and the salaries earned in the competitive sector significantly deviate from the legal allowances of the public administration, in the majority of the cases, it is necessity that makes a top manager of a large company enter the area of politics. There are some who decided to change in hope of an international career, as they believed that politics might help them to get into a leadership position in an international organisation.

58 Judicial case Nr. BH 84/2001

59 Dr. Drávucz, Péter: How should I conclude a non-competition agreement with my employee? (In Hungarian: *Hogyan kössek versenytildalmi megállapodást az alkalmazottammal?*) <http://www.gtm.hu/magazin/hogyan-kossek-versenytildalmi-megallapodast-az-alkalmazottammal-110915105608>

60 Judicial case Nr. 31/2005

According to the headhunter interviewed, there were examples when employees changed sectors due vanity motivated by politics and/or thirst for power. All in all, we might say that two important motivations may be drawn up in case of those who tried themselves out in politics after leaving the competitive sphere. One is the desire to approach the centre of power, with the intention to influence certain decisions at their origin and thereby later obtain material advantages for oneself. The ability to obtain information is the other important motivation, since that is also a form of power that may be marketed.

For instance while in England it is a prestige to work for the state and the revolving door is a frequent and accepted phenomenon there, in Hungary it is the necessity that sets the revolving door in motion and not career ambition or the striving for the betterment of society, the latter being somewhat difficult to interpret in the given context.

Different Approach

During the research, in several cases we faced the underlying approach that the market does not value an employee's movement between the public sector and private sector, which constitutes the real deterrent of the revolving door phenomenon. According to the headhunter interviewed, a couple of years spent in the public service in resume of a former top manager or high-ranking employee subtract a lot from his or her market value. That indicates, on one hand, that there was a shortfall in his or her career for which he or she must name reasons, while on the other hand, the employer might take political risks due to this factor. It is rare that someone becomes successful in two sectors that have such vastly different requirements and this is also a reason why the headhunter interviewed does not recommend passing the revolving door.

However, the most significant factor is that the public sector and state sector require totally different approaches. The liability system and the requirements are entirely dissimilar. Thus, if someone worked in the public administration for years and got used to not being under pressure for performance and learned that it is better not to take responsibility for the decisions made, etc., then the competitive sector will be reluctant to employ him.

People tend to overestimate the contact network – as many of our sources emphasized. A contact network may become obsolete in one or two years and the current pressure groups are always those that can effectively work instead of contacts from the past. This does not mean at all that personal relations would not influence political and corporate decisions, but rather that a contact network *per se* is hardly marketable.

The HCA and the State-owned Companies Did Their Best

It is the Competition Authority and the state-owned companies where most experts might be 'seduced' from the public sector. The reason, on one hand, is that the HCA, which is a body operating at high standards compared to other public administration offices, employs a well-prepared group of professionals, whose expertise is easily marketable, and on the other hand, companies are really eager to inform themselves about the mechanisms and aspects that supervision of competition is based on. Thus, fundamentally they do not want to influence decisions, but they want to purchase the expertise gained there. With state-owned companies the issue is far more complex, since future employers have business relations (in the position of supplier or procurer) with or are competitors to the majority of them. Thus in this case information, expertise and the possibility to influence business decisions are equally determining factors.

Political Risk

At the same time the political risk taken by a company purchasing an expert who can unambiguously be linked to a political cycle must be noted as well. In this case risks are considered individually. In Hungary there are companies, for instance one of the largest Hungarian banks, that can afford to hire politicians (experts in a field) or former authority executives belonging to any of the political sides, because the charge of political commitment will not be serious against them; they remain capable of doing business with the state and the municipalities. Nonetheless, there are advisory companies that, considering the risks taken this way, decide later to “demerge”, in order to avoid that the company be linked to any of the political sides.

Lobby and Advisory Activity Remains

As noted above, according to the unequivocal opinion of the experts interviewed, those who pass through the revolving door into the competitive sector do not profit from public administration’s dissimilar idea and different approach of work. It follows that, in the majority of cases, workforce ‘seduced’ from public administration generally does not perform operative work. He or she might get a high-ranking position e.g. at an advisory company, but he or she is entrusted with an advisory task. Typically, such is the position of the director responsible for governmental relations or that of a chief executive named “communications director”, who performs the lobby activity of a corporation. However, he or she is not involved in the operative management of the company, since he or she does not have the experience necessary.

It is also typical that he or she is offered a position in the board of directors or the supervisory board, since he or she does not partake in the daily management of the company in that case either.

The interviewees mentioned several examples of large state-owned companies where former politicians previously helped the company receive an advantageous position are now put into a ‘parking position’ – they receive income for their prior merits without performing actual work.

Useless to Employ

Although a company may need a network of information and contact, it is not necessarily able to achieve these through a given employee in the most effective way. It is much more comfortable to ask for advice in the framework of a separate engagement agreement or to engage someone for lobbying. This is the reason why, according to the majority of the experts interviewed, the revolving door phenomenon is not frequent in Hungary, since it is expensive to employ someone only for those purposes. It is much more important that a part of the political decision-makers be suggestible and a part of them be approachable for an appropriate mediation fee. Thus, the state does not yet function on a level where the revolving door phenomenon may become a problem at all. For that a well-functioning state administration is needed – claimed the top managers interviewed.

Practical Experience of Non-competition Agreements

Above, we have elaborated the legal background of non-competition agreements and the related judicial practice together with the changes to the pertaining law in detail. However, during the interviews we found it important to ask questions about the intentions of employers and employees with regard to the agreements.

Beyond doubt it is reasonable to regulate the institution, because the employer’s interest in keeping the employee from marketing the expertise obtained from the employer at a competitor’s company is legitimate. According to the experts interviewed, in practice, approximately half of one year’s

salary is stipulated as compensation and the average duration of non-competition agreements is a period of 1 to 2 years.

However, according to some interviewees this institution does not function appropriately in Hungary. The reason for that could be the size of the market, thus a narrowly determined competition restriction agreement easily makes the employee's career impossible. On the other hand, the agreement can hardly be enforced when it is breached which is partly attributable to the ineffective justice system.

Thus, several interviewees considered the frequently applied competition restriction agreement as an additional compensation, as extra income rather than a real restriction. Similar agreements were applied at several state-owned companies, where, rather than solving the revolving door phenomenon, the explicit aim was to achieve as high an income as possible.

It often happens in companies that when an employee leaves, the company dismisses the "cooling off period" but draws the employee's attention to the confidentiality obligation that applies to them regardless of competition restriction agreement was applied or not. This is free of cost for the employer, but allows for the enforcement of the confidentiality, which is of great importance.

In several multinational companies in Hungary, the application of non-competition agreements was throttled, because it meant significant sums for the companies. Nowadays, this type of agreement is only applied with regard to the small circle of chief executives – experts interviewed claimed.

Background check

In large foreign companies, running a background check when recruiting a middle-ranking or top manager is a customary procedure. Any prior occupation that could give rise to a conflict of interest can thus be monitored. Several interviewees mentioned this as an example that should be introduced into the public sector.

Conflict of Interest Tests

Employees working in positions of key importance having high corruption risks – as procurement executives – issue a declaration on (the lack of) conflict of interest upon the commencement of employment, or, as is the case with several large companies, each year. According to a risk management expert interviewed, in the majority of the cases, no conflict of interest arises since the circle of those cases when conflict of interest must be notified is not appropriately clarified. Therefore, over the regular declaration obligation, it is advisable to hold trainings and run tests so that the employees learn to assess the risks of conflict of interest.

Ethos

Proposals for solutions may be drafted, risks may be reduced, but the problem is that as long as the two fundamental ethos remain infringed, according to which the business sector operates in the spirit of competition on the market and the public sector proceed primarily in the name of the public good, no substantive progress can be expected. No effective answers may be given to the revolving door phenomenon without creating transparency in legislation, adopting lobby regulations and the overall modernisation of public administration.

6. RECOMMENDED SOLUTIONS

Regulation of the revolving door phenomenon presented in the study gives several tasks to both for the public and the private sector. We suggest solution proposals below, which may not be exhaustive and the details of which must surely be worked out; however, these constitute the minimum required for an effective regulation.

Public Sector

- The Public Officials Act should regulate the scope of prohibitions on post-employment on which the public official and his or her public administration office employer each agree. Absent such agreement, binding rules should be laid down.
- Public officials leaving riskier public administration positions should be obliged to notify the public administration office of their new position after leaving the public service. Governmental body(s) should be designated for the registration, the publication and the verification of this body of information.
- Internal controlling and ethical organs should determine the scope of the riskier public administration positions of each institution with the assistance of the State Audit Office of Hungary.
- For riskier public administration positions, future employers should be afforded the possibility to screen the candidates with respect to the risks of the revolving door phenomenon (public administration organs).
- For riskier public administration positions, the employer should publish the professional resumes of the newly employed public officials on the Internet.
- The Code of Conduct of each governmental organ should regulate details of conflicts of interest issues of the revolving door phenomenon.
- The scope of the regulation based on legal regulations and also on other norms should apply to governmental chief officials, members of the Parliament the European Parliament and the municipalities and mayors with the provision that the rules concerning each position should be differentiated.
- Effective lobby regulation should be introduced, which also handles certain types of the revolving door phenomenon.
- Revolving door regulations should also cover the conflict of interest situations after retirement with particular respect to the (former) members of the armed forces.

Private Sector

- Business companies should build the revolving door regulation into their Social Responsibility Programmes and Codes of Conduct in a way that self-restraint in the use of revolving door phenomenon is also enforced by their human resources policy, internal policies and internal and outward communications.
- Sectorial representative organisations should adopt sector-specific transparency and conflict of interest regulations to handle the revolving door phenomenon and these regulations should be required of all members.
- Business companies should undertake not to use persons going through the revolving door for lobbying for at least a period of two years of his or her change of sectors.

ANNEX

(Revolving Door – Requests for Information, 19 March 2012)

Ministry of Interior
Ministry of Defence
Ministry of Public Administration and Justice
Ministry of Foreign Affairs
Ministry of National Economy
Ministry of National Resources
Ministry of National Development
Ministry of Rural Development
Hungarian Energy Office
Hungarian Atomic Energy Authority
Hungarian Intellectual Property Office
National Tax and Customs Administration
Public Procurement Authority
Equal Treatment Authority
Hungarian Competition Authority
Hungarian National Authority for Data Protection and Freedom of Information
National Public Health and Medical Officer Service
Hungarian Financial Supervisory Authority
Office of the Parliament
Office of Education
National Innovation Office
Central Agricultural Office
Agricultural and Rural Development Agency
Hungarian Trade Licencing Office
Geological Institute of Hungary
Governmental Information-Technology Development Agency
Institute of Geodesy, Cartography and Remote Sensing
National Employment Office
Office of Immigration and Nationality

(No answers received from the institutions underlined).

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