

Government Code of Conduct: A Way to Prevent Economic Corruption or Just a Propaganda Initiative?

Conceição Castro¹, Pedro Nunes²

¹ Professor at Porto Accounting and Business School of Polytechnic Institute of Porto
PhD in Management, Member CEOS.PP/ISCAP/P.PORTO and CEPES - Oporto University – Porto – Portugal

² Professor at Scholl of Management – IPCA
PhD in Management, Member CEPES – Oporto University and UNIAG – Porto – Portugal

Abstract: *This article aims to analyse, in the light of general principles of conduct, the performance of the duties of Government members. The objective is to analyze the code of conduct published by the Portuguese Government (Council of Ministers Resolution No. 184/2019, of December 3, 2019) in comparison with other legislative and doctrinal initiatives at the international level. It should be noted that the analysis will focus primarily on whether governments' codes of conduct are more of a "charm operation" or propaganda initiative, as a reaction to any more recent scandal (nepotism, as it became known in Portugal, the "family gate" —family relations between Government members), than as a reaction to the phenomenon of economic corruption.*

Keywords: Portuguese Council of Ministers Resolution No. 184/2019; Code of Conduct; Corruption; Government.

1. Introduction and Literature Review

To analyze codes of conduct, it is necessary to understand them as being a statement of principles and values that establishes a set of expectations and standards for how an organisation, government body, company, affiliated group or individual will behave, including minimum levels of compliance and disciplinary actions for the organisation, its staff and volunteers (TIG, 2019). As argued in Gilman (2005, p. 6) “codes of ethics are written to guide behavior. Any final analysis of the impact of a code must include how well it affects behavior. Scholarly researchers’ debates about codes generally revolve around whether more general codes are mere platitudes, and whether more detailed codes require behavior about which reasonable people can disagree”. The same author (*idem*, 2005, p. 16) adds “codes of conduct or codes of behavior are designed to anticipate and prevent certain specific types of behavior; e.g. conflict of interest, self-dealing, bribery, and inappropriate actions¹. Although conduct codes can be brief, most often they are fairly lengthy and detailed. The rationale for the detailed scope of this kind of code is that it is necessary to both protect the employee while at the same time protecting the reputation of the government”.

A code of conduct has been described as “a written, formal document consisting of moral standards and guidelines intended to help guide employee or corporate behavior” (Giorgini, 2015, p.1; Schwartz, 2002, *apud* Popescu, 2016, p. 126). Different synonyms such as code of ethics, business code, code of practices, business principles, code of business conduct, etc. are used to describe the set of conduct rules that companies operate under. However, their different names have sometimes produced confusion in the literature (Popescu, 2016, p. 126). According to the International Transparency Glossary (2019), the code of conduct is a statement of principles and values that establishes a set of expectations and standards for how an organisation, government body, company, affiliated group or individual will behave, including minimal levels of compliance and disciplinary actions for the organisation, its staff and volunteers. Codes of conduct are also known as corporate codes, or codes of behaviour, or codes of ethics and values. Ethics codes and codes of conduct were considered esoteric luxuries for public service, only a few decades ago and today most international anticorruption agreements include them as an essential ingredient in corruption prevention measures (Gilman, 2005).

The best practices of state reform, and particularly of public administrations, in recent decades have been fruitful in codes of ethics and conduct of the various governments in reference countries. The most recent studies do not establish a causal relationship between legislative production in this area, nor a decrease in cases of violation of these same codes of conduct. However, there are several Governments that, for one or several causes, publish a code of contention in response, ex-post, to corruption phenomena such as conflict of interest (Nunes, 2010) and corruption (Castro, & Nunes, 2013). For the purposes of this article, the code of conduct is an instrument of self-regulation and constitutes a commitment to guidance taken by members of the Government and members of their offices in the

¹Articles 8 and 10 of the Portuguese Government Code of Conduct. Offers, invitations or similar benefits. Persons covered by the Portuguese Government's code of conduct refrain from accepting the offer, under any circumstances, of material, consumable or durable goods or services that may affect the impartiality and integrity of the performance of their duties. For the purposes of the Code, it is understood that the impartiality and integrity of the performance of duties is conditioned upon the acceptance of property of an estimated value of € 150 or more (during a calendar year). With regard to similar invitations or benefits, members of the Government refrain from accepting, under any circumstances, invitations to attend social, institutional or cultural events, or other similar benefits, which may affect the impartiality and integrity of the performance of their duties.

performance of their duties (Portuguese Council of Ministers Resolution No. 184/2019, December 3, 2019) and there is a conflict of interest when members of the Government find themselves in a situation in which they can reasonably seriously doubt the impartiality of their conduct or decision. Finally, corruption is the abuse of entrusted power for private gain. It can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs (ITG, 2019).

The scope of the code of conduct (see figure 1) it is applied to members of the Government, also apply, mutatis mutandis, to members of the offices of the members of the Government, as well as to all senior leaders of Administration under the direction of the Government ((*) Top Public Service (spoils system) and Top Management Service (merit system). Depending on the country, the designation may be: Senior Executive Service, Senior Civil Service, Senior Officials, etc.), as well as the directors and managers of institutes and public enterprises, through guidance provided by the member of the Government to exercise supervisory or supervisory powers over them.

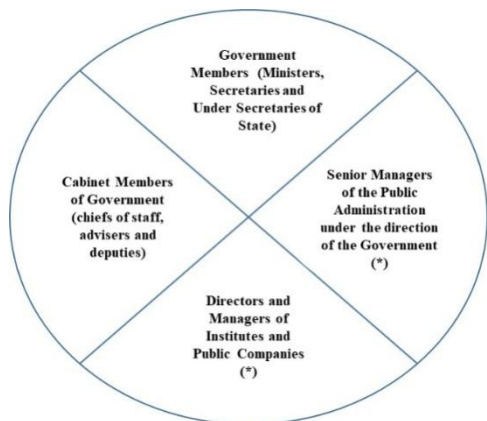


Figure 1: Scope of the Portuguese Government Code of Conduct

In the performance of their duties, the Government members shall observe general principles of conduct, in particular those set out in figure 2 below.



Figure 2: General principles of Portuguese Government Code Conduct

Portugal, by Resolution of the Assembly of the Republic n.º. 47/2007 (DR, 1st Series, of 21 September 2007) ratified the *Convention Against Corruption* (adopted by the United Nations General Assembly on October 31, 2003), which is part of the Portuguese legal system. Since then it has been obliged to approve a code of conduct for public officials for those purposes. The code of conduct, now approved, goes further and binds the entire body of Government. As noted

in several OECD (2016) documents, traditional approaches based on the creation of more rules, stricter compliance and tougher enforcement have been of limited effectiveness. A strategic and sustainable response to corruption is public integrity. Integrity is one of the key pillars of political, economic and social structures and thus essential to the economic and social well-being and prosperity of individuals and societies as a whole.

2. Government codes of conduct versus economic corruption, conflict of interests and clientelism

Much associated with codes of ethics, and much more with codes of conduct, are the concepts of conflict of interest², patronage, corruption, among others. According to Transparency International glossary (2019³) the conflict of interests⁴ is a situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests, and, the clientelism is an unequal system of exchanging resources and favours based on an exploitative relationship between a wealthier and/or more powerful ‘patron’ and a less wealthy and weaker ‘client’. However, more associated or at least the most plausible justification for the appearance of codes of conduct has been because of the phenomena of corruption, without the above reasons not being valid.

As stated previously corruption is usually defined as being the abuse of entrusted power for private gain, and can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs. Also see ‘grand corruption’, ‘petty corruption’ and ‘political corruption’ (TIG, 2019); corruption refers to the misuse of resources or power for private gain (Kolstadet al, 2008, apud Menocalet al, 2015, p. 12); Transparency International defines corruption as “the abuse of entrusted power for private gain” (Lapointe&Gendron (s.d.), p.13); the authors Menocalet al (2015) distinguish *political corruption* and *bureaucratic corruption*⁵. According to the same authors,

²Article 6 of the Government Code of Conduct. Conflict of interest shall be deemed to exist when the members of the Government are in a situation whereby one may reasonably seriously doubt the impartiality of their conductor decision pursuant to Articles 69 and 73 of the Code of the Administrative Procedure.

³ Available at https://www.transparency.org/glossary/term/code_of_conduct, accessed at 2019-12-12.

⁴In the eurobarometer data on conflicts of interest and public procurement (% of respondents considering conflicts of interest to be “widespread” in the evaluation of bids in public procurement) for Portugal this percentage is 70% (the fourth highest in the EU) (Blomeyer&Sanz, 2017, p. 29).

⁵They argue that (Menocalet al, 2015, p. 13) “political corruption takes place at the highest levels of political authority. It involves politicians, government ministers, senior civil servants and other elected, nominated or appointed senior public office holders. Political corruption is the abuse of office by those who decide on laws and regulations and the basic allocation of resources in a society (i.e. those who make the “rules of the game”). Political corruption may include tailoring laws and regulations to the

the two perspectives are related, adding that there is evidence that corruption at the top of a bureaucracy increases corruption at lower levels (Chand and Moene, 1999, *apud* Menocal *et al*, 2015).

In the case of an analysis of the Portuguese Government's code of conduct, published in 2019, with the scope of the principles defined therein, it seems to be observance of political behaviors in its sphere of action and, in particular, in compliance with the principles mentioned on figure 2, either of government officials or their staff (although it is also foreseen that government officials should encourage the application of the code to other sectors of Public Administration). As argued in Gilman (2005, p. 68) "corruption prevention initiatives develop because of the commitment of political will. Political will eventually fades. Codes and systems to support them survive because of institutional continuity. In complex government structures what counts after political will fades is that the organization is viable and has authority. Part of this viability is effective, independent leadership in the organization. If no one is responsible for continuity during transitions of political authority, it is very difficult for organizations to maintain their effectiveness".

2.1 The codes of conduct versus economic corruption

According to the authors, Menocal *et al* (2015, p. 28) "corruption is a complex and multi-faceted phenomenon that can take a variety of forms. The literature identifies a wide variety of political, institutional, administrative, social and economic factors, both domestic and international, as important in enabling and fomenting corruption". In the present article, the most likely species is *political corruption* that has the most relation to codes of conduct and which may subsequently prove the most damaging to the economy. Corruption, political scandals, and the spreading adoption of management practices in the public sector contribute to a decline in public trust⁶ (Thaler *et al*, 2016).

advantage of private sector agents in exchange for bribes, granting large public contracts to specific firms or embezzling funds from the treasury. The term "grand corruption" is often used to describe such acts, reflecting the scale of corruption and the considerable sums of money involved". Regarding bureaucratic corruption, they refer to "occurs during the implementation of public policies. It involves appointed bureaucrats and public administration staff at the central or local level, entails corrupt acts among those who implement the rules designed or introduced by top officials. Corruption may include transactions between bureaucrats and private agents (e.g. contracted service providers). Such agents may demand extra payment for the provision of government services; make speed money payments to expedite bureaucratic procedures; or pay bribes to allow actions that violate rules and regulations. Corruption also includes interactions within the public bureaucracy, such as the payment or taking of bribes or kickbacks to obtain posts or secure promotion, or the mutual exchange of favours. This type of corruption is often referred to as "petty corruption", reflecting the small payments often involved – although in aggregate the sums may be large".

⁶Sweden has been an example of good practice, is one of the countries with the lowest level of corruption around the world. The main feature of Swedish society directly related with the low level of corruption in Sweden is based on the high level of public trust in society (Makarova, 2018, p.80), and is usually ranked by different

Dávid-Barrett *et al* (2019, p. 1) suggest that governments that have just won elections "sometimes abuse their power to manipulate the allocation of government contracts so as to buy loyalty from cronies. While scandals suggest such practices are relatively widespread, the extent of such partisan favoritism is difficult to measure and the conditions under which it flourishes under-theorized" and "drawing on theory regarding the role of institutions as constraints on corruption, we identify three spheres of political influence over government contracting and show how elites can manipulate two of those spheres to increase their opportunities to influence the procurement process and minimize external accountability, facilitating the corrupt allocation of contracts to partisan allies"⁷. The same authors (*idem*, 2019) conclude that grand corruption is related to changes in government. In fact, suggest that the techniques for political capture of public procurement occur in three spheres: (i) policy formation; (ii) implementation; and, (iii) accountability. At first, ensuring that the law provides opportunities for procurement to occur with minimal scrutiny. In the second, ensure that process favors certain bidders, rather than being competitive. The third, disable checks and balances are that favoritism in procurement goes undetected or unchallenged. It is also commonly accepted that corruption is related to three factors that facilitate its emergence/development (Menocal *et al.*, 2015, p. 81): (i) Economic (including levels of development, patterns of wealth accumulation, salaries, structure of the economy and openness to trade, sources of income, illicit flows, resource

institutes (e.g., Transparency International, GRECO, and Eurobarometer) among the least corrupt countries in the world. In 2017, Sweden had Corruption Perception Index score 84, and is always ranked among the first five-six less corrupt countries in the world (Corruption Perceptions Index, 2018). The last Eurobarometer survey shows very low acceptance of any corruption by Swedish citizens. At the same time, corruption still remains in Swedish society: 37% of Swedish people believe that corruption is widespread in their country. Thus, 85 percent of Swedish citizens believe that giving a gift to a public official is unacceptable (the average in the EU countries is 76 percent) (*idem*, p. 82).

⁷To Dávid-Barrett *et al* (2019, p. 3) corruption occurs when "Political elites allocate state resources in exchange for political support (clientelism) (Hicken, 2011; Piattoni, 2001); Abuse their patronage power to appoint allies to civil service positions (Meyer-Sahling and Veen, 2012); Design privatization programs so as to ensure that state assets are sold to cronies (Ganev, 2005); Manipulate the public procurement process to grant friends or relatives preferential access to public contracts for goods, works, and services (Grodland, 2010; Hamilton, 2010); Politicians are motivated to corrupt the procurement process partly to channel private gains to themselves and their families but also because the strategic allocation of state resources buys loyalty, comes in many forms, including donations to political parties or individual campaigns, direct bribes or 'kickbacks' on contracts, and sometimes in-kind provision of services (Emek and Acar, 2015; Faccio, 2006; Fisman, 2001; Goldman *et al*, 2013); Favoritism in the allocation of public contracts can lead to higher prices, reduced value for money, the provision of low-quality or unsafe works, goods and services, and reduced competition (Bank, 2016; Dastidar and Mukherjee, 2014; Hessami, 2014); Harms democracy since, by distributing resources according to particularistic ties, partisan favoritism disadvantages parties that lack connections and thus weakens political competition (Stark and Vedres, 2012; Stokes, 2005; Klitgaard, 1991; Mungiu-Pippidi, 2013, 2015; Fazekas and King, 2018; Tavares, 2003)".

curse, etc.); (ii) Political (e.g. different types of political systems [e.g. different types of political systems and state-society dynamics]; competition for power and authority at different levels; accountability relationships; meritocracy vs. patronage); and, (iii) Sociological/anthropological (sociocultural logics, gift-giving, solidarity networks).

Corruption⁸, as mentioned earlier, takes various forms: bribery, embezzlement, facilitation payment, fraud, collusion, extortion, patronage, clientelism, nepotism, etc. and the main spheres of corruption is normally in central government, local government and private sector. Pring (2016, p. 10) in the report "people and corruption: Europe and Central Asia" for the Transparency International, when analyzing corruption by institutions (% of people who think that most of all people in these groups or institutions are involved in corruption) concluded that the member of Parliament appears in 1st place (31%), followed by government officials (30%) business executives (26%), the President/Prime Minister and officials in their office (25%), tax officials (25%), judges and magistrates (24%), police (22%) and religious leaders (17%). Portugal appears with 37% in the case of perceptions of government actions to fight corruption, and for the perceptions of corruption levels for members of parliament 33%. When asked if is corruption one of the biggest problems facing the country? (the anti-corruption performance of the government and the country's corruption risks are rated by citizens as high risk, medium risk and low risk) Portugal appears (along with Spain, Cyprus, Czech Republic, Latvia, Slovenia, Kosovo, Kazakhstan, Bulgaria, Croatia, Romania, Slovakia, Armenia, Bosnia, Lithuania, Moldova, Russia, Serbia and Ukraine) as high risk (*idem*, 2016, pp. 32-33). In another project, coordinated by Paul Zoubkov and authored by Mulcahy (2012) a number of countries in southern Europe – Greece, Italy, Portugal and Spain – are shown to have serious deficits in public sector accountability and deep-rooted problems of inefficiency, malpractice and corruption, which are neither sufficiently controlled nor sanctioned and yet (*idem*, pp.10-11) that Greece, Italy, Portugal and Spain top the list of the Western European countries found to have serious deficits in their integrity systems. "Legal corruption goes beyond bribery and includes influence peddling, for example the excessive and undue influence of lobbyists in the European corridors of power. It skews decision-making to benefit the few at the expense of the many" (*idem, ibidem*, p.10). The same authors also analyzed the aggregate view of the institutions, across the 25 countries, providing a unique opportunity to identify the institutions that are performing best and worst. The question was on the table: How do Institutions in Europe Measure up? The results are clearly visible in the following figure.

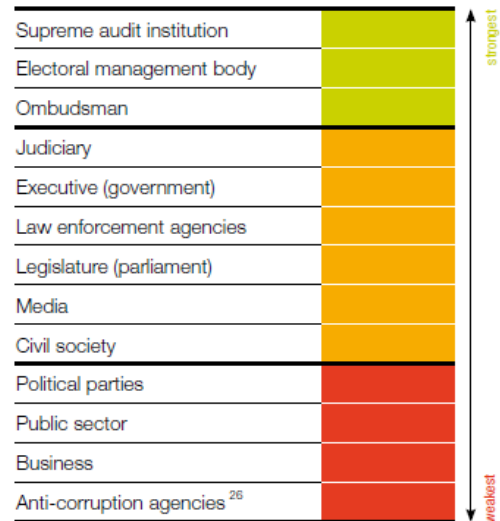


Figure 3: How do Institutions in Europe Measure up?

Source: Mulcahy (2012, p.16)

As we can see, the judiciary administration is the most resilient and strongest to corruption, in particular, the Supreme audit institution and the Ombudsman. The Government and Parliament⁹ are not in a very comfortable situation either, and according to the study, the institutions most susceptible to corruption are the political parties, public sector, business and anti-corruption agencies.

It should be noted, however, that it is in the relations of politicians with the private sector (the phenomenon of the *revolving door*) that much of the corruption also occurs.

Codes of conduct

Codes of conduct have been at the heart of the debate about how global companies should manage their supply chains in a socially and environmentally responsible manner (Lund-Thomsen, 2008). The same author argues that "exaggerated claims are often made about the benefits that codes supposedly bring to workers and the environment in the developing world. The risk is that codes of conduct may do more harm than good, because much of the academic and policy-oriented rhetoric on the topic is largely divorced from the realities faced by many developing country suppliers, workers and communities. Using insights from recent fieldwork in the Pakistani sporting goods industry, this contribution attempts to bust five myths that continue to characterize the codes of conduct debate and introduce five recommendations that could lead to a more fruitful engagement with future research, policy, and practice in this area" (*idem*, 2008, p. 1). As referred to in Garcia-Sanchez *et al* (2011) by the way of a study to determine the actual implementation of codes of ethics and conduct in the public sphere reveals that corruption as the most important non-ethical behavior¹⁰. Those authors conclude that findings

⁸Or, in other meanings, "The intentional misperformance or neglect of a recognized duty, or the unwarranted exercise of power, with the motive of gaining some advantage more or less directly personal. Corruption is quite as possible elsewhere as in the state" (Brook, 1909, *apud* Heywood, 2015, Routledge Handbook of Political Corruption, by Oskar Kurer, p. 31); Or "According to constitutional economists, political corruption is an inevitable result of growth of the government. Therefore, the most effective solution is to limit the government" (Aktan, 2015, p. 69).

⁹Countries that do not yet have codes of conduct for parliamentarians: Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Hungary, Italy, Netherlands, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and Switzerland (Mulcahy, 2012, p. 32).

¹⁰"A code of conduct serves as an instrument of a rules-based compliance approach. It describes as specifically and unambiguously as possible what kind of behaviour is expected and establishes strict monitoring and sanctioning procedures to enforce

stress the absence of any influence of codes on corruption problems in the public context, both in developed and developing countries and the level of education is the most important determining factor in the control of corruption, especially in developing countries. Worldwide initiatives promoting good governance can be observed. At an organizational level, management of ethics has gained in importance as codes of conduct and ethical leadership are promoted. However, public management research has hardly analysed the impacts of these measures (Thaler *et al.*, 2016). Atkinson, and Mancuso (1985), made the following questions “do we need a code of conduct for politicians? in a publication (Canadian Journal of Political Science), or are the existing unwritten rules a sufficient safeguard against acts of political malfeasance? The authors conducted a study (based on interviews with 84 MPs) where they conclude considerable disagreement in assessments of particular acts, notably those involving conflicts of interest and constituency service. Differences among MPs are related to a number of factors including partisanship, political experience and spatial cleavages. Such divisions of opinion belie the presence of a single elite political culture of corruption which in some way makes it difficult to draw up a single code of conduct that suits everyone.

Practically all countries in Europe and internationally have adopted codes of conduct at various levels of Government and Public Administration. These codes of conduct also took many forms and types. As referred to in Blomeyer&Sanz (2017, p. 59) “overall, the diversity of codes manifests the relevance of ethical infrastructures and the necessity to combat and prevent corruption not only by highlighting hard law deterrence based mechanisms, but also by raising awareness and giving ethical guidance. The terms codes of ethics and codes of conduct are usually used interchangeably”. However, they are different from each other, according to Staphenurst and Pelizzo (2004, *apud* Martini, 2013). So with, there is a definitional differentiation between (i) codes of conduct, (ii) codes of ethics and (iii) codes of rules and regulations (M. Van Wart, 2016, *apud* Blomeyer&Sanz, 2017, p. 59).

3. Conclusions

In most cases, which includes Portugal, the code of conduct restates and elaborates the values and principles already embodied in legislation (e.g., conflicts of interest, public service ethics letter¹¹, mission letter, disciplinary statutes, etc.). It remains an absence of an entity that assumes the implementation and control of codes of conduct and their real implementation. The Portuguese Code of Conduct, now published, does not mention or contemplate an institutional support system, a kind of anti-corruption agency.

If, on the one hand, codes of conduct can improve the ethical behavior and morals, they should not (as seems to be the Portuguese case) appear in reaction to a recent scandal, and

the code. A code of ethics is rooted in the values-based management approach. It focuses on general values rather than on specific guidelines, putting more trust in the employee’s capacities for moral reasoning.” (Blomeyer&Sanz (2017, p. 59).

¹¹Article 11 (2) of the Portuguese Government Code of Conduct.

do not go beyond the phase of its creation/publication, that is, not be effective. The codes are only effective in an atmosphere of trust. On the one hand, codes of conduct will present unethical and illegal wrongdoing (Kaptein and Schwartz, 2008) for another, there are many cases that confirm that governments or companies develop codes to self-protect themselves (Stevens, 1994, *apud* Mulcahy, 2012, p. 128).

The Portuguese Code of Conduct appears to be a result as a mere response to public and government pressure, which also includes the media and society; Portuguese code have a very vague language, essentially because the mechanisms are not known used by the government for self-evaluation, and are not specific in order to shape moral behaviour and to sanction misconduct. Beyond that, self-declared, self-imposed and very little constraining seeming, as several authors have stated, a kind of window-dressing (Stevens, 2009, p. 6). Not surprisingly, the Portuguese government preferred a “soft law” of voluntary codes of conduct to the “hard law” of command and control government regulation (Lapoint, (s.d), p. 1). Codes of conduct are used as efficient marketing tools. Politics are organised around personalism or “big man” syndrome, reflected in the high centralisation of power (*idem*, p. 20).

Unethical behaviour in government is viewed as a situation where there is a fraudulent or dishonest conduct by people who are in a position of power. We think we will never know if the code of conduct fulfill their objectives. In the Portuguese case, each ministry¹² was open to implement and create rules of conduct, which will cause a variety of codes or interpretations of these codes, in different institutions, etc.. The Portuguese code of conduct also has, in our view, a problem because do not cover the whole range of ethical principles¹³. See in this regard the UK Code of Conduct adopted in August 2019 – Ministerial Code – Cabinet Office, where, besides many more principles than the Portuguese, it also contemplates: the relationship of the ministers with the government, ministers and appointments, ministers and their departments, ministers and civil servants, ministers and party interests; ministers and private interests; ministers and the presentation of policy; ministers and parliament; and, travel by ministers.

Codes fail most often because they raise unrealistic expectations (Guilman, 2005, p.63) and the fact that another variable can exist, that is the potential shift of political will. Change governments, changewills...

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¹³Article 12 (1) The principles and duties contained in this Code shall constitute general guidance.

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