

OECD Guidelines for Managing Conflict of Interest in the Public Service

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Introduction

Conflict of interest has become a key issue in public debate worldwide in recent years, not just in the private sector but also increasingly in the public sector. The breaking down of barriers between public and private sectors – through the privatisation of services, public/private partnerships and exchanges of personnel – has created grey zones and opportunities for corruption. For instance, conflicts between public officials' individual private interests and their public duties have multiplied due to the contracting out of government functions such as defence. Temporary public service employees could in particular use information that is not available to the public concerning defence department policies to obtain contracts with future clients.

If not adequately identified and managed, grey zones can provide opportunities for public officials to take advantage of their public position for personal benefit. There is increasing recognition that conflict-of-interest situations that are not properly dealt with can lead to corruption. Considering the volume of transactions between public and private sectors, and the financial interests at stake, unmanaged conflicts of interest can impose a heavy cost on a country's economy. They can in particular distort competition and the allocation of public resources, waste public money and trigger well-publicised scandals that weaken citizens' trust in public institutions.

The OECD, through its *Guidelines for Managing Conflict of Interest in the Public Service* and its *Principles of Corporate Governance*, is helping governments promote integrity and high standards of conduct in both the public and the private sectors. This *Policy Brief* focuses on the conflict-of-interest *Guidelines*, which provide the first comprehensive international benchmark to help governments review and modernise their conflict-of-interest policies for the public sector. They take a practical approach, considering that all conflicts of interest cannot be eliminated and therefore public officials' private interests need to be properly identified and managed in an appropriate manner. Governments are to report in 2006 on progress in implementing the *Guidelines*. ■

What is conflict of interest?

Conflict of interest arises when public officials have to make decisions at work that may affect their private interests. For example, a public official with the telecommunications regulator has to decide whether mobile phone charges are too high – is he being influenced by the thought that one day he might want a job with a particular company?

Governments have for many years been aware of the dangers of personal bias in public decision making. But in the past these concerns focussed on traditional sources of influence, such as gifts or hospitality offered to public officials, and personal or family relationships. Increased co-operation with the private sector in recent years has made the whole issue more complex, multiplying the opportunities for conflicts of interest, such as:

- A public official having private business interests in the form of partnerships, shareholdings, board memberships, investments, government contracts, etc.
- A public official having affiliations with other organisations (e.g. a senior public official sits on the board of a non-profit organisation that receives funding from the official's agency).
- A public official leaving to work for a regulated private company or a chief executive taking up a key position in a government agency with a commercial relationship with his/her former company.

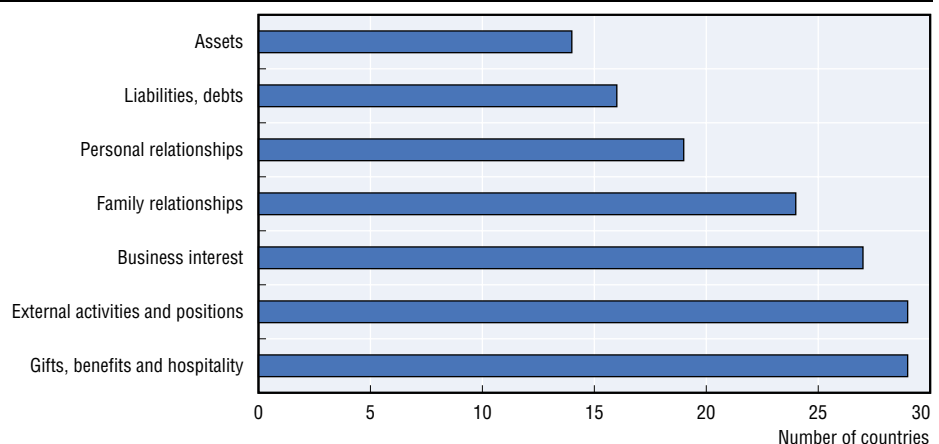
The key question is whether a public official is in a situation where his private interests might improperly influence the way he does his job. The *Guidelines* adopt a deliberately simple and practical definition of conflict of interest to help organisations answer this question and, if necessary, resolve the problem.

The *Guidelines* define conflict of interest as: **“a conflict between the public duties and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.”** ■

Why is it so important today?

Recent scandals have drawn attention to the increased potential for conflict of interest resulting from modern-day forms of co-operation between the public and private sectors, such as public/private partnerships, sponsorships, contracting out and self-regulation. The barriers between public and private employment are also breaking down, leading to new pressures on traditional employment obligations

Figure 1:
ACTIVITIES AND SITUATIONS WITH POTENTIAL FOR CONFLICT OF INTEREST



Source: *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences (2003)*.

and loyalties. Private sector representatives may sit on the advisory body of a public regulatory agency, for instance, or a public official may sit on the board of a company involved in a partnership with the public agency that employs him.

At the same time, governments are under increased pressure from the business community and society at large to ensure that public officials perform their duties in a fair and unbiased way and are seen to do so. “Zero tolerance” of misconduct, particularly corruption, has become the driving force of civil society organisations like Transparency International. Furthermore, governments are expected to keep the public informed of the fact that they are dealing with actual conflict-of-interest cases and the internal arrangements they have in place to properly identify and resolve potential conflict-of-interest situations. A situation that looks like a conflict of interest may be enough to undermine public confidence, even if in fact there is no conflict or it has already been resolved. For example, a senior public official owns shares in a corporation that is competing for a contract to supply services to the official's agency. The agency may have formal internal arrangements to exclude the official from all decision making in such cases, but if they are not well-publicised the situation could still give rise to scandal. ■

What is the approach of the OECD Guidelines?

An effective conflict-of-interest policy needs to strike a balance between the public interest – protecting the integrity of public decisions – and the private interests of public officials. The aim is not to prevent public officials from having any private interests. An overly strict approach may infringe upon a public official's other rights, and could discourage competent potential candidates from seeking public office. The immediate aim of a conflict-of-interest policy should be to protect the integrity of official policy and administrative decisions and of public management generally.

The *OECD Guidelines* were designed to:

- Create a practical framework of reference for reviewing existing solutions and modernising mechanisms in line with good practices in OECD countries.
- Promote a public service culture where conflict of interest is properly identified, managed and resolved in an appropriately transparent and timely way.
- Support partnerships between the public sector and the business and non-profit sectors, in accordance with clear public standards defining the parties' responsibilities for integrity.

The *OECD Guidelines* provide a practical tool to help public institutions maintain integrity in public decision making. This can generally be achieved by:

- Ensuring that public bodies have relevant policy standards for promoting integrity and that they implement them.
- Establishing effective processes to identify risk and deal with conflicts of interest in the daily work; as well as appropriate accountability mechanisms and management approaches. This includes sanctions not only to ensure that public officials take personal responsibility for complying with both the letter and the spirit of such standards, but also encouragement for public officials who consistently demonstrate such compliance.

The primary aim of the *Guidelines* is to help governments and public organisations review existing conflict-of-interest policy and practice for public officials working in national public administrations. The *Guidelines* can also provide general

guidance for other branches of government, sub-national government, and state-owned corporations.

The *Guidelines* recommend that any conflict-of-interest policy takes into account the particular risk attached to certain categories of officials, especially policy makers and public office holders working in the most senior positions; public officials working in key functions of the state, such as law enforcement; and decision makers in sensitive areas such as at the interface of the public and private sector.

Indeed, most OECD countries create particular conflict-of-interest policies for these specific categories (see Figure 2 below). In principle, the higher the position, the stricter the policy and the more transparency required. For example, officials in these categories are regularly called upon to provide information on their financial assets, and in the case of the most senior public office holders this information is often made public. ■

What principles should guide public officials?

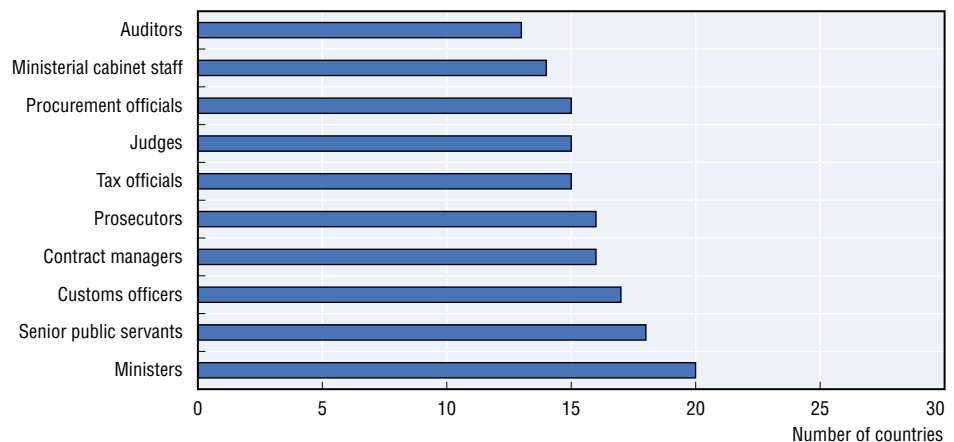
The *OECD Guidelines* set four core principles for public officials to follow in dealing with conflict-of-interest situations in order to maintain trust in public institutions: serving the public interest; supporting transparency; promoting individual responsibility; and creating an organisational culture that does not tolerate conflict of interest.

Serving the public interest

Public officials should make decisions and provide advice without regard for personal gain. The decision maker’s religious, professional, party-political, ethnic, family, or other personal preferences should not affect the integrity of official decision making. At the same time, public officials should dispose of, or restrict the operation of, private financial interests, personal relationships or affiliations that could compromise official decisions in which they are involved. Where this is not feasible – an official can hardly be expected to abandon her relationship with her husband or children in the interests of her job – a public official should abstain from involvement in official decisions that could be compromised by private interests.

Public officials should also avoid taking improper advantage in their private lives from “inside information” not available to the public that is obtained in the course of official duties. So public officials should not engage in a private financial transaction which involves using confidential information obtained

Figure 2.
DEVELOPING SPECIFIC CONFLICT-OF-INTEREST POLICY FOR PARTICULAR CATEGORIES OF PUBLIC OFFICIALS



Source: *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences (2003)*.

at work. In addition, public officials must not misuse their position and government resources for private gain, such as awarding a contract to a firm in the hope of obtaining a job with that firm on leaving public office.

Supporting transparency and scrutiny

The *Guidelines* state that public officials and public organisations are expected to act in a way that will bear the closest public scrutiny. Public officials should disclose any private interests and affiliations that could compromise the disinterested performance of public duties when taking up office and afterwards if circumstances change, to enable adequate control and management of the situation.

Public organisations and officials should also ensure consistency and openness in resolving or managing conflict-of-interest situations, for example by providing up-to-date information about the organisation's policy, rules and administrative procedures regarding conflict of interest, or by encouraging discussion on how specific situations have been handled in the past and are expected to be handled in the future. Organisations should also promote scrutiny of their management of such situations, perhaps by involving employees in reviews of existing conflict-of-interest policy or consulting them on future preventive measures.

Promoting individual responsibility and personal example

Public officials, particularly public office holders and senior managers, should act at all times in a manner that demonstrates integrity and thus serves as an example to other officials and the public. When dealing with individual cases, senior officials and managers should balance the interests of the organisation, the individual and the public. Public officials should also accept responsibility for arranging their private affairs so as to prevent conflicts of interest, and for identifying and resolving conflicts in favour of the public interest when a conflict does arise. So an official could sell a relevant financial interest, or declare an interest in a particular issue and withdraw from the decision-making process.

Creating an organisational culture

The *Guidelines* also call on public organisations to create an organisational culture that does not tolerate conflict of interest. This can be done in a number of ways, such as raising awareness by publishing the conflict-of-interest policy, giving regular reminders, developing learning tools to help employees apply and integrate the policy and by providing concrete advice when need arises. Organisational practices should encourage public officials to disclose and discuss real, apparent or potential conflict-of-interest cases, and provide reasonable measures to protect them from retaliation. Public organisations should also create and sustain a culture of open communication and dialogue to promote integrity, while providing guidance and training to promote understanding. ■

How can these principles be put into practice?

The *OECD Guidelines* provide six key policy recommendations on how to identify, prevent, manage and resolve conflict-of-interest situations (see Box).

But following such recommendations in real-life situations is the test. Even identifying a specific conflict-of-interest situation in day-to-day work practice can prove very difficult. And resolving the conflicting interests appropriately in a particular case is something that most people find even more challenging. If public organisations are to be able to follow these recommendations, they need practical instruments to help public officials understand how to apply the conflict-of-interest policy in concrete situations. The OECD has developed and tested a *Toolkit* to meet this need.

Box 1.

KEY RECOMMENDATIONS FOR MANAGING CONFLICT OF INTEREST

1. Identify relevant conflict-of-interest situations.

Provide a clear and realistic description of what circumstances and relationships can lead to a conflict-of-interest situation.

Ensure that the conflict-of-interest policy is supported by organisational strategies and practices to help identify concrete conflict-of-interest situations at the workplace.

2. Establish procedures to identify, manage and resolve conflict-of-interest situations.

Ensure that public officials know what is required of them in identifying and declaring conflict-of-interest situations.

Set clear rules on what is expected of public officials in dealing with conflict-of-interest situations, so that both managers and employees can achieve appropriate resolution and management.

3. Demonstrate leadership commitment.

Managers and leaders in the public service should take responsibility for the effective application of conflict-of-interest policy, by establishing a consistent decision-making process, taking decisions based on this model in individual cases, monitoring and evaluating the effectiveness of the policy and, where necessary, enhancing or modifying the policy to make it more effective.

4. Create a partnership with employees.

Ensure wide publication, awareness and understanding of the conflict-of-interest policy through training and counselling.

Review “at-risk” areas for potential conflict-of-interest situations.

Identify preventive measures that deal with emergent conflict-of-interest situations.

Develop and sustain an open organisational culture where measures dealing with conflict-of-interest matters can be freely raised and discussed.

5. Enforce the conflict-of-interest policy.

Provide procedures for establishing a conflict-of-interest offence, and consequences for non-compliance, including disciplinary sanctions.

Develop monitoring mechanisms to detect breaches of policy and take into account any gain or benefit that resulted.

Co-ordinate prevention and enforcement measures and integrate them into a coherent institutional framework.

Provide a mechanism for recognising and rewarding exemplary behaviour related to consistent demonstrated compliance with the conflict-of-interest policy.

6. Initiate a new partnership with the business and non-profit sectors.

Involve the business and non-profit sectors in elaborating and implementing the conflict-of-interest policy for public officials.

Anticipate potential conflict-of-interest situations when public organisations involve persons representing businesses and the non-profit sector through boards or advisory bodies.

Include safeguards against potential conflict-of-interest situations by making other organisations aware of the potential consequences of non-compliance and reviewing together high-risk areas.

The Toolkit provides a set of practical ways to help managers and officials put the policy into practice. Instead of giving a set of complex administrative definitions and processes, the Toolkit provides practical solutions to enable officials to identify, manage and resolve conflict-of-interest situations. Practical tools include self-tests to identify conflicts of interest, checklists to detect “areas at risk” and training materials in the form of detailed case studies. The Toolkit also provides model legislative provisions and procedures for conflict-of-interest situations, covering gifts, registration of assets and relevant private interests, as well as protecting whistleblowers. The tools themselves are based on examples of sound conflict-of-interest policy and practice drawn from various OECD member countries. The tools have been adapted to provide applicable solutions, which are suitable for adaptation for use in public organisations. ■

What is the impact of the OECD Guidelines?

OECD countries are increasingly using the *OECD Guidelines* and the Toolkit to develop or review guidelines and practical tools for avoiding and managing conflict of interest. In Australia, the New South Wales Independent Commission Against Corruption and the Queensland Crime and Misconduct Commission have developed guidelines modelled on the *OECD Guidelines* and have created a local version of the Toolkit. Canada used the *OECD Guidelines* as a benchmark in a review of its conflict-of-interest policy in 2003, and in particular updated the conflict-of-interest and post-employment measures in the *Values and Ethics Code for the Public Service*. Hungary has reviewed its disclosure policy according to the *OECD Guidelines*, and has required almost 60 000 public officials to submit asset declaration forms. A specific conflict-of-interest Bill has been passed in the Slovak Republic and restrictions for civil servants were strengthened from January 2004. Existing conflict-of-interest provisions were reviewed in Portugal, and the resulting report published in Spring 2005 sets directions for new legislation. The Spanish Government approved a *Code of Good Governance* in February 2005 that contains the OECD definition of conflict of interest and started public consultations on the Bill on conflict of interest and a new transparent disclosure system.

Non-OECD countries have also demonstrated an interest in the *Guidelines* and the Toolkit, which have played a key role in policy dialogue with countries in South Eastern Europe, the Asia-Pacific region and Latin America. ■

What next?

The 2003 *OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service* asks for a report on progress by member countries in implementing the Recommendation. A progress report, scheduled for 2006, will analyse how the *Guidelines* are applied in a rapidly changing public sector environment. It will specifically review developments in key areas at the public/private sector interface such as post-public employment and lobbying.

The *OECD Guidelines* and the Toolkit have increasingly served as a benchmark against which policy makers and managers can review, compare, assess and further develop existing policies. The *Guidelines* will in particular promote good governance in non-OECD countries in the framework of the United Nations Convention Against Corruption and regional co-operation action plans. ■



For further information

Further information regarding conflict of interest and prevention of corruption in the public service can be obtained from the OECD Integrity Web site: www.oecd.org/gov/ethics.

Additional information regarding this topic can also be obtained from: Elodie Beth, tel.: (33-1) 45 24 96 29, E-mail: elodie.beth@oecd.org, and Janos Bertok, tel.: (33-1) 45 24 93 57, E-mail: janos.bertok@oecd.org.

For further reading

- OECD (2003), **Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences**, ISBN 92-64-10489-5, € 40, 252 pages (or www.oecd.org/gov/ethics).
- OECD (2005), **Managing Conflict of Interest in the Public Sector: A Toolkit**, ISBN 92-64-01822-0, € 24, 110 pages (or www.oecd.org/gov/ethics).
- OECD (2002), **Public Sector Transparency and Accountability: Making It Happen**, ISBN 92-64-19830-X, € 45, 212 pages (or www.oecd.org/gov/ethics).
- OECD (2000), **Trust in Government: Ethics Measures in OECD Countries**, ISBN 92-64-18519-4, € 68, 332 pages (or www.oecd.org/gov/ethics).
- OECD (2000), **Building Public Trust: Ethics Measures in OECD Countries**, PUMA Policy Brief (September 2000), available at www.oecd.org/gov/ethics.
- OECD (1999), **Public Sector Corruption: An International Survey of Prevention Measures**, ISBN 92-64-17071-5, € 29, 120 pages (or www.oecd.org/gov/ethics).

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The OECD Policy Briefs are prepared by the Public Affairs Division, Public Affairs and Communications Directorate. They are published under the responsibility of the Secretary-General.