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PART I

OECD Guidelines for Managing Conflict of Interest in the Public Service

Part I presents the OECD Guidelines for Managing Conflict of Interest in the Public Service. These Guidelines set the first international benchmark to help governments review and develop comprehensive conflict-of-interest policies for the public sector in line with good practices in OECD countries.

A. A growing public concern

Serving the public interest is the fundamental mission of governments and public institutions. Citizens expect individual public officials to perform their duties with integrity, in a fair and unbiased way. Governments are increasingly expected to ensure that public officials do not allow their private interests and affiliations to compromise official decision-making and public management. In an increasingly demanding society, inadequately managed conflicts of interest on the part of public officials have the potential to weaken citizens' trust in public institutions.

Conflicts of interest in both the public and private sectors have become a major matter of public concern world-wide. In government and the public sector, conflict-of-interest situations have long been the focus of specific policy; legislation and management approaches intended to maintain integrity and disinterested decision-making in government and public institutions. In the private sector there has also been a long history of concern for integrity in business, and in particular for protecting the interests of shareholders and the public at large. Recent scandals have drawn attention to the importance of avoiding conflicts of interest which can become an issue when, for example, a public official leaves public office for employment in the business or NGO sector, or an accounting firm offers both auditing and consulting services to the same client, or a regulatory agency becomes too closely aligned to the business entities it is intended to supervise.

New forms of relationship have developed between the public sector and the business and non-profit sectors, giving rise for example to increasingly close forms of collaboration such as public/private partnerships, self-regulation, interchanges of personnel, and sponsorships. New forms of employment in the public sector have also emerged with potential for changes to traditional employment obligations and loyalties. In consequence, there is clearly an emerging potential for new forms of conflict of interest involving an individual official's private interests and public duties, and growing public concern has put pressure on governments to ensure that the integrity of official decision-making is not compromised.

While a conflict of interest is not *ipso facto* corruption, there is increasing recognition that conflicts between the private interests and public duties of public officials, if inadequately managed, can result in corruption. The proper objective of an effective conflict-of-interest policy is not the simple

prohibition of all private-capacity interests on the part of public officials, even if such an approach were conceivable. The immediate objective should be to maintain the integrity of official policy and administrative decisions and of public management generally, recognising that an unresolved conflict of interest may result in abuse of public office.

This objective can generally be achieved by ensuring that public bodies possess and implement relevant policy standards for promoting integrity, effective processes for identifying risk and dealing with emergent conflicts of interest, appropriate external and internal accountability mechanisms, and management approaches – including sanctions – that aim to ensure that public officials take personal responsibility for complying with both the letter and the spirit of such standards.

Traditionally, the different approaches to managing conflict-of-interest situations which have been taken by member countries have reflected their different historical, legal and public service traditions. Institutional measures such as positive external audit and verification, or other internal supervisory approaches, do have a place in the management of conflict situations. Other measures, such as limited or full publication of disclosed interests and/or the development of a strong management culture supporting integrity may also be effective.

B. Managing conflict of interest

In a rapidly changing public sector environment, conflicts of interest will always be an issue for concern. A too-strict approach to controlling the exercise of private interests may be in conflict with other rights, or be unworkable or counter-productive in practice, or may deter some people from seeking public office altogether. Therefore a modern conflict-of-interest policy should seek to strike a balance, by identifying risks to the integrity of public organisations and public officials, prohibiting unacceptable forms of conflict, managing conflict situations appropriately, making public organisations and individual officials aware of the incidence of such conflicts, ensuring effective procedures are deployed for the identification, disclosure, management, and promotion of the appropriate resolution of conflict-of-interest situations.

Aims of the guidelines

The primary aim of the Guidelines is to help member countries, at central government level, consider existing conflict-of-interest policy and practice relating to public officials – including public servants/civil servants, employees, and holders of public office – who work in the national public administration. The Guidelines can also provide general guidance for other

branches of government, sub-national level government, and state-owned corporations.

In particular, the Guidelines reflect policies and practices that have proved effective in OECD countries, and are intended to:

- Help government institutions and agencies to develop an effective conflict-of-interest policy that fosters public confidence in their integrity, and the integrity of public officials and public decision-making.
- 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 conflicts of interest are properly identified and resolved or managed, in an appropriately transparent and timely way, without unduly inhibiting the effectiveness and efficiency of the public organisations concerned.
- 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.

Defining a “conflict of interest”

Historically, defining the term “conflict of interest” has been the subject of many and varying approaches. As all public officials have legitimate interests which arise out of their capacity as private citizens, conflicts of interest cannot simply be avoided or prohibited, and must be defined, identified, and managed. These Guidelines adopt a definitional approach which is deliberately simple and practical to assist effective identification and management of conflict situations, as follows:

A “conflict of interest” involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.

Defined in this way, “conflict of interest” has the same meaning as “actual conflict of interest”. A conflict-of-interest situation can thus be current, or it may be found to have existed at some time in the past.

By contrast, an apparent conflict of interest can be said to exist where it appears that a public official's private interests could improperly influence the performance of their duties but *this is not in fact the case*. A potential conflict arises where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future.

Where a private interest has *in fact* compromised the proper performance of a public official's duties, that specific situation is better regarded as an instance of misconduct or "abuse of office", or even an instance of corruption, rather than as a "conflict of interest".

In this definition, "private interests" are not limited to financial or pecuniary interests, or those interests which generate a direct personal benefit to the public official. A conflict of interest may involve otherwise legitimate private-capacity activity, personal affiliations and associations, and family interests, if those interests could reasonably be considered likely to influence improperly the official's performance of their duties. A special case is constituted by the matter of post-public office employment for a public official: the negotiation of future employment by a public official prior to leaving public office is widely regarded as a conflict-of-interest situation.

Defined in this way, conflict of interest is the focus of these Guidelines because, if not managed or resolved appropriately, it has the potential to undermine the proper functioning of democratic governments by:

- weakening adherence by public officials to the ideals of legitimacy, impartiality, and fairness in public decision-making; and
- distorting the rule of law, the development and application of policy, the functioning of markets, and the allocation of public resources.

C. Core principles for managing conflict of interest

In the interest of maintaining public confidence in public institutions, the Guidelines reflect the fact that public officials may be expected to observe in particular the following core principles in dealing with conflict-of-interest matters to promote integrity in the performance of official duties and responsibilities:

Serving the public interest

- Public officials should make decisions and provide advice on the basis of the relevant law and policy, and the merits of each case, without regard for personal gain (*i.e.* be "disinterested"). The integrity of official decision-making, in particular in the application of policy to individual cases, should not be prejudiced by the religious, professional, party-political, ethnic, family, or other personal preferences or alignments of the decision-maker.
- Public officials should dispose of, or restrict the operation of, private interests that could compromise official decisions in which they participate. Where this is not feasible, a public official should abstain from involvement in official decisions which could be compromised by their private-capacity interests and affiliations.

- Public officials should avoid private-capacity action which could derive an improper advantage from “inside information” obtained in the course of official duties, where the information is not generally available to the public, and are required not to misuse their position and government resources for private gain.
- Public officials should not seek or accept any form of improper benefit in expectation of influencing the performance or non-performance of official duties or functions.
- Public officials are expected not to take improper advantage of a public office or official position which they held previously, including privileged information obtained in that position, especially when seeking employment or appointment after leaving public office.

Supporting transparency and scrutiny

- Public officials and public organisations are expected to act in a manner that will bear the closest public scrutiny. This obligation is not fully discharged simply by acting within the letter of the law; it also entails respecting broader public service values such as disinterestedness, impartiality and integrity.
- Public officials’ private interests and affiliations that could compromise the disinterested performance of public duties should be disclosed appropriately, to enable adequate control and management of a resolution.
- Public organisations and officials should ensure consistency and an appropriate degree of openness in the process of resolving or managing a conflict-of-interest situation.
- Public officials and public organisations should promote scrutiny of their management of conflict-of-interest situations, within the applicable legal framework.

Promoting individual responsibility and personal example

- Public officials are expected to act at all times so that their integrity serves an example to other public officials and the public.
- Public officials should accept responsibility for arranging their private-capacity affairs, as far as reasonably possible, so as to prevent conflicts of interest arising on appointment to public office and thereafter.
- Public officials should accept responsibility for identifying and resolving conflicts in favour of the public interest when a conflict does arise.
- Public officials and public organisations are expected to demonstrate their commitment to integrity and professionalism through their application of effective conflict-of-interest policy and practice.

Engendering an organisational culture which is intolerant of conflicts of interest

- Public organisations should provide and implement adequate management policies, processes, and practices in the working environment to encourage the effective control and management of conflict-of-interest situations.
- Organisational practices should encourage public officials to disclose and discuss conflict-of-interest matters, and provide reasonable measures to protect disclosures from misuse by others.
- Public organisations should create and sustain a culture of open communication and dialogue concerning integrity and its promotion.
- Public organisations should provide guidance and training to promote understanding and dynamic evolution of the public organisation's established rules and practices, and their application to the working environment.

D. Developing the policy framework

Defining a policy approach to dealing with conflict of interest is an essential part of the political, administrative and legal context of a country's public administration. These Guidelines do not attempt to cover every possible situation in which a conflict of interest might arise, but instead are designed as a general policy and practice reference that is relevant to a rapidly changing social context. The proposed measures are intended to reinforce each other to provide a coherent and consistent approach to managing conflict-of-interest situations. The key functions of this approach are:

- *Definition* of the general features of conflict-of-interest situations which have potential to put organisational and individual integrity at risk.
- *Identification* of specific occurrences of unacceptable conflict-of-interest situations.
- *Leadership and commitment* to implementation of the conflict-of-interest policy.
- *Awareness* that assists compliance, and *anticipation* of at-risk areas for prevention.
- *Appropriate disclosure* of adequate information, and *effective management* of conflicts.
- *Partnerships* with other stakeholders, including contractors, clients, sponsors and the community.
- *Assessment and evaluation* of a conflict-of-interest policy in the light of experience.

- *Redevelopment and adjustment of policy and procedures as necessary to meet evolving situations.*

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

- a) The general description of conflict-of-interest situations should be consistent with the fundamental idea that there are situations in which the private interests and affiliations of a public official create, or have the potential to create, conflict with the proper performance of his/her official duties. The description should emphasise the overall aim of the policy – fostering public trust in government institutions.
- b) The description should also recognise that, while some conflict-of-interest situations may be unavoidable in practice, public organisations have the responsibility to define those particular situations and activities that are incompatible with their role or public function because public confidence in the integrity, impartiality, and personal disinterestedness of public officials who perform public functions could be damaged if a conflict remains unresolved.
- c) The policy should give a range of examples of private interests which could constitute conflict-of-interest situations: financial and economic interests, debts and assets, affiliations with for-profit and non-profit organisations, affiliations with political, trade union or professional organisations, and other personal-capacity interests, undertakings and relationships (such as obligations to professional, community, ethnic, family, or religious groups in a personal or professional capacity, or relationships to people living in the same household).
- d) More focused examples of unacceptable conduct and relationships should be provided for those groups that are working in at-risk areas, such as the public-private sector interface, government procurement, regulatory and inspectorial functions, and government contracting. Specific attention needs to be given to functions which are subject to close public scrutiny or media attention.

Ensure that the conflict-of-interest policy is supported by organisational strategies and practices to help with identifying the variety of conflict-of-interest situations

- a) Laws and codes, as primary sources, should state the necessary definitions, principles and essential requirements of the conflict-of-interest policy.
- b) In addition, guidelines and training materials, as well as advice and counselling, should provide practical examples of concrete steps to be taken

for resolving conflict-of-interest situations, especially in rapidly-changing or “grey areas” such as private-sector sponsorships, privatisation and deregulation programmes, NGO relations, political activity, public-private partnerships and the interchange of personnel between sectors.

Establish procedures for identifying, managing and resolving conflict-of-interest situations

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

- a) *Initial disclosure on appointment or taking up a new position* – Develop procedures that enable public officials, when they take up office, to identify and disclose relevant private interests that potentially conflict with their official duties. Such disclosure is usually formal, (by means of registration of information identifying the interest), and is required to be provided periodically, (generally on commencement in office and thereafter at regular intervals, usually annually), and in writing. Disclosure is not necessarily required to be a public process: internal or limited-access disclosure within the public organisation, together with appropriate resolution or management of any conflicts, may be sufficient to achieve the policy objective of the process – encouraging public confidence in the integrity of the public official and their organisation. In general, the more senior the public official, the more likely it is that public disclosure will be appropriate; the more junior, the more likely it is that internal disclosure to the management of the official’s organisation will be sufficient.
- b) *In-service disclosure in office* – Make public officials aware that they must promptly disclose all relevant information about a conflict when circumstances change after their initial disclosure has been made, or when new situations arise, resulting in an emergent conflict of interest. As with formal registration, *ad hoc* disclosure itself is not necessarily required to be a public process: internal declaration may be sufficient to encourage public confidence that integrity is being managed appropriately.
- c) *Completeness of disclosure* – Determine whether disclosures of interests contain sufficient detail on the conflicting interest to enable an adequately-informed decision to be made about the appropriate resolution. The responsibility for the adequacy of a disclosure rests with the individual public official.
- d) *Effective disclosure process* – Ensure that the organisation’s administrative process assists full disclosure, and that the information disclosed is properly assessed, and maintained in up-to-date form. It is appropriate that the responsibility for providing adequate disclosure of relevant information should rest with individual officials. Ensure that the responsibility for

providing relevant information rests with individual officials and this requirement is explicitly communicated and reinforced in employment and appointment arrangements and contracts.

Set clear rules on what is expected of public officials in dealing with conflict-of-interest situations

- a) *Dealing with conflicting private interests* – Public officials should be required to accept responsibility for identifying their relevant private interests. An organisation’s policy statement should make it clear that the registration or declaration of a private interest does not in itself resolve a conflict. Additional measures to resolve or manage the conflict positively must be considered.
- b) *Resolution and management options* – Options for positive resolution or management of a continuing or pervasive conflict can include one or more of several strategies as appropriate, for example:
- divestment or liquidation of the interest by the public official;
 - recusal of the public official from involvement in an affected decision-making process;
 - restriction of access by the affected public official to particular information;
 - transfer of the public official to duty in a non-conflicting function;
 - re-arrangement of the public official’s duties and responsibilities;
 - assignment of the conflicting interest in a genuinely “blind trust” arrangement;
 - resignation of the public official from the conflicting private-capacity function; and/or
 - resignation of the public official from their public office.
- c) *Recusal and restriction* – Where a particular conflict is not likely to recur frequently, it may be appropriate for the public official concerned to maintain their current position but not participate in decision-making on the affected matters, for example by having an affected decision made by an independent third party, or by abstaining from voting on decisions, or withdrawing from discussion of affected proposals and plans, or not receiving relevant documents and other information relating to their private interest. The option of re-assigning certain functions of the public official concerned should also be available, where a particular conflict is considered likely to continue, thereby making *ad hoc* recusal inappropriate. Particular care must be exercised to ensure that all affected parties to the decision know of the measures taken to protect the integrity of the decision-making process where recusal is adopted.

- d) *Resignation* – Public officials should be required to remove the conflicting private interest if they wish to retain their public position and the conflict of interest cannot be resolved in any other way (for example by one or more of the measures suggested above). Where a serious conflict of interest cannot be resolved in any other way, the public official should be required to resign from their official position. The conflict-of-interest policy (together with the relevant employment law and/or employment contract provisions) should provide the possibility that their official position can be terminated in accordance with a defined procedure in such circumstances.
- e) *Transparency of decision-making* – Registrations and declarations of private interests, as well as the arrangements for resolving conflicts, should be clearly recorded in formal documents, to enable the organisation concerned to demonstrate, if necessary, that a specific conflict has been appropriately identified and managed. Further disclosure of information about a conflict of interest may also be appropriate in supporting the overall policy objective, for example by demonstrating how the disclosure of a specific conflict of interest was recorded and considered in the minutes of a relevant meeting.

E. Implementing the policy framework

While it is primarily the responsibility of individual public officials to be aware of possible conflicts of interest, public bodies and government organisations have the responsibility to ensure that the conflict-of-interest policy is implemented effectively. Particular attention needs to be paid to at-risk areas and functions, especially where significant conflicts are more likely to arise or to prove more damaging to organisational integrity and public confidence. In so doing, the potential for overly-complex procedures to discourage compliance should be recognised.

Demonstrate leadership commitment

Leadership

All public officials, particularly more senior public officials and senior managers, should arrange their private-capacity interests in a manner that preserves public confidence in their own integrity and the integrity of their organisation, and sets an example to others. Mere compliance with the letter of the conflict-of-interest policy or law, narrowly interpreted, is not generally sufficient to encourage public confidence in an organisation's integrity.

Commitment – Organisations should take responsibility for the effective application of their conflict-of-interest policy, by:

- a) *Deciding in individual cases* – Managers must be prepared to exercise judgement when dealing with a disclosure of private interests. In particular,

they should consider carefully the larger question of whether a reasonable person who is in possession of the relevant facts would be likely to think that the organisation's integrity was at risk from an unresolved conflict of interest. When determining the most appropriate solution to resolve or manage the actual conflict situation, managers should weigh the interests of the organisation, the public interest, and the legitimate interests of employees, as well as other factors – including in specific cases the level and type of position held by the public official concerned, and the nature of the conflict.

- b) *Monitoring and evaluating the effectiveness of the policy* – Over time, organisations should ensure that the policy remains effective and relevant in dealing with current and anticipated conflicts in a continuously evolving environment, and change or redevelop the policy as necessary.

Create a partnership with employees: awareness, anticipation and prevention

Ensure wide publication and understanding of the conflict-of-interest policy

- a) *Publish the conflict-of-interest policy* – Give all new public officials, upon initial appointment and on taking up a new position or function, a clear and concise statement of the current conflict-of-interest policy.
- b) *Give regular reminders* – Regularly remind public officials of the application of the policy in changing circumstances, and in particular ensure that public officials know how the rules are applied in the organisation and what their own responsibilities are. For example, an organisation's code of conduct can be tailored as a practical instrument for setting and communicating conflict-of-interest standards both to public officials and the wider public.
- c) *Ensure that rules and procedures are available* – Provide up-to-date information about the organisation's policy, rules and administrative procedures relevant to conflict of interest, and clearly establish any additional requirements specific to the organisation.
- d) *Provide guidance* – Support public officials with information and advice, including real-world examples and discussions on how specific conflict situations have been handled in the past and are expected to be handled in the future. In particular, consult with staff on the application of the policy, and ensure that the policy's rationale is understood and accepted.
- e) *Provide assistance* – Identify sources of appropriate assistance for public officials who are in doubt about the application of the policy, and widely publicise how to obtain such advice. Make such advice available to clients of the organisation and others, including contractors, agents, and partnering bodies, to assist stakeholders to be well-informed. Such advice may be

especially valuable to parties who may feel that the public organisation's conflict-of-interest policy is not fully effective but are reluctant to complain formally to the organisation concerned.

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

- a) *Additional employment* – Define the circumstances, including the required authorisation procedures, under which public officials may engage in ancillary (“outside”) employment while retaining their official position.
- b) *“Inside” information* – Make sure that information collected or held by public organisations which is not in the public domain, or information obtained in confidence in the course of official functions, is understood to be privileged, and is effectively protected from improper use or disclosure.
- c) *Contracts* – Consider the circumstances in which the preparation, negotiation, management, or enforcement of a contract involving the public organisation could be compromised by a conflict of interest on the part of a public official within the public organisation.
- d) *Gifts and other forms of benefit* – Consider whether the organisation's current policy is adequate in recognising conflicts of interest arising from traditional and new forms of gifts or benefits.
- e) *Family and community expectations* – Consider whether the organisation's current policy is adequate in recognising conflicts of interest arising from expectations placed on public officials by their family and community, especially in a multicultural context.
- f) *“Outside” appointments* – Define the circumstances, including the required authorisation procedures, under which a public official may undertake an appointment on the board or controlling body of, for example, a community group, an NGO, a professional or political organisation, another government entity, a government-owned corporation, or a commercial organisation which is involved in a contractual, regulatory, partnership, or sponsorship arrangement with their employing organisation.
- g) *Activity after leaving public office* – Define the circumstances, including the required authorisation procedures, under which a public official who is about to leave public office may negotiate an appointment or employment or other activity, where there is potential for a conflict of interest involving the organisation.

Identify preventive measures that deal with emergent conflict situations

- a) *Meeting procedures* – Enable participants in official decision-making to foresee potential conflicts, where feasible: for example by providing

meeting agendas in advance; record in meeting proceedings any conflicts that arise and the measures taken to resolve them.

- b) *Recusal* – Establish clear rules and efficient procedures (for example, a register of interests for board members, advisors and senior management), to ensure that *ad hoc* conflicts of interest are made transparent so that decision-making is not compromised.
- c) *Screening processes* – As part of selection processes, require identification in advance of relevant interests, and discuss possible strategies for resolution of identified conflicts; obtain appropriate clearances (such as tax clearance certificates), declarations or undertakings, to identify and deal with potential conflict-of-interest situations at an early stage.
- d) *Periodic system assessment* – Review the implementation of policy and procedures on a regular basis and update mechanisms and procedures to ensure their relevance to a constantly evolving situation. Consider the relevance of current assumptions – for example concerning the impact of new technology, which makes possible “day-trading” of stocks and shares via the Internet, which in turn could necessitate daily disclosures of an individual’s changing pecuniary interests. Draw on surveys of client and partner bodies’ experience of risk, where appropriate, partly to engage a broader set of experience, and partly to indicate continuing commitment to the process of risk-management and safeguarding the organisation’s integrity.

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

- a) *Involve employees, their representatives and other interested parties* in the review of existing conflict-of-interest policy. Their opinion, as users, on the daily problems faced in the implementation of the conflict-of-interest policy can substantially contribute to the improvement of existing measures.
- b) *Consult* on future prevention measures to bring a practical aspect into the policy-making process and to build a common understanding that is vital for the implementation of agreed policy.
- c) *Assist understanding* by providing training for public officials to develop an understanding of the relevant general principles and specific rules, and to help them improve decision-making skills for practical application.
- d) *Provide support mechanisms* for assisting managers in reviewing and improving their skills in identifying and resolving or managing conflicts in their day-to-day work.

Enforce the conflict-of-interest policy**Provide procedures for establishing a conflict-of-interest offence, and proportional consequences for non-compliance with conflict-of-interest policy including disciplinary sanctions**

- a) *Personal consequences* – Non-compliance with the organisation’s conflict-of-interest policy should generally be regarded as, at minimum, a disciplinary matter, while more serious breaches involving an actual conflict could result in sanctions for abuse of office, or prosecution for a corruption offence. Other sanctions may apply to the public official depending on the seriousness of the breach – for example, a simple failure to register a relevant interest as required, compared with a more serious refusal to resolve an actual conflict of interest of which the public official is aware. Sanctions should be enforceable, to the extent of ultimately affecting the appointment or career of the public official involved where appropriate.
- b) *Management measures* – Positive management can provide effective complementary forms of redress for breaches of conflict-of-interest policy, and can be effective in dissuading those who would seek to benefit, directly or indirectly, from such breaches. Such measures could include retroactive cancellation of affected decisions and tainted contracts, and exclusion of the beneficiaries – whether corporations, individuals, or associations, etc. – from future processes. Such exclusion measures may operate for a given period of time, within given contract monetary limits, or for certain types of activities.

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

- a) *Controls* – Ensure that management and internal controls as well as external oversight institutions – such as independent auditors or an ombudsman – work together to detect those who do not comply with required standards. Appropriate reporting for independent oversight institutions and the publication of regular reports on the implementation of integrity-management arrangements and on the progress of any investigation, can play an important role in encouraging compliance with policy and discouraging abuse of the integrity-management process.
- b) *Complaint-handling* – Develop complaint mechanisms to deal with allegations of non-compliance, and devise effective measures to encourage their use. Provide clear rules and procedures for whistle-blowing, and take steps to ensure that those who report violations in compliance with stated rules are protected against reprisal, and that the complaint mechanisms themselves are not abused.

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

- a) *Policy responsibility* – Identify a central function, not necessarily an independent organisation or government agency, as being responsible for the development and maintenance of the conflict-of-interest policy and procedures; this function could also evaluate and provide guidance on agencies’ management of conflict-of-interest policy and procedures, as well as selecting “champion” organisations and disseminating their best practices.
- b) *Synergies* – Consider the combined use of complementary instruments to support related policy objectives; for example, disclosure systems that require regular declaration of financial and other interests can prevent potential conflicts of interest, help to detect illicit enrichment of public officials, and also help to deter corrupt practices.
- c) *Consistency of laws* – Harmonise existing laws with the conflict-of-interest policy to remove conflicts and enable effective enforcement of the policy, including disclosure requirements and sanctions.

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

Mechanisms for resolving conflict-of-interest situations must be kept up-to-date in the context of increasing co-operation between public organisations and the business and non-profit sectors. This is particularly crucial when appointing representatives to public bodies from other sectors to benefit from their particular experience, knowledge and involvement.

Create partnerships for integrity with the business and non-profit sectors by involving them in the elaboration and implementation of the conflict-of-interest policy for public officials

- a) *Stakeholder involvement* – Engage representatives of the business and non-profit sectors in reviewing the policy in order to have their views on the problems of implementation, and possible applications of the policy.
- b) *Consultation* – Ensure that proposed standards reflect actual public expectations by involving the business and non-profit sectors in the design of new integrity measures. Consultations could be used to identify or negotiate mutually acceptable solutions and encourage co-operation in the implementation process.

Anticipate potential conflict-of-interest situations when public organisations invite the involvement of persons representing businesses and the non-profit sector

- a) *Potential problems* – Anticipate potential problems in order to maximise the benefit of involving representatives from other sectors in the work of public

bodies – such as boards and advisory bodies – by identifying situations where the involvement of these representatives could result in a conflict of interest.

- b) *Safeguards* – Set up mechanisms that prevent confidential information, authority or influence gained through involvement in the activities of public bodies, from being used for personal gain or for the improper advantage of other businesses and non-profit organisations. Examples of potentially effective prevention mechanisms include the restriction of an individual's access to particular information, formally recording the fact that a specific individual has had access to particular confidential information, and requiring the identification of relevant private and business interests of appointees from the business and non-profit sectors.

Raise awareness of the conflict-of-interest policy when dealing with other sectors, and include safeguards against potential conflict-of-interest situations when co-operating with the business and non-profit sectors

- a) *Provide information* – Make other organisations aware of the potential consequences of non-compliance (which can include the termination or retrospective cancellation of a contract, recording and publicising a proven breach in a register, or prosecution for criminal offences such as corruption). Assist partner organisations, for example through providing contractors with training in compliance with and enforcement of the stated requirements.
- b) *Review together high-risk areas* – Potential conflict-of-interest areas should be identified, and appropriate preventive mechanisms developed, to protect both sides in a potential conflict situation. Ensure, for example, that partner organisations and the business sector accept that relevant private interests are to be disclosed transparently in the process of lobbying, and that breaches or attempted breaches of policy are to be brought to light so that they can be dealt with firmly and constructively. Similarly, ensure that partner organisations and the business sector are aware of the public organisation's requirements regarding the handling of privileged “inside” information that is not available in the public domain, ensure that “commercial-in-confidence” information is adequately protected by verifiable processes, and ensure that decision-making procedures at all stages can be audited for integrity and justified.

F. Recommendation of the OECD Council on Guidelines for Managing Conflict of Interest in the Public Service

The Council,

Having regard to Articles 1(c), 3(a) and 5(b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

Having regard to Rule 18(b) of the OECD Rules of Procedure;

Having regard to the Recommendation of the Council on Improving Ethical Conduct in the Public Service of 23 April 1998 [C(98)70/FINAL] that includes the Principles for Managing Ethics in the Public Service, and noting, in particular, that Principle 7 indicates that “there should be clear guidelines for interaction between the public and private sectors”;

Having regard to the Communiqué of the 2000 Council meeting at Ministerial level that emphasised “building trust in public institutions is a keystone of good governance”;

Recognising the desirability of establishing and maintaining a set of core principles, policy frameworks, institutional strategies, and practical management tools for managing conflict-of-interest matters in the public service;

On the proposal of the Public Management Committee:

- a) RECOMMENDS that member countries, in establishing, amending or reviewing their conflict-of-interest policies in accordance with their own political, administrative and legal context, take due account of the *Guidelines for Managing Conflict of Interest in the Public Service* (hereafter the Guidelines)* which are set out in the Annex to this Recommendation and form an integral part thereof.
- b) INVITES member countries, through their work in the Public Management Committee, to identify and disseminate good practices in the management of conflict of interest, as well as to assess areas in which further work could be appropriate.
- c) INSTRUCTS the Public Management Committee to report to Council on progress made in implementing this Recommendation within three years of its adoption and regularly thereafter.

* The full text of the *Guidelines for Managing Conflict of Interest in the Public Service* can be seen in Part I.

Foreword

Ensuring that the integrity of official decision-making is not compromised by public officials' private interests is a growing public concern. To answer that concern, the OECD surveyed the policies and practices of member countries and developed practical instruments for governments to modernise their conflict-of-interest policies. Based on the experiences of all 30 OECD member countries, this report presents the OECD Guidelines for Managing Conflict of Interest, the first international benchmark for a comprehensive review. A comparative overview highlights trends, approaches and models across OECD countries. And case studies provide more details on policy approaches, the key elements of legal and institutional frameworks and how the policy is implemented. The countries covered are Australia, Canada, France, Germany, New Zealand, Poland, Portugal and the United States.

The OECD Guidelines were developed in collaboration with the Expert Group on Conflicts of Interest under the chairmanship of Howard R. Wilson, Ethics Counsellor of the Government of Canada, and under the direction of the OECD Public Management Committee. The OECD Council endorsed the Guidelines in the form of a Council Recommendation in June 2003.

The report was prepared by János Bertók of the OECD Public Governance and Territorial Development Directorate, who would like to thank Neda Mansouri for her preparatory work and Howard Whitton for his continuous advice in the drafting process. The report is published under the responsibility of the Secretary-General of the OECD.

Preface

In the private sector, inadequately managed conflicts of interest, some not previously identified, have been a major cause of the recent corporate governance shortcomings. These were identified by the OECD Informal Roundtable on Corporate Governance and Market Integrity that I chaired in November 2002.

Looking at the public sector, the same holds true. It is not feasible to identify all possible forms of conflict of interest in advance and simply prohibit them. Instead, the primary task for governments and public organisations should be to recognise risks to good governance arising from conflict of interest, and put in place robust measures for ensuring that conflicts of interest which arise are rapidly identified and resolved appropriately.

The OECD *Guidelines for Managing Conflict of Interest in the Public Service* comprise the first international standard to help governments review and modernise their conflict of interest policies for the public sector. The Guidelines set comprehensive standards for policy design and implementation, and encourage partnership between the public sector and the business and non-profit sectors by suggesting the responsibilities of each sector for improving integrity and strengthening the business environment.

Based on the OECD's survey of member countries' experiences and case studies, this report outlines policy options that can be adopted to the administrative and legal contexts of particular countries. It also sets out examples of good practice and innovative solutions.

OECD Governments demonstrated their commitment in this crucial area of governance by approving the Guidelines as an OECD Recommendation in June 2003, and undertaking to report on progress in the implementation of the Recommendation in 2006.

This report supports governments in their efforts to meet growing public expectations for strengthening integrity in government and in public institutions.

Donald J. Johnston
Secretary-General of the OECD

Executive Summary

Managing conflict of interest: The OECD Guidelines

Managing conflict of interest is a major challenge for governance...

Conflicts of interest in both the public and private sectors have become a major matter of public concern worldwide. An increasingly commercialised public sector that works closely with the business and non-profit sectors gives rise to the potential for new forms of conflict between the individual private interests of public officials and their public duties. In the private sector conflicts of interest have been identified as a major cause behind recent corporate governance shortcomings. When conflict-of-interest situations are not properly identified and managed, they can seriously endanger the integrity of organisations and result in corruption in the public sector and private sector alike.

... and key for improving the business climate and preventing corruption

Growing expectations from an increasingly well-informed society and business community together with a general demand for unbiased and transparent public decision-making, put pressure on governments to ensure that public officials perform their duties in a fair and unbiased way, and that official decisions are not improperly affected by self-interest, so that the integrity of markets and fair business competition is supported, and corrupt practices are excluded.

This OECD report outlines trends and presents practical examples of good practice...

Defining an effective policy approach to dealing with conflict of interest is essential to the political, administrative and legal structure of a country's public life. The present OECD report provides, for the first time, a comparative

overview of models and solutions in place in 30 member countries to identify and resolve conflict-of-interest situations in the public service. Based on the OECD survey, the report compares overall trends, identifies good practices and analyses emerging areas in which further work could be appropriate. Selected country case studies review national practices on how particular solutions fit into a country's political, administrative and legal contexts.

... to provide a generic framework of reference

The report recognises the importance of the specific national contexts for policy: there is not a single “one size fits all” solution. Consequently, the Guidelines, together with the comparative overview and selected country case studies, provide a comprehensive reference for public institutions seeking to ensure integrity in public decision-making.

OECD has developed Guidelines for Managing Conflict of Interest in the Public Service

The preparation of the OECD Guidelines for Managing Conflict of Interest in the Public Service recognised the desirability of establishing a set of core principles, policy frameworks and institutional strategies for managing conflict-of-interest matters in the public service. The Guidelines were approved in the form of an OECD Recommendation to assist the efforts of OECD member countries in setting principles and benchmarks in this critical dimension of ensuring good public governance.

The Guidelines set the first international benchmarks for designing and implementing a comprehensive conflict-of-interest policy

The Guidelines help government institutions to develop and implement an effective conflict-of-interest policy that fosters public confidence in the integrity of public officials and public decision-making. The Guidelines:

- Provide a practical framework of reference for reviewing existing policy solutions and modernising mechanisms in line with good practices in OECD countries.
- Promote a public service culture in which conflicts of interest are properly identified and resolved or managed, in an appropriately transparent and timely way, without unduly inhibiting the effectiveness and efficiency of the public organisations concerned.

- 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.

*A hands-on definition of what constitutes a
“conflict of interest”*

In order to assist the clear, objective and effective identification of conflict-of-interest situations, the Guidelines adopted a definitional approach which is deliberately simple and practical. A “conflict of interest” is:

A conflict between the public duty and private interests of public officials, in which public officials have private-capacity interests which could improperly influence the performance of their official duties and responsibilities.

Developing the policy framework: Approach and principles

Why the focus on “managing” conflict of interest?

In rapidly changing public sector environments, conflicts of interest will always be an issue for concern. A too-strict approach to controlling the exercise of private interests may conflict with other rights, or be unworkable or counter-productive in practice by deterring experienced and competent potential candidates from seeking public office. A modern approach to conflict-of-interest policy seeks to strike a balance, by:

- Identifying risks to the integrity of public organisations and public officials.
- Prohibiting specific unacceptable forms of private interest.
- Making public organisations and individual officials aware of the circumstances in which conflicts can arise.
- Ensuring that effective procedures are deployed for the identification, disclosure, management, and promotion of the appropriate resolution of conflict-of-interest situations.

*A sound strategy with the right approach combines
the different measures into a comprehensive policy*

The recommended measures are intended to reinforce each other to provide a coherent and consistent approach to managing conflict-of-interest situations.

In addition to the general policy for all public officials, senior positions and sensitive areas need particular attention

The report presents the experience of OECD countries and is aimed at helping central governments to review and modernise existing conflict-of-interest policy and practice relevant to the national public administration. In addition, these experiences can also provide general guidance for other branches of government, sub-national level government and state-owned corporations. A sound conflict-of-interest policy pays particular attention to:

- 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.
- Decision-makers in sensitive areas at the interface between the public and private sector.

Core principles provide a solid basis to guide officials in the application of the policy

Core principles guide public officials in the application of integrity standards. Public officials can be expected to observe the following core principles in dealing with conflict-of-interest matters:

- Serving the public interest.
- Supporting transparency and scrutiny.
- Promoting individual responsibility and personal example.
- Engendering an organisational culture which is intolerant of conflicts of interest.

Crucial elements of the conflict-of-interest policy

A clear and realistic description of what can lead to a conflict-of-interest situation

The financial or pecuniary interests of officials are generally considered as the principal causes of conflict of interest. However, a forward-looking policy should also describe examples of other causes, such as related-party business undertakings, personal relationships and non-financial personal interests that

can be relevant in a very complex public sector environment. In addition, affiliations with for-profit or non-profit organisations, or with political or professional organisations, can also give rise to new and difficult examples of conflict. Public organisations have the primary responsibility to define particular situations and activities that are incompatible with their public function.

Develop organisational strategies and practices that identify the variety of conflict-of-interest situations

While laws and codes, as primary sources, can establish definitions, principles and essential procedural requirements of a conflict-of-interest policy, guidelines, training materials, advice and counselling should also be used to provide practical examples and concrete steps to be taken for identifying and resolving conflict-of-interest situations, especially in rapidly-changing or “grey” areas such as private-sector sponsorship, public-private partnerships, interchange of personnel between sectors, NGO relations, and party-political activity by individuals.

Ensure that public officials know what is required of them to disclose details on conflicting private interest...

Organisational procedures should enable public officials to identify and disclose relevant private interests that potentially conflict with their official duties. Such procedures should make public officials aware that they must promptly disclose all relevant information about a conflict when taking up office (initial disclosure), and later, when relevant circumstances change (in-service disclosure). An effective disclosure process ensures that the responsibility for providing sufficient details on the conflicting interest rests with individual officials, and this requirement is explicitly communicated in employment and appointment arrangements and contracts.

... that enables managers to find proper resolution and management options

Disclosure of a private interest does not in itself resolve a conflict, however, it enables the necessary steps to be taken to determine what measures are needed to resolve or manage the conflict positively. These options could range from divestment, recusal or restriction of activity (through transfer and other re-arrangements), up to resignation, if the conflict of interest cannot be resolved in any other way. Organisations need to clearly record both disclosed

private interests and the measures taken in a particular case for resolution to demonstrate that a specific conflict has been appropriately identified and managed.

Implementing the policy framework: Management measures

Demonstrate leadership commitment

Senior officials set a personal example to others when they arrange their private-capacity interests in a manner that preserves public confidence in their integrity and the integrity of their organisation. The interests of the organisation, the public interest, and the legitimate interests of the employee must be balanced when managers seek to resolve or manage an actual conflict situation.

Create a partnership with employees ...

The wide publication of the organisation's rules and procedures, and provision of advice to public officials, who are in doubt, are needed to support the effective application of the policy. Discussions involving staff, either in training or in the actual workplace, where real-world examples are considered, can be used to improve skills in identifying and resolving conflicts in day-to-day work.

... that develops an open organisational culture

An open management culture would encourage employees to take part in the review of existing conflict-of-interest policy and practice: consultation with staff on future prevention measures can build a common understanding of the issues, and can also create an organisational culture where dealing with conflict-of-interest matters can be freely raised and discussed.

Review "at-risk" areas

Organisations need to consider reviewing existing management arrangements on a regular basis, to assess whether they remain adequate in recognising potential risk areas. Changing practices and expectations, for example in areas such as additional employment and "outside" appointments, post-public employment, use of "inside" information, public contracts, new forms of gifts and other benefits, and different family and community expectations in a multicultural context, can generate new forms of risk.

Preventive measures for emergent conflicts and...

A forward-looking management anticipates potential conflict situations and employs preventive measures that deal with emergent conflict situations, such as screening applicants before employment, and the adoption of meeting procedures that ensure that official decision-making is not compromised. Regular assessment of the effectiveness of policy implementation enables the upgrading of mechanisms and procedures to ensure their continuing relevance to a constantly evolving situation.

... strong enforcement with control and real sanctions are the fundamentals of the policy

Monitoring mechanisms, such as management and internal controls and external audit, can be used to detect breaches of policy and take into account any consequences that resulted from the conflict. In case of non-compliance, proportional enforceable sanctions, in the form of disciplinary measures or prosecution which affect the appointment or career of the public official concerned, could provide evidence of the organisation's commitment to upholding its integrity policy. Complementary management measures which provide effective redress for breaches of the policy, in the form of retroactive cancellation of affected decisions or tainted contracts, and exclusion of the beneficiaries from future contracts, can also be adopted.

Successful implementation depends on co-ordination of prevention and enforcement measures

Effective co-ordination of preventive measures and positive enforcement is a key element of successful implementation. The coherent integration of these measures into the existing legal, institutional and procedural frameworks promotes an organisational culture where conflicts of interest are properly identified and resolved or managed appropriately without unduly inhibiting efficiency.

Encourage new co-operation with the business and non-profit sectors

The business and non-profit sectors can play a crucial role in keeping the policy up-to-date in the context of increasing co-operation with public

organisations. The Guidelines advocate promoting integrity in partnership with the business and non-profit sectors by:

- Providing clear public standards that define the parties' responsibilities for integrity.
- Supporting the involvement of business and non-profit sectors in the development and implementation of conflict-of-interest policy for public officials.

From policy to practice

OECD is developing management tools...

In order to help the implementation of policy standards the OECD is developing and testing *Conflict of Interest Management Tools*. These forthcoming tools provide a set of practical management strategies and processes that help managers put the Guidelines into practice.

... that also assist dialogue with non-members

The OECD Guidelines, together with the report and practical management tools, are the first international comprehensive reference in this key area of governance. The report, Guidelines and management tools can also be deployed to promote good governance in non-OECD countries, particularly in transition economies in Central Eastern Europe, in Asia-Pacific and Latin America, by providing a benchmark for non-member countries against which policy-makers and managers can compare, assess and further develop existing policies.

Reporting back on progress and emerging issues in 2006

The 2003 OECD *Recommendation on Guidelines for Managing Conflict of Interest in the Public Service* requests the Public Management Committee to report back to the Council on progress made by member countries in implementing the Recommendation. To answer this request, a new report, scheduled for 2006, will analyse how the Guidelines are applied in very rapidly changing public sector environments and will also review developments in emerging areas such as public-private partnership, sponsorship, lobbying and employment after public office or institutional conflict of interest.

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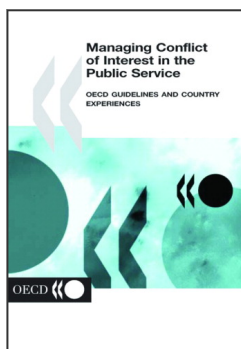
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From:
Managing Conflict of Interest in the Public Service
OECD Guidelines and Country Experiences

Access the complete publication at:
<https://doi.org/10.1787/9789264104938-en>

Please cite this chapter as:

OECD (2004), "OECD Guidelines for Managing Conflict of Interest in the Public Service", in *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264104938-2-en>

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