



Implementation of conflicts of interest rules: challenges and good practice

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International standards: UNCAC

- **Article 7 Public sector, paragraph 4**

Each State Party *shall*, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that *promote transparency and prevent conflicts of interest*.

- **Article 8 Codes of conduct for public officials, paragraph 5**

Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make *declarations* to appropriate authorities regarding, inter alia, their *outside activities, employment, investments, assets and substantial gifts or benefits* from which a conflict of interest may result with respect to their functions as public officials.



International standards: UNCAC

- **Article 9 Public procurement and management of public finances, paragraph 1(e)**

Each State Party *shall*, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, *shall address*, inter alia:

- (e) Where appropriate, measures to regulate matters regarding *personnel responsible for procurement*, such as *declaration of interest* in particular public procurements, screening procedures and training requirements.



International standards:

OECD Guidelines for Managing Conflict of Interest in the Public Service

- the first comprehensive international standard and reference on conflict of interest policies
- a tool to review and modernise conflicts of interest policies in the public sector
- the benchmark against which to assess and further develop existing policies

Definition of a conflict of interest – 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.



International standards: OECD Guidelines

Modern approach to conflicts of interest policy:

- identify risks to the integrity of public organisations and public officials and anticipate emerging COIs;
- prohibit unacceptable forms of conflicts by implementing policy standards;
- make public organisations and individual officials aware of the circumstances in which conflicts can arise;
- ensure effective procedures are deployed for the identification, disclosure, management and resolution of COIs;
- put in place external and internal accountability mechanisms, including sanctions



International standards: OECD Guidelines

Focus on:

- ☐ 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**



Two major approaches to managing COI in OECD :

- a **descriptive approach** defines COI situations in general terms and provides public officials with the general features of the phenomenon;
- a **prescriptive** approach defines a range of specific situations that are considered incompatible with public office or in conflict with the public interest and official duties.



Main instruments for preventing and managing COIs:

1. Incompatibilities and disqualifications, ancillary employment, concurrent appointments and mandates

- **Italy, Portugal** – exclusivity principle
- **Norway, Denmark, Iceland** – minimal regulations
- **Canada** – public office holders are prohibited from a wide range of activities and positions, including practicing a profession, the active management or operation of a business or commercial activity, a directorship or office in a financial or commercial corporation, an office in a union or professional association or a position as a paid consultant.
- **Germany** – Federal Ministers and Parliamentary Secretaries of State are forbidden from occupying another salaried office, practising another profession or commercial occupation, acting as a paid arbitrator or undertaking a consultant activity outside the courts; holding an honorary position without government permission; sitting on boards or supervisory boards of companies with profit-making aims, with certain exceptions.
- **France** – concurrent mandates



Main instruments for preventing and managing COIs:

2. Declaration of interests

- **Finland** – most senior civil servants to declare their private interests according to provisions of the Civil Servant's Act
- **Ireland** – annual statements of MPs, PM and ministers entered in a register and published; annual statements made by public and civil servants
- **UK** – Ministers advised to provide their Permanent Secretary with a full list of all interests (including of a spouse or partner and children) which might be thought to give rise to a conflict. The Ministerial Code lists forms of private interests, sets procedures for resolution of conflicts in general and also addresses specific issues, such as Ministers' constituency and party interests
- **Bulgaria, France, Portugal** – *ad hoc* declarations by MPs



Main instruments for preventing and managing COIs:

3. Gifts and benefits

- **Canada** – gifts, hospitality and benefits must be declared publicly in the Public Registry;
- **Germany** – notification of gifts received in connection with official position
- **Latvia** – mandatory declaration for all public officials (including elected officials and MPs)
- **UK** - members of the British Parliament to declare gifts worth more than 1% of their salary
- **US** – gifts from foreign governments of up to \$ 375 and gifts from any other source of up to \$ 50 are acceptable



Main instruments for preventing and managing COIs:

4. Asset declarations

- **Croatia** – declarations of public officials (elected and appointed) are public, those of judges and prosecutors can be made public in certain cases
- **France** – limited disclosure (consultable only by voters from the elected representative's constituency *in situ* with specified authorities, disclosure of private information is a crime)
- **US** – 20 000 public declarations and approx. 255 000 confidential declarations within the executive branch



Main instruments for preventing and managing COIs:

5. Post public employment

- **Canada** – Ministers to wait for 2 years before taking employment with any organisation with which they had direct and significant official dealings during their last year in public office.
- **Poland** – up to one year following end of tenure, civil servants cannot be employed or perform any activities for a business entity if they were involved in the official decisions of cases concerning the business.
- **Italy** – telecom, energy sectors; procurement and contract management for officials overseeing public works
- **Spain** – supervisory and regulatory agencies (competition, energy, nuclear security agencies);
- **US** – financial institution regulatory agencies; procurement and contract management for officials overseeing public works when contracts exceed a threshold



Main instruments for preventing and managing COIs:

6. Third party contacts, lobbying

- **Denmark** – further transparency measures for employing political advisors
- **France** – public register of lobbyists shared by government, local authorities and the parliament; policies regarding parliamentary assistants

Need for further guidance and advice to MPs on their interaction with lobbyists (Bulgaria, Portugal, US)



Main instruments for preventing and managing COIs:

7. Specific policies for:

- **officials in charge of contract management, procurement officials** – New Zealand (The Audit Office developed specific Good Practice for Purchasing by Government Departments guidelines that set out the standards for identification and management of COI)
- **Judges and prosecutors** – Canada (self-regulating codes of conduct for federal judges since 1998)



Consequences of breaching COI policy:

- **personal** consequences, including disciplinary actions and criminal prosecution (non-disclosure of COI is criminally liable in Austria, France, Ireland, Italy, Korea, Slovakia; in Portugal, ministerial advisors in addition to losing office, should also reimburse the remuneration they have received);
- **management** consequences – range from advice to the cancellation of affected decision to correct the material consequences of compromised decisions and tainted contracts.



Remaining challenges:

- Greater coherence of standards that would facilitate unambiguous interpretation and implementation
- Simplification and streamlining of procedures
- Better integration of COI policies in the broader anti-corruption strategies
- Providing more details to the public on the implementation of COI policies in general and with respect to senior public office holders
- Regular assessment of the implementation, impact and effectiveness, including with the involvement of civil society