

# ARE GOVERNANCE ARRANGEMENTS ADEQUATE TO PREVENT CONFLICT OF INTEREST IN POST-PUBLIC EMPLOYMENT AND LOBBYING?

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## *Introduction and methodology*

Conflict of interest<sup>2</sup> has been a key issue in recent years. When conflict-of-interest situations have not been properly identified and managed, they could seriously endanger the integrity of organisations and result in corruption in the public sector and private sector alike. Lobbying and post-employment cases especially made headlines in media worldwide and raised public concern about the integrity of government decision-making particularly in procurement and regulatory decisions. Effectively preventing and managing conflict of interest in the public service have been considered vital to maintain trust in public decision making. A survey has been conducted in late 2005 early 2006 through answering a comprehensive questionnaire by central government experts in 30 OECD countries on:

- Progress made in conflict of interest policy and practice in the past three years;
- Arrangements in place for ensuring effective application of rules and policies to avoid conflict of interest when officials leave public office or in anticipation of leaving and taking up employment and – either temporarily or permanently – work in the private or not-for-profit sectors; and
- Approaches and regulations that have been developed for relationships with those lobbying, including the main concerns (whether they were related to the integrity of public decision making or lobbyists' behaviour and governance arrangements in place to address these concerns (e.g. by improved transparency mechanisms or by setting standards for lobbying).

### *1. Progress made in managing conflict of interest in the public service in the last three years*

80% of the 30 OECD countries updated key elements of their frameworks for preventing and managing conflict of interest, in particular:

- Enacted new Acts on conflict of interest, for example Czech Republic, Italy and Spain. Several countries updated relevant existing regulations, for example Slovakia, Germany and Greece.
- Updated codes of conduct or issued new codes, for example Canada, Ireland, Japan, Norway and Spain.
- Established new institutional frameworks such as the independent Office of Ethics Commissioner in Canada, a central unit for co-ordination in Germany, and the Ethics Board of Public Servants in Turkey.

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<sup>1</sup> Further information on the results of the survey and the forthcoming report; please contact János Bertók, Principal Administrator ([janos.bertok@oecd.org](mailto:janos.bertok@oecd.org)), OECD Public Governance and Territorial Development Directorate ([www.oecd.org/gov](http://www.oecd.org/gov)).

<sup>2</sup> 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.

- Modernised implementing mechanisms, such as the introduction of new disclosure system in Norway and “Blind-trust Stock System” in Korea; Hungary streamlined asset declaration procedures.
- Provided practical tools for supporting awareness raising and implementation, such as guidelines, toolkits and handbooks, for example in Canada, Czech Republic, Finland, Germany, New Zealand and Norway.

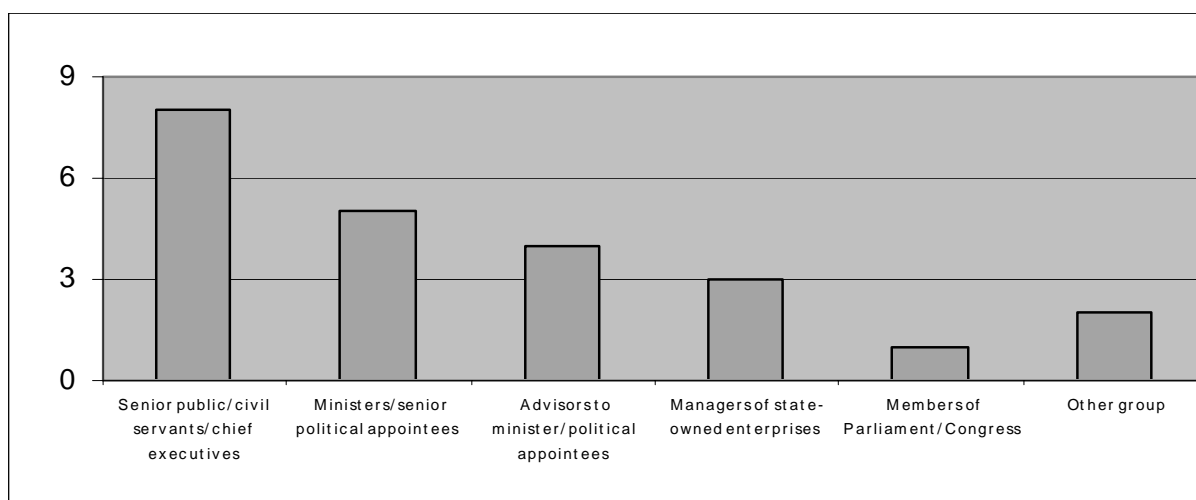
## 2. Preventing conflict of interest in post-public employment

OECD countries have encouraged movement of personnel between sectors to support labour market dynamism. However, suspicion of impropriety, such as misuse of “insider information” and rewarding past decisions benefiting a prospective employer, have raised concerns.

The survey indicated that countries are aware of this risk and over 83% of OECD countries set rules – principally in legislation – for avoiding conflict of interest. The general approach is to focus on public officials rather than on prospective employers and set general prohibitions that are applicable to all public officials. Few countries developed specific restrictions, principally for top level officials and exceptionally for risk areas for tailored application of prohibitions and restrictions.

Post-public employment prohibitions and restrictions are considered as temporary solutions: countries generally use time limits for their application that range from six months (in Norway) to a maximum of a five-year period (in France and Germany). While ten countries apply the same time limit across the whole public service, nine countries established specific time limits for senior categories (see following figure indicating the number of countries):

**Figure 1. Specific time limits on post employment restrictions for public officials**



Whereas several measures are used for communication of rules on restrictions, only few countries have established procedures for approval of new employment. Managers remain key in applying the rules, independent bodies have also been created recently for ensuring unbiased approval-decision for senior level. Although providing flexibility in case management is an emerging concern, few countries provide standards for it and make available formal appeal mechanisms.

Supporting application of rules remains rather experimental whereas enforcing restrictions and imposing suitable sanctions remain a key challenge for many countries. Traditional such as disciplinary sanctions are although available but could rarely be applied when officials already left their position (an example for exception is the curtailment of retirement pension). More

effective are the criminal or administrative sanctions such as debarring the former public official to enter again into public office for a period of time (e.g. for five years in Spain) and also debarring companies improperly employing a former official from public contracts.

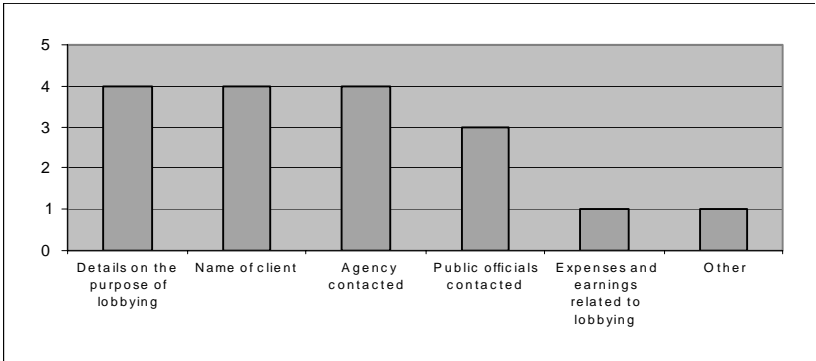
**3. Improving governance arrangements to ensure transparency in lobbying**

Existence of large interest groups – in particular business associations and large companies, Trade Unions and NGOs – and their efforts to influence policy making is a reality in modern democracies. However, assertions are made that it frequently borders on influence peddling and that lobbyists have privileged access to decision makers and their representations too often take place behind closed doors. Public opinion has often raised questions about the legitimacy of public decisions and after a decade public expectations have given new impetus to revisit current governance arrangements to:

- Enhance openness on actors influencing policy making.
- Provide a level playing field for all stake holders interested in participating in development of public policies.

The survey shows that only five countries – Canada, Hungary, Poland, the United Kingdom and the United States – have already set rules for lobbying and even fewer have experience of long-established legal frameworks for improving transparency in lobbying. Although, no single concept and definition exist for lobbying in OECD countries, findings show several commonalities, including purpose of rules, formal sources of rules, transparency standards (see figures below on types of information to be disclosed) and supporting measures for implementation. [Please consider inserting a reference to how companies implement policies and procedures for lobbying and on the draft new GRI]

**Figure 2. Disclosed information on lobbying**



Survey findings also reveal diverging aspects in defining the subject, delimiting the scope, and providing administering capacity and sanctions as these elements should be closely considered in the country context. Improving compliance remains a key challenge even in these countries.