Guidelines for Prevention of Conflict of Interest

November, 2013
Belgrade, Serbia
1. What is a Conflict of Interest?

Conflict of interest existed in public service is as old as public administration. Nowadays managing conflict of interest in both the public and private sectors has become a major governance issue world-wide.

Major international standards defining conflict of interest are:
- The OECD “Guidelines for Managing Conflict of Interest in the Public Service”
- The Council of Europe Resolution (97)24 on the “Twenty Guiding Principles for the Fight against Corruption”, (especially its guiding principles 1, 3, 7, 10 and 20)
- The Council of Europe Recommendation No. R (2000)10 of the Committee of Ministers to Member states on “codes of conduct for public officials”, (Articles 13 to 18 of the Model Code of Conduct for Public Officials)
- The United Nations Convention against Corruption (articles 5, 7, 8 and 48).

OECD has undertaken extensive work on conflicts of interest and has developed the following simple and practical definition: “A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the public official’s private-capacity interest could improperly influence the performance of his/her official duties and responsibilities”.\(^1\)

Conflict of interest can arise from avoiding personal losses, as well as gaining personal advantage – whether financial or otherwise. The OECD guidelines ensure:
1. The public interest must come first.
2. Transparency of decision making is paramount. This means supporting objective scrutiny by putting in place a system of declaration of interests and conflicts.
3. Lead by individual responsibility and personal example.
4. To establish an organizational culture that does not tolerate conflict of interests.

The Council of Europe defines the Conflict of interest as “a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective

performance of his or her official duties.”\(^2\) The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto. Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to:

- be alert to any actual or potential conflict of interest;
- take steps to avoid such conflict;
- disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;
- comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

More generally, and in academic literature - conflict of interest can be defined as any situation in which an individual or corporation (either private or governmental) is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit.

### 2. Conflict of Interests and Corruption

There is a recognized relationship between corruption and conflict of interest. But although there is no clear separation between conflict of interest and corruption, they are still different things.

Corruption is the use of public office for private gain.

Conflict of interest is the performance of public duties where the public official has a personal interest that is, or appears to be in conflict with their official duty.

Corruption in terms of “bribery, extortion, clientelism, kleptocracy, nepotism and corruption networks” has been studied as a criminological problem with economic, legal, political and sociological consequences. Conflict of interest studies describes the phenomenon as a “public administration, political and legal problem.”

\(^2\)Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials. Article 13 – Conflict of interest
Corruption may often include cases of conflict of interest, but not all cases of conflict of interest are cases of corruption.

Sometimes there is conflict of interest where there is no corruption and vice versa. For example, a public official involved in making a decision in which he/she has a private-capacity interest may act fairly and according to the law, and, consequently, there is no corruption involved. Another public official could take a bribe (corruption) for making a decision he/she would have made anyway, without any conflict of interest being involved in his/her action.

In this context a conflict of interest is not necessarily corruption or fraud. However, it constitutes an “abuse of public office for private advantage” and may hold a potential for unfair behaviour.

However, it is also true that, most of the time, corruption appears where a prior private interest improperly influenced the performance of the public official. This is the reason why it would be wise to consider conflict of interest prevention as a part of a broader policy to prevent and combat corruption. Situated in this context, conflict of interest policies are an important instrument for building public sector integrity and for defending and promoting democracy.

In reality, conflict of interest is properly understood as a situation, not an action, and it is clear that a public official may find himself or herself in a conflict of interest situation without actually behaving corruptly. Conflicts of interest involve a conflict between public duty and private interests, whereby a private interest could improperly influence the public interest, activities and decisions.

3. Types and Categories of Conflict of Interests

Conflicts of interest can be actual, perceived or potential.

• An actual conflict of interest involves a direct conflict between a public official’s current duties and responsibilities and existing private interests.

• A perceived or apparent conflict of interest can exist where it could be perceived, or appears, that a public official’s private interests could improperly influence the performance of their duties – whether or not this is in fact the case.
• A potential conflict of interest arises where a public official has private interests that could conflict with their official duties in the future.

Understanding and defining the differences between actual, perceived or apparent and potential conflicts of interest assists in identifying when a conflict exists, and determining which type of management approach may be the most appropriate.

Conflicts of interest generally fall into two categories: pecuniary and non-pecuniary interests. *Pecuniary interests* involve an actual or potential financial gain. They may result from a staff member, or a member of his or her family, owning property, holding shares or a position in a company bidding for government work, accepting gifts or hospitality, or receiving an income from a second job. Money does not have to change hands - the benefit could be an increase in the value of a property because of a favourable rezoning decision, or the selection of a particular tenderer for a contract.

For example, if a person with an application before council makes a donation to a company in which a councillor is a partner, there is a potential conflict of interest because the councillor might be influenced by the donation when considering the application. There is a risk that the councillor's personal interest in the company could conflict with his or her public duty to assess the application on its merits.

*Non-pecuniary* interests do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. The most obvious example of this is family interest – for example, the recruitment officer may have an interest in influencing hiring procedures to secure a position for his brother or cousin, without ever benefiting financially.

For example, if a municipal city planner, with a child at the local preschool, draws plans on a voluntary basis for some extensions to the preschool, she has a personal interest in the plans being approved and this could influence the impartial assessment of the application by her.

Similarly, if a government organisation that gives grants to sporting organisations has a senior staff member whose daughter is a star player in a group which is applying for funds, the staff
member has, or could be perceived to have a personal interest in the outcome of the grant application.

Moreover, there are also other interests which are not directly personal, yet may be subject to conflict of interest. With the idea of reelection in mind, elected officials generally pursue the interests of their constituents and/or of their party, and attempt to influence the relevant administrative process, which is usually against the public interest.

### Identifying types of conflicts of interest

<table>
<thead>
<tr>
<th>Actual conflict of interest</th>
<th>Perceived conflict of interest</th>
<th>Potential conflict of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>A public official is in a position to be influenced by their private interests when doing their job.</td>
<td>A public official is in a position to appear to be influenced by their private interests when doing their job.</td>
<td>A public official is in a position where they may be influenced in the future by their private interests when doing their job.</td>
</tr>
</tbody>
</table>

### Examples of Potential Conflicts Of Interest

1. **Tendering and Purchasing**
   
   An organisation has advertised for a firm to supply and fit office equipment. A member of the panel assessing the tenders has shares in one of the firms which has submitted a bid. This may affect, or it may reasonably be suspected that it could affect, his or her ability to make an unbiased decision.

2. **Staff Recruitment**
   
   A member of a selection panel has a close relationship with one of the applicants for the job. This conflict of interest could bias, or could reasonably be expected to bias, the decision of the panel.

---

3. Secondary employment

Two police officers have second jobs as bouncers at a nightclub. Local residents have complained to the police several times about noise levels at the club and problems with drunks and underage drinking, but no action appears to have been taken. The impartiality of the police officers has been compromised, as it may be perceived that they are using their influence to make sure the club is not investigated.

4. Dealing with former public officials

A senior employee of a government department awarded a particular firm several valuable contracts. Shortly after awarding the contracts, he resigned from his job and went to work for the firm. It could appear that the offer of employment was a personal benefit, in return for favours given. Other competitors might be disadvantaged if staff at the agency were influenced by their previous colleague and continued to award contracts to his firm. This situation must be carefully managed to ensure favouritism, or the perception of favouritism does not occur.

5. Gifts, benefits and hospitality

A regular supplier offered the purchasing officer of a government department a free weekend for two, at a beach resort. The officer's impartiality when dealing with the supplier could be compromised if she accepted the offer.

6. Local Government Planning Approvals

A senior council planner often had to advise applicants on how to make their development applications comply with council's codes. He suggested to some applicants that they should use the services of a local architectural firm where his brother worked. Although the necessary work was mainly done by staff at the firm, the planner was sometimes paid to prepare the drawings himself. The planner's job was to act in the public interest and to provide impartial advice about council's policies. By recommending his brother's firm, he put the private interests of his brother and himself before his public duty. A similar conflict can occur when councils have a dual role as developer and regulator. Councils that decide to develop a piece of land they own, may make decisions in their own commercial interest and unfairly disadvantage other developers. It may be difficult for councils to be impartial when they effectively have to assess their own applications.
7. Licensing

A health inspector is friendly with the owner of a local butcher's shop and often gets given extra meat with his family's order. As a part of his job, the inspector has to inspect the butcher's shop to check whether it complies with health regulations. The personal relationship between the butcher and the inspector, and his acceptance of free meat, could reasonably be expected to influence his assessment of the health standards in the shop.

8. Elected officials

Many councilors have business and professional interests in the local government area they represent. Conflicts can arise if their public positions allow them access to information and opportunities that could be used to advance their personal and business interests. For example, a councillor may be tempted to influence an application to set up a new business in the town if his own business could lose customers as a result.

In total, potential conflicts of interests concern different issues such as: Relationships (such as obligations to professional, community, ethnic, family, or religious group in a personal or professional capacity, or to people living in the same household); Possession of important information; Representing and acting for foreign countries; Misuse of own position for private gain; Misuse of government property; Other professional activities; Post-employment; Future employment; Financial interests; Different responsibilities to different actors; Honorary positions; Invitations for holidays, dinners, speeches, participation in events.

Some scholars have identified eight categories of conflict of interest:

1. Self-dealing refers to a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity, and which confers a benefit on oneself.

2. Accepting benefits describes that public employees should not solicit nor, unless duly authorized, accept transfers of economic value from persons with whom they have contact in their official capacity. Such benefits range from token gifts to significant "transfers" prohibited by the criminal code.

3. Trading in influence is "the practice of soliciting some form of benefit... in exchange for the exercise of one’s official authority or influence on their behalf".
4. Using government property may involve using government telephones for personal use or the archetypal "taking pencils home" from the office. In more serious iterations, it might involve significant private use of government vehicles, aircraft, computers, etc.

5. Using confidential information means that a public official discloses to others, or uses to further their personal interest, confidential information acquired by them in the course of their official duties. A specific example of this is "insider information", which means the use of information that is gained in the execution of a public official’s office, and is not available to the general public to further or seek to further the member’s private interest.

6. Outside employment may include a public official to engage in, solicit, negotiate for, or promise to accept private employment, or render services for private interests or conduct a private business when such employment, service or business creates a conflict with, or impairs the proper discharge of their official duties.

7. Post-employment is one of the newest areas of conflict of interest. It implies that public officials cannot act after they leave public office in such a manner as to take improper advantage of their previous office. This is the problems of "capture" of government officials, particularly in areas of regulation. When "future employment" in such situations emerges, public interest in such examples rises, and public confidence in prior administrative decisions and fairness by such officials is potentially undermined.

8. Personal conduct is the question whether public servants (are) entitled to the same privacy as other citizens. There are two key circumstances where personal conduct may create a conflict situation:

(a) when a public servant’s conduct makes him or her vulnerable to pressure to use his or her public office improperly (as with drug addiction); and (b) when a public servant’s conduct brings significant discredit to the government or to a particular department and thereby undermines public trust in public officials. Each case of questionable or improper personal conduct involving public servants needs to be carefully considered on its merits.

4. Regulation of Conflict of Interests

There are basically three categories of conflict of interest regimes worldwide: restrictive approach, moderate approach and soft approach with special reference to extent of regulation, obligation and mechanisms. Although very few numbers of democratic countries have adopted
general conflict of interest laws which apply to all institutions, there are some universal standards regulated within the scope of conflict of interests.

Despite the inherent limitation to regulate “behaviour”, some countries establish impressive lists of prohibitions and restrictions. These restrictions concern different issues such as:

– absolute prohibition to accept gifts;
– regulation or restriction of political activities;
– prohibition of the appointment of relatives;
– restricted membership of boards, NGOs, companies and non-profit organizations;
– no affiliations with trade union or professional organisations and other personal interests;
– no involvement in secondary employment that potentially conflicts with an official’s public duties – no undertakings and relationships (such as obligations to professional, community, ethnic, family, or religious group in a personal or professional capacity, or to people living in the same household);
– disclosure of public information;
– interdiction to represent and act for foreign countries;
– rules on the use of own position for private gains, misuse of government property and information;
– resignation requirements;
– others.

In addition to these prohibitions and restrictions, different countries and institutions implement new measures as to disclosure duties, general transparency requirements, monitoring and control instruments (such as ethics commissions), and training and awareness policies and reform their administrative and criminal law statutes.

Despite these common trends, the Member States of the EU, the European institutions and Canada and the US differ widely as to the degree of transparency policies, powers of the different ethic commissions and committees, training (obligatory or non-obligatory) and disclosure requirements (e.g. declaration of personal income, declaration of family income, declaration of personal and family assets, etc.). In addition, important differences exist as to rules and standards in the field of post-employment policies (existence of cooling-off periods, strict, flexible or no restrictions and control of post-employment activities), complete or only partial restrictions and
control of gifts and other forms of benefits, personal and family restrictions on property and
divestment requirements. As can be seen, the area of conflicts of interest is a field of
extraordinary complexity and political and legal sensitivity. Only the principle as such is easy to
define. However, to resolve a conflict and to distinguish between actual, apparent, real, and
potential conflict situations usually requires legal, technical and managerial skills and a
fundamental understanding of the many issues and points of view involved. Moreover, the
language is confusing: “having an interest” is not the same as being interested in an issue.

The most important instruments to prevent and avoid conflict of interest are:

1. Restrictions on ancillary employment;
2. Declaration of personal income;
3. Declaration of family income; Declaration of personal assets;
4. Declaration of family assets;
5. Declaration of gifts;
6. Security and control of access to internal information;
7. Declaration of private interests relevant to the management of contracts;
8. Declaration of private interests relevant to decision-making;
9. Declaration of private interests relevant to participation in preparing or giving policy
   advice;
10. Public disclosure of declarations of income and assets;
11. Restrictions and control of post-employment business or NGO activities;
12. Restrictions and control of gifts and other forms of benefits;
13. Restrictions and control of external concurrent appointments (e.g. with an NGO, political
    organisation, or government-owned corporation);
14. Refusal and routine withdrawal of public officials from public duty when participation in
    a meeting or making a particular decision would place them in a position of conflict);
15. Personal and family restrictions on property titles of private companies;
16. Divestment, either by the sale of business interests or investments or by the establishment
    of a trust or blind management agreement.

Then, the first major questions arises: who will become the subject of these regulations? These
rules should apply to all public officials, elected or appointed, in executive branch, including the
members of the government. However, different types of public officials need to be regulated differently.

Some of the institutional mechanisms for preventing conflict of interest in the case of appointed public officials (public/civil servants) may be applicable to elected officials but not all. There are several differences between appointed and elected public officials. Whereas civil servants are “permanent, professional and full-time” officials, the elected officials are “temporary, non-professional and part-time.” Whereas civil servants are “accountable only to the institution for which they work and its rules” the elected officials are directly accountable to the public through elections and other means and ways of legislative control. Whereas civil servants can only participate in specific discussion relevant to their office or duty the elected officials are, by definition, part of various public debates or decision-making process. Therefore it is necessary to draw a clear distinction between public officials who exercise functions within public administration or a public sector entity on the one hand, and elected representatives who are political figures responsible before parliament and ultimately to the voters on the other. Besides that, the holders of judicial office (i.e. judges and prosecutors) usually are also excluded from the scope of the conflict of interest regulation applied to the public administration officials.

Second methodological question is how to develop a regulation for conflict of interest?
Three main types of regulation are:

- prohibitions on activities,
- declarations of interests, and
- exclusion from decision-making processes.

The objectives of conflict of interest regulation are wider, and in practice include the following:
- To prevent conflict of interest situations arising, to the extent that this is possible and practical
- To establish rules that address conflict of interest situations where they do arise
- To provide guidance to public officials and enable them to protect themselves more easily.

4.1. Prohibitions and incompatible activities

In order to prevent possible conflict of interest situations, prohibitions on concurrent positions, duties and interest in addition to a public servant’s official duty are very essential. These may
include a brief list of measures in a summary form: overlapping positions in different branches of
government, employment or holding a position in or contractual relation (e.g. consulting) with
private sector, having shares (absolute or over certain percentage) in private legal entities
partially or fully owned by the state or doing business with the state, signing a contract with the
government or the government agency where the official works, temporary leave from public
office to work in a private legal entity which the official’s government office does business with
or exercises regulatory power over.

It should be taken into account that if salaries of public officials are not satisfactory for
maintaining a standard of living, outside income sources cannot be prohibited unless that interest
may have a conflict with public official’s official duty.

Due to the limited period of duty with no reelection guarantee, an elected official may continue to
pursue interest outside the office. However, an elected official cannot have an overlapping
membership in different branches of government, hold a position, or have an interest in a private
company which may have a contract with the government, or hold a position or interest which
prevent the elected official to fulfill the official’s duty.

4.2. Declaration of Interests

Declaration of Interests may be seen as the single most important component of a framework
for tackling conflicts of interest. Article 8.5 of the United Nations Convention Against
Corruption obliges parties to the Convention 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.

Such declarations have two main forms:

- general declarations of personal interests, usually recorded in a register of interests; and
- case-by-case declarations by members, of any interest they may have in a matter that is
  before the legislature or one of its committees of which they are a member.
It is important to distinguish between declarations of assets/income and declarations of interests. Assets and income refer to concrete financial ownership or benefits, whereas ‘interests’ encompasses a wider range of benefits that may at the time of declaration not have provided the public official with any concrete benefit. Examples include membership in a business association, but also any position, function or similar, that results in the official being subject to certain incentives – for example the job held by a relative.

Although public officials do make general declaration of their assets and income regularly, declaration of interest can be made on ad hoc basis. As private interests could affect the impartiality of civil servants in their discharge of duties, declaration of private interests has been made a requirement for civil servants in several countries. Apart from declaring their own interests, civil servants may also be required to disclose those of their family members. This is a listing of public officials’ relevant personal interests and possibly those interests of individuals closely related to the employee where the interests may cause a conflict of interest. These may be either “general declarations of personal interests, usually recorded in a register of interests” or “case-by-case declarations by members of any interest they may have in a matter that is before the legislature or one of its committees of which they are a member”.

Declaration of interest provides transparency by means of which detection of conflict of interest situations and exclusion of public official from decision-making process can be possible. Declaring an actual or potential conflict of interest is essential to avoid any such perception that public official is acting in his self-interest – e.g. making a declaration of personal assets on taking office, establishing “blind trusts” that are managed by an independent trustee, and “declaring an interest” and asking another minister or official to provide the advice or take the decision when there is a clear conflict of interest”.

For practical reasons, the scope of declaration of interest should cover only those who have important decision-making powers, such as department heads. It is equally important to define the value or size of particular kinds of interest over which they must be declared.

Declaration of interest is more important for elected officials simply because of the nature of their functions and must be regulated separately. The major question here is the extent to which
declarations of interests should be public. In other words, how to balance transparency and right to privacy is a delicate matter.

In this respect, there are two important points to be formulated carefully. First, the higher the office held by the official and the greater his/her decision-making authority, the stronger is the argument for public disclosure. Second, the content of declaration can be divided into two as “public” and “non-public” parts.

4.3. Exclusion from decision-making process

The main outcome of declaration of interest is the exclusion of a public official from decision-making process. However, this may happen in two ways: following the declaration of interest, either the superior disqualifies the public official from participation (exclusion), or public official himself resigns from participation (self-exclusion). The important point is that public official must make the declaration to the appropriate superior and the superior should take proper action.

In the case of an elected official self-exclusion from participation, debate or voting with or without declaration varies from country to country. Since an elected official is accountable to the voters, it may be sufficient to make a declaration of interest. However, whether the voters are informed about the interest of public official in details is a major issue. It is also important that popular accountability of an elected official is simply determined by electoral system. These provisions should also apply to the members of the cabinet appropriately.

5. 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.

---

4Managing of Conflict of Interest. OECD, 2003
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 organizational 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 recognizing and rewarding exemplary behavior 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.