



CONFLICT OF INTEREST

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What is and what is not a conflict of interest

Conflict of interest (COI) is a term that applies to a wide range of behaviors. It refers to any time that an employee has a personal interest (whether actual, potential or perceived) that conflicts with the interests of their employer or a business partner.

An employee may use their position, confidential information or company time and resources for private gain. COIs can be the motive behind crimes like fraud, bribery and corruption.

Corruption occurs when a conflict of interest influences duties (misconduct, abuse of power, etc.)



A conflict of interest does not necessarily imply corruption, but it damages public trust and has to be managed.



A political statement from the organization would have to clarify that the registration or declaration of a private interest does not resolve the conflict.



Beyond corruption and political scandals...

- Reviews must be conducted proactively by the administration and not driven by scandals.
- Although conflict of interest has been considered a sensitive issue, this proactive approach prevented the debate on the conclusions of reviews from becoming over politicised.
- Some countries even integrated reviews into periodic assessments to check the implementation of rules and standards, for example, in reviewing the implementation of the Directives in Germany, and the application of the 2000 Ethics Code in Japan.



Types of Conflict of Interest

- A real conflict of interest: it involves a conflict between the public duty and the private interests of a public official;
- An apparent conflict of interest: it exists when it appears that the private interests of a public official may inappropriately influence the performance of his duties, although this is not the case;
- A potential conflict of interest: arises when a public official has private interests that may lead to a conflict in the event that, in the future, the official is involved in relevant official responsibilities.



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- The OECD has provided guidance on the issue in the following documents:
 - **Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service**
 - **Recommendation of the Council on Public Integrity**

For example, by asking countries to:

- c) set clear and proportionate procedures to help prevent violations of public integrity standards and to manage actual or potential conflicts of interest;
- Guidelines, Toolkits and Integrity Reviews



Managing conflict of interest

- Managing conflict of interest requires a balance
- A too-strict approach to controlling private interests may conflict with other rights or be unworkable or deter experienced and competent candidates from entering public office or public service.
- A modern approach to conflict-of-interest policy seeks to strike a balance by:
 - **Identifying risks** and managing those risk within an organisation
 - **Prohibiting** unacceptable forms of private interest
 - **Raising awareness** of the circumstances in which conflicts can arise
 - **Building capacities** to prevent conflict of interest through training
 - **Ensuring effective** procedures to resolve conflict-of-interest situations



OECD Guidelines to Manage a conflict of interest

The OECD helps countries modernise their approach for managing conflict of interest by mapping “at risk” areas and positions within the public service and paying particular attention to:

Asset declarations that follow some criteria, particularly focused on risk areas or positions (e.g. PEPs, decision makers or managers of public funds)

Practical framework of reference for reviewing and modernising existing policy solutions in line with good practice

Promote a public service culture in which conflicts of interest are properly identified and resolved or managed (role of Human Resources offices or Civil Service).

Support partnerships between the public, private and non-profit sectors in identifying and managing conflict-of-interest situations





OECD REPORT ON IMPLEMENTATION

Tightening restrictions and simplifying rules, lack of clarity was identified as a common weakness both in countries with long-established codes of conduct, such as Canada, and in countries with a new code with complicated text, for example in Japan. Reviews also pointed out that uneven awareness of rules and policies presents a key barrier to implementation.

Expand the scope of the code of conduct, for example in Korea to cover employees in public agencies, in addition to public officials in government; and clarify terms in order to ensure consistent application, for example of the Standards of Ethical Conduct in the United States.

Simplification and harmonisation of disclosure forms and procedures, for example in Hungary and the United States.



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- **Mapped out risks and identified emerging challenges**, providing options for improving and enforcing transparency mechanisms that could effectively deal with appearance of conflict of interest have been a concern in many countries, such as in Canada, Denmark, Poland and Portugal.
 - **Better co-ordination and monitoring by a central unit**, for example, in Belgium, Germany, the Netherlands and Portugal.
 - **Include new types of sponsoring**, for example “editorial fees” in Japan. Some countries also expressed emerging concern to establish adequate standards for: Those employees who carry out public tasks, although they are not employed by public organisations.



Issues to be considered when drafting legislation

- Definition of private interest
- Legislation or rules must take into consideration the different branches of power (executive, legislative and judicial).
- Cooling-off period
- Asset declaration and how to best use it (risk areas)
- How to improve prevention (think about the different possibilities, conflict of interest before taking office (board member), during office (wife in a position that conflicts with the role), after (cooling-off period))



Private Interest

Financial or monetary interests, Personal affiliations or associations, Family interests,

Private activities (eg, being the owner / partner of a private business, participating in a Board of Directors, etc.)

Last job or former clients (e.g. a lawyer that gets appointed as a Judge)



Cooling-Off Period: Seek reasonable time limits for tailored application of prohibitions and restrictions

Finding the right balance in the legal framework is a key concern in OECD countries as excessive prohibitions and restrictions for post-public employment could create severe impediments to bringing knowledgeable and experienced people into the public service.

“Cooling off” period in the timeframe determined by laws. Among OECD countries the maximum fixed time limits range from six months, for example in Norway, up to a five-year period in France and Germany.

In general this “cooling-off” period is one year, for example for public servants in Canada, Ireland, Mexico, Poland and Slovakia; or two years, for example in Japan, Korea, the Netherlands, Turkey and the United Kingdom.

To avoid “switching sides” in cases in which former officials have personally and substantially participated in the decision making, no fixed time limit is applied. The actual duration of the limitations depends on the life of a specific matter, for example a contentious issue.



Risk areas to be considered for policies and assets declarations

Human resources management Another job

- Other concurrent positions
- Employment prior to / or subsequent to the position of public servant

Public procurement

- Bids
- Evaluations
- Contract assignment

Other Areas

- Decision and policy design
- Inside information
- Family and community expectations
- Gifts and other benefits



Prevention of conflicts of interest

Public officials

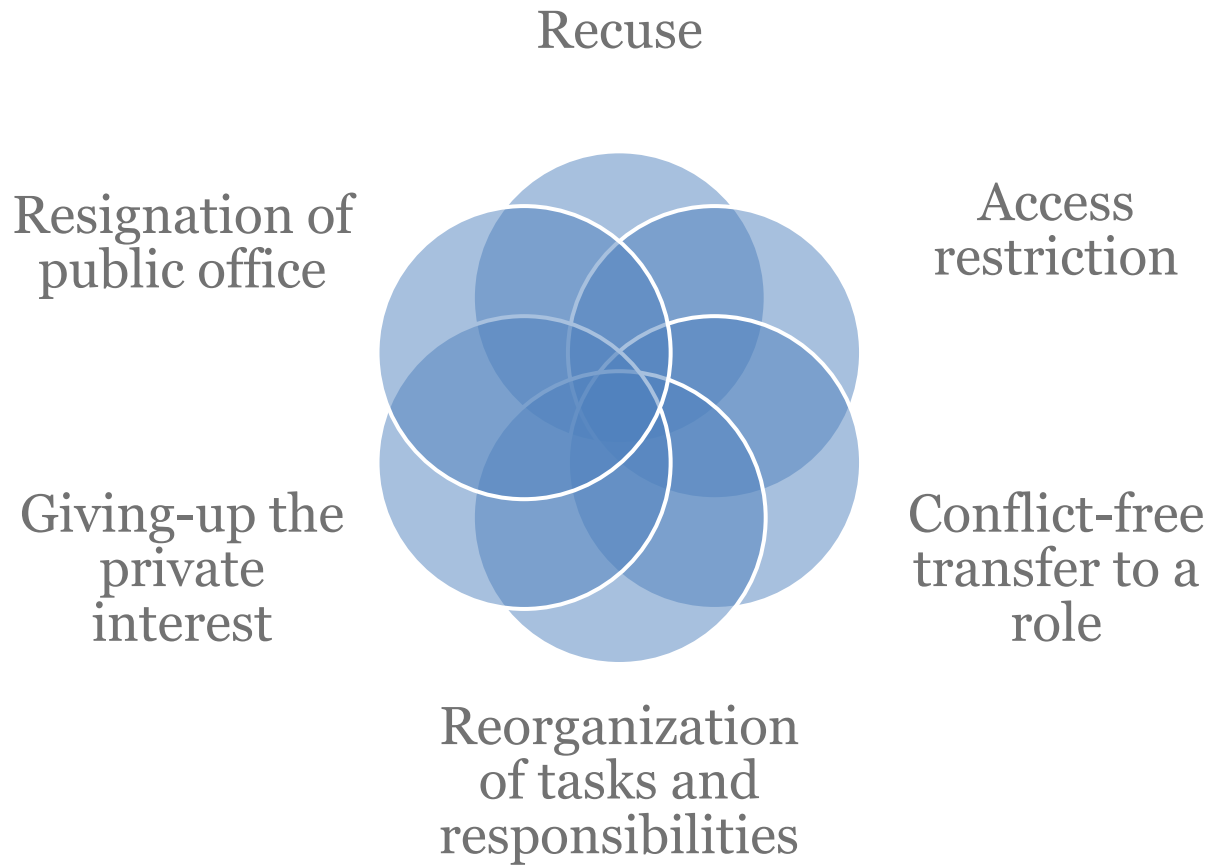
- Comply with the organization's codes of conduct / ethics
- Identify and declare your conflicts of interest as required
- Declare gifts and other benefits received

Public Organizations

- Publish the conflict of interest policy
- Ensure early detection
- Provide regular reminders
- Provide guidance and assistance
- Implement always current policies and tools



How to manage a conflict of interest?





Conflict of Interest: policy recommendations

Define real, apparent and potential conflicts of interest;

Identify risks to the integrity of public organizations and public officials

Prohibit unacceptable forms of conflict

Adequately manage conflict situations; during both pre- and post-public employment

Raise awareness in public organizations and public officials about conflicts of interest

Promote the adequate resolution of conflict of interest situations