Unclassified **GOV/PGC(2006)4**

Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development **31-Mar-2006**

English - Or. English

PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE
PUBLIC GOVERNANCE COMMITTEE

GOV/PGC(2006)4
Unclassified

MANAGING CONFLICT OF INTEREST

33rd Session of the Public Governance Committee
6-7 April 2006
Château de la Muette, Paris

This document presents the main findings of the OECD survey to support discussion at the session on managing conflict of interest (Item 6 of the agenda). The results of the survey were reviewed at the expert meeting on managing conflict of interest in the public service on 26-27 January 2006.

It is presented to the Committee for comment and discussion. Delegates may also provide their written comments to the Secretariat by 17 April 2006.

For further information, please contact János Bertók, E-mail: janos.bertok@oecd.org
Tel: +33 1 45 24 93 57, Fax: +33 1 45 24 85 63.

JT03206797

English - Or. English

Introduction

The 2003 OECD Recommendation on Managing Conflict of Interest in the Public Service requests the Public Governance Committee to report back to the OECD Council in 2006 on progress made by member countries in implementing the Recommendation. It also reviews specific emerging issues related to conflict of interest in post-public employment and lobbying. Accordingly, this draft report summarises the main findings of the OECD survey[1] on:

1. General trends in recent developments for modernising conflict-of-interest policy and practice, and how the OECD Guidelines have been used in the last 3 years;
2. Standards and measures in place for preventing conflict-of-interest situations in post-public employment; and
3. Approaches and legislation for improving transparency and accountability in lobbying.

Action

Delegates are invited to **comment** and **discuss** the main findings. Delegates may also provide their written comments to the Secretariat by 17 April 2006.

Questions for discussion:

1. Progress made in managing conflict of interest

- *What concerns lessons can be learned from reviews and updates of conflict of-interest policy and practice in the past three years? What are the emerging issues and key areas of concern?*

2. Preventing conflict of interest in post-public employment

- *How could prohibitions and restrictions be better tailored to achieve the objectives of post-public employment policy in risk areas? What measures successfully support implementation and what sanctions prove effective?*

3. Improving governance arrangements to ensure transparency in lobbying

- *What are the main concerns with regard to lobbying? How could these concerns be addressed by governments? What measures could ensure transparency and accountability in lobbying?*

[1] Based on responses from 30 OECD countries to the OECD Country Information Sheet on Managing Conflict of Interest, GOV/PGC/ETH(2005)4.

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

Maintaining confidence in public institutions has been a major concern in countries

Conflict of interest has been a key issue in recent years, as preventing and managing conflict of interest in the public service have been considered critical for ensuring good public governance and vital to maintain trust in public decision making.

Two thirds of OECD countries reviewed their conflict-of-interest policy and practice in the last three years …

Following the approval of the 2003 *OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service*, countries made significant efforts to review and verify whether existing arrangements were outdated to deal with emerging concerns, particularly resulting in the breaking down of barriers between the public and private sectors.

…and identified weaknesses, particularly the lack of clarity and awareness,…

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 for implementation.

…put forward proposals for closing loopholes and simplifying rules,…

Results of reviews gave directions for improvement and proposed amendments: to improve clarity and close loopholes, for example in the new Ethics Code in Japan; to reinforce awareness raising and monitoring in Germany; to develop a new code of conduct in Portugal; to update and simplify standards, clarify terms in order to ensure consistent application of the Standards of Ethical Conduct in the United States.

…strengthen implementing and enforcing mechanisms…

Specific suggestions for improving implementation include, introduction of briefings, for example in Germany; simplification and harmonisation of disclosure forms and procedures, for example in Hungary and the United States; and better co-ordination and monitoring by a central unit, for example, in Belgium, Germany, the Netherlands and Portugal.

…and also mapped out risks and identified emerging challenges...

Emerging new practices, such as new types of sponsoring, for example in Germany, innovative forms of gifts and benefits, for example "editorial fees" in Japan, challenge the options provided by traditional rules and practices. Countries expressed emerging concern to provide adequate standards for those who are not employed by public organisations, although they fulfil public tasks; and public officials working in boards/committees of statutory authorities, public agencies and state owned enterprises.

…such as dealing with appearance of conflict of interest

Increased media focus made it necessary in many countries to pay increased attention to appearance issues. Considering public perception is particularly critical at the top level, and in at-risk areas, for example in post-public employment and lobbying. Providing options for improving and enforcing transparency mechanisms that could sufficiently deal with appearance of conflict of interest have been a concern in many countries, such as in Canada, Denmark, Poland and Portugal

Reviews mostly focused on adequacy of existing legal rules and codes…

Reviews were mostly intended to verify the effectiveness of existing rules, for example, the incompatibility system in Spain, Portugal and France; the criminal statutes in the United States; and the codes for public service and for public office holders in Canada, in order to check whether existing rules

and codes were still adequate. Establishing baseline data by surveys was a key concern in countries which introduced new codes and laws, such as Japan and Slovakia.

…and occasionally on specific instruments

Some reviews put the spotlight on specific measures and mechanisms, including control mechanisms, for example in Belgium, Mexico and Greece; and financial disclosure systems, for example in Hungary, Spain and the United States.

Reviews were proactive conducted internally by the administration…

Reviews were generally 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, reviewing the implementation of the 1998 Directives in Germany, and the application of the 2000 Ethics Code in Japan.

…and exceptionally externally

Few reviews were initiated *ad hoc*, by public concern, or requested externally by another branch of power, for example directed by the Congress in the United States; or independent audit institutions, such as the Auditor General in Canada, and *Cour des comptes* in France. However, this 2003 report of the supreme audit institution was immediately followed up by a more in-depth review by the Central Agency of Corruption Prevention (SCPC) in 2004.

Over three quarters of OECD countries updated conflict of interest policy and practice to…

The vast majority of OECD countries updated key elements of their frameworks for preventing and managing conflict of interest, in particular:

- Codes of conduct as a relatively flexible instrument play an essential role in setting standards. Consequently, countries most commonly updated or issued new codes, for example the code for the public service and for public office holders in Canada, the Civil Service Code of Conduct in 2004 in Ireland, the Ethics Code updated in 2005 in Japan, the Code of Good Governance in 2005 in Spain[2], and a new Code of Conduct in 2005 in Norway[3].

…improve legal frameworks and…

- Some countries even developed new laws on conflict of interest, for example specific acts were passed in Italy and Slovakia in 2004. Bills on conflict of interest are still under debate in the Parliament in Spain and the Czech Republic. Generally, countries updated relevant existing regulations, for example the 1998 Directive was revised in Germany, and more severe sanctions were introduced in Greece.

make existing arrangements more effective

- Practical tools for supporting awareness raising and implementation, such as guidelines, toolkits and handbooks, for example in Canada, Czech Republic, Finland, Germany, New Zealand, Norway.

---

2 For further information see Modernising conflict of interest legislation: The Spanish experience GOV/PGC/ETH(2006)2.

3 See Norwegian Ethical Guidelines and the Post Employment Guidelines GOV/PGC/ETH(2006)4/ANN.

- Institutional framework – establishment of the independent Office of Ethics Commissioner in 2004 in Canada, a central unit for co-ordination in Germany, and the Ethics Board of Public Servants in 2004 in Turkey

- Implementing mechanisms, such as a new disclosure system in Norway in 2005, introduction of a blind-trust stock system in Korea in 2005 and streamlined asset declaration procedures in Hungary.

The OECD Guidelines supported the debate,…

The OECD Guidelines have played an influential role to shape professional and public debate on conflict of interest across the OECD area In general, the Guidelines were used as an international benchmark in reviewing existing arrangements, for example in France, Germany, Mexico, and designing new rules and mechanisms, for example on disclosure in Hungary and Korea.

…reviews and…

…the update of conflict-of-interest policy and practice

The OECD Guidelines provided a framework for the development of new legislation on conflict of interest, for example in the Czech Republic, Norway and Spain where the recent Code of Good Governance makes special reference to the OECD Guidelines. Other countries also incorporated specific measures from the Guidelines, for example in the Values and Ethics Code for the Public Service in Canada. In Australia, the New South Wales Independent Commission Against Corruption and the Queensland Crime and Misconduct Commission developed a set of guidelines modelled on the OECD Guidelines and a local version of the Toolkit.

The Guidelines were also translated in many countries to ensure wide distribution and use in policy review, for example, in the Czech Republic, Hungary, Portugal, Slovakia and Spain.

The Guidelines also supported dialogue with non member countries…

To help managers put the Guidelines into practice a practical "Toolkit for Managing Conflict of Interest" was developed, then tested in many countries. Non member countries have also demonstrated their interest in using the practical approach developed by the OECD Guidelines and Toolkit, which have played a key role in the policy dialogue between OECD and non member countries, in particular:

…in the framework of a global partnership,…

- Supported a new understanding of the concept of conflict of interest in *transition countries in Central and Eastern Europe*, as well as the development of new legal frameworks. For example, in South Eastern Europe the OECD Guidelines and Toolkit were endorsed at a High-level Forum in November 2003. The vast majority of these countries passed new legislation on conflict of interest in the last three years that were influenced by the OECD Guidelines. In addition, the Toolkit was also translated into all major languages in the region and widely used for training.

- Supported the “establishment of clear rules and tools for identifying and managing conflicts of interest" in the framework of the ADB-OECD Anti-Corruption Action Plan for Asia-Pacific. Many countries, for example, the Philippines and Vietnam, have already used the Guidelines in the development of new laws.

- The OECD Guidelines and Toolkit played a critical role to support the implementation of the preventative measures of the Inter-American Convention Against Corruption. The Toolkit is recognised as a "practical instrument that could be adapted to national contexts in order to help the implementation of conflict-of-interest policies" in Latin-American countries. The Guidelines and Toolkit were translated into Spanish and Portuguese to support policy making and have already been used for training, for example in Brazil.

…and reached out to the private sector

The Guidelines were considered good practice in public governance that inspired corporate governance policies and practices, for example in the review of the OECD Principles of Corporate Governance. The Guidelines are included in the draft OECD Risk Management Tool for Investors in Weak Governance Zones and the draft Policy Framework for Investment.

The Guidelines have become recognised international instrument…

The OECD Guidelines for Managing Conflict of Interest in the Public Service is considered the leading international instrument to assist governments and public institutions in reviewing and modernising their policy in this critical dimension of good public governance. The wide use of the OECD Guidelines indicated high level awareness of the Guidelines across member and non member countries and demonstrated its relevance to influence professional and public debates on finding solutions to prevent and manage conflicts of interest in the public service. These experiences provide a sound basis on which to address emerging challenges, in particular at interfaces such as post-public employment, lobbying, public procurement or the political administrative interface.

…to address emerging challenges

2. Preventing conflict of interest in post-public employment

OECD countries have encouraged movement of personnel between sectors to support labour market dynamism

A growing challenge across OECD countries has been how to attract the best and brightest to serve the public interest in public organisations. Several countries have encouraged movement between the public sector and the private sector. For example over three quarters of new entrants in senior positions came from outside the civil service in the UK and after a period of 4-5 years they sought to return to the private or non-profit sectors. Facilitating the development of civil servants' skills and competences through gaining experience in the private sector is also supported by public opinion in many countries[4]. Skill development and "removing barriers to labour market participation has become the key priority for most OECD countries"[5].

However, suspicion of impropriety, such as. misuse of "insider information" could

Leaving public office also raises legitimate questions about the potential use of the special knowledge and insights of former public officials. Commercially sensitive information, for example, could provide unfair advantage over competitors. Suspicion of impropriety, such as the potential

4 For example, a recent survey in France indicated 70% support for putting in place a system that obliges civil servants to get experience in the private sector during their career. Les Français et la Fonction publique, Sondage de l'Institut CSA, February 2006.

5 Towards More and Better-Paid Jobs: A Reassessment of the OECD Jobs Strategy, p. 1. draft 2006.

jeopardize trust in public service

misuse of "insider information"[6] for the illicit benefit of former public officials is a widely shared concern across OECD countries, as it could endanger confidence in public decisions and public officials. Post-public employment could become a particularly highly sensitive issue during government transitions or periods of outsourcing and downsizing. More frequent interchange of personnel between sectors makes it crucial that standards for preventing conflict of interest properly reflect public expectations and that existing mechanisms enable their application in all situations.

Countries are aware of the risks and set rules in legislation for avoiding potential conflict of interest...

The findings of the survey demonstrated that governments are aware of the potential risks of conflict of interest as a result of officials leaving public office. The vast majority[7] of OECD countries set out prohibitions and restrictions in laws to avoid conflict of interest in post-public employment. These prohibitions and restrictions have been reviewed and updated in almost half of the OECD countries in the last five years. Many countries have even further strengthened and reinforced these provisions.

…in line with specific policy objectives

Preventing the misuse of "insider information" by former officials and minimising the possibility of using public office for unfair advantage in obtaining post employment are considered critical measures for maintaining trust in government and public decision making. Consequently, the primary objectives of post-public employment prohibitions and restrictions are to:

- Avoid use of "insider information" to the disadvantage of both former employers in the public sector and potential competitors in the private sector.
- Discourage influence peddling, and avoid suspicion of rewarding past decisions which may have benefited a prospective employer.

The approach of OECD countries is to focus on public officials rather than on prospective employers…

As a rule, post-employment prohibitions and restrictions predominantly focus on officials leaving public office. Seeking to impose restrictions on potential or new employers of former public officials is rather the exception in OECD countries.

…and set general prohibitions…

Accepting future employment or appointment, for example to a board of directors, advisory or supervisory bodies, and misusing "insider information" are at the centre of prohibitions and restrictions. An emerging trend in OECD countries is the application of specific restrictions, for example to prevent:

---

6 Information not available to the public, such as classified government information (e.g. on policy intention, national security, etc), data on personal privacy as well as commercially sensitive information (e.g. trade secrets).

7 Details on figures, trends and good practices can be consulted in Avoiding Conflict of Interest in Post-public Employment: Comparative Overview of Prohibitions, Restrictions and Implementing Measures in OECD Countries, GOV/PGC/ETH(2006)3.

- "Switching sides"[8] in Canada, France, Ireland, Italy, Mexico, Turkey, the United Kingdom and the United States.
- Lobbying back to government in Canada, France, Mexico, the Netherlands, Portugal, Turkey, the United Kingdom and the United States.

…that are applicable to all public officials

The findings indicate that OECD countries use more the approach of setting general prohibitions and restrictions for post-public employment that are applicable to all public officials. Restrictions may differ according to the level of officials in a few countries. For example, the more senior the official, the more stringent the restrictions are in Korea and the United States.

Specific restrictions are developed in few countries…

A minority of OECD countries have developed specific rules for certain categories of public officials. They focus principally on the most senior level, namely:

…for the top level…

- Top decision makers, including ministers, senior political appointees and their advisors, Members of Parliament and Congress.
- Senior civil and public servants, chief executives and managers of state-owned enterprises.

…and exceptionally for risk areas

Although paying adequate attention to risk areas particularly at the public-private sector interface is a key factor for successfully avoiding conflict of interest in post-public employment, only very few countries have developed specific prohibitions and restrictions for at-risk areas such as:

- Supervisory and regulatory agencies, for example, competition, energy, nuclear security agencies in Spain, regulators in the telecom and energy sectors, as well as the National Centre for Government Information Technology in Italy, and the financial institution regulatory agencies in the United States.
- Procurement and contract management, for example in Italy for officials overseeing public works, and in the United States when procurement and contracts exceed USD 10 million.
- Customs and tax administration, as well as inspection, for example by fire departments in Korea, handling or using federal public funds in Mexico

OECD countries seek reasonable time limits…

Excessive prohibitions and restrictions for post-public employment could create severe impediments to bringing knowledgeable and experienced people into the public service. Finding the right balance in the legal framework is a key concern in OECD countries, as restrictions are generally considered temporary solutions. In line with this, countries established various time limits:

---

[8] Former public officials change sides in an ongoing procedure or negotiation to represent the opposite party in a contentious issue.

… for tailored application of prohibitions and restrictions

- Before taking *new employment* outside the public service, the vast majority of OECD countries define a specific "*cooling-off*" period in the timeframe determined by laws. Among OECD countries the maximum fixed time limits range from six months in Norway[9], up to a five-year period in France and Germany. In general this "cooling-off" period is one year, for example in Canada, Ireland, Poland and Slovakia; or two years, for example in Japan, Korea, The Netherlands, Turkey and the United Kingdom. This fixed time limit is also applicable for lobbying or representing back to government, for example in Canada. Although the "cooling-off" restrictions are principally employed to maintain trust in public service, they also provide a learning period for both former officials and those in the government to become used to their new relationship vis-à-vis one another.
- In case of using "*insider information*", OECD countries apply no fixed time limit, for example in Austria, Belgium, Canada, Denmark, Luxembourg and Sweden. However, restrictions for former public officials remain valid until the information becomes unclassified and public.
- 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.

Whereas several measures are used for communication of rules, few countries have established procedures for applying them

The survey indicates that although the vast majority of countries set general rules for post-public employment, countries established many fewer mechanisms to apply these rules in practice. A majority of countries employ a combination of measures for communication, such as briefings on appointment and on leaving, acknowledgment in writing that officials are aware of the rules, counselling and regular reminders. However, only a few countries have established procedures for facilitating the application of prohibitions and restrictions. Canada, Ireland, Portugal and Spain, for example, request officials to disclose future employment and an approval is also required before taking up a new appointment.

Managers remain key in applying the rules, although, independent bodies have been created recently for ensuring unbiased decision in case of senior level

Managers play a key role in the application of rules. Making the decision on post-employment cases is, for example, traditionally the responsibility of top management of public organisations, such as the secretary general of departments in Ireland, the head of the organisation for civil servants in Norway, the deputy head of public organisations for public servants in Canada. In the case of the senior level, however, recently established independent bodies make the decisions, such as the Ethics Commissioner for public office holders in Canada, the Outside Appointments Board for assistant secretary level and above in Ireland, the Competition Authority in Italy, the Government Ethics Committee in Korea, and the Standing Committee on Outside Political Appointments for Politicians in Norway.

---

[9] For further details see Designing and implementing post-public employment regulations for civil servants and politicians: The Norwegian initiative GOV/PGC/ETH(2006)4.

Although providing flexibility in case management is an emerging concern, few countries provide standards for it …

Providing flexibility in the application of general rules in individual cases is an emerging concern. Applying flexibility in concrete cases may well require standards for deciding on exceptions and issuing waivers in order to ensure fairness in the process and accountability of decisions. However, a few countries have developed standards against which such post-public employment decisions can be made.

…and make available formal appeal mechanisms

Decisions on post-public employment cases are not open to a formal appeal in the majority of countries. If formal appeal is available, the decisions can be appealed in general to an independent court or tribunal, and/or an administrative body within the public service.

Supporting application remains rather experimental…

Implementation of decisions on post employment generally remains the responsibility of former public officials. Countries employ fairly exceptionally support measures for tracking and ensuring implementation of decisions, including:

- Recording decisions on individual cases for future tracking, for example in Canada, France, Japan, Norway and the United Kingdom.

…and needs to be strengthened based on good practices

- Making available past decisions for benchmarking, for example in Canada, France and Japan.
- Informing prospective employers of imposed restrictions and conditions, for example in Germany and the United Kingdom.
- Requesting information on the application of decisions, for example in Ireland and Korea.

The Internet provides an efficient tool for communication by making information available on decisions, for example in Ireland, or breaches and sanctions applied in the United States.

Enforcing restrictions and imposing suitable sanctions remain a key challenge for many countries

Dissuasive sanctions, together with timely application, provide key pillars for enforcing post-public employment prohibitions and restrictions. A combination of traditional disciplinary, criminal and administrative sanctions is provided for non-compliance. However, one of the remaining challenges for OECD countries is the availability and application of adequate sanctions in case of breaching post-employment rules:

- In many countries there are still no sanctions available. For example, sanctions are not specified in the laws in Turkey, and sanctions would require legislation for public office holders in Canada.
- Existing sanctions have also been considered insufficient in a few countries, as they can only be applied for public officials in office, for example in Slovakia. In Spain, the Government has already proposed to establish a more severe sanction regime through the Bill on Conflict of Interest.
- Lack of control mechanisms to impose sanctions on former public servants is an additional challenge, for example in the case of breach of code of conduct.

OECD could help countries with practical tools to address these challenges

The survey results give a unique insight for policy makers on trends and solutions for avoiding conflict of interest after leaving public office. Based on reviewed good practices, the development of practical tools could particularly help policy makers in choosing adequate solutions amongst available options.

3. Improving governance arrangements to ensure transparency in lobbying

Public opinion has raised questions about the legitimacy of public decisions

Existence of large interest groups 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 where the public interest may not be well represented. At this point the integrity of public institutions becomes threatened. However, purely penalising illegal influencing of public decision making may not be sufficient to maintain trust in decision making. "Good governance" arrangements, particularly those clarifying expected standards of behaviour and improving transparency of decision making become essential

Ensuring impartial decision making is a key concern for ministers to maintain trust in government

"Vocal vested interests" over the "wishes of the whole community" in public decision making was considered a major threat to public trust at the recent OECD Ministerial meeting on *Strengthening Trust in Government: What Role for Government in the 21st Century?*[10]. Maintaining trust in the legitimacy of public decisions requires functioning frameworks and arrangements for:

- Transparency – Enhancing openness on actors influencing policy making as the public has a right to know how public decisions were influenced by stakeholders or vested interests; and

- Accessibility – Providing a level playing field for all stakeholders interested in participating in the development of public policies in order to ensure that the "public" also has a voice, and not only the "privileged".

Good governance also involves anticipation of risks and potential solutions

There is limited concern about lobbying activities in many European countries. For example, in Scandinavian countries established practices, unwritten traditions and social partnership recognise interest groups and provide access to decision makers. However, influenced by the various scandals in the past decade, public opinion increasingly considers existing lobbying practices as somewhat illegal or at least unethical and calls for immediate action.

[10] Statement by the Chairman Mr. Alexander Pechtold, Minister of Government Reform and Kingdom Relations, The Netherlands on 28 November 2005 in Rotterdam. The full text of the Statement can be consulted at http://www.oecd.org/dataoecd/0/11/35806296.pdf. Further information on the event is available at http://www.modernisinggovernment.com/.

After a decade public expectations have given impetus to revisit current governance arrangements for lobbying

The OECD survey shows[11] that only six countries[12] have already set rules for lobbying, and even fewer have experience of long-established legal frameworks for improving transparency in lobbying. Public expectations in the early nineties were at the origin of the updates of rules in Canada and the United States, when the European Parliament established new rules at the supra-national level. After a decade, higher expectations of transparency and integrity brought lobbying back to the political agenda in these countries and the European Union, and the issue of formal regulation on lobbying reached political support in many other countries.

Commitment to improve existing systems is demonstrated by initiatives across countries

Nowadays, several proposals for legislation on lobbying have been presented to legislators in North America, Europe and Asia to meet expectations of increased transparency that put more public light on relationship between public officials and representatives of interest groups. However, setting rules for lobbying has proved very difficult in many cases because it is not only an important aspect of good governance but also a sensitive political issue.

Sharing lessons on key aspects of existing arrangements provides a source of solutions…

Although government programmes (for example in Hungary, Ireland and Slovakia), or broad socio-political consensus (for example the K-PACT[13] in South Korea) widely supported the development of a legal framework for lobbying in the last few years, concrete proposals were often rejected by legislators. It took a long drawn-out debate in many countries, such as Hungary, Ireland, Mexico, Poland and Slovakia to reach political consensus on the approach and key elements, such as definitions, scope and effective measures to be included in the laws.

…and support depoliticised debate on key aspects of lobbying

The key aspects of rules on governance arrangements for lobbying that need to be considered when regulating lobbying include:

- Aims – Why legislation, what is the purpose of rules?
- Subject – What is lobbying and what activities are excluded?
- Scope – Who is a lobbyist and who is the lobbied?
- Standards of behaviour – What standards could reflect public expectations?
- Implementation – How to increase transparency and administer implementation? How to combine incentives, sanctions and enforcement to increase compliance?

Findings show several commonalities in key elements that could be considered in policy

Survey results show that no single concept and definition exist for lobbying in OECD countries. The approach in six countries with rules that provide governance arrangements for lobbying is more common as it principally focuses on the lobbyists. However, guidance may also be

11 For details on approaches and regulations in OECD countries see "Governance arrangements to ensure transparency in lobbying: A comparative overview" GOV/PGC/ETH(2006)5 and "Lobbying: Key policy issues" GOV/PGC/ETH(2006)6.

12 Canada, Hungary, Mexico, Poland, the United Kingdom and the United States.

13 Article 7 of the Korean Pact on Anti-Corruption and Transparency supported the preparation of legislation of lobbying.

design, including…

available for officials, for example in the Directory of Civil Service Guidance in the United Kingdom. Key commonalities include:

…purpose of rules,…

- Their overall aim is to increase transparency and maintain trust in decision making. The preparation of the recent Polish Act shows how the original aim of the bill to support the prevention and prosecution of trading in influence shifted to improve transparency in law making[14].

…formal sources of rules,…

- Their primary source is legal regulations, though codes of conduct are also used for setting rules, particularly for senior public officials. Voluntary codes are rarely used in OECD countries.

…transparency standards and…

- Measures for increasing transparency are at the heart of lobbying regulations and similar standards for transparency reflect shared expectations across the six countries. All of them require registration of lobbyists that provides ground for ensuring transparency of lobbying activities. Lobbyists are also commonly obliged to disclose the purpose and name of a client when undertaking lobbying, and to provide periodic reports on key aspects of lobbying activities. An emerging trend is to request more disclosure on issues of emerging concern, such as lobbying expenses, contingency payments, public funding received by a client, past employment as a public official.

...supporting measures for implementation

- Improving compliance is a common concern. Review and verification of information provided in registrations and reports, as well as making information public, are the most commonly used measures for supporting the implementation of rules.

Survey findings also reveal diverging aspects in…

Survey results also revealed diverging views on key aspects of rules on lobbying, such as:

…defining the subject,…

- Definition of lobbying – There is no single definition used across OECD countries. Legal rules often establish very complex definitions, for example in Canada and the United States; or focus exclusively on limited aspects, such as lobbying in the law-making process at the central level in Poland.

…delimiting the scope, and…

- The primary scope of regulations is professional lobbyists. However, the definitions and even the classification of lobbyists differ from country to country. For example, Canada recently introduced further distinction between corporate and other organisations' in-house lobbyist, in addition to consultant-lobbyists. Lobbying can also be undertaken without payment according to the proposed Bill on Lobbying in Slovakia.

…providing administering capacity…

- Administering agencies and penalties also vary from country to country. There is no single solution to determine the body in charge of administering the rules on lobbying. According to the national context, this organisation can be independent, such as the Registrar in Canada, or subordinated to central government ministries, such as in Hungary, Mexico and Poland.

---

[14] For details on the preparation of the Polish Act on Legislative and Regulatory Lobbying see "Developing a legal framework for lobbying: The Polish experience", GOV/PGC/ETH(2006)7.

…and sanctions…

- Sanctions are generally imposed either on public officials or on lobbyist with the exception of the United Kingdom where both administrative sanctions for lobbyists and disciplinary sanctions for officials could be applied.

…as these elements should be closely considered in the country context

These diverging aspects may direct policy makers in identifying what elements of legislation on lobbying should principally reflect domestic concerns and should be closely considered in the national socio-political and administrative context. For example, a proper definition of lobbying is essential as it provides a basis for adequately addressing public concerns in a given country. A too narrow or too wide definition could possibly render legislative efforts ineffective.

Challenges, such as improving compliance remain

Achieving compliance remains a constant challenge in countries with rules on lobbying. Commitment to review the actual level of compliance and involvement of stakeholders in the review process are two fundamental pillars to provide options for improving existing arrangements.

Developing a proactive approach to properly reflect increasing public expectations…

The survey findings provide grounds for developing a proactive approach to support:

- Awareness raising and understanding of the potential risks of lobbying to the integrity of public decision making.

…and better combine measures for improving standards of behaviour and transparency in lobbying…

- Preparedness of decision makers to properly address emerging expectations, and find adequate solutions in order to avoid overreacting.

If legislation is determined to be necessary, the central choices lie within a spectrum between disclosure of lobbying activities to improve transparency at one end, and regulation to set standards of conduct for lobbying in line with public expectation at the other.

…can be supported by practical instruments developed on identified good practices

Maintaining trust in democratic institutions requires clarification of the "rule of the game" in decision making that properly put good governance principles into daily practice.