

Public Procurement in the Slovak Republic

Towards a Strategy for Managing Conflicts of Interest



This report assesses Slovakia's current practices for identifying and managing conflicts of interest in public procurement and sets the foundations for a strategy to strengthen such practices by drawing on international cases. It takes stock of good practices from several OECD countries for, for example, identifying and managing conflicts of interest related to gifts and gratuities given to public procurement officials or to pre- and post- public employment. It analyses the current system for identifying conflicts of interest in public procurement in Slovakia, which relies on officials' reporting the dilemmas to senior managers, and highlights the need to build a robust data management and verification system. Finally, the report reviews the regulatory framework for conflicts of interest in public procurement in Slovakia and suggests additional elements to consider for a successful reform strategy, including leadership and stakeholder engagement.

This paper was authorised for publication by Elsa Pilichowski, Director, Public Governance Directorate.

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Acronyms and abbreviations

CAB	Central Anti-corruption Bureau (Poland)
COEC	Chief Official Ethics Commission (Lithuania)
COI	Conflict of interest
CSO	Civil society organisation
DAEO	Designated Agency Ethics Official (United States)
EU	European Union
EUR	Euros
FAQ	Frequently asked questions
HATVP	High Authority for Transparency of Public Life (France) <i>Haute Autorité pour la Transparence de la Vie Publique</i>
HR	Human resources
IMSD	Internal Methodology of the Supervision Department
ISO	International Organization for Standardization
OA	Anticorruption Office (Argentina) <i>Oficina Anticorrupción</i>
OECD	Organisation for Economic Co-operation and Development
OGE	Office of Government Ethics (United States)
PP	Public procurement
PPE	Personal protection equipment
PPO	Public Procurement Office
ROLECE	Official Register of Tenderers and Classified Economic Operators (Spain) <i>Registro Oficial de Licitadores y Empresas Clasificadas del Estado</i>
SFP	Ministry of Public Administration (Mexico) <i>Secretaría de la Función Pública</i>
TBS	Treasury Board Secretariat (Canada)
US	United States of America

Executive Summary

Main findings

Conflict of interest is a rising integrity concern in many OECD countries, including the Slovak Republic. It particularly affects public procurement, which is considered one of the government activities most vulnerable to corruption.

Slovakia's regulatory framework for conflicts of interest, and specifically the part applicable to the staff of the Public Procurement Office (PPO), has been recently developed. Notably, Slovakia has addressed previous OECD recommendations by developing robust definitions of conflict of interest, including apparent, real, and potential conflicts of interest. Furthermore, some regulations, such as the Code of Conduct, were developed through participative processes.

Slovakia's system to identify and prevent conflicts of interests requires PPO staff to be aware of any conflict of interest and inform their superior of any potential, apparent, or real conflict of interest. Senior managers must then assess the potential of a conflict of interest and advise on how to proceed. They can also consult the Anti-corruption Specialist, the Anti-corruption Coordinator, and/or the Head of the Human Resources Department.

Currently, the PPO has no template or practice for officials to declare their interests upfront or with certain periodicity. There are some affidavits in which PPO officials declare that they are not acting under a conflict of interest, but they do not have to declare the specific interests they do hold.

While the regulatory framework is clear regarding the duty to inform a superior when a conflict of interest situation takes place, or even when the public official is in doubt, such rules do not provide significant guidance on the alternatives to manage the situation, other than recusal and restrictions to access particular information. The Interpretation of the Code of Ethics for Civil Servants provides a list of potential options to resolve a conflict of interest, but does not explain how, when, and under what circumstances each alternative might be appropriate.

A PPO official can accept a gift if its value is below 30 Euros and as long as it meets specific criteria. However, if the value exceeds 30 Euros, officials must relinquish it and register it in the bureau of the PPO Chairman. The guidance provided in the codes and directives is quite illustrative and explained through, for instance, examples, frequently asked questions, and checklists. Given that the framework is robust, the main challenges are found in its implementation, including building trust among public officials to come forward and declare the gifts.

Nonetheless, several difficulties related to pre- and post- public employment are not comprehensively addressed in Slovakia's framework to prevent, identify, and manage conflicts of interest among procurement officials.

Recommendations

- The PPO may consider merging the roles of the Anti-corruption Specialist and the Anti-corruption Coordinator. Having a single point of contact on questions about conflict-of-interest dilemmas would prevent confusion among line officials and senior managers.
- Introducing the duty-to-file interest declarations by procurement officials would facilitate a more thorough assessment of conflict-of-interest risks.
 - Interest declarations are useful for improving transparency, allowing contracting entities to carry out risk assessments and identify potential conflicts of interest that may undermine public trust and jeopardise institutional and personal reputations.
 - Requiring public officials to file a declaration of interests upon taking office and every year or two years, or when the public official's interests change in a way that may lead to conflicts with the public interest. Such a requirement would allow the PPO to screen such interests and develop a risk profile of procurement officials.
- Interest declarations by procurement officials would need to be complemented by a robust verification system and a mechanism to systematise the data for decision making and evaluation.
 - Assessing the implementation of conflict-of-interest policy should be systematic to provide evidence-based feedback on impact and effectiveness.
- The PPO should set clear rules on what is expected from procurement officials to manage conflict-of-interest situations and facilitate their implementation.
 - The PPO could include in the regulatory framework the full range of options for managing conflict-of-interest situations and explain when and how to use them.
 - Given their prominent role in identifying and managing conflicts of interest, senior managers should receive support and training to help them understand and weigh the various options and potential solutions.
- The PPO may want to consider carrying out a broad survey to assess the degree of awareness among officials of the rules and procedures around gifts and gratuities. In parallel, the PPO may continue communicating about the framework through posters, flyers, e-mails, wallpapers, etc.
- As more cases dealing with gifts come up, the consistent application of the framework is likely to become a challenge. It will be important to document each case and its respective solutions to periodically analyse consistency and create the right incentives for procurement officials to declare gifts.
- The PPO may consider making the registry of gifts publicly accessible.
- The PPO should develop the framework for identifying and managing conflict of interest among procurement officials that arise from pre- or post- public employment, as well as establish cooling-off periods.
 - The PPO could establish exit interviews and a committee to assess risks on a case-by-case basis.
- The PPO leadership should visibly support the framework for managing conflicts of interest and continuously communicate to employees about its relevance.
- The PPO should strengthen its partnership with employees to facilitate acceptance and compliance with the conflict-of-interest framework.
- The PPO should partner with business and civil society organisations to extend the application of its conflict-of-interest principles and widely communicate its efforts in this area.

1 Introduction

Conflict of interest is a rising integrity concern in most countries. For example, preventing and managing conflicts of interest and the transparency of public officials' private interests are key elements to prevent policy capture.¹

The COVID-19 crisis has underlined how conflicts of interest can lead to corruption and wasted resources. For example, press reports about graft and corruption in the procurement of personal protection equipment (PPE) in Latin America were quite common during the early stages of the health crisis.²

Integrity concerns related to conflicts of interest are not exclusive to emerging economies or regions. In fact, Transparency International's *Global Corruption Barometer – EU 2021* found that almost one-third of the population in 27 EU countries think corruption is getting worse. Although only 19% of people in Slovakia think corruption is getting worse, well below the EU average, a closer look seems to indicate there are specific concerns about conflicts of interest.³

For example, 56% of people in Slovakia think that the government is run by a few major interests, to the detriment of the public interest, while the EU average is slightly below at 53% (see Figure 1.1). Likewise, the TI survey reports that 26% of public service users in Slovakia used personal connections to obtain a service over the last 12 months.⁴

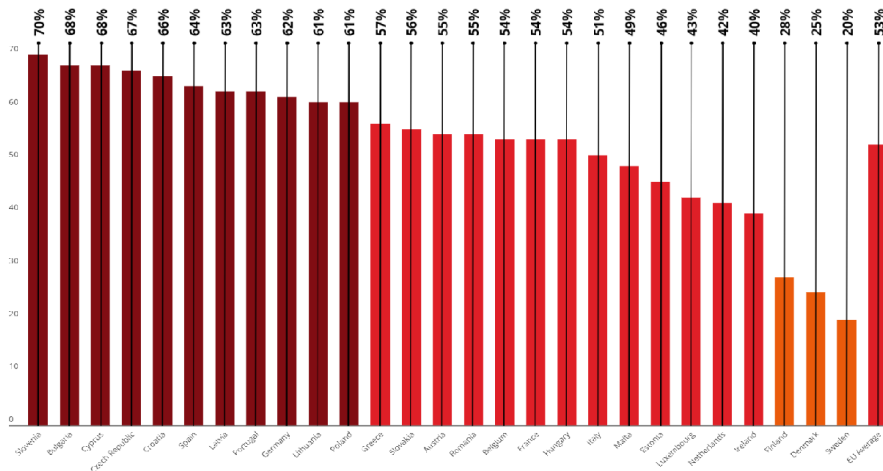
¹ OECD (2020), *OECD Public Integrity Handbook*, OECD Publishing, Paris.

² The New York Times, *Latin America's Virus Villains: Corrupt Officials Collude with Price Gougers for Body Bags and Flimsy Masks*, published on 20 June 2020, <https://www.nytimes.com/2020/06/20/world/americas/coronavirus-latin-america-corruption.html>.

³ Transparency International (2021), *Global Corruption Barometer – EU 2021*, <https://www.transparency.org/en/news/gcb-eu-2021-survey-people-worry-corruption-unchecked-impunity-business-politics#> (consulted on 12 July 2021).

⁴ Transparency International (2021), *Global Corruption Barometer – EU 2021*, <https://www.transparency.org/en/news/gcb-eu-2021-survey-people-worry-corruption-unchecked-impunity-business-politics#> (consulted on 12 July 2021).

Figure 1.1. Percentage of people who agree that the government is controlled by private interests, by country



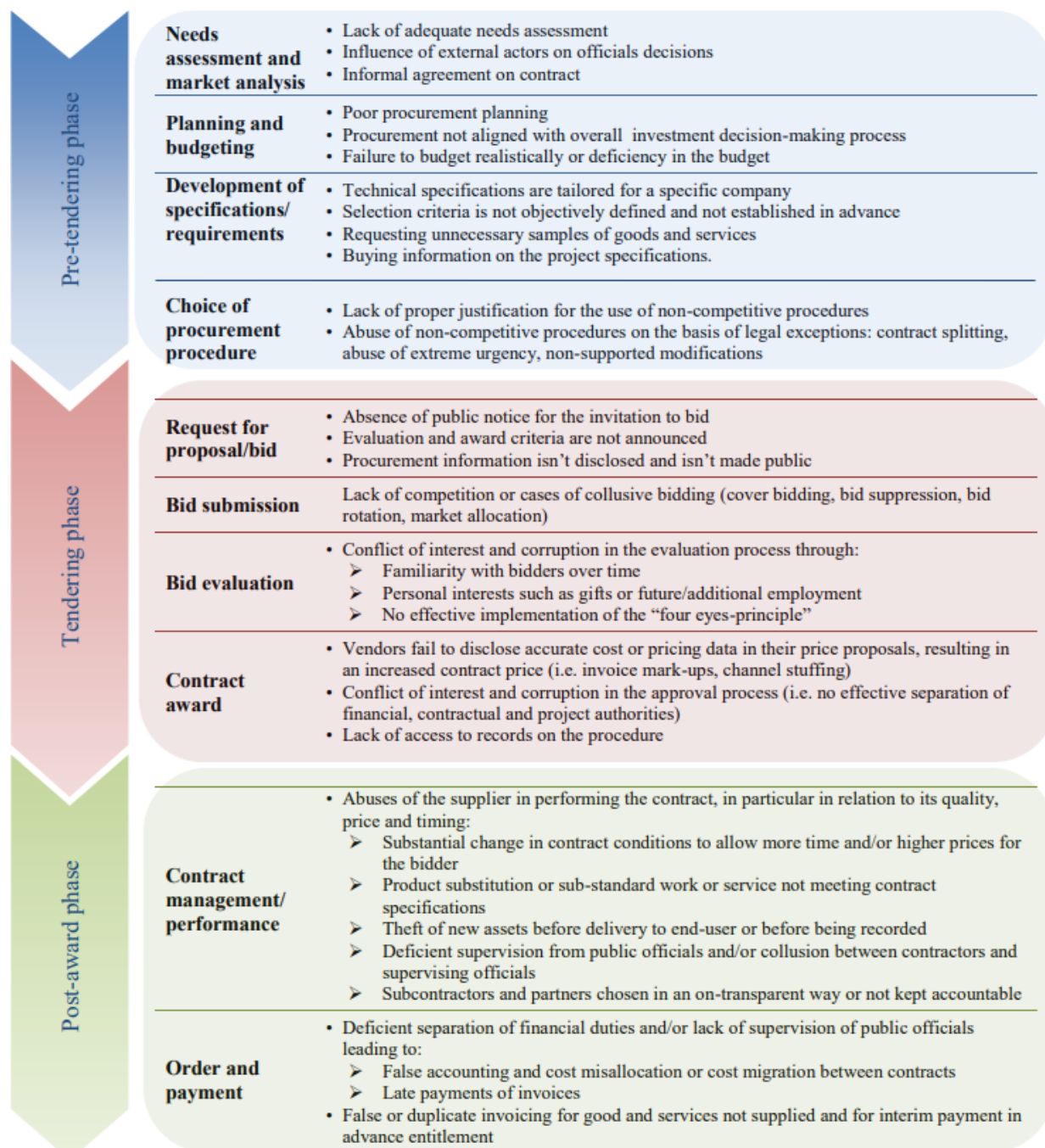
Source: (Transparency International, 2021^[1])

Public procurement is one of the government activities that is most vulnerable to corruption. In addition to the volume of transactions and the financial interests at stake, the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders all exacerbate corruption risks.⁵

Various types of corrupt acts may exploit these vulnerabilities, such as undue influence in needs assessment, or conflicts of interest among public officials who have a stake in the businesses bidding for a contract or who have to assess a contractor’s performance and obligations. In many OECD countries, significant corruption risks arise from conflicts of interest in decision making, which may distort the allocation of resources through public procurement. Indeed, integrity risks affect all stages of the procurement cycle, from needs assessment to execution, contract management, and evaluation (see Figure 1.2).

⁵ OECD (2016b), *Preventing corruption in public procurement*, OECD Publishing, Paris, <http://www.oecd.org/gov/public-procurement/publications/Corruption-Public-Procurement-Brochure.pdf>.

Figure 1.2. Integrity risks throughout the public procurement cycle



Source: (OECD, 2016^[2])

The *Recommendation of the OECD Council on Public Procurement* and the *Recommendation of the OECD Council on Public Integrity* explicitly refer to the identification and management of conflicts of interest (see Box 1.1).

Box 1.1. Identification and management of conflict of interest in the OECD Recommendations

The *Recommendation on Public Procurement* “recommends that Adherents preserve the integrity of the public procurement system through general standards and procurement-specific safeguards.

To this end, Adherents should:

i) Require high standards of integrity for all stakeholders in the procurement cycle. Standards embodied in integrity frameworks or codes of conduct applicable to public sector employees (such as on managing conflict of interest, disclosure of information or other standards of professional behaviour) could be expanded (e.g. through integrity pacts)”.

In turn, the *Recommendation on Public Integrity* calls on Adherents to build a coherent and comprehensive public integrity system.

To this end, Adherents should:

4. Set high standards of conduct for public officials, in particular through:

c) setting clear and proportionate procedures to help prevent violations of public integrity standards and to manage actual or potential conflicts of interest;

8. Provide sufficient information, training, guidance and timely advice for public officials to apply public integrity standards in the workplace, in particular through:

c) providing easily accessible formal and informal guidance and consultation mechanisms to help public officials apply public integrity standards in their daily work as well as to manage conflict-of-interest situations.

Source: (OECD, 2017^[3]) (OECD, 2015^[4])

This report analyses the status of Slovakia’s Public Procurement Office (PPO) policies and regulations related to conflict of interest, in particular in their application to public procurement activities. It identifies opportunities for improvement and provides recommendations based on good practices from OECD member and partner countries. Such experiences are described throughout this report to illustrate reforms and enhancements to be undertaken in Slovakia.

2 The regulatory framework defining conflicts of interest

Slovakia's regulatory framework, and specifically that applicable to the staff of the PPO, relative to conflicts of interest has been developed over the last decades. It includes acts, codes, directives, manuals, and other types of normative instruments (see Table 2.1 for a summary of the regulatory framework).

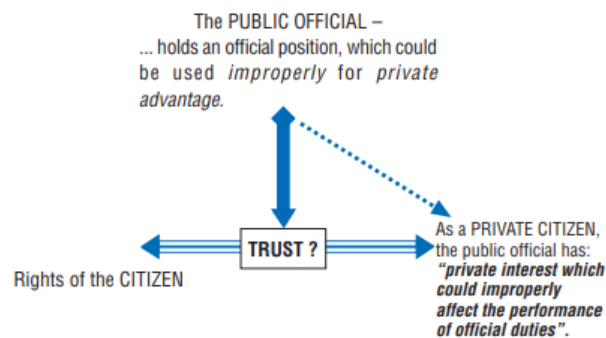
Table 2.1. PPO's regulatory framework relative to conflicts of interest

<i>Instrument</i>	<i>Issue date</i>	<i>Description</i>
Directive No. 9/2020 on the acceptance and registration of gifts	July 2021	It sets out the procedure for accepting and registering gifts, benefits, or hospitality and applies to all PPO's departments and staff.
Code of Conduct	December 2020	It applies to all PPO staff. It is a practical manual to assist PPO staff in preventing situations involving corruption risks, conflicts of interest, or any other related to ethical conduct and work integrity. It addresses the following topics: i) Notification of anti-social activity; ii) acceptance and registration of gifts; iii) Conflict of interests; and iv) Lobbying.
Interpretation of the Code of Ethics for Civil Servants	2019	It is a manual for reading and interpreting the rules contained in the Code of Ethics for Civil Servants. It aims to facilitate the application of the Code of Ethics by explaining individual provisions in more detail and approaching the solution to situations met in practice through examples.
Code of Ethics for Civil Servants	21 November 2019	It sets out the principles of ethics and conduct for civil servants in connection with the performance of civil service and the procedures to comply with them.
Act 55 (2017) on Civil Service and on Amendment to Certain Acts	2017	It regulates the exercise of the civil service by providing strong provisions, for example, on transparency in recruitment to the civil service.
Public Procurement Act (Act No. 343/2015 Coll. of Laws)	2015	§23 par. 2 defines a conflict of interest as a conflict of duties arising from a public office with the private interests of a public official
PPO's Employee Code of Ethics	March 2011	It determines the basis of the duties of a civil servant according to the Civil Service Act, its duty to perform in the public interest and according to generally accepted and universally applied moral rules and values, and the principles of conduct for civil servants.
Constitutional Act on the protection of public interest in the exercise of the public officials' office 357 (2004), as amended by Constitutional Act 545 (2005)	2005	The Act concerns malfeasance in the public office and introduces duties and restrictions applicable to all public officials, together with their liability for failure to comply.
Act 552 (2003) on Performance of Work in Public Interest	2003	This Act regulates the rights and obligations of public sector employees, for example, concerning taking up income-earning activities, employment of relatives, and disclosure of assets.

Source: (OECD, 2017^[5]) and information provided by Slovakia's PPO.

A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official's private-capacity interest could improperly influence the performance of his official duties and responsibilities.⁶ This definition of conflict of interest determines a clash between a public official's private interests and his duties as a public servant. There are instances which are definitely unacceptable in light of the values and principles of the public service and which may lead public officials to privilege private interests over the public interest. Such a "real conflict of interest" stems from the recognition that public officials are entrusted with powers and authority to pursue the public interest but, when they privilege private interests, they are in essence betraying the trust of citizens and the State (see Figure 2.1).

Figure 2.1. Illustration of the conflict of interest concept



Source: (OECD, 2005^[6])

In addition, OECD's work suggests considering apparent and potential conflicts of interest. An apparent conflict of interest happens when there appears to be a conflict of interest, but this is in fact not the case, or may not be the case.⁷ Even though a real conflict of interest may not materialise, the appearance of a conflict of interest may be as damaging as its actual occurrence. Consider, for example, a case where a public official participates in the assessment of bids submitted by different potential suppliers and he is the cousin of one of the main shareholders of company A. Even if the public official refrains from talking to his cousin and even if he behaves genuinely and in the spirit of obtaining the best procurement conditions for his institution, if the family ties were disclosed by the media, a reasonable individual may think that he will try to benefit his cousin's company. In other words, even when the public official did not explicitly try to benefit company A, the tender process, his reputation, the reputation of his colleagues and his institution would be questioned and public trust would suffer.

A potential conflict of interest illustrates a situation where a public official has private interests that could lead to a real conflict of interest in the future, should the circumstances change.⁸ Using the case above, company A is in the pharmaceutical industry and the public official works for the City's Public Parks Department. Clearly, it is unlikely that such department would procure medicines. However, if the public official were transferred to the Procurement Unit of the Department of Health, then his private interests would become a real issue and the potential for a conflict of interest would exponentially grow.

⁶ OECD (2005), *Managing Conflict of Interest in the Public Sector: A Toolkit*, OECD Publishing, Paris.

⁷ OECD (2005), *Managing Conflict of Interest in the Public Sector: A Toolkit*, OECD Publishing, Paris.

⁸ OECD (2005), *Managing Conflict of Interest in the Public Sector: A Toolkit*, OECD Publishing, Paris.

Slovakia has addressed previous OECD recommendations by developing more robust definitions of conflict of interest

In a report delivered in 2017 (OECD, 2017^[5]), the OECD assessed the definition of conflict of interest in Slovakia's regulatory framework, specifically the one provided in Act 552. The OECD report noted that Section 8 (d) establishes that public officials are obliged to refrain from actions that could lead to conflicts of interest, but it provides little details as to how a conflict of interest is defined. In consequence, OECD recommended Slovakia to “consider providing a more detailed definition of conflict of interest in the Act, as well as providing practical guidelines on its management to support the implementation of the Act”.⁹

Some of the instruments mentioned in Table 2.1 provide a more robust definition of conflict of interest, which should facilitate implementation by PPO officials. Notably, the Code of Conduct, the Code of Ethics for Civil Servants, and the Interpretation of the Code of Ethics for Civil Servants define conflict of interest as “a situation in which the personal interests of a civil servant may affect the performance of his duties or a situation in which a civil servant may benefit from his position in favour of personal interests”. The codes go on to establish that “the personal interest of a civil servant means any advantage for himself or for persons related to him”.

The Code of Conduct and the Interpretation of the Code of Ethics for Civil Servants provide a definition for an apparent conflict of interest, as a situation in which it is reasonable to think that the personal interests of a public official may disproportionately affect implementation or decisions, regardless of whether the conflict of interest really exists. The Code of Conduct and the Interpretation of the Code of Ethics for Civil Servants also provide examples, for instance, the Code of Conduct mentions “each employee must be aware that any gift or other benefits may give the *impression* of anti-social activity and may be *perceived* by a third party as a bribe”. Likewise, the Code of Ethics for Civil Servants establishes that public officials should not “accept invitations to a cultural or sporting event, conference, holiday, and other activities financed by a natural or legal person, if the participation of the employee at such an event or activity may affect the confidence in the impartial performance of his duties or give the *impression* that he is remunerated for the performance of his duties”. Furthermore, the Interpretation of the Code of Ethics for Civil Servants establishes that a public official shall “take all the necessary preventive and remedial actions to address real, potential, or apparent conflicts of interest”. It also explicitly recognises that risks for conflicts of interest are particularly prone in public procurement processes and in entering into contracts with the private sector, among other government activities.

Likewise, the Code of Conduct and the Interpretation of the Code of Ethics for Civil Servants define a potential conflict of interest as a situation in which the state employee currently has no personal interests connected with the implementation of his duties, but there is potential for the emergence of a conflict in the future. As in the case of apparent conflict of interest, the Code of Conduct and the Interpretation of the Code of Ethics for Civil Servants provide examples of potential conflicts of interest. However, there is no practice of declaring public officials' interests when taking up his duties to assess the potential for conflicts in the future (for example, if the public official were to be transferred from one institution to another).

⁹ OECD (2017), *Assessment of key anti-corruption related legislation in the Slovak Republic*, <https://www.oecd.org/gov/ethics/Assessment-anti-corruption-legislation-Slovak-Republic.pdf>, (consulted on 13 July 2021).

Box 2.1. The definition of apparent and potential conflicts of interest by the High Authority for Transparency in Public Life (France), Transparency Estonia, the Polish Public Procurement Office, and Act 09/2017, of 8 November, on Public Sector Contracts (Spain)

France

The High Authority for Transparency of Public Life (*Haute Autorité pour la Transparence de la Vie Publique*, HATVP) developed the *Guide Deontologique II: Contrôle et Prévention des Conflits d'Intérêts*, which provides definitions and guidance to manage apparent and potential conflicts of interest.

The Guide establishes that "in its definition of conflict of interest, Article 2 of the Law of 11 October 2013 specifies that the interference must be "of such nature to influence, or appear to influence, the independent, impartial and objective practice of the public service. Thus, the legal provision seeks to prevent both conflict of interest and its appearance". It explains that it is sufficient that the interference gives rise to reasonable doubt as to the independent, impartial and objective exercise of the function for a risk of conflict of interest to be identified by the HATVP.

The Guide provides the following example: The fact that a municipality awards a public contract through a deliberation in which a municipal official takes part and who participates, as part of his private functions, in the governing bodies of the awarded company, is sufficient to characterise the conflict of interest. In such a case, it becomes irrelevant that the official did not seek to promote the company in which he has an interest.

Concerning potential conflicts of interest, the Guide establishes the powers of the HATVP, such as carrying out checks prior to the appointment of public officials and reviewing their interest declarations. In the first case, the HATVP anticipates the potential exercise of public functions and conflicts in light of past and future interests. On top of that, the HATVP assesses the declarations of interest to detect, before they materialise, the illegal holding of interests in the exercise of public functions.

Estonia

Transparency Estonia provides guidance on the definition, identification, and management of conflicts of interest through its website (<https://www.korruptsioon.ee/en/conflict-interests>). It provides that, in order to identify a conflict of interests, one can look at the official's tasks and define whether he has any personal interests. If there are clear personal interests and the official has to make a decision, for example, in that field, then there is a factual (real) conflict of interests. If there are personal interests but the official does not participate in the decision, then it is an apparent conflict of interests. If it can be assumed that private interests may have an influence in the future, then there is a potential conflict of interests.

Poland

The publication *Conflict of interests in public procurement: Practical Guide* establishes three types of conflicts of interest: Actual, potential, and perceived. A potential conflict of interest is defined as a case where relationships with potential contractors today may create a conflict of interest in the future. The Guide provides examples of such situations:

- all types of gifts and benefits received from potential contractors;
- electronic equipment or cars rented "for testing";
- trainings funded by contractors with a rich cultural and entertainment programme;
- loans, financial favours, extraordinary discounts or payment terms not available to the general public;

- job offers after finishing work or service in a public institution;
- establishing close personal relationships (joint barbecues, leisure, parties with the contractor's representatives); and
- any other relationship that creates a debt of gratitude.

A perceived conflict of interest is defined as a situation where there are currently no ties to contractors, but procurement officials can be viewed as biased due to past relationships, either due to failure to observe the rules of equal treatment during the proceedings or at the stage of preparation. Examples provided include the following:

- one of the contractors is a former employer of the procurement official;
- one of the contractors is the research institute where the procurement official defended his doctoral thesis;
- by analysing the market and estimating the value of the order, the procurement official constantly asks for information to the same entities;
- one of the contractors or its employees helped in the preparation of the Terms of Reference;
- despite the principle of providing explanations in writing, the procurement official succumbed to the importunity of one of the potential contractors and gave it additional explanations over the phone.

Spain

Act 9/2017, of 8 November, on Public Sector Contracts establishes in Article 64 the general obligation for contracting bodies to adopt the necessary measures to effectively prevent, detect, and manage conflicts of interest that may occur in procurement procedures, aiming to avoid distortions to competition and ensure transparency and equal treatment to all the bidders. A conflict of interest is defined as any situation in which staff of the contracting authority, who are also participating in the procurement procedure or may influence its outcome, have a direct or indirect financial, economic, or personal interest that may seem to jeopardise the impartiality and independence of the process.

The Act also establishes “procurement bans”, which establish specific cases of companies that cannot bid for government contracts, such as:

- Any individual or manager of a legal person included in the cases described in Act 3/2015, of 30 March, regulating the exercise of high office within the General State Administration, or the corresponding rules of the Autonomous Communities, Act 53/1984, of 26 December, on incompatibilities of staff serving public administrations, or concerning any of the elected positions regulated by Organic Law 5/1985, of 19 June, on the General Elections Regime.
- The prohibition also applies to any legal person in whose capital there is participation by the staff or senior managers referred to in the previous paragraph, under the terms and amounts established in legislation.
- The prohibition also extends, in both cases, to spouses, persons linked with a similar relation of affinity, ascendants and descendants and relatives up to the second degree of consanguinity or affinity of the persons referred to in the paragraphs above.

Source: (Haute Autorité pour la Transparence de la Vie Publique, n.d.^[77]), (Polish Public Procurement Office, 2015^[98]), and (Agencia Estatal Boletín Oficial del Estado, 2017^[99])

The Code of Conduct was developed following consultation of PPO's officials, which is aligned with OECD recommendations, but missed the perspectives of external stakeholders

The inclusive development of the regulatory framework on conflict of interest offers many benefits such as developing ownership, facilitating the understanding by public officials about their responsibilities, and raising awareness of the standards of conduct of the public service among other stakeholders, for example, the business (supplier) community. Consultation and communication may take place through the review of existing policies and codes, the design of prevention measures, and the organisation of capacity-building activities.¹⁰ The State of Nuevo León, Mexico, for example, engaged several stakeholders in the revision of the Ethics Code for public officials.

Box 2.2. The participatory process to adopt the Ethics Code of the State of Nuevo León, Mexico

The Ethics Code was adopted in August 2016, thanks to the participation of various stakeholders, in a procedure different from that adopted at the federal level and in other Mexican states. Liaison groups were created in the central ministries and parastatal entities of the public administration, which met every two weeks for a year. The effort was co-ordinated by the Executive Agency for the Co-ordination of the State's Public Administration (*Coordinación Ejecutiva de la Administración Pública del Estado de Nuevo León*) to address different aspects of organisational culture. The code was drafted to replace the previous one, dated 2005, as well as the 2014 Code of Conduct.

Each liaison group developed seven ethics standards, and hypothetical scenarios were discussed to better understand its content and scope. To draft the Ethics Code, public officials were assisted by an ethics specialist from the Monterrey Institute of Technology and Higher Studies (*Instituto Tecnológico y de Estudios Superiores de Monterrey, ITESM*), who led the drafting process. The goal was to have a punctual and succinct code, easy to communicate and understand, and inspiring behaviour based on commonly shared values.

The Code declares that its main purpose is to uphold the values of legality, honesty, loyalty, impartiality and efficiency in the exercise of the duties and functions of public officials. Public officials are required to comply with Nuevo León's legal system, which regulates the public service as well as the seven ethics standards and integrity rules. Each ethical standard describes, in a non-exclusive way, three expected modes of conduct with which public officials should comply, so as not to contravene any of the ethics standards. The seven ethics standards are: no corruption; service; respect and empathy; austerity and sustainability; innovation and efficiency; inclusion; fair and swift decision; and transparency. It applies to all individuals who work and are paid with public resources, for as long as they are engaged in public service activities.

Source: (OECD, 2018^[10]) and <http://codigodeetica.nl.gob.mx/>.

¹⁰ OECD (2020), *OECD Public Integrity Handbook*, OECD Publishing, Paris.

The PPO's Code of Conduct was developed following consultation of its officials, which was organised in several stages:

- Stage 0: The initiative was presented to the PPO Chairman by the ISO 37001 implementation team, including the Anti-corruption Specialist, the Anti-corruption Co-ordinator, and the Director of the Chairman's Bureau. The Chairman agreed to consult PPO officials during the process.
- Stage 1: Individual in person consultations with departmental directors, resulting in overwhelming support.
- Stage 2: All PPO staff, in person and in small groups of maximum 25 staff, were consulted. The process took place during 3-hour sessions of anti-corruption training during 2020. The Anti-corruption Specialist facilitated the process and collected ideas for content and most frequently asked questions.
- Stage 3: The draft version of the Code of Conduct was sent to the Legal Department for review and comments.
- Stage 4: The draft version of the Code of Conduct was sent to all PPO staff via e-mail for comments (to be submitted within two weeks). At least 23 comments and suggestions were received during the consultation process (more than 10% response or active participation rate).
- Stage 5: The revised version was sent again to the Legal Department for final review.
- Stage 6: The final version was sent to the PPO Chairman to be signed and published.

In addition to consulting public officials, the PPO may try to engage other stakeholders to communicate the standards of conduct of the public service and align expectations.

In order to facilitate the implementation of the rules and policies on anti-corruption, including on conflicts of interest, the PPO communicates the relevant documents to all staff at the beginning of their job contracts, during an introductory anti-corruption training session (within 30 days after the entry into force of the contract) and during annual training sessions, and via the Intranet. Training sessions are led by the Anti-corruption Specialist and are mandatory for all the staff. Two trainings took place during 2021, as of April, and 22 sessions were organised during 2020, with the participation of all PPO staff (about 220 employees).

The PPO also offers tailored training for its senior managers at least once a year, focusing on managerial approaches to the anti-bribery management system and various integrity issues, including conflicts of interest. Such training includes case studies and role-playing. Since the entire system for the identification and management of conflicts of interest relies on reporting to and getting the advice of senior managers, as we will see in the next sections, their training is crucial.

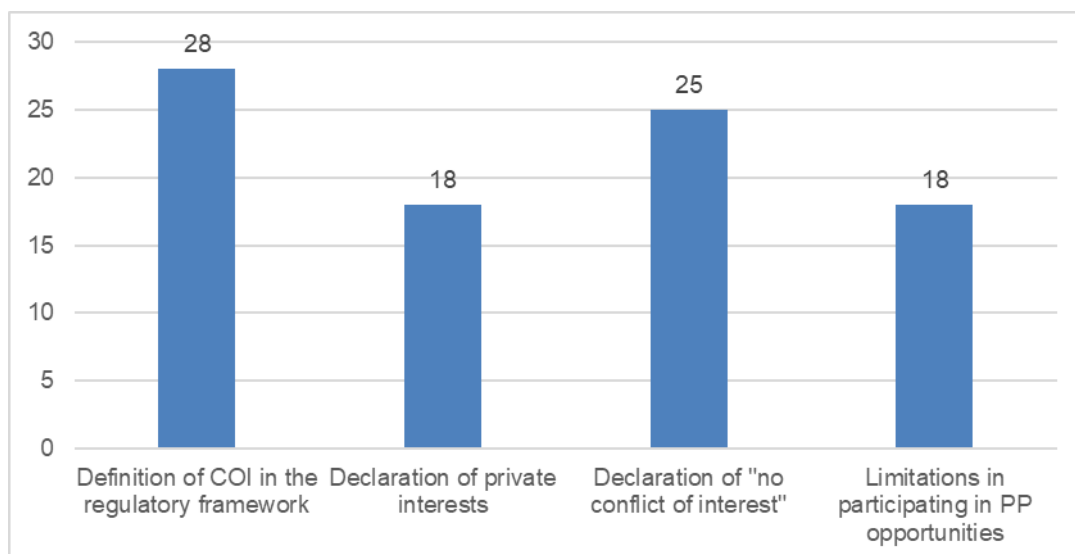
3 Identification and prevention of conflicts of interest

There are two principles on which the identification and prevention of conflicts of interest should be based:

1. Having interests is not wrong and, in fact, all public officials may have interests (i.e., economic, familiar, membership to associations or political parties, etc.). Integrity issues arise when such private interests clash with the public interest the official should privilege.
2. Governments can set clear rules on what is expected of public officials in identifying, preventing and managing conflict of interest situations, both when they join the public service and throughout their careers. Moreover, rules should clearly note that public officials are responsible for identifying, managing and preventing conflicts of interest.

The second principle highlights that public officials are responsible for identifying and preventing conflicts of interest. OECD countries usually rely mainly on two mechanisms, which are not mutually exclusive, to identify and prevent conflicts of interest: i) mandating the public official to report a conflict of interest dilemma to his hierarchical superior; and/or ii) declaring the public official's interests up front through a template or declaration that must be filed at different times of the official's tenure. In other cases, public officials must file a "no conflict of interest" declaration/affidavit every time they participate in procurement procedures.

Figure 3.1. Policies and mechanisms to identify, prevent and manage conflicts of interest of procurement officials



Source: OECD Government at a Glance 2021 Database.

In the first case, public officials are instructed by law to report and consult with their superiors when in doubt about how to manage a conflict of interest situation. Senior managers are then supposed to provide advice on how to avoid the materialisation of the conflict of interest, sustaining the values and upholding the rules applicable to the situation. For example, a senior manager may suggest a public official to exclude himself from participating in a bid assessment committee if the official has an interest (i.e. stock) in one of the bidding companies. The official is then obliged to follow his boss' advice and document the decisions and actions taken to manage the conflict of interest.

The main assumptions that allow this mechanism to work effectively are the following:

- Public officials are sufficiently trained to identify a conflict of interest dilemma, even the so-called “grey zones”, and know the protocol to follow in compliance with the institutional values and the regulatory framework;
- Senior managers are trained to provide good advice and effectively manage the conflict of interest dilemmas;
- The organisational climate builds on the confidence of the public official to request advice from his superiors and allows for open and honest discussions, without fear of reprisals.

The second mechanism, based on up front disclosure of interests, supports accountability and safeguards against undue influence on policy makers and policy-making processes. Moreover, implementation of interest disclosure mechanisms helps detect and prevent unethical behaviours and abuse of power in the public service. Frequently, the disclosure of interest accompanies the disclosure of assets. When both interests and assets are disclosed, governments choose either one single form of disclosure, as in Mexico, or two separate ones, as in France, Lithuania (see Box 3.1) and Portugal. Disclosure provisions usually include financial and non-financial assets and interests that public officials hold, including:

- Financial: real estate assets and personal properties (houses, fields, boats, jewellery, works of art, etc.), financial assets and investments, securities and stocks, trusts, income, intangible assets (licences, permits, intellectual property rights), liabilities, remunerated memberships, positions and outside activities, as well as government contracts.
- Non-financial: non-remunerated memberships, positions and outside activities, spouse or partner's functions, etc.

In some countries, public officials declare additional information such as beneficial ownership or control of companies, gifts and sponsored travels, expenses and transactions while in functions, pre-tenure employment work and activities, and children's and other relatives' functions and activities.¹¹

The timing of the disclosure also varies by countries, but usually disclosure statements are required upon taking a public position and when leaving the public service. In some cases, the interest disclosure (and the asset statement) are filed periodically, for example, every one or two years in specific months. Likewise, the declarations may be required when the public official is promoted or changes its position.

¹¹ OECD (2020), *OECD Public Integrity Handbook*, OECD Publishing, Paris.

Box 3.1. Lithuania's Register of Declarations of Private Interests

Lithuania's Chief Official Ethics Commission (COEC) aims to ensure that the public institutions and persons working in them serve people in an ethical manner. The COEC is a collegial authority that is set up by the Parliament of the Republic of Lithuania (*Seimas*) and is accountable to it. Some of its main objectives are helping officials to declare private interests and adjust them with public interests and carrying out supervision of the declarations of private interests, assessing and managing the risks of conflict of interests, preventing compliance failures in state and municipal institutions and bodies, as well as other public sector entities listed in the Law on Adjustment of Public and Private Interests.

The COEC developed a Register of Declarations for Private Interests, in which e-declarations by public officials can be searched by one or more search parameters. The declarant is responsible for the accuracy of the declared data.

The list of persons whose declarations are public is also established by the Law on Adjustment of Public and Private Interests. In general, the data of relevant declarations (except for declarations of the persons whose data is classified under the procedure established in the law and/or who carry out intelligence, counter intelligence or criminal intelligence) shall be public.

As for the timing of the disclosures, declarations shall be submitted immediately, but not later than within 30 calendar days after the date of election, employment, or appointment. In the event of a change in the data to be declared, the person must immediately, but no later than within 30 calendar days, revise or supplement the declaration.

Public officials should provide the following information in the declaration:

- Name, surname, personal identification number, workplaces and positions (status) for which they must declare private interests, as well as other workplaces and/or positions held;
- name, surname, personal identification number, workplaces and/or positions held by the spouse;
- data on the legal persons in which the votes at the general meeting of shareholders or the rights of the member of the legal person, his spouse, cohabitee or partner allow exercising a decisive influence on the activities of such legal persons.

Likewise, declarants must specify the existing private interests that may create issues:

- by reason that he or a person close to him is a member of a legal person. In this case, the declaration shall contain information on participation of the legal person in public procurement or support projects funded by the European Union, international organisations, foreign states or the Lithuanian development cooperation and democracy promotion projects implemented by the institution or body in which the person concerned works or the institution or body subordinate to it;
- due to the relationship between him, his spouse, cohabitee, partner and legal and natural persons arising from a transaction the value of which is higher than EUR 3 000, including individual activity transactions. The declaration shall contain information on the transactions concluded during the period of 12 months to the date of filing the declaration;
- due to his membership and/or positions held in legal persons or the membership and/or positions held by persons close to him, except for membership in political parties and trade unions; and
- due to a person close to him or another person or data related to such persons or himself.

Regarding procurement officials, Article 5 of the Law on Adjustment of Public and Private Interests establishes that members of the procurement commissions of contracting entities, officials appointed by the head of the contracting entity for conducting simplified procurement, experts participating in the procurement procedures conducted by a contracting entity, and initiators of the procurement shall file a declaration before the start of participation in the procurement procedures. Those who fail to file a declaration shall not be entitled to participate in the procurement procedures and must be removed from the respective position.

Source: (Chief Official Ethics Commission, n.d.^[11])

One of the main requirements for declarations based on standardised templates to effectively prevent and identify potential conflicts of interest is a robust verification system. These mechanisms foster public officials' accountability to oversight institutions and the public. They are instrumental in the detection of financial and non-financial interests that may affect public policies and decisions. However, verification of compliance with requirements to disclose as well as checks on the accuracy and completeness of the content need to be performed for effective implementation. Verification may involve dedicated human resources with the necessary technical skills and may include crosschecking information with other publicly available data sources (real estate, public registers of companies, etc.) and administrative databases (tax administration, anti-money laundering units, procurement databases, etc.). Conducting verification procedures in order to prevent or detect conflict of interest includes:

- Compliance with restrictions to strengthen public integrity, notably on prohibited outside activities (rules on incompatibility), divestment of financial interests, post-employment restrictions, etc. Noncompliance with these restrictions and requirements usually leads to sanctions.
- Detection of specific interests or activities that may give rise to situations of potential, actual or apparent conflicts of interest with a public official's duties and position.¹²

The other issue to consider here is whether the declarations should be made public or not and this has been the subject of heated debate in many countries. On the one hand, those against claim that making the interests of officials public renders them vulnerable to criminal activities (i.e. kidnapping, blackmailing, etc.). Likewise, they invoke privacy rights for the officials themselves and for their relatives (in some countries, officials must declare assets and interests of their close relatives). On the other hand, those in favour of making the information public claim that this helps inform the general public about officials' interests, links and potential biases in policymaking, thereby providing an additional accountability and scrutiny mechanism. Furthermore, they argue that the information can be reused for investigative purposes by journalists and other jurisdictions, for research by academia and think tanks, or for advocacy reasons by civil society organisations. This allows holding public officials accountable and verifying if they effectively made special arrangements to manage their conflicts of interest. The argument goes on to sustain that public officials must relinquish some of their privacy to allow for scrutiny and strengthen accountability.

The issue of the vulnerability of public officials to criminal activity may be particularly relevant in contexts where rule of law is weak and criminal activity is high. For example, this has been part of the debate in countries like Colombia or Mexico. However, making the information about officials' interests public by default, at least partially, may help to reverse lack of trust in public institutions where this is the case.

¹² OECD (2020), *OECD Public Integrity Handbook*, OECD Publishing, Paris.

Slovakia's system to identify and prevent conflicts of interests of public procurement officials relies on having them reporting the dilemmas to their senior managers

The regulatory framework, including the Code of Ethics for Civil Servants, the PPO's Employee Code of Ethics, and the Interpretation of the Code of Ethics for Civil Servants, requires PPO staff to beware of any conflict of interest and inform their superior of any potential, apparent, or real conflict of interest. Senior managers then have to assess the potential of a conflict of interest and provide advice on how to proceed. Additionally, they can consult the Anti-corruption Specialist, the Anti-corruption Coordinator, and/or the Head of the Human Resources Department.

Interviews with PPO senior managers and line officials seem to confirm that they know the rules and protocols and are trained periodically to identify and prevent conflicts of interest and, in the case of senior managers, to provide advice. Trainings rely on practical dilemmas to be reflected upon by participants. This is a good practice applied in several OECD countries and regions (see Box 2.2). Twenty-two training sessions took place during 2020 and two more during February-April 2021 with about 200 participants. Furthermore, the written guidance contained in documents such as the Interpretation to the Code of Ethics for Civil Servants and the Code of Conduct is useful to guide line officials and senior managers to identify conflicts of interests. On top of illustrating real-life cases, many of them related to procurement activities, these materials introduce practical concepts and tools such as "grooming" and the "front-page test".

"Grooming" refers to gaining gradual influence on a person with authority to steer his future decisions, for example, through gifts and gratuities. It relies on the human psyche of gratitude and reciprocity. The "front-page test" encourages public officials to imagine their photos, decisions, or activities displayed in an article on the front page of a newspaper and reflect on whether they would be able to defend publicly their decisions or actions without jeopardising their reputations or that of their institutions.

Box 3.2. Dilemma training in OECD countries and regions

Dilemma training is an example of combined rules-based and values-based approaches, as it involves situations where there is no obvious choice among the different alternatives available. For example, the Agency for Government Employees in the Flemish Government offers dilemma training to public officials; trainees are given practical situations in which they face an ethical dilemma with no clear path to resolution with integrity. Similarly, the Office of Government Ethics (OGE) in the United States offers in-person training with a series of scenarios aimed at fostering ethical reasoning and discussing ethical dilemmas.

The purpose of dilemma training is to convey that such situations are inevitable, and to stress the message that public officials should seek support when they face such situations. Dilemma training also runs less risk of being perceived as naïve or as a mere formal requirement; it may yield greater results if it is interactive and allows participants to be confronted with realistic situations that generate a personal commitment to integrity.

As such, focusing dilemma training on public officials' working situations helps stimulate participants' moral awareness, contributes to their level of moral reasoning, and provides methods to help improve the moral quality of their actions.

Source: (OECD, 2020^[12])

Self-awareness, training, and guiding materials provide good foundations for the mechanism of reporting conflict of interest situations to senior managers. This is also supported by the appointment of PPO's Anti-corruption Specialist, who happens to be subordinated to the person exercising the role of the Anti-corruption Coordinator in the PPO. Indeed, in Slovakia, two integrity related networks are being developed and deployed in parallel. On the one hand, the network of Anti-Corruption Coordinators, appointed by law in each government institution, is facilitated by the Corruption Prevention Department and focuses mainly on corruption risk management. On the other hand, the Civil Service Council is establishing a network of Ethics Advisors across the public sector. Currently about 70 advisors have been appointed, about one third of the target of 200 institutions at national and subnational levels. These ethics advisors serve on a voluntary basis, often part-time. Currently, government-wide there are no connections between these two networks, neither in terms of information exchange nor in coordination.¹³ According to PPO officials, having these two networks could mitigate the risk of mishandling corruption cases and the two officials (the coordinator and the advisor) can assist each other and reach a better decision when dealing with anti-social activities and corruption investigations.

However, it may be worthwhile to consider merging the roles of the PPO Anti-corruption Specialist and the Coordinator. This would prevent confusion by line officials and senior managers on who they can consult in case of doubts or questions about conflict of interest dilemmas. As explained in the forthcoming OECD *Integrity Review of Slovakia*, a model of one single anti-corruption officer or co-ordinator may be clearer for staff, for example in terms of anti-corruption inquiries or integrity issues, and for management, for example when organising anti-corruption trainings, conducting anti-corruption risk assessments, and reporting on ethical dilemmas, cases or wrongdoing and emerging risks. It may also be helpful to concentrate data on cases of conflict of interest dilemmas and systematise it to produce useful information for decision-making. The existence of ethics or integrity advisors is, indeed, a good practice in many OECD countries (see Box 3.3).

During the period 2020-July 2021, there have been around 17 cases consulted with the Anti-corruption Specialist, about four had to do with conflict of interest. Furthermore, during the period July 2020-April 2021 there have been three reports filed of potential wrongdoing. While this number may seem low, it is important to consider that people in Slovakia are not used to report such anti-social/corruption-related cases. Notably, the reports were not anonymous, which facilitates following up.

¹³ OECD (forthcoming), *OECD Integrity Review of Slovakia*, OECD Publishing, Paris.

Box 3.3. Ethics or integrity advisors in Germany

Germany, at federal level, has institutionalised units for corruption prevention as well as a responsible person that is dedicated to promoting corruption prevention measures within a public entity. The contact person and a deputy have to be formally nominated.

The “Federal Government Directive concerning the Prevention of Corruption in the Federal Administration” defines these contact persons and their tasks as follows:

1. A contact person for corruption prevention shall be appointed based on the tasks and size of the agency. One contact person may be responsible for more than one agency. Contact persons may be charged with the following tasks:
 - serving as a contact person for agency staff and management, if necessary without having to go through official channels, along with private persons;
 - advising agency management;
 - keeping staff members informed (e.g. by means of regularly scheduled seminars and presentations);
 - assisting with training;
 - monitoring and assessing any indications of corruption; and
 - helping keep the public informed about penalties under public service law and criminal law (preventive effect), while respecting the privacy rights of those concerned.
2. If the contact person becomes aware of facts leading to reasonable suspicion that a corruption offence has been committed, he shall inform the agency management and make recommendations on conducting an internal investigation, on taking measures to prevent concealment and on informing the law enforcement authorities. The agency management shall take the necessary steps to deal with the matter.
3. Contact persons shall not be delegated any authority to carry out disciplinary measures; they shall not lead investigations in disciplinary proceedings for corruption cases.
4. Agencies shall provide contact persons promptly and comprehensively with the information needed to perform their duties, particularly with regard to incidents of suspected corruption.
5. In carrying out their duties of corruption prevention, contact persons shall be independent of instructions. They shall have the right to report directly to the head of the agency and may not be subject to discrimination as a result of performing their duties.
6. Even after completing their term of office, contact persons shall not disclose any information they have gained about staff members’ personal circumstances; they may however provide such information to agency management or personnel management if they have a reasonable suspicion that a corruption offence has been committed. Personal data shall be treated in accordance with the principles of personnel records management.

Source: (OECD, 2022^[13]).

Introducing the duty to file interest declarations by procurement officials would facilitate a more thorough assessment of conflict of interest risks

Public organisations need to ensure that specific measures are in place to address conflicts of interest for at-risk positions such as public procurement, as well as for at-risk situations such as pre- and post-public employment, additional employment or outside appointments. Interest declarations are useful tools to increase transparency, allowing contracting entities to carry out risk assessments and identifying potential conflicts of interest that may hinder public trust and jeopardise institutional and personal reputations.

Currently, the PPO has no template or practice for officials to declare their interests upfront or with certain periodicity. There are a couple of affidavits in which PPO officials declare that they are not acting under a conflict of interest, but they do not have to declare the specific interests they do hold, so these are different kinds of statements.

Regarding such affidavits, all PPO staff are given on the day of signing the job contract a form that states that they will comply with the laws, rules, and regulations – national and PPO specific, including conflict of interest provisions. All PPO staff also sign an affidavit declaring that if they do or have done something that may jeopardise PPO's reputation (including conflict of interest situations), they are bound to proactively inform their superior or the Human Resources Department.

Likewise, each time there is a public procurement process and a necessary ad hoc selection commission formed – the participating PPO officials sign an affidavit where they declare that they do not have any knowledge of a conflict of interest in the particular procurement in which they participate. These signed forms are archived and are part of the respective procurement file. In case there is a conflict of interest either at the beginning of the procurement process or at any later stage, they have to immediately declare the situation and they will be withdrawn from the process and replaced by a new official, if necessary. The statement declaring the conflict of interest situation is also archived in the procurement file.

The different affidavits are the following:

- Conflict of interest affidavit for all PPO staff: Used by officials to declare that they will refrain from any action leading to a conflict of interest and pledge not to misuse information obtained in the performance of public service.
- Close persons affidavit for all PPO staff: Used by officials to declare they have no close personal relationships that may create conflicts of interests.
- No business activity affidavit for all PPO staff: Used by officials to declare that they do not perform any other remunerated activities and are not members of management, control, or supervisory bodies of legal entities engaged in business activities that may lead to a conflict of interest.
- Good reputation affidavit for all PPO staff: Used by officials to declare that there are no facts that could endanger their reputations or that of the PPO.
- Affidavit for assessing conflicts of interest by public procurement staff: Used by officials to declare that they are or are not in a conflict of interest relative to specific suppliers or bidders. This form should be filled repeatedly depending on the individual procedural steps in which the official participates.
- Conflict of interest affidavit for public procurement staff relative to EU operation programmes: Used by officials to declare that they are aware of the definition of conflict of interest, that they have no conflict of interest with bidders participating in a specific procurement procedure, that they will immediately notify in case a conflict of interest emerges, and that they will preserve the confidentiality of all matters entrusted as a public servant.

Such affidavits are not proactively disclosed for public scrutiny. Citizens may request information through freedom of information requests and/or ask for the materials in person, by post, or e-mail.

Establishing an up front and periodic declaration of interests to be filed upon taking office and every year or two years, or when the public official interests change in a manner that may lead to conflicts with the public interest, would allow the PPO to screen such interests and develop a risk profile of procurement officials. The profiles would describe interests that may potentially lead to conflicts of interests, which, in turn, would be useful to preclude public officials from specific circumstances that would materialise the conflict of interest. It would also be useful to prevent apparent conflicts of interest and safeguard the institution's reputation. This would be a first line of defence, which would be followed by a second, consisting on the reports by public officials to their senior managers in case they face a conflict of interest dilemma and do not know how to manage it. The periodic updating of interest declarations, together with training and consultation, are key elements in systems that rely on individual public officials to disclose their interests.

While the recommendation consists on establishing the practice of an upfront and periodic declaration of interests by procurement officials, this does not mean the affidavits are useless. All to the contrary, the affidavits may serve as “moral reminders”, which have proved to be effective in triggering ethical reflection and motivating good behaviour. However, the effect of a moral reminder may be reduced if an individual is exposed to it on a frequent basis, and at some point, the message may no longer be noticed. Nonetheless, when policy makers place such messages in the proximity of decisions with integrity risks – which are not taken frequently by the same person – they can make a significant difference (see Box 3.4).

Box 3.4. Moral reminders

One straightforward strategy to induce ethical behaviour is to remind decision makers about moral standards. Research has shown that inconspicuous messages can have a striking impact. In Austria, it is common practice to buy newspapers from a self-service box in public places. The papers have a fixed price, but there is no control of how much money customers actually place in the box when they take a paper. Researchers from the Universities of Linz and Vienna conducted a field experiment on these paper sale boxes. On some of the signs indicating the price of the paper they added, “Thank you for being honest”. The amount paid for a paper increased significantly in these cases. Other studies have shown similar effects. For example, students cheated less when reminded of a moral norm, such as the Ten Commandments, just prior to taking a test.

In Mexico, the Ministry of Public Administration (*Secretaría de la Función Pública*, SFP) in co-operation with the Centre for Economic Research and Teaching (*Centro de Investigación y Docencia Económicas*, CIDE) applied this behavioural insight to their gift registration policy, in order to enhance compliance. SFP sent out reminder emails to public employees required to register their received gifts. They randomly varied the text of the message. Five different types of reminder messages were sent:

- Legal: It is your legal obligation to register received gifts.
- Honesty: We recognise your honesty as a public official. You are required to register gifts. Show your honesty.
- Impartiality: Receiving gifts can compromise your impartiality. When you receive a gift, register it.
- Social: More than 1 000 registrations per year are made by your colleagues. Do the same!
- Sanction: If you receive a gift and you do not inform us, someone else might. Do not get yourself punished. Register your gifts.

The study then observed the number of gifts registered around the Christmas period (peak season for gifts), and compared this with previous years and against a control group who did not receive any of the messages. The study demonstrated that receiving a reminder email increased the number of gifts registered. However, some messages were more effective than others: reminding public officials of their

legal obligations and appealing to their impartiality and honesty encouraged more people to register gifts than referring to sanctions or registrations made by colleagues.

This example shows that: (i) small behavioural nudges can increase compliance with an existing policy, and (ii) appealing to values and integrity changes behaviour more effectively than threatening sanctions.

Source: (OECD, 2018^[14])

Introducing the interest declarations by procurement officials would need to be accompanied by building a robust verification system and a mechanism to systematise the data for decision-making and evaluation

As mentioned before, one of the main requirements for declarations to effectively prevent and identify potential conflicts of interest is a robust verification system. Interest declarations should not merely be “tick-the-box” exercises of filling forms that will only be stored somewhere. They should provide data to effectively and proactively identify and manage risks of conflicts of interest before they affect the reputation of public officials and institutions and, above all, before they lead to acts of corruption. This verification of correctness and completeness and the extraction of useful information require resources (political, human, IT, etc.).

The forthcoming OECD *Integrity Review for Slovakia* concluded that, for the case of asset declarations, control and verification are weak and insufficient to process all declarations in a timely manner.¹⁴ A parliamentary committee currently performs such verification at national level, but the government pledged to establish an independent institution. At this point, it is unclear whether this change will bring the requirement of interest declarations.

During 2021, the PPO’s Anti-corruption Specialist, together with the Anti-corruption Coordinator, devised a database of interests reported by the institution’s staff who participate in public procurement processes for the PPO (i.e., internal public procurement). While this is a step in the right direction, there are three issues hindering its usefulness. First, the database will, in its first stage, only include PPO’s staff who participate in internal public procurement processes. Thus, staff who participate in hiring processes and other decisions in which conflicts of interest may arise and could be declared, are not included in the database. Second, the database is being built in a simple Excel sheet, so the possibility of extracting trends, correlations, and other types of information useful for decision making is limited. Third, the number of reports and requests for advice may not be significant to populate a bigger database with information about the interests of PPO officials. However, this third issue would be addressed if PPO officials were required to file an interest declaration. Then, such information would be useful to, for example, tailor the training and guidance materials according to the interests held by officials and which may conflict with the public interest.

The PPO Supervision Department also developed the Internal Methodology of the Supervision Department (IMSD), which is backed by a team of six staff members and aims to answer questions from control officials seeking connections between procurement officials and bidders to spot red flags for conflicts of interest. Answers should be provided by the IMSD team within five working days. As of October 2021, the IMSD had provided methodological guidance to 31 cases related to the contents of the Public Procurement Act and 171 requests on identifying a potential conflict of interest. Since the beginning of the operation of the

¹⁴ OECD (forthcoming), *OECD Integrity Review of Slovakia*, OECD Publishing, Paris.

IMSD, 16 red flags have been recorded, indicating comptrollers that they should be aware of specific situations.

In addition to the previous tools, the PPO relies on an online database (*Index Podnikatela*) that is actually a tool to link 26 different databases to crosscheck connections between procurement officials and bidders (Table 3.1 provides a list of the 26 databases). A step-by-step manual provides guidance on how to use the database and basic control rules.

Table 3.1. The 26 databases in *Index Podnikatela*

<i>Data source</i>	<i>Web page</i>	<i>Update</i>
Business register	http://www.orsr.sk/	Every 3 days
Trade register	http://www.zrsr.sk/	Every 7 days
Register of financial statements	http://www.registeruz.sk/	Every day
Commercial journal	https://www.justice.gov.sk/PortalApp/ObchodnyVestnik/Web/Zoznam.aspx	Every day
Register of bankruptcy	https://ru.justice.sk/ru-verejnost-web/	Every day
Statistical Office	https://slovak.statistics.sk/	Every day
Financial administration of the Slovak Republic – List of VAT payers	https://www.financnasprava.sk/sk/elektronicke-sluzby/verejne-sluzby/zoznamy	Every day
Financial administration of the Slovak Republic – List of problematic VAT payers	https://www.financnasprava.sk/sk/elektronicke-sluzby/verejne-sluzby/zoznamy	Every day
Financial administration of the Slovak Republic – List of abolished VAT payers	https://www.financnasprava.sk/sk/elektronicke-sluzby/verejne-sluzby/zoznamy	Every day
Financial administration of the Slovak Republic – List of tax debtors	https://www.financnasprava.sk/sk/elektronicke-sluzby/verejne-sluzby/zoznamy	Every day
PPO	https://www.uvo.gov.sk/evestnik	Every day
Social insurance	https://www.socpoist.sk/zoznam-dlznikov-emw/487s	Every two days
General Health Insurance Company	https://www.vszp.sk/platitelia/platenie-poistneho/zoznam-dlznikov.html	Once a month
Insurance Dôvera	https://www.dovera.sk/overenia/dlznici/zoznam-dlznikov	Every day
Insurance Union	https://www.union.sk/zoznam-dlznikov	Once a month
Central State Claims Register	https://www.pohladavkystatu.sk/	Every day
Judicial decisions	https://obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie	Every day
Slovak domains	https://sk-nic.sk/	Every day
Central Register of Contracts	https://www.crz.gov.sk/	Every day
Register of liens	http://www.notar.sk/	Every day
Newly established companies in business and trade registers	http://www.orsr.sk/ http://www.zrsr.sk/	Every day
Register of executions	https://cre.sk/	Upon request
Business register (Czech Republic)	http://www.info.mfcr.cz	Every day
Trade register (Czech Republic)	http://www.info.mfcr.cz	Every day
Insolvency register (Czech Republic)	https://isir.justice.cz	Every day
List of data boxes (Czech Republic)	http://seznam.gov.cz/	Upon request

Source: Information provided by Slovakia's PPO.

Despite the fact that the previous steps represent positive measures (two years ago there were no IT tools to investigate conflicts of interest), a more robust verification system and a more extensive and automated database would also be useful to evaluate conflict of interest policies (see Box 3.5). For example, it would be useful to identify if policies were effective in preventing potential conflicts of interests from materialising. It may also provide valuable information on the extent of conflicts of interests stemming from pre- or post-public employment situations, thereby leading to initiatives to regulate it. In fact, based on the ISO 37001 and the adopted anti-bribery management system, the Anti-corruption Specialist produces every year a report of his work for PPO's senior management. A more developed database would provide information to feed this yearly report and include evidence on the impact of conflict of interest policies.

Assessment of the implementation of the conflict of interest policy should be an integral part of it to provide evidence-based feedback on impact and effectiveness. It would support PPO in fine-tuning and improving the policy standards and put them into practice more effectively. Evaluation should take place periodically to take account of the changing environment. Furthermore, demonstrating the effectiveness of conflict of interest policies for procurement officials would fit nicely with the government commitment to advance integrity and would build trust among citizens, at times when governments all around the world are asking them to make sacrifices to address the spread of Covid-19.

Box 3.5. Monitoring and evaluating conflict of interest policies

In order to understand the impact of conflict of interest (and other integrity-related) policies and be able to fine-tune them, it is important to specify evaluation arrangements from the very beginning (the design stage). These mechanisms are often institutionalised within the policy-making process for all public policies. Evaluation mechanisms at various stages of the policy process are defined and planned prior to implementing any actions.

Having a clear idea of what data will be collected for evaluation, as well as how and when measures taken will be evaluated, informs the design and implementation of actions. It is essential to establish evaluation mechanisms before the implementation phase to ensure measurability, progress reports, and accountability.

Some data may overlap with what is collected for risk identification and assessment activities, but the monitoring and evaluation arrangements have a different purpose: holding the implementing actors accountable for what has been achieved, and how efficiently.

The evaluation can either be done in-house or outsourced. Alternatively, it is possible to outsource only certain parts of the process. The choice depends on the purpose of the evaluation and the resources available. In short, in-house evaluations have the advantages of facilitating organisational self-reflection and learning, being less expensive and faster to execute. On the other hand, they are often perceived as less objective, and in-house staff often have neither the time nor the skills needed for a thorough evaluation.

Source: (OECD, 2020^[12])

There are other sources of information on conflict of interest that could be leveraged by the PPO. The Anti-corruption Specialist and the Human Resources Department monitor compliance with the rules and standards. Currently, the Human Resources Department keeps records regarding staff-related issues, including conflict of interest cases informed by procurement officials. However, this information is not systematised. Likewise, the Anti-corruption Specialist and a team of internal auditors carry out internal audits on an annual basis in each PPO unit. Conflict of interest rules are part of the elements audited and

the information stemming from them could feed the suggested database. The U.S. OGE, for example, carries out audits to verify compliance with integrity standards (see Box 3.6).

Another more qualitative source of potential information would be furthering the dialogue with procurement officials and other stakeholders (i.e. suppliers) to take feedback on the impact of conflict of interest policies. Discussions could be motivated in dedicated workshops or even in the regular training sessions organised by the Anti-corruption Specialist. Focus groups, roundtables, and surveys would be useful as well to collect relevant data for evaluation purposes.

Box 3.6. The compliance circle in the Executive Branch of the United States

In the Executive Branch of the United States, a circular system is in place in order to monitor compliance by public officials with ethics policies:

- The first actor in this process is the OGE, which develops the Executive Branch wide ethics policies and specifies the frameworks of an agency's ethics programme.
- The implementation of the OGE developed programmes lies within the responsibility of each agency head. In order to carry out this function, the agency selects a Designated Agency Ethics Official (DAEO), who takes care of the day-to-day activities in accordance to the programme.
- The circle is completed when the OGE conducts its regular audit – that takes place every four to five year cycle – to monitor compliance with the defined programmes in the given agency. However, the OGE can start an audit within the four to five year cycle if the DAEO reports non-compliance that requires corrective actions.

To enforce compliance by individual public officials, the responsibility lies with the agency in which the official is employed. Employees are encouraged to seek advice from the DAEO in case of any doubt: an employee who acts in good faith pursuant to the advice given by a DAEO will not be penalised even if the advice turns out to be wrong.

Source: (OECD, 2003^[15]).

4 Managing conflicts of interest to prevent corruption (or the appearance of a conflict of interest)

The PPO should work on setting clear rules on what is expected from procurement officials to manage conflict of interest situations and facilitate their implementation

The identification, registration, or declaration of a conflict of interest does not resolve it by itself. The OECD experience illustrates several options to manage a conflict of interest situation:¹⁵

- Divestment or liquidation of the interest by the public official;
- recusal of the public official from involvement in an affected decision making process;
- restriction of access by the affected public official to particular information;
- transfer of the public official to duty in a non-conflicting function;
- re-arrangement of the public official's duties and responsibilities;
- assignment of the conflicting interest in a genuinely "blind trust" arrangement;
- resignation of the public official from the conflicting private-capacity function; and
- resignation of the public official from their public office.

The appropriate measure to take varies depending on the specific circumstances (i.e. the intensity and the nature of the conflict of interest). For example, *ad hoc* recusal from participating in a discussion or decision may be appropriate if the conflicting situation is not likely to come up again. On the contrary, if the concerned official's interest is likely to raise issues repeatedly, it might be better to opt for another alternative like the re-arrangement of the official's duties and responsibilities. There might also be cases in which the nature of the official's interest imposes resignation as the only way to resolve it. Civil service and conflict of interest regulations should anticipate such cases and allow for the termination of the public official.

All the affected parties to a decision in which a conflict of interest is raised should be informed of the measures taken to safeguard integrity. Registrations and declarations of private interests, as well as the arrangements for resolving conflicts, should be clearly recorded in formal documents, to enable the organisation concerned to demonstrate, if necessary, that a specific conflict has been appropriately identified and managed. Further disclosure of information about a conflict of interest may also be appropriate in supporting the overall policy objective, for example, by demonstrating how the disclosure of

¹⁵ OECD (2003), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris.

a specific conflict of interest was recorded and considered in the minutes of a relevant meeting. As previously discussed, the disclosure of interest declarations is useful to protect the reputation of public officials and organisations and to reassure stakeholders that proactive measures are being taken to protect the integrity of, for example, procurement decisions.

While the rules described in Table 2.1 are clear regarding the duty to inform a superior when a conflict of interest situation takes place, or even when the public official is in doubt, such rules do not provide significant guidance on the alternatives to manage the situation, other than recusal and restrictions to access particular information. For example, the Code of Ethics for Civil Servants establishes that “if a civil servant has doubts about conflicts of interests, without undue delay, he shall notify his superior. The superior assesses the matter and, if the civil servant is in a conflict of interest, ensures that he is not involved in duties, in particular acting and decision making, and does not have access to the information concerned”. The requirement to inform the official’s superior about a conflict of interest is also included in the PPO’s Employee Code of Ethics and the Interpretation of the Code of Ethics for Civil Servants.

The Interpretation of the Code of Ethics for Civil Servants provides a list of potential options to resolve a conflict of interest, but do not explain how, when, and under what circumstances each alternative might be appropriate. The potential solutions are the following:

- re-assigning the employee to another position where there will be no conflict of interest;
- excluding the employee from decision making if he has a real, potential, or apparent conflict of interest;
- preventing the public official from having access to documents and information if he has a real, potential, or apparent personal interest;
- requiring HR to report personal interests when taking sensitive positions and when there are changes in personal interests;
- requiring the public officials in sensitive positions to declare that they will not incur in conflicts of interests when negotiating and taking decisions; and
- in the case of particularly sensitive matters, entrusting a person to conduct a conflict of interest investigation.

The list above and the rules on conflict of interest do not anticipate solutions such as divestment, creating blind trusts, resignation, or termination of the public official. Furthermore, as explained previously, they do not explain the circumstances under which each option might be appropriate. In consequence, the PPO could work on the regulatory framework to elaborate more comprehensively the options to manage conflict of interest situations and explain when and how to use them.

Likewise, as the system to identify and manage conflicts of interest relies heavily on senior managers, they should be supported to understand and consider different options to resolve such a situation. For example, the training for senior managers should address more extensively the potential solutions.

Since the current regulatory framework is particularly strong in defining and identifying conflicts of interest, improving the instructions and guidance to manage them is not only a logical next step, but also a requirement to align PPO’s conflict of interest rules with best practice.

Box 4.1. Dealing with conflicts of interest in New Zealand's public sector

The document *Managing conflicts of interest: A guide for the public sector*, produced by New Zealand's Controller and Auditor General, describes conflicts of interest in the public sector and how to identify, disclose, and manage them. The guide aims to be useful for everyone who works in New Zealand's public sector. Part 4 addresses how to deal with conflicts of interest.

The guide establishes that for each potential conflict, it is important for public organisations to consider whether something more ought to be done after disclosure. In doing so, organisations should have regard to risks of how outside observers might reasonably perceive the situation. It is not safe to assume that a disclosure, and no further action, is always adequate.

First, if any legal requirement applies, then compliance with that is critical and overriding. For example, where the situation involves a legal requirement about a board member participating in a meeting, the law will usually require the member to refrain from participating in discussions and voting on the matter. There is usually no scope to decide on some lesser mitigation option. Second, public organisations should consider whether any relevant policy contains a clear rule covering the situation. Third, if no relevant legal requirement or policy applies (or after any such rule has been complied with), then public organisations should also consider whether anything more needs to be done. This is where there might be scope for a range of options. This assessment is a matter of judgement. In exercising such judgement, public organisations need to assess carefully:

- the seriousness of the conflict of interest;
- the level of risk the conflict gives rise to; and
- the range of possible mitigation options.

Several factors might need to be considered in assessing the seriousness of the conflict of interest, such as:

- the type or size of the person's other interest;
- the nature or significance of the particular decision or activity being carried out by the public organisation;
- the extent to which the person's other interest could specifically affect, or be affected by, the public organisation's decision or activity; and
- the nature or extent of the person's current or intended involvement in the public organisation's decision or activity.

Judgements made about the seriousness of any conflict of interest will inform the suitable mitigation option. It might also be necessary to take into account the practicability of any options for avoiding or mitigating the conflict. The guide presents a broad range of options for avoiding or mitigating a conflict of interest. The options (listed roughly in order of lowest to highest severity) include:

- taking no action;
- asking whether all affected parties will agree to the person's involvement;
- seeking a formal exemption to allow participation (if such a legal power applies);
- imposing additional oversight or review over the person;
- withdrawing from discussing or voting on a particular item of business at a meeting, or taking some other steps to limit influence or decision-making powers (for example, they might not take part in decisions but could still provide advice);
- exclusion from a committee or working group dealing with the issue;

- re-assigning certain tasks or duties to another person;
- agreement or direction not to do something;
- withholding certain confidential information;
- placing restrictions on access to information;
- transferring the person (temporarily or permanently) to another position or project;
- relinquishing the private interest;
- refraining from having further dealings with a person or organisation; and
- resignation or dismissal from one or other position or organisation.

Ensuring that the conflicted person is no longer involved in the public organisation's work on the particular matter, through withdrawal, removal, or reassignment, is the most typical mitigation option. According to the guide, taking one of those steps will usually be enough to adequately manage a conflict of interest. However, it also states that giving up an interest or role might not always deal with a conflict of interest if it happens at a very late stage. In other words, sometimes it might be too late for the person to choose to withdraw from one role or interest in order to be able to carry on with the other one.

Finally, the guide suggests making a written record about any decision. This might include details of the facts, who undertook the assessment, and how and what action was taken as a result. Sometimes risk management might be helped by also considering whether to make an announcement to certain other people, or even publicly, about the conflict of interest and how it has been dealt with.

Source: (New Zealand's Controller and Auditor General, 2020^[16]).

5 Gifts and gratuities

Gifts and gratuities policies and rules for PPO staff are robust, so the main challenge lies in implementation and consistency

The policy on gifts and gratuities for PPO staff is briefly established in the Code of Conduct, the Code of Ethics for Civil Servants, and the PPO's Employee Code of Ethics, but it is further elaborated in Directive No. 9/2020 on the acceptance and registration of gifts and in the Interpretation of the Code of Ethics for Civil Servants.

Basically, a PPO official can accept a gift if its value is below 30 Euros and as long as it meets specific criteria – most importantly, if given by an external party it must be given at an official function or an official meeting. However, if the value exceeds 30 Euros, officials must hand it over and register it in the bureau of the PPO Chairman. If it happens that it is impossible to determine the value of the gift, it must be handed over. The Chairman will decide what to do with the gift upon the recommendation by a commission that carries out due diligence and assesses if the gift could reasonably be perceived as influencing official decisions. The gift is then recorded in a registry that is not public.

The guidance provided in the codes and directives mentioned above is quite illustrative and explained in a friendly manner through, for example, cases, frequently asked questions (FAQ), and checklists. The Code of Conduct, for instance, contains a set of set of FAQ calling on PPO officials to consider, beyond the economic value of a gift, how it might be perceived by third parties. In other words, even if the gift or gratuity does not exceed the threshold of 30 Euros, it might be perceived as a bribe due to a non-economic appreciation (for example, football tickets to watch my favourite team). The Code of Conduct also stresses that public officials consider the risk of grooming (i.e. getting gradual influence on an official with the purpose of being able to steer his future decisions) and applying the front-page test (i.e. encouraging public officials to imagine their photos, decisions, or activities displayed in an article in the front page of a newspaper and reflect on whether they would be able to defend publicly their decisions or actions without jeopardising their reputations or that of their institutions).

The Code of Ethics for Public Servants is more prescriptive but also calls the attention of public officials to avoid a situation in which a gift may affect their impartiality and objectivity. For example, section 7 on *Gifts and other benefits* raises the risk of feeling the duty to reciprocate. It establishes that public officials “ensure that, in connection with the performance of assigned duties, they do not get into a situation in which they are obliged to repeat the service or attention given to them through an action or procedure that impairs the impartiality and objectivity of their conduct or decision making”. This Code also establishes that if the public servant cannot refuse receiving the gift, he should prepare a written record of this fact, forward the written record and deliver the gift to the bureau of the PPO Chairman, and inform his hierarchical superior, who may also provide advice on whether the public official is acting according to the rules.

Directive No. 9/2020 on the acceptance and registration of gifts provides a template to register gifts. It requests the following information:

- Serial number

- Date of receipt
- Place of receipt
- Who provided the gift (the donor)
- To whom was the gift given (gifted)
- Description of the gift (specifications of the gift, benefit, or hospitality)
- Estimated financial value of the gift
- Date of award of the gift
- Reason for awarding the gift (based on the recommendation of the commission).

The Interpretation of the Code of Ethics for Civil Servants provides additional examples and situations to illustrate how public officials should behave. Furthermore, it provides practical tools, such as the GIFT test to prompt public officials to reflect upon the potential consequences of accepting a gift (Box 5.1).

Box 5.1. The GIFT test

This prescriptive checklist reduces the potential for confusion to four simple tests, arranged under a mnemonic – GIFT – to make the tests easier to remember. Each element of the GIFT mnemonic recalls one of the principles of public ethics, rather than a set of complex administrative definitions and criteria or processes.

Genuine

Is this gift genuine, in appreciation for something I have done in my role as a public official, and not requested or encouraged by me?

Independent

If I accept this gift, would a reasonable person have any doubt that I could be independent in doing my job in the future, especially if the person responsible for this gift is involved or affected by a decision I might make?

Free

If I accept this gift, would I feel free of any obligation to do something in return for the person responsible for the gift, or for his family, or friends or associates?

Transparent

Am I prepared to declare this gift and its source, transparently, to my organisation and its clients, to my professional colleagues, and to the media and the general public?

Source: (OECD, 2005^[6])

After reviewing the framework for managing gifts and gratuities applicable to PPO officials, the conclusion is that it is fairly robust, as it provides guidance on the basic questions public officials may need to answer such as:

- Under what conditions may I accept a gift?
- What principles should I observe?
- What is the threshold for accepting a gift?
- Beyond the threshold, what other considerations should I reflect upon?
- What should I do to accept a gift or if I cannot refuse to receive it?

- Whom can I consult in case of doubts?
- What are some of the practical situations I may encounter?

While the framework is robust, there have only been two reports on gifts exceeding the 30 Euros threshold during the period July 2020-July 2021. This may be indicative of one of the major implementation challenges for rules on gifts, which is building trust among public officials to come forward and declare the gifts. As in other types of conflicts of interests, public officials need to understand that receiving a costly gift, for example, may have been unavoidable under specific circumstances (for example, due to protocol standards, diplomatic courtesy, etc.), but they can still manage the situation by being transparent and getting rid of the gift.

During fact-finding interviews, the OECD team tested the knowledge of PPO officials about the framework. In general, they were aware of the rules and basic procedures, so the low number of cases does not seem to stem from lack of awareness. Even so, the PPO may want to consider applying a wider survey to get a better assessment of the degree of awareness of officials about the gifts and gratuities rules and procedures. In parallel, the PPO may continue communicating the framework through posters, flyers, e-mails, wallpapers, and so on.

As more cases come up, there will also be a challenge of consistent application of the framework. It will be important to document each case and their respective solutions to periodically analyse consistency to create the right incentives for procurement officials to come forward declaring gifts and behaving according to the PPO rules and principles. Ideally, such analyses will consider the opinions of officials who have been the recipients of instructions, or even sanctions, for the management of gifts. This would allow identifying areas of opportunity to strengthen the framework even more and make it easier to grasp and understand.

The PPO may consider making the registry of gifts publicly accessible

The fact that the registry is not public may give rise to suspicion that the PPO or its employees are hiding something. The main argument provided by PPO officials to not make it public was to avoid someone making bad use of the information to criticise without adequate justification (for example, the press). However, making the registry public may be more effective in avoiding scandals and communicating what the PPO is doing to prevent conflicts of interests.

First, disclosing the gifts would send a strong message that there is nothing to hide and communicate the conflict of interest standards to communities that interact with PPO officials (i.e. suppliers). Second, disclosing publicly the gifts and their management would protect organisational and individual reputations. If at some point the gift is reported by a third party such as the press or a watchdog, anyone interested would be able to see that the gift was declared and how the situation was managed. Third, a public registry would be a deterrent for companies or individuals trying to “groom” public officials, as they would know that the gift will be public and this fact may impact their reputations. Finally, once the registry gets traction and there are enough gifts registered, its publication will also allow PPO officials to realise that people are complying with organisational policies, creating incentives to comply as well.

Argentina, for example, recently developed a public registry of gifts, which can be consulted at <https://www.argentina.gob.ar/anticorrupcion/prevencion/regimen-de-obsequios/consulta-el-registro> (see Box 5.2).

Box 5.2. Argentina's public registry of gifts

In Argentina, all public servants, including procurement officials, must register gifts or financed travel permitted by law. For this purpose, the Anticorruption Office (*Oficina Anticorrupción*, OA) set up the Gifts and Travel Registry, following the mandate of Decree 1179/2016, which regulates Article 18 of Public Ethics Law 25188.

The registry is accessible on the Internet and includes the following information:

- Description of the gift.
- Public official who received the gift
- Position of the public official
- Institution
- Date of reception of the gift
- Place (event, if applicable) where the gift was received
- Estimated value
- Destination of the gift
- Donor (either a moral or a physical person)
- Motivation for the gift

For the case of paid travel, the information includes the following items:

- Event
- Nature of participation (i.e. speaker, participant, etc.)
- Destination
- Public official
- Position of the public official
- Institution
- Dates of beginning and end of travel
- Sponsor
- Means of transport
- Contact reference of the donor and his position

Source: (Oficina Anticorrupción de Argentina, 2017^[17])

6 Pre- and post-public employment

A major integrity concern in OECD countries is the conflict of interest stemming from movements from the private to the public sector and vice versa. This phenomenon is often called the “revolving door” and may take different forms:¹⁶

- From private sector to government: It mainly refers to the appointment of business executives to key positions in the public sector, which may lead to biases in policy formulation, regulatory enforcement, or procurement decisions.
- From government to private sector: The main concern is that officials moving to the private sector may use their government experience and connections to benefit their new employer (for example, in procurement procedures). Notably, this can happen not only after the official has left his public sector position, but also while still in office.

The revolving door phenomenon has gained relevance for different reasons. First, governments face the challenge of making a career in the public sector attractive for talent and skilful individuals and may be tempted to tap into, or at least open the door to, professionals from the private sector. Second, in many OECD countries public sector careers are now less stable than they used to be because of reforms to address budgetary pressures and/or downsizing. Third, new forms of interaction between the private and public sectors raise integrity concerns and may undermine public trust, which has already been severely affected by the financial crisis of 2008-09 and the current Covid-19 crisis.

Pre- and post-public employment offences occur when public officials use, or appear to use, information, contacts or powers acquired while in government to benefit themselves, or others. However, as mentioned before, conflicts of interest related to post-employment can also occur before officials actually leave public office. For example, a serving procurement official can give preferential treatment to a business firm and award it a contract with a view to obtaining employment with that firm after leaving government. If the official is successful in obtaining that employment and leaves government, he clearly had a conflict of interest related to post-public employment. After leaving government, the former official may also use confidential information obtained while in government (for example, on the public office needs that will lead to procurement procedures) to the benefit of the new employer. Thus, conflict of interest related to post-public employment can arise both from:

- the use of someone’s current public office for private gain (e.g. making a biased award decision to benefit a prospective employer), and
- the wrongful exploitation of someone’s previous public office (e.g. misusing sensitive official information for the illicit benefit of the former public official or a new employer).¹⁷

The main challenge for governments in dealing with conflicts of interest stemming from pre- or post-public employment is to strike a fair balance between, on the one hand, fostering public integrity and the safeguard of the public interest and, on the other hand, preserving a reasonable measure of employment freedom to attract and retain talent. Compliance with pre- and post-public employment measures is also

¹⁶ OECD (2010), *Post-public employment: Good practices for preventing conflict of interest*, OECD Publishing, Paris.

¹⁷ OECD (2010), *Post-public employment: Good practices for preventing conflict of interest*, OECD Publishing, Paris.

challenging, particularly for post-public employment as officials leaving the public sector to some extent move beyond the government control sphere.

In 2010, the OECD developed the *Post-Public Employment Good Practice Framework*, which aims to be a reference for policy makers and public managers to review and modernise post-public employment policies and practices (See Box 6.1). This chapter relies on that framework while illustrating its specific application in public procurement activities.

Box 6.1. The key pillars of the OECD Post-Public Employment Good Practice Framework

- The post-public employment system contains the instrument(s) needed to **deal effectively** with its current and anticipated post-public employment problems and emerging concerns.
- The post-public employment instrument(s) is linked, where feasible, with instrument(s) dealing with conflict of interest in the public sector and with the overall **values and integrity framework**.
- The post-public employment system covers **all entities** for which post-public employment is a real or potential problem and meets the distinctive needs of each entity.
- The post-public employment system covers all of the important **risk areas** for post-public employment conflict of interest.
- The restrictions, in particular the length of time limits imposed on the activities of former public officials, are **proportionate** to the gravity of the post-public employment conflict of interest threat that the officials pose.
- The restrictions and prohibitions contained in the post-public employment system are effectively **communicated** to all affected parties.
- The authorities, procedures and criteria for making approval decisions in individual post-public employment cases, as well as for appeals against these decisions, are **transparent and effective**.
- The enforcement of sanctions for post-public employment offences are **clear and proportional**, and are timely, consistently, and equitably applied.
- The effectiveness of the policies and practices contained in each post-public employment system is **assessed regularly** and, where appropriate, is updated and adjusted to emerging concerns.

Source: (OECD, 2010^[18])

Developing the framework to identify and manage the different forms of conflicts of interest of procurement officials stemming from pre- or post- public employment is one of the main opportunities for the PPO, as well as establishing cooling-off periods

Several problem areas related to pre- and post- public employment are not comprehensively addressed in Slovakia's framework to prevent, identify, and manage conflicts of interest of procurement officials. The development of such a framework is one of the main opportunities for tackling conflict of interest in public procurement. Indeed, the Interpretation of the Code of Ethics for Civil Servants in its footnote 5 explicitly recognises that "in the Slovak Republic, in contrast to developed countries, there is no system of post-employment restrictions".

A first issue is post-public employment lobbying, particularly for procurement-related decisions. Former officials with knowledge and access to their former colleagues could influence decisions related to, for example, the award or the management of contracts. Their colleagues may feel compelled to grant them preferential access or treatment through private meetings or improper access to information. These opportunities would not be available to the lobbyist's competitors and hence the fairness and transparency of the processes may be jeopardised. A common solution in OECD countries to this problem is establishing a cooling-off period, which is a designated period of time during which former public officials cannot accept employment with specific private sector organisations or cannot represent them in dealings with particular parts of the government where those activities are likely to imply a real or apparent conflict of interest.¹⁸

The Code of Conduct in section 4 specifically refers to lobbying, but it starts by recognising that "the Slovak Republic has not legislated to regulate lobbying". It also mentions that lobbying may be directed to influence the assessments or inspections related to public procurement in order to, for example, reverse the possibility of fines. FAQs on lobbying answered in the document include the following:

- How can I prevent lobbying or lobbying pressures? Some suggestions include engaging at least two PPO employees when communicating with third parties and favouring written communications.
- When does lobbying become corruption? The document explains that lobbying may become a corrupt act when the public servant has an interest or relationship with the company trying to influence a decision or when he is benefited with a gift or some other form of gratuity.
- I am considering the bid of a private entity. One of the entities that are subject to the assessment procedure approached me with a request for a meeting. How should I proceed? The guidance indicates that the meeting should be declined and further communications should take place in written form. In case the meeting is allowed by the applicable regulations, it should involve at least two PPO employees and the hierarchical superior must be informed.
- Is there a list of lobbyists? The document states that Slovakia has not regulated lobbying but, for example, the European Parliament set up a public register of lobbyists.
- What is the difference between a lobbyist and a handler? The handler tries to unfairly influence a decision, while a lobbyist can perform his activities legitimately, under clear and transparent rules.

The Code of Conduct also provides examples for public officials to reflect on the conflicts of interest raised by specific situations. However, while the Code provides guidance on how to react in the face of lobbying, it does not contain explicit restrictions for procurement officials to become lobbyists and try to influence procurement decisions once they have left the public service. As mentioned above, many OECD countries have established cooling-off periods to prevent conflicts of interest in these situations but there is variance in the scope of the restrictions according to positions and risks involved (see Box 6.2).

¹⁸ OECD (2010), *Post-public employment: Good practices for preventing conflict of interest*, OECD Publishing, Paris.

Box 6.2. Cooling-off periods in OECD member countries

There is substantial variation between as well as within countries that use cooling-off periods according to position, when it comes to time limits adopted. For example:

- In Australia, Article 7 of the Lobbying Code of Conduct sets a cooling-off period of 18 months for ministers and parliamentary secretaries, and 12 months for ministerial staff. During those times, the former are prohibited from engaging in lobbying activities pertaining to any matter on which they worked in the last 18 months of employment, and the latter in the last 12 months.
- In Canada, the Lobbying Act prohibits “former designated public office holders” from carrying on most lobbying activities for a period of five years.
- In Italy, specific national legal provisions (d. lgs. 165/2001, art. 53, c. 16-ter, modified by the Anti-Corruption law no. 190/2012) prevent public officials who have held managerial and negotiating positions in the previous three years from performing related duties in a private sector entity.
- In the United Kingdom, the Ministerial Code does not allow ministers to lobby government for two years after they leave office. Moreover, UK ministers and senior crown servants must seek permission of the Advisory Committee on Business Appointments before taking on any new paid or unpaid appointment within two years of leaving ministerial office or crown service.
- In the United States, public procurement officials are prohibited from accepting compensation from a contractor for one year following their government employment if they served in certain decision-making roles with respect to a contract awarded to that contractor. They are also required to disclose any contacts regarding non-federal employment by a bidder on an active procurement, and either reject such offers of employment or disqualify themselves from further participation in the procurement.

When considering the length of cooling-off periods, core factors to take into account include whether the time lengths are fair, proportionate, and reasonable considering the seriousness of the potential offence. Tailoring the duration of restrictions is also necessary depending on the type of problem area and level of seniority. For example, a ban on lobbying may be appropriate for a specific length of time, but restrictions on the use of insider information should be for life, or until the sensitive information is public.

Source: (OECD, 2020^[12])

A second issue regarding conflicts of interest stemming specifically from post-public employment has to do with seeking future employment. The problem emerges when a public official favours a specific company with the objective of improving his future employment prospects and being rewarded with a job in the private sector. Trust may be hindered even by the suspicion that procurement decisions (i.e. in the tendering or contract management phases) unduly favoured a specific supplier. The regulatory framework sets some principles to deal with this problem, but it is not explicitly addressed. For example, the Code of Ethics for Civil Servants establishes that civil servants should act exclusively in the public interest, objectively, impartially, without prejudice and bias, and avoiding influences by his positive or negative relationships. Likewise, the Interpretation of the Code of Ethics for Civil Servants elaborates on the impartiality principle and establishes that civil servants should act without prioritising their personal interests. These instruments could refer more explicitly on how the principles apply to the possibility of a public servant seeking future employment, particularly through favourable procurement decisions. Examples and case studies may also be helpful to illustrate the risks and how to manage them.

A third issue has to do with “switching sides”, which occurs when public officials represent themselves or a new employer vis-à-vis the government in an ongoing procedure or negotiation on a contentious issue for which they had responsibility when they worked for the public sector. The insider knowledge and contacts of the public official who switch sides may benefit, for example, the interests of a supplier who challenged an award decision over the public interest. Many OECD countries have established strict rules on switching sides. Similarly to lobbying, this issue may be managed through a cooling-off period during which former public officials are prohibited to switch sides. Here again, while the normative framework provides principles to guide procurement officials when tempted to switch sides, there are no cooling-off periods formally established.

A fourth and more common problem consists on using insider information. A post-public employment conflict of interest arises when public officials who leave government take unfair advantage of confidential information that they acquired while in government to benefit themselves or their new employer. The broad term “insider information” is commonly used to refer not only to information that is formally classified as confidential but also to information to which public officials have access by virtue of their official position and which has not been made available to the public. OECD countries such as Canada and Norway prohibit the misuse of insider information. Cooling-off periods are once again a common solution as information have a limited “shelf life” and the restrictions have no more sense when it becomes unclassified or public.¹⁹ This issue is more thoroughly addressed in the regulatory framework, but again no cooling-off periods have been established. The PPO’s Employee Code of Ethics establishes that PPO officials shall maintain confidentiality of the facts they become aware in connection with their activities. It also mentions that PPO employees should not misuse such information for their own benefit or that of others. Practical guidance, cases, and examples could further exemplify how to manage the risks relative to insider information.

Finally, a fifth issue concerns re-engaging or re-employing former officials. This type of conflict of interest may arise when former public officials are re-engaged by public organisations to do substantially the same work that they did when they were employed there. Public officials are sometimes re-engaged by being brought back to public organisations as consultants on contracts to perform the same tasks they did previously. They can be seen as benefiting from connections to their former colleagues. Nonetheless, there is less concern about re-engagement or re-employment if a former official is hired to work in a part of the public sector that is not directly connected with his former job. Competitive and transparent hiring processes are a mitigating measure to the risks created by this type of conflict of interest.

In order to tackle the risks of conflicts of interest stemming from post-public employment, the PPO could establish exit interviews and a committee to assess such risks case-by-case

In line with the OECD *Principles for Managing Post-Public Employment Conflict of Interest in the Public Service*, the PPO could establish a mandate so that, before leaving the public sector, procurement officials who are in a risk of being involved in a conflict of interest are subject to an exit interview to assess the situation on a case-by-case basis and, if necessary, determine appropriate measures for remedy and mitigation.²⁰

This practice would nicely complement the information the PPO collects from the affidavits required for each procurement procedure from the participating officials. Additionally, if the PPO were to establish the requirement for periodic interest declarations, as recommended in Chapter 3, exit interviews would be

¹⁹ OECD (2010), *Post-public employment: Good practices for preventing conflict of interest*, OECD Publishing, Paris.

²⁰ OECD (2010), *Post-public employment: Good practices for preventing conflict of interest*, OECD Publishing, Paris.

useful to test whether the interests declared remain and could hurt the credibility and legitimacy of procurement decisions and procedures.

Likewise, exit interviews could analyse if the official's departure stems from actively seeking employment or switching sides, which would certainly create risks. In such a case, measures such as a cooling-off period would be appropriate and hence the need for Slovakia to carry out the necessary reforms to develop the pre- and post-public employment framework and establish cooling-off periods backed by robust risk assessments.

Box 6.3. Exit interviews in Canada and Queensland (Australia)

According to the Conflict of Interest and Post-Employment policy issued by Canada's Treasury Board Secretariat (TBS), prior to an employee's official separation from public office, the designated official will communicate with the employee to review the post-employment requirements in order to facilitate their observance. This requirement includes conducting exit interviews with employees subject to the post-employment compliance measures before they leave the public service and reviewing with employees their responsibilities in this regard.

In Queensland, Australia, employees leaving the public service are interviewed by their managers following a *Separations and Exit Checklist*. This tool contains a section called "Manager Risk Assessment" to assess if it is necessary to raise additional awareness with the employee about his obligations to the State of Queensland when leaving. The assessment is based on the following questions:

- Does the employee have access to a system and/or information of a commercial, confidential and/or sensitive nature?
- Did the employee perform a role that was involved in the development of intellectual property?
- Does the employee control any assets with known vulnerabilities?
- Could the employee's new position have an association with a lobbyist?
- Is the employee leaving to commence with an organisation that provides services to his former area?

If the answer to any of these questions is "yes", the following actions are due:

- Discussing the risk assessment with the employee and refer to the Managing Conflicts of Interest Policy to determine if the employee's current or future circumstances are considered an actual, potential, or perceived conflict; and
- Outlining all necessary actions taken.

Source: (Canada's Treasury Board Secretariat, 2002^[19]) and (Queensland Public Service Commission, n.d.^[20])

In addition to requiring exit interviews, the PPO could create a committee or working group to assess the risks of conflicts of interest stemming from post-public employment. Such body would have the responsibility of processing all the required information (i.e. affidavits and, when available, interest declarations and exit interviews) and make recommendations for mitigation measures, including cooling-off periods. The PPO Anti-corruption Specialist and the Human Resources Department would be among the members of the committee, to not only assess the situation and make recommendations, but also to take advantage of the cases and the information collected to update the regulatory framework and guidance for PPO officials and to evaluate the system as a whole. Even though it focuses on politicians, the experience of Norway's Standing Committee on Outside Political Appointments may be a useful model for the PPO (see Box 6.4).

Box 6.4. Norway's Standing Committee on Outside Political Appointments

In 2005, in response to integrity concerns related to post-public employment, the Norwegian government issued three regulations:

- Post-Employment Guidelines for the Public Service
- Ethical Guidelines for the Public Service
- Post-Employment Guidelines for Politicians

The Post-Employment Guidelines for Politicians established the Standing Committee on Outside Political Appointments with the authority to decide that a politician should not work or provide services to an organisation outside the public service after his engagement as a minister, political secretary, or political adviser. It can rule on the following measures:

- Temporary disqualification of up to six months is requested when there is a clear connection between the politician's previous spheres of responsibilities or duties and the relevant organisations' interests.
- A politician can also be ordered to abstain from involvement in specific cases for up to one year, provided this adequately safeguards the interest to be protected.

At least two weeks before starting the new position, the politician is required to voluntarily inform the committee about:

- Starting a new job or accepting a position outside the public service
- Starting a business

During the first year of the Standing Committee, 13 politicians, including four ministers, were temporarily disqualified from three to six months and/or asked to abstain from involvement up to 12 months in certain cases.

All formal communications between politicians and the Standing Committee are open to the public and copies of letters from the Committee to politicians are published on the Internet.

Source: (OECD, 2010^[18])

7 Additional implications towards a practical strategy

As described in Chapter 2 of this report, under PPO rules, public officials are responsible for identifying and preventing conflicts of interest. While this is in line with international good practices, it is also true that the institution should facilitate the coherent and systematic implementation of the framework. The rules per se are not enough and should be complemented by specific actions and messages to create an integrity culture where conflicts of interests are prevented, identified, and managed proactively.

The PPO leadership should visibly embrace the framework to manage conflicts of interest and continuously send the message to employees regarding its relevance

One of the main ways to send a strong message to employees regarding the importance of the conflict of interest policies is by having the PPO leadership visibly embracing such policies, their implementation and compliance. There are several ways to do this, such as the following:

- Incorporating the issue of conflict of interest management in the speeches, messages, corporate e-mails, end of year reports, and other communications from the Chairman and the PPO senior management directed to all employees.
- Setting reminders in visible points of the offices, for example, wallpapers, posters, stickers, corporate communication materials, etc.
- Having the Chairman and the senior management opening and participating in events related to the conflict of interest framework (i.e. presentations, workshops, seminars, etc.).
- Deciding in individual cases: Each decision creates a precedent and sends a message to all employees as to how conflict of interest will be dealt with and how the framework is applied. While the personal information of the involved employees should be preserved confidential, the PPO could record the cases and incorporate lessons learned for all employees to understand the implications of their behaviours.
- Encouraging managers to be proactive in managing conflicts of interests (see Box 7.1).
- Evaluating the implementation of the policy: Following up and evaluating the implementation of the conflict of interest policy also sends a message in the sense that management pays attention and keeps up to date with developments. A report on the implementation and outcomes of the policy, endorsed by the Chairman, would send a strong message to all employees.

Box 7.1. Proactively managing conflicts of interest in Poland's public procurement

The publication *Conflict of interests in public procurement: Practical Guide* establishes that contracting authority managers are expected to actively manage conflicts of interests of subordinate staff and contractors. A proactive attitude, as defined in the document is characterised by several features:

- Clear communication to the staff and potential contractors that a conflict of interest is not tolerated;
- raising awareness (through speeches, training and information materials) on what a conflict of interest is and that any employee or contractor may have a conflict of interest and should be avoided;
- encouraging the disclosure and consultation of any situations that may give rise to the appearance of a conflict of interest in order to analyse them and work out the appropriate solutions;
- creating (or using the existing) ethical infrastructure in the organisation to provide opinions on cases that may cause an actual or perceived conflict of interest and to prevent a potential conflict of interest; and
- introducing (or using existing) procedures for receiving and resolving notifications of undisclosed conflicts of interest along with whistleblower protection procedures.

Source: (Polish Public Procurement Office, 2015^[8]).

Leadership is, in fact, one of the principles of the OECD *Recommendation on Public Integrity* to create a culture of integrity (see Box 7.2).

Box 7.2. The OECD Recommendation on Public Integrity (leadership)

Recommends that Adherents cultivate a culture of public integrity. To this end, Adherents should:

6. Invest in integrity leadership to demonstrate a public sector organisation's commitment to integrity, in particular through:

- a) including integrity leadership in the profile for managers at all levels of an organisation, as well as a requirement for selection, appointment or promotion to a management position, and assessing the performance of managers with respect to the public integrity system at all levels of the organisation;
- b) supporting managers in their role as ethical leaders by establishing clear mandates, providing organisational support (such as internal control, human resources instruments, and legal advice) and delivering periodic training and guidance to increase awareness of, and to develop skills concerning the exercise of appropriate judgement in matters where public integrity issues may be involved; and
- c) developing management frameworks that promote managerial responsibilities for identifying and mitigating public integrity risks.

Source: (OECD, 2017^[3])

The PPO should strengthen its partnership with employees to facilitate acceptance and compliance with the conflict of interest framework

As discussed in section 2.2, the PPO framework to manage conflicts of interest, specifically the Code of Conduct, was developed after consultation with the employees. This is a significant advantage to develop ownership and facilitate implementation. Any effort to upgrade or reform the framework should also take the perspective of the different stakeholders, mainly the PPO employees. In consequence, the PPO could continuously consult with its employees, for example, through yearly surveys on the working environment or training needs, about the implementation of the conflict of interest policies and their understanding.

To start with, the different rules and procedures should be visible and easily accessible for all PPO employees. This could include not only the rules per se, but also more practical manuals such as the Interpretation of the Code of Ethics for Civil Servants. For example, these materials could be shared every time procurement officials are promoted or transferred within the organisation.

The feedback obtained from the individual cases, the consultation, and the dialogue with officials should be useful to tailor any guidance in written form and to make senior leadership aware of the most frequent issues, so that they can make themselves available to provide timely and concrete advice to their subordinates.

The PPO should also partner with business and CSOs to extend its conflict of interest principles and communicate widely its efforts

Integrity should be a whole-of-society endeavour, as recognised in the OECD *Recommendation on Public Integrity* (see Box 7.3). This is particularly relevant for public procurement as the interactions of public officials with the private sector (i.e. suppliers and contractors) is permanent. Furthermore, some of the conflict of interest situations, for example those stemming from pre- or post-public employment, by nature involve the private sector.

Box 7.3. The OECD Recommendation on Public Integrity (whole-of-society)

Recommends that Adherents cultivate a culture of public integrity. To this end, Adherents should:

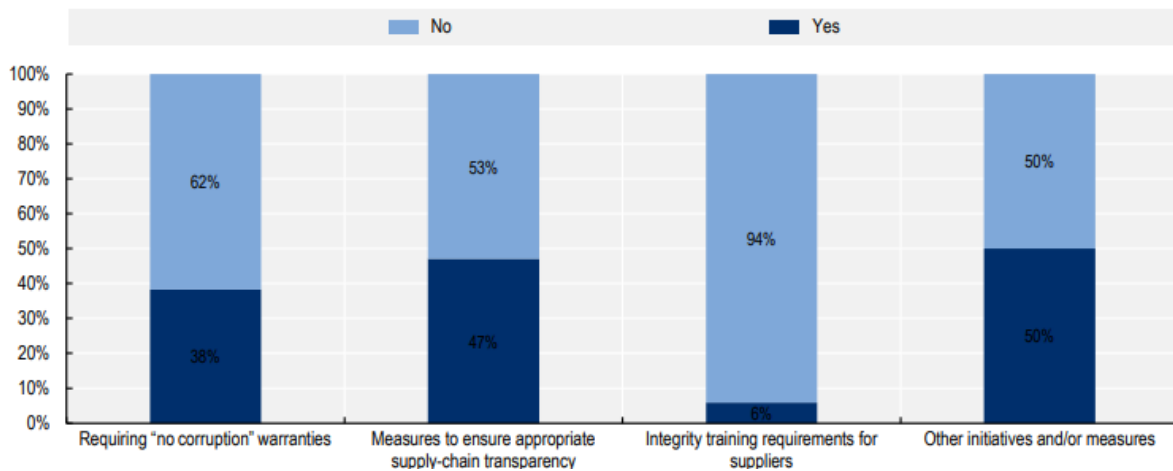
5. Promote a whole-of-society culture of public integrity, partnering with the private sector, civil society, and individuals, in particular through:

- a) recognising in the public integrity system the role of the private sector, civil society and individuals in respecting public integrity values in their interactions with the public sector, in particular by encouraging the private sector, civil society and individuals to uphold those values as a shared responsibility;
- b) engaging relevant stakeholders in the development, regular update, and implementation of the public integrity system;
- c) raising awareness in society of the benefits of public integrity and reducing tolerance of violations of public integrity standards and carrying out, where appropriate, campaigns to promote civic education on public integrity, among individuals and particularly in schools;
- d) engaging the private sector and civil society on the complementary benefits to public integrity that arise from upholding integrity in business and in non-profit activities, sharing and building on, lessons learned from good practices.

Source: (OECD, 2017^[3])

Ideally, the private sector would be an active participant and facilitator of compliance with the conflict of interest rules and they themselves would adopt standards to contribute to the integrity of public procurement. Indeed, there are several measures OECD countries use to promote integrity among suppliers, which could be used specifically for conflict of interest rules, for example, providing training for suppliers (see Figure 7.1).

Figure 7.1. Measures to promote integrity among suppliers in OECD and selected countries



Source: (OECD, 2019^[21])

A partnership with the private sector and CSOs would be useful for several purposes. First, the partnership would facilitate consultation whenever new instruments are developed to complement the current conflict of interest framework or when updating it. Second, the dialogue with stakeholders may help both sides to identify potential problematic situations and agree on solutions that are mutually acceptable, so that they can be promoted from both sides. Finally, the engagement could be useful to align expectations and communicate widely that conflict of interest cases will be dealt with and, if applicable, punished for non-compliance through, for example, the termination of contracts, the inclusion of a company in a registry of black-listed suppliers, or even through criminal procedures.

8

Additional information on the experiences of selected OECD countries

France²¹

The Law of August 6, 2019, on the transformation of the public service recognised the High Authority for Transparency of Public Life (HATVP) as the main authority relative to the ethics of public action, empowering it to intervene throughout the careers of public officials. As the authority responsible for controlling professional mobility between the private and public sectors, the HATVP supports public officials in their duties to comply with ethical obligations and ensures the prevention of conflicts of interest.

The HATVP has developed several guidance documents and resources for public officials in France. For example, it drafted two volumes of an ethics guide (*Guide Déontologique*). The first volume is a manual for public officials and ethical references (*Manuel à l'usage des responsables publics et des référents déontologues*) and the second is particularly focused on the control and prevention of conflicts of interest (*Contrôle et prévention des conflits d'intérêts*).

The topics addressed in volume I cut across the various ethical themes that the HATVP regularly deals with. The first and second sections set out the structuring procedures for any public body to renew or create its ethics framework: developing a risk map, drafting a code of ethics, and establishing the function of ethics advisor. The third part is more specific and discusses sectoral content and procedures, such as dealing with conflicts of interest, framing gifts and hospitality, or even the use of resources by elected officials and public agents.

The purpose of volume II of the ethics guide is to provide a user-friendly presentation of the expertise and doctrine of the HATVP. It is aimed directly at administrations, ethics officers and public officials to illustrate the doctrine of the HATVP relative to the risk of conflicts of interest and offers a summary of the ethical procedures that public officials should follow throughout their careers.

Volume II includes a detailed section on the interest declaration that public officials file in France. The declaration is considered the key tool in the implementation of the framework to prevent and identify conflicts of interest, particularly for public officials whose nominations are not validated by the HATVP. The interest declaration allows mapping the interests public officials hold at the time of their appointments. It also encourages them to develop ethical reflections about their personal situations.

²¹ This section is based on public information available in the HATVP website: <https://www.hatvp.fr/ressources-documents-utiles/> (consulted on 28 October 2021).

The information requested from the public officials required to file an interest declaration with the HATVP is extensive. Nevertheless, the declaration strives to achieve a balance between respect for privacy and the requirement of transparency.

More than 15 000 public officials (elected and appointed) fall within the scope of the reporting obligations provided for by the laws of October 11, 2013 and must, as such, declare their interests to the HATVP. The interests that must be declared include the following:

- Professional activities giving rise to remuneration or gratuity exercised on the date of appointment;
- Professional activities giving rise to remuneration or gratuity exercised during the last five years;
- Consultancy activities carried out on the date of appointment and over the past five years;
- Participation in the governing bodies of an organisation, public or private, or of a company on the date of appointment or in the last five years;
- Direct financial participation in the capital of a company on the date of appointment;
- Voluntary functions likely to create a conflict of interest;
- The elective functions and mandates exercised on the date of the nomination; and
- Parliamentary staff (only for deputies and senators).

New Zealand²²

The document *Managing conflicts of interest: A guide for the public sector*, produced by New Zealand's Controller and Auditor General, starts by stating that, given that New Zealand is a small country, public officials may face conflicts of interests during their careers, and by clarifying that having private interests is nothing wrong, but they should be managed to avoid undue influences in policy making.

Part 6 of the Guide describes the regulatory framework on conflicts of interest in New Zealand, which stems from legislation and statutory rules, common law, and general standards and expectations. Some public organisations are subject to statutory rules that apply to managing conflicts of interest. Statutory rules generally regulate conflicts of interest of members of an organisation's governing body, rather than the organisation's employees. They may:

- prohibit members from discussing and voting at meetings on matters in which they have an interest;
- require members to disclose interests before appointment, in a register of interests and/or at relevant meetings;
- prohibit members from having an interest in certain contracts with their organisations; and
- prohibit members from signing documents relating to matters in which they have an interest; and provide mechanisms for seeking exemptions from the general rules.

Examples of important statutory rules are the Crown Entities Act 2004, the New Zealand Public Health and Disability Act 2000, the Companies Act 1993, the Local Authorities Act 1968, and the Education Act 1989.

Conflicts of interest in New Zealand are also regulated by common law, as part of the general requirement that all public decision-making must be procedurally fair, including being free from bias and predetermination. The common law's rule against bias has two main goals:

- Ensuring the best decision is taken based on relevant information and arguments, not ulterior motives or prejudices; and

²² This section is based on New Zealand's Controller and Auditor General (2020), *Managing Conflicts of Interest: A Guide for the Public Sector*, available at <https://oag.parliament.nz/2020/conflicts> (consulted on 28 October 2021).

- Ensuring that people affected by, or interested in, a decision have trust and confidence in the process.

The rule against bias operates both to avoid actual bias and to avoid any appearance of bias.

There is no single source of rules or expectations specifying what constitutes ethical behaviour for all situations or all public organisations. Any rules or expectations applying to a particular situation might come from a variety of sources, including:

- the organisation's founding or constituting document;
- the organisation's code of conduct or relevant internal policies and procedures, such as those about procurement decisions; other sets of mandatory requirements that apply to the public sector or a particular part of it (such as the Code of Conduct for the State Services, the Cabinet Manual, the State Services Commission's Board Appointment and Induction Guidelines, or the Government Procurement Rules);
- relevant clauses in an employment agreement or contract for services;
- rules of conduct or codes of practice applying to members of a profession or industry;
- general guidance or good practice guides;
- customary practice and behaviour in the public sector or a particular part of it;
- commonplace understandings of the concepts of integrity, impartiality, accountability, trustworthiness, respect, and responsiveness; and
- analogies drawn from legal rules that apply to similar situations.

The Guide explains that the primary responsibility for identifying and disclosing conflicts of interest to the relevant people in a timely and effective manner rests with the official concerned. If the matter where a public official has an interest arises at a formal meeting, he should declare to the meeting that he has an interest in the matter before it is discussed. The declaration should then be recorded in the minutes of the meeting.

The Guide goes on explaining that in other situations, the matter should be raised and discussed with a relevant authority as soon as the potential for a conflict of interest is identified. For most officials, the relevant person would be their managers (or another designated official in the public organisation, such as an ethics advisor). For a chief executive, the relevant authority would be the board chairperson, responsible Minister, or another senior official.

As explained previously regarding the regulatory framework, there might be an applicable law or internal policy that requires a disclosure to be lodged in a register. It is advisable to always record any disclosure in writing. If something significant changes about the official role or the other interest, or the nature of the connection between them, the official should make a further disclosure, in case it is necessary to reconsider any decisions about how to deal with the conflict of interest.

Poland²³

Article 56 of the Public Procurement Law establishes the principle of impartiality and the declaration of conflict/no conflict of interest as a key mechanism for the prevention and identification of conflicts of interest. The individuals who may be subject of exclusion when there is a conflict of interest include the head of the contracting authority, a member of a tender committee, officials carrying out a procurement

²³ This section is based on information shared by a peer expert from Poland's Public Procurement Office during an OECD workshop on the identification of conflicts of interest in public procurement, held on 18-19 October 2021.

procedure on behalf of a contracting authority; and those who may influence the result of the procedure or the award of a contract. Article 56 establishes that the conflict of interest exists when such individuals:

- compete for a contract;
- remain in matrimony, consanguinity or affinity in direct line or consanguinity or affinity in indirect line up to the second degree, or are related due to adoption, legal custody or guardianship, or remain in cohabitation with the economic operator, his legal deputy or members of managing or supervisory bodies of economic operators competing for a contract;
- during the three years prior to the launch of the procurement procedure, remained in a relationship of employment or service with the economic operator, were remunerated by the economic operator for a different title, or were members of the managing or supervisory bodies of economic operators competing for a contract;
- remain in such legal or actual relationship with the economic operator that there is a justified doubt about their impartiality or independence in connection with the procurement procedure, due to having a direct or indirect financial, economic or personal interest in the settlement of that procedure.

The officials referred above shall submit, under oath of criminal liability for misrepresentation, a statement in written form on the existence or the lack of existence of the circumstances described. Before submitting the statement, the head of the contracting authority or an official to whom activities in the procedure have been entrusted, shall warn about the criminal liability for misrepresentation.

On the one hand, the statement describing the existence of the circumstances referred above should be submitted immediately upon learning of them. On the other hand, the statement on the lack of existence of those circumstances shall be submitted no later than before the closing date of the procurement procedure, but preferably before the launch of the activities related to the procurement procedure. The activities in connection with the procurement procedure undertaken by a person subject to exclusion shall be repeated, except for the opening of tenders and other actual activities having no influence on the outcome of the procedure.

Article 108 of the Public Procurement Law establishes reasons for exclusion of economic operators from participating in procurement procedures. There are mandatory and optional grounds for exclusion.

The PPO President conducts control in the scope of compliance of the contracting body's actions or failures to act according to the provisions of the Public Procurement Act. He may request from the head of the contracting body or from its employees, explanations in cases concerning control and documents related to the procurement procedure.

The President's control powers include *ad hoc* control of all procedures (ex officio or upon request), *ex ante* control, before concluding a contract for large procurements, including those co-financed from EU funds for works (above EUR 20 000 000) and goods or services (above EUR 10 000 000). Subsequently, the PPO President provides information on violations or their absence and post control recommendations, including, as applicable, justification to cancel the procedure or remove the infringements found. In the event of suspicion of corruption, the PPO President forwards the case to the Central Anti-corruption Bureau (CAB).

The actions or documents that may suggest a conflict of interest include the register of companies, the acceptance of a false statement (i.e. authenticity not verified), lack of written form of contracts, and signing multiple contracts with one economic operator.

Several institutions participate in Poland's control system for public procurement, including the following:

- President of the PPO: Central government regulatory and monitoring agency.
- National Appeals Chamber: First instance review body.

- Common Court in Warsaw: Second instance review body.
- Public Procurement Council: Consultative and advisory body to the PPO President. It is formed by 10 to 15 public procurement experts appointed by the Minister of Development. It issues opinions on particularly relevant issues related with public procurement.
- Audit and control authorities, including those responsible for managing EU funds, the Supreme Audit Office, and the PPO President.
- Regional Accounting Chambers, which supervise and control local governments in their financial management and public procurement.
- CAB: Deals with cases of non-compliance with legal provisions.
- Office of Competition and Consumer Protection: Its responsibilities include shaping the antimonopoly and consumer protection policy and the detection of collusion and bid rigging.

The main obstacles found during the implementation of conflicts of interest policies are the following:

- Creating and managing a complex oversight and control system, with multiple stakeholders: Co-operation, exchanging information, and interpreting the rules.
- Leveraging e-procurement for transparency and control purposes: Poland is in the middle of a process to implement a new e-procurement platform.
- Training and professionalisation, including the publication of guidance documents such as *Conflicts of Interest in Public Procurement: Practical Guide*²⁴, *Awareness of the Risk of Corruption and Bid Rigging in Public Procurement*²⁵, and *Conflict of Interest: What is it and How to Avoid It?*²⁶

Spain²⁷

The identification of conflicts of interest in public procurement in Spain is based on two approaches described in legislation, namely Act 9/2017, of 8 November, on Public Service Contracts, adopting Directives 2014/23/EU and 2014/24/EU of the European Parliament, of 26 February 2014:

- Act 9/2017 established for the first time obligations for contracting authorities and a wide definition of conflicts of interest.
- It also formalised “public procurement bans”, which had a long-time tradition in the Spanish public procurement system.

Act 9/2017 also complemented and provided details for the implementation of rules established in other pieces of legislation such as the following:

- Act 53/1984, of 26 December, on incompatibilities of service personnel of public administrations or concerning any of the elected positions regulated by Organic Law 5/1985;
- Organic Law 5/1985, of 19 June, on the General Electoral Regime; and

²⁴ Available at https://www.uzp.gov.pl/_data/assets/pdf_file/0030/35994/Konflikt-interesow-w-zamowieniach-publicznych.-Praktyczny-poradnik..pdf.

²⁵ Available at https://www.uzp.gov.pl/_data/assets/pdf_file/0011/38000/swiadomosc-ryzyka-korupcji-i-zmowy-przetargowej-wieksza-czcionka.pdf.

²⁶ Available at <https://antykorupcja.gov.pl/ak/konflikt/11895,Konflikt-interesow-Czym-jest-i-jak-go-unikac.html>.

²⁷ This section is based on information shared by a peer expert from the Spanish Secretariat of the Board for State Public Procurement during an OECD workshop on the identification of conflicts of interest in public procurement, held on 18-19 October 2021.

- Act 3/2015, of 30 March, regulating the exercise of high office within the General State Administration.

Several institutions play a role in the prevention, identification, and management of conflicts of interest in Spain, namely the Conflicts of Interest Office and the Public Procurement Consultative Board. On the one hand, the Conflicts of Interest Office has, among others, the following responsibilities:

- Managing incompatibilities and conflicts of interest of high ranking officials;
- Managing the Register of Assets and Patrimony of high ranking officials;
- Managing (professional) incompatibilities of public employees; and
- Legally assessing incompatibilities and conflicts of interest.

On the other hand, the Public Procurement Consultative Board has the following powers, among others:

- Legally assessing incompatibilities and conflicts of interest in public procurement;
- Managing public procurement bans procedures;
- Managing the Official Register of Tenderers and Classified Economic Operators (*Registro Oficial de Licitadores y Empresas Clasificadas del Estado*, ROLECE); and
- Providing compulsory instructions only for contracts financed with EU Next Generation funds.

Just like in the case of Poland, the implementation of the legislation and protocols has not been free of obstacles. Some of the main challenges highlighted during an OECD workshop are the following:

- The correct interpretation of the regulations relative to public procurement bans and incompatibilities, which was entrusted to the Public Procurement Consultative Board.
- Translating general obligations for contracting authorities into concrete measures.
- Assessing implementation, following up progress, and learning from previous mistakes.
- Avoiding piling up procedures and red tape in already complex procurement procedures.
- Co-ordination among public procurement authorities (i.e., Public Procurement Consultative Board, Independent Office for Regulation and Supervision of Public Procurement, National Competition Authority, and Regular Courts, among others).

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