



**Organisation for Economic Co-operation and Development
Public Governance and Territorial Development Directorate**

**OECD/STABILITY PACT ANTI-CORRUPTION INITIATIVE
MANAGING CONFLICT OF INTEREST IN GOVERNMENT
AND THE PUBLIC SECTOR**

Assessing Conflict-of-interest Policy in SPAI countries

PROJECT DESCRIPTION

This background document describes the OECD SPAI project on Managing Conflict of Interest in Government and the Public Sector and the expected results of the assessment phase.

RATIONALE

With the establishment of the Stability Pact Anti-Corruption Initiative (SPAI) in February 2000 its member countries¹ have acknowledged the need to promote professional and stable public service through legal, structural and management reforms, better accountability and transparency of public administrations, institutional capacities and establishment of high standards of public service ethics.²

Conflict of interest is a new concern in the SPAI countries. It emerged as vital part of the efforts to prevent corruption and to modernise the public sector. Actual or potential conflict of interest of public officials has become a key issue of political and public debate. There is a growing understanding that conflict of interest is harmful to public trust and can lead to corruption. Even though, in practice conflict of interest situations appear to remain widespread. The SPAI countries recognise the harmful effect and take steps to establish strict and precise legal rules.

Over the last years specific conflict of interest laws were developed in several SPAI countries. Together with other relevant constitutional, administrative and criminal legal provisions they provide a legal basis for identifying and controlling conflict of interest situations. A number of institutions have been assigned to implement conflict-of-interest laws; many public institutions have introduced codes of ethics. Bosnia and Herzegovina was the first of the SPAI countries to adopt a dedicated Law on conflict of interest. Imposed by the Office of the High Representative, the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina entered into force on 15 November May 2002. After about two years of parliamentary and public debate, in October 2003 the Law on Prevention of Conflict of Interest in Exercise of Public Office was adopted also in Croatia; the Law on Prevention of Public and Private Interests in Public Office was introduced in April 2004 in the Republic of Serbia and the Law on Conflict of Interest in Performing Public Functions - in June 2004 in the Republic of Montenegro. Albania has included a number of Conflict of Interest provisions in the Law on Rules of Ethics in the Public Administration passed in September 2003. Romania has specific provisions on conflict of interest in its Law on Transparency and Prevention and Sanctioning of Corruption introduced in April 2003. A Conflict of Interest Bill exists in the Republic of Macedonia, where relevant provisions were introduced earlier as part of the April 2002 Corruption Prevention Law. The adoption of a dedicated law is envisaged also by the State program of Combating Criminality and Corruption in The Republic of Moldova.

Meanwhile, the implementation of conflict-of-interest legislation and codes of conduct appear to be weak. The SPAI countries recognise that in order to gain the respect of these new rules by public officials and the general public further work is required.

For instance, the European Commission concluded in the Stabilisation and Association Process for South East Europe report in March 2004: “Across the region, reforms are underway in the public administration. Progress is uneven, however. There is little progress in the fight against organised crime and corruption. Administrative and judicial reforms are slow and implementation and enforcement of legislation weak.”³ The Council of Europe indicated in January 2004 that “the process of formulating and implementing anti-corruption plans and setting up of specialised institutions is at different stages and has taken different

¹ SPAI members are Albania, Bosnia and Herzegovina, Croatia, the Republic of Macedonia, Republic of Moldova, Republic of Montenegro, Republic of Serbia and Romania. The Republic of Montenegro joined the SPAI in February 2000 and the Republic of Serbia in December 2001. While not international legal subjects but two parts of the State Union of Serbia and Montenegro, formerly the Federal Republic of Yugoslavia, within the SPAI Serbia and Montenegro are viewed as two separate members.

² Stability Pact Anti-Corruption Charter and Action Plan, adopted at the Working Table III of the Stability Pact for South Eastern Europe, Sarajevo 16 February 2000.

³ Commission of the European Communities (2004) The Stabilisation and Association Process for South East Europe, 3rd Annual Report, COM(2004) 202 /2 final, 30 March 2004

forms in the countries of South Eastern Europe but the challenge of implementing the anti-corruption plans is common to all countries”⁴

At the OECD, conflict of interest has been addressed by the Council in April 1998 by adopting the OECD *Recommendation on Improving Ethical Conduct in the Public Service*. The recommendation indicated that “there should be clear guidelines for interaction between the public and private sectors”. It has led to the adoption of the Recommendation on OECD *Guidelines for Managing Conflict of Interest* in June 2003. A separate overview *Managing Conflict of Interest: OECD Guidelines and Country Experiences*⁵ was provided by the OECD in 2003. It contains the OECD Guidelines, a comparative overview and selected OECD country studies. The Guidelines define conflict of interest as “a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities”.

The standards for defining and controlling conflict of interest of public officials are also set by the Council of Europe in its Committee of Ministers *Recommendation of the to Member States on Model Code of Conduct for Public Officials* that was adopted on 11 May 2000. The model code of conduct of the Council of Europe states that conflict of interest “arises from a situation in which the official has an interest which is such as to influence, or appear to influence, the impartial and objective performance of the official duty”.

1. BACKGROUND TO THE PROJECT

Outline

The project *Managing Conflict of Interest in Government and the Public Sector - from Policy to Practice* was launched in 2003 to support the development and implementation of conflict-of-interest policies in the SPAI members: Albania, Bosnia and Herzegovina, Croatia, Republic of Macedonia, Republic of Moldova, Republic of Montenegro, Republic of Serbia and Romania. The project contributes to the implementation of the objectives of the SPAI.

The project is implemented by the OECD represented by the Innovation and Integrity Division based at the Public Governance and Territorial Development Directorate and - the Anti-Corruption Network for Transition Economies based at the Anti-Corruption Division of the Directorate for Financial and Enterprise Affairs. The project involves both policy and technical conflict-of-interest experts from governments and the public sector and civil society representatives from the SPAI countries, as well as international organisations involved in the anti-corruption work in the region and the SPAI Regional Secretariat Liaison Office. The project will benefit from co-operation with the joint OECD and EU SIGMA programme and the Council of Europe.

The four stages of the project involve:

1. Needs assessment, planning and tool-development;
2. Testing of specific tools and strategies;
3. Information-sharing and planning for long-term implementation;
4. Long-term implementation and assessment.⁶

The project is based on two interrelated components: sharing of regional and international practice and - exchange of the specific SPAI experience. It draws on the standards laid down in the OECD Guidelines

⁴ Council of Europe (2004), PACO IMPACT project document, 13 January 2004.

⁵ OECD (2004), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD.

⁶ These stages were set out in the funding proposal submitted to Switzerland on 30 June 2003.

and practices in the member countries, including in Central Europe, and recent developments in the SPAI countries.

Since 2003 the project was funded mainly from voluntary contributions provided by Switzerland, Norway, Finland and the United States for the implementation of the SPAI and in-kind contributions of the OECD and SPAI members. This project phase is funded by Switzerland.

Main outputs to date

Since the launch in 2003 the project has focused on increasing the understanding of the SPAI countries on how to define conflict of interest situations and the relation of conflict of interest and corruption, as well as on the main elements of conflict-of-interest policy, its effective implementation and ways to identify and manage actual and potential conflict of interest situations in governments and the public sector.

In 2003, the first three stages of the project have delivered:

- **Two expert workshops** in Zagreb 12 – 13 May 2003 and in Istanbul on 12-13 September 2003 for up to 50 government, the public sector, civil society, international organisation representatives involved in anti-corruption work in the SPAI countries;
- **Toolkit on Managing Conflict of Interest in Governments and the Public Sector**, endorsed by the SPAI countries in November 2003, English version and the four translations in Albanian, Bosnian/Serb/Croat, Romanian and Macedonian;
- **Investigative Journalists workshop** in Istanbul on 10-11 November for 24 journalists and editors covering corruption and conflict of interest in the SPAI countries;
- **High Level Forum** in Prague on 24 – 25 November 2003 for senior public officials and key civil society representatives from the SPAI countries calling for further OECD support in implementing and assessing conflict-of-interest policies in the SPAI countries.

2. ASSESSMENT PHASE

Overall objectives

The overall objectives of this phase are to:

- Support conflict-of-interest policy and implementation assessment;
- Foster evidence-based adjustment of policies;
- Increase general awareness on conflict-of-interest rules by means of survey.

Expected results

This project phase aims to:

- Set up an **expert team** from SPAI participants, international organisations and selected foreign countries to review the methodology, prepare the external assessment and policy recommendations;
- Develop the **methodology** for a cross-country survey;
- Undertake a **review process** combining self-assessment, external assessment and policy recommendations;
- Convene a **political forum** to discuss the assessments and endorse the recommendations;
- Publish the final results of assessment and the recommendation in a **report**;
- **Monitor the implementation** of the recommendations within [two] years time [procedure];

SPAI participants

This project phase aims to involve all SPAI members: Albania, Bosnia and Herzegovina, Croatia, Republic of Macedonia, Republic of Moldova, Republic of Montenegro, Romania and the Republic of Serbia. The main contact points will be the **SPAI senior representatives** (traditional counterparts in each SPAI member nominated by the government to the SPAI Steering Group). The senior representatives will be asked to nominate a **liaison person** from a government or competent independent state institution. The liaison person will oversee the preparation and delivery of the self-assessment report and participate to the assessment of another country as part of the expert team. **Civil society representatives** will be involved in the expert teams.

Expert teams

In order to prepare the external assessment and policy recommendations, a separate expert team will be set up for each of the eight SPAI members, combining: national government; civil society, another SPAI member; a representative of the OECD/the Council of Europe/the OECD expert group on Managing Conflict of Interest in the Public Sector/transition economies.

All experts will be invited to provide comments on the draft survey methodology.

Main partners

To carry out this project phase, the Secretariat will draw particularly on the experience of the SIGMA Programme and the Council of Europe/PACO IMPACT project.

The Support for Improvement in Governance and Management Programme - **SIGMA Programme** - is a joint initiative of the European Union (EU) and the OECD, mainly funded by the EU and based at the OECD. Since 1992 the SIGMA programme provides support to the modernisation of the public management systems through assessments and technical assistance. This project phase will benefit from the work of the SIGMA Programme on public administration and civil service, legal and institutional frameworks, policy-making and ethics in the participating SIGMA partner countries.

The Council of Europe’s PACO IMPACT project is a technical co-operation project launched in March 2004 by the Economic Crime Division of the Legal Affairs Directorate of the Council of Europe and funded by the Swedish International Development Agency. The aim of the PACO IMPACT project is to contribute to strengthening the implementation of anti-corruption plans. The inception phase of the project in March – June 2004 indicated that conflict-of-interest policy is an important part of national anti-corruption plans. The project report highlights that a dedicated Law on conflict of interest in submitted to the parliament in the Republic of Macedonia, the related legislation is revised in Albania and the Republic of Montenegro; further support for the implementation is required in the Republic of Serbia.

As part of this project, the Council of Europe envisages:

- Selected **country reviews** of conflict of interest legislation;
- **Regional thematic seminars** on anti-corruption services, including conflict of interest, scheduled for February 2005, September 2005 and January 2006.

The OECD and SIGMA experts will take part in country reviews and in the relevant regional thematic seminars; the Council of Europe will support funding of expert travel/per diems when necessary. The Council of Europe/PACO IMPACT project and the OECD Secretariat aim to co-ordinate to organise the OECD political forum back-to-back with a PACO IMPACT regional seminar.

SPAI	SIGMA	PACO IMPACT
Albania	Albania	Albania
Bosnia and Herzegovina	Bosnia and Herzegovina	Bosnia and Herzegovina
Croatia	Croatia	Croatia
Republic of Macedonia	Republic of Macedonia	Republic of Macedonia
Republic of Moldova	Serbia, Montenegro	Kosovo, Montenegro, Serbia
Republic of Montenegro	Romania	
Romania		
Republic of Serbia		

Calendar

First draft methodology - October 2004

First draft methodology reviewed by OECD/CoE– October 2004

Launch of the assessment, presentation of the methodology at the SPAI Steering Group meeting – 4 November 2004

Draft questionnaire --November 2004

Review of questionnaire by OECD/CoE/SPAI country experts– two weeks

Review – 2005 first half

Political Forum, back-to-back with CoE/PACO – mid 2005

3. SURVEY METHODOLOGY

Procedure

It is proposed to carry out a cross-country survey combining:

- Country-by-country government **self-assessments** based on a questionnaire;
- **Public service employees survey**;
- **External assessment and policy recommendations** based on self-assessments, by an expert team (see the description above).

Outline

It is proposed to base the survey on a questionnaire divided into the following chapters:

1.1. Policy framework

- Relevant reform or national program
- Aims and expected outcomes
- Political commitment
- Resources
- Timeframe

1.2. External assessment and policy recommendations

2.1. Legal framework

- Constitution
- Legal frameworks for elected or politically appointed high-level officials⁷
- Legal frameworks for public administration and civil service, including high level civil servants, other civil servants and other public sector employees
- Specific legislation for ‘at-risk’ areas (*e.g.* political financing, tax, customs)
- Dedicated conflict-of-interest laws
- ‘Conflict of interest’ and ‘private interest’ definitions

2.2. External assessment and policy recommendations

3.1. Institutional framework

- Mandates of institutions to which specific policy-making, managerial, enforcement or control functions in the area of conflict-of-interest policy are assigned
- Overall coordination of above institutions with other institutions in the areas of anti-corruption, ethics, public administration reform, civil service management and law enforcement

3.2. External assessment and policy recommendations

⁷ Here: Head of State, Head of government, members of government, political appointees, members of parliament, elected local officials.

4.1. Procedural framework and other implementation mechanisms (e.g. procedures, guidelines, codes, declarations, trainings)

- High-Level officials
- Public Administration and Civil Service
- Police, Prosecutors, Courts
- Involvement of civil society⁸
- Evaluation mechanisms

4.2. External assessment and policy recommendations

5.1. Awareness and application in practice

- Familiarity with conflict-of-interest policy and provisions in the public service and government and – among the general public
- Usefulness of conflict-of-interest policy, provisions and implementation programmes in day-to-day life of public officials, civil servants and other public service employees
- Examples of application in practice
- Examples of impact on behaviour

5.2. External assessment and policy recommendations

Sources of information

The main sources of information for developing the baseline methodology are:

- OECD (2003) *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD, 2003;
- OECD (2005), *Managing Conflict of Interest in the Public Service: A Toolkit*, OECD, 2005;
- Council of Europe Model Code of Conduct;
- Legislation of the SPAI countries;
- Assessments reports of SIGMA and the European Commission;
- PACO IMACT project documents;
- Legislation and normative acts of selected countries of Central and Eastern Europe with a comparable experience.

⁸ Here: NGOs, academia, professional associations, businesses.