



# **Conflict of Interest: Tools for implementation and enforcement**

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# Conflict of interest

- The **CHALLENGE:**
  - Clarify the concept
  - Support implementation
- **What is conflict of interest?**
  - **Origin, sources, forms, definition**
- **What tools for managing conflict of interest?**
  - **Policy & practice**



# What is conflict of interest?

## Reality

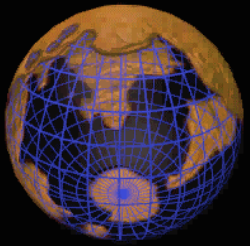
- **Rapidly changing socio-economic environment**
  - **Public/private interface** - new forms of co-operation, emerging and grey areas
  - **Changing society** - educated, multi-cultural
  - **Demand for information** - critical media
- **Concern about declining confidence in public institutions**

# Evolution of conflict of interest

**Origin** -- avoid personal bias

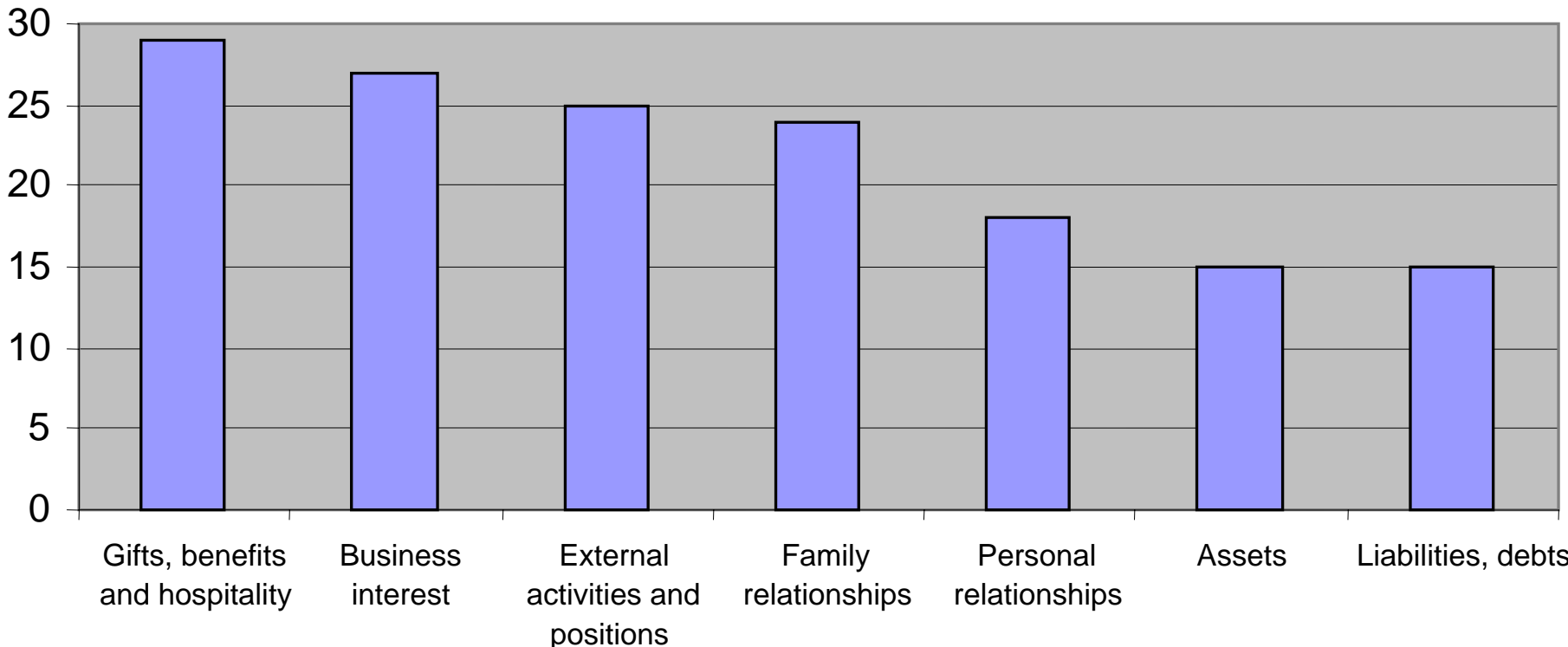
- **Personal relationships** (family, friendship)
  - “No one may judge his/her own case” Code of Hammurabi 1760 BC
  - Community, ethnic or religious associations
- **Material interests** – assets, income, debts, obligations
- **Business interest**
- **Professional, party-political, etc, alignments**

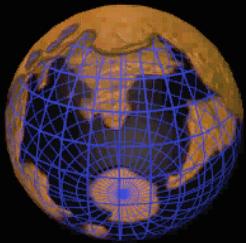
Any specific private (i.e. non-public) interest could be **relevant** if it could reasonably be considered as likely to influence *improperly* the official’s performance of their duties in relevant circumstances.



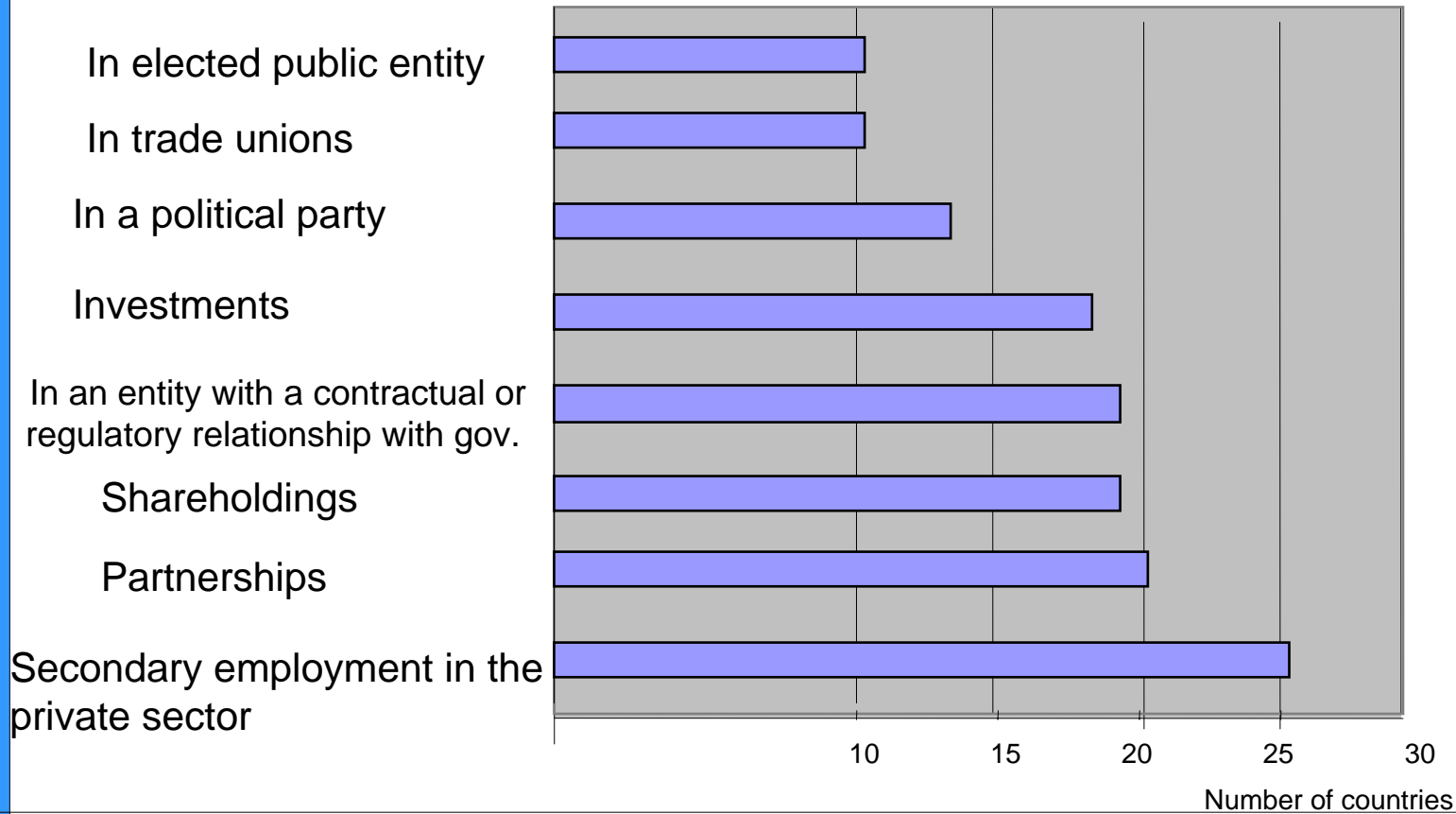
# Sources of Conflict of Interest

Number of countries





# Business interests, external activities and positions



# What is Conflict of Interest?

## Definition

- A reasonable person, knowing the relevant facts, would conclude that the official's specific private-capacity interest was such that it could improperly influence the official's conduct or decision-making.
- The key terms - “*private interests*” “*public official*” and “*official duty*” have been defined specifically, to remove the possibility of doubt in application, and what is relevant “*improper*” conduct is codified.



## ‘Apparent’ Conflict of Interest

An *apparent* Conflict of Interest exists where it *appears* that an official has a Conflict of Interest, *but this is not in fact the case*.

For example, the senior official with shares in XYZ Corporation has made formal internal arrangements to stand aside from all decision-making [‘recusal’] in relation to the contract for which XYZ Corporation is competing, in order to resolve the conflict.

*The arrangements are -*

- *not known to the public at large, but*
- *satisfactory to the official’s organisation*

## ‘Potential’ Conflict of Interest

**Definition** -- an official may have private-capacity interests which may be such as to cause a conflict of interests to arise in the future.

Example -- a potential conflict of interest exists for an official who

- owns a large number of shares in a forestry company, *which* -
- *could, in the future*, decide to compete for a timber-production contract with the official’s organisation, *where*
- the official is currently in charge of all procurement contracts.

## Is Conflict of Interest = Corruption?

- *Compare* -- placing the King 'in check' in Chess:
  - being 'in check' must be resolved, but
  - it is not *of itself* fatal unless the conflict cannot be resolved
- Conflicts of interest are not necessarily Corruption, but are damaging/dangerous; **MUST** be managed.
- A COI situation which is not identified, managed and resolved appropriately can lead to corruption.

## Toolkit

- AIM: HELP officials put conflict of interest regulations into practice
  - Understanding
  - Skills to recognise and resolve
- Collection of explanations, checklists, model codes, procedures, self-test, training materials, case studies

## Tool No. 1: defining COI situations an objective test

- 1. *Is Joe / Joanna a public official of a relevant kind ?***
- 2. *Does he / she have private interests of a relevant kind ?***

If the answer to both is ‘Yes’, then Joe / Joanna has a [real/ actual] conflict of interest.

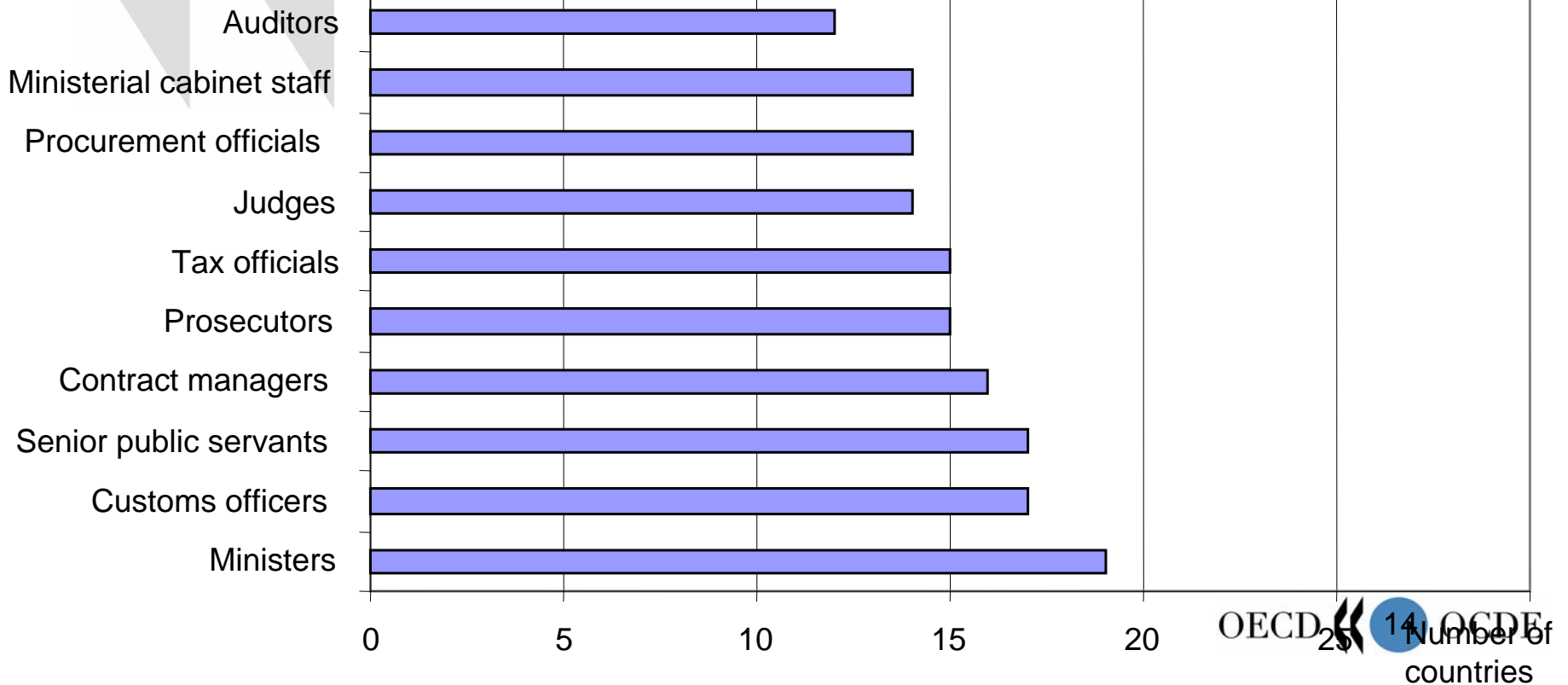
What is ‘relevant’ is context-dependent

- determined by the circumstances, (“*conflict*”)
- determined by relevant law (“*incompatibility*”)

## Tool No. 8: Gifts checklist

- **Genuine** Is this gift genuine, in appreciation for something I have done in my role as a public official, and not sought or encouraged by me?
- **Independent** If I accepted this gift, would a reasonable person have any doubt that I would be independent in doing my job in the future, when the person responsible for this gift is involved or affected?
- **Free** If I accepted this gift, would I feel free of any obligation to do something in return for the person responsible for the gift , or for his/her family or friends/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 public generally?

# Who is covered by Conflict of Interest policy?





# Why “manage” conflict of interest?

## Two major approaches

- description -- principle-based
- prescription -- rule-based
  - enforceable
  - enacted standards -- formal procedures

**Reflect the social-political-administrative context**

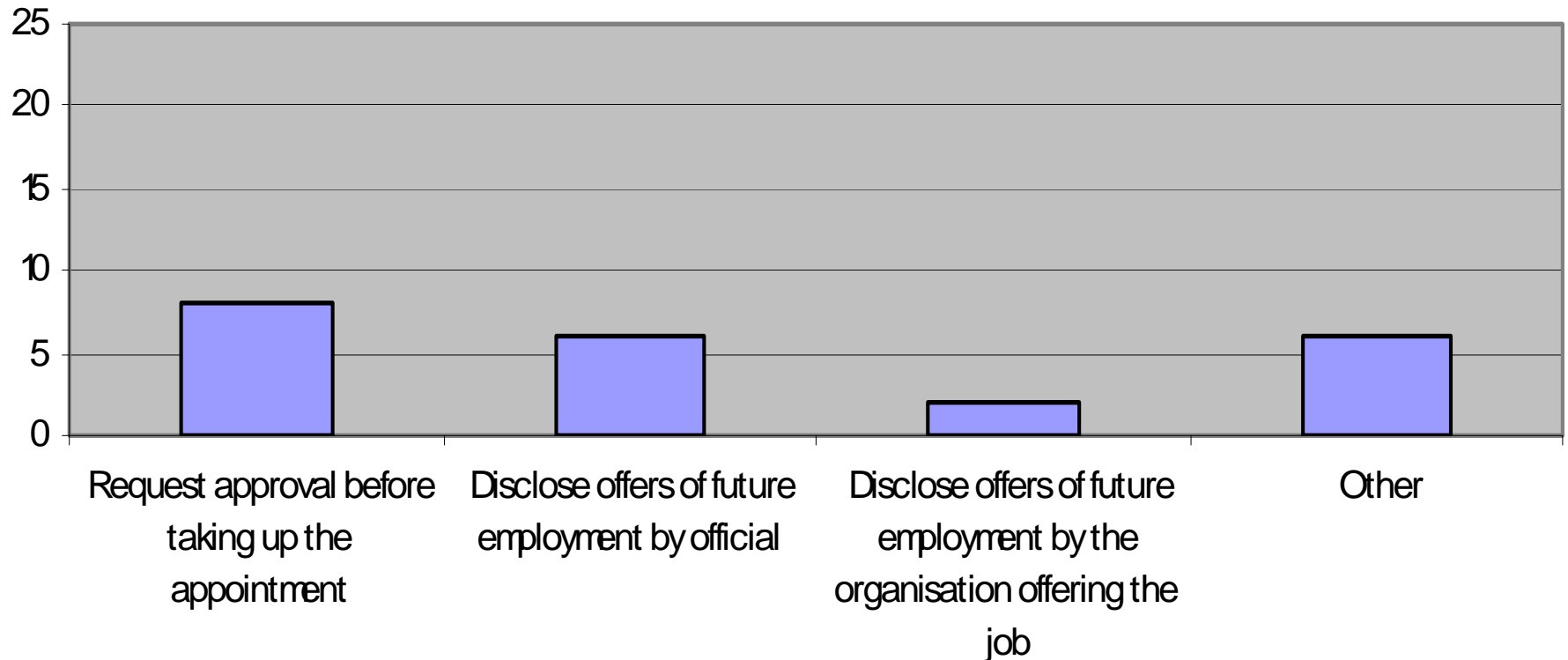
**Evolution -- seek to strike a balance**

# Post-public employment

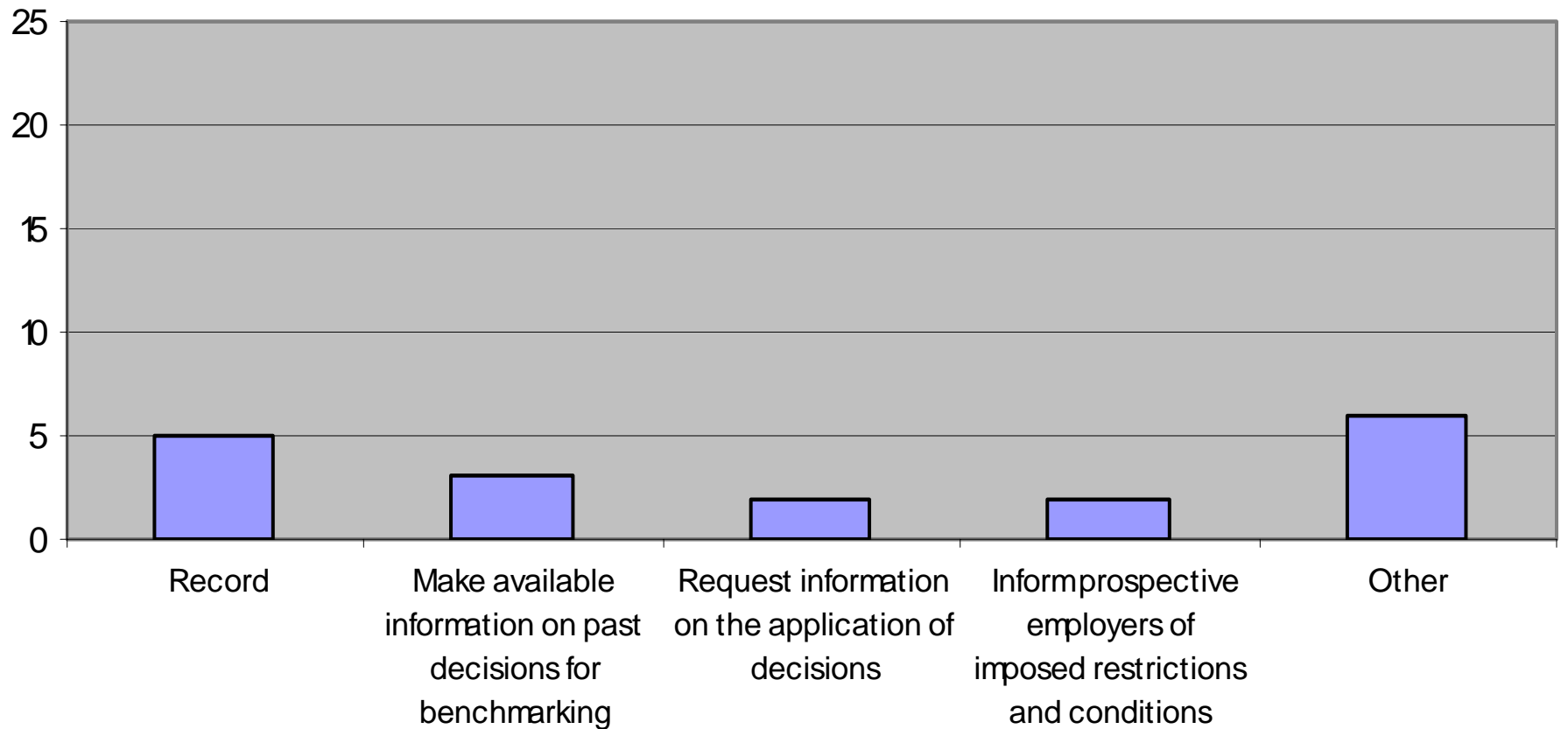
## Facing the consequence of NPM

- Majority of countries are aware of the problem and have developed legislation and preventative measures
- However, these are rather general prohibitions and rarely tailored to specific risk areas
- Implementation mechanisms are weak, e.g.
  - Measures for supporting, tracking, and ensuring implementation of decisions on new employment,
  - Hard to apply traditional (e.g. disciplinary) sanctions, imposing suitable sanctions is a key challenge

## Procedures used for deciding on specific post-public employment cases



## Procedures used for deciding on specific post-public employment cases





# CONCLUSIONS

- ***Conflict of Interest (COI) is a reality***
- ✓ ***Needs identification, prevention, resolution & proper management***
- ✓ ***OECD Guidelines & Toolkits provide reference***



## OECD policy instruments and tools on managing conflict of interest

- Guidelines
- Toolkit
- Country experiences
- Progress report
- Emerging issues

<http://www.oecd.org/gov/ethics>