OECD Public Governance Reviews

Preventing Policy Capture

INTEGRITY IN PUBLIC DECISION MAKING



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Foreword

By changing the formal "rules of the game", public policies determine to a large extent the distribution of costs and benefits in an economy. Tax exceptions, subsidies, private sector participation in government services, emission standards, public health policies and education grant programmes (to name a few) directly influence who gets what. Having a say in the design of these formal rules of the game is therefore of great interest to all parties.

In democracies, wielding influence on priorities and policy decisions through legal and legitimate means, such as public consultation, lobbying, or the financing of political parties and campaigns, is an everyday reality. Transparent, balanced and fair competition of interests through these channels leads to public decision making that reflects constituents' various views and concerns, and favours the public interest.

Clearly, however, both incentives and temptations exist to gain unwarranted advantages by exerting influence on these public decisions. This undue influence of vested interests on public decision making is known as "policy capture". While bribery is its most direct form, capture can also be achieved through more subtle means: lobbying and political finance are two examples of where "grey areas" can arise and networks can be monetised, granting illegitimate power and influence without resorting to cash-filled envelopes. Even formal participation mechanisms can be abused and result in captured policies, thereby fostering exclusion rather than promoting inclusion as intended.

At the same time, countries are experiencing widening income gaps, with a concentration of wealth in the hands of a small number of individuals. This is likely to further facilitate privileged groups' access to decision makers and exacerbate the risk of capture. The alarmingly low levels of trust in government, political apathy (as evidenced by poor turnout at the ballot box) and radicalisation observed in many countries could well be related to the growing perception that policy making exclusively serves vested interests. Those left behind by globalisation and public policies may doubt the fairness of the current system and start questioning it. Undue influence – whether real or perceived – erodes the social contract underpinning democracies, and hence the system's credibility and legitimacy.

This report exposes how public decisions regarding public policies can consistently be steered away from the public interest in favour of a specific interest group or individual. Capture always undermines core democratic values and jeopardises the fundamental value of a democratic decision-making process based on openness, dialogue, and evidence. Capture escapes clear-cut legal definitions, and happens in the grey areas between ethics and laws. Tackling capture, therefore, requires broader approaches that promote not only compliance with formal rules, but also values and political openness.

Building on previous work undertaken by the OECD on integrity, conflict of interest, lobbying and political finance, this report provides guidance for policy makers on identifying and mitigating capture risks. It links policies based on transparency, stakeholder engagement, accountability and organisational integrity that, taken together, prevent undue influence and safeguard the public interest in policy making.

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Executive summary

Policy making is vulnerable to capture

Public policies are at the centre of the relationship between citizens and governments. To a large extent, they determine the quality of citizens' daily lives. While policy makers should, in principle, pursue the public interest, they need to acknowledge, in practice, the existence of diverse legitimate interest groups, and consider the costs and benefits for these groups. Since policies generally entail both winners and losers, real "win-win" situations are an exception. This context creates incentives and opportunities to influence public decisions in favour of a particular stakeholder.

Policy capture is the process of consistently or repeatedly directing public policy decisions away from the public interest towards the interests of a specific interest group or person. Capture is the opposite of inclusive and fair policy-making, and always undermines core democratic values. The capture of public decisions can be achieved through a wide variety of illegal instruments, such as bribery, but also through legal channels, such as lobbying and financial support to political parties and election campaigns. Undue influence can also be exercised without the direct involvement or knowledge of public decision makers, by manipulating the information provided to them, or establishing close social or emotional ties with them.

Policy capture has pervasively negative impacts on the economy and society

Particularly in today's environment of growing inequality and political discontent, capture erodes the fundamental democratic process of fair decision making based on openness, dialogue, consensus, and the public interest. It can hinder sustainable economic growth, affect the quality and effectiveness of public services and policies, and undermine trust in government, further exacerbating inequalities and trapping societies in a vicious circle. More specifically, capture can have the following impacts:

- Capture leads to misallocation of public and private resources, resulting in rent-seeking activities and diminished allocative and productive efficiency. Capture endangers sustainable growth.
- Capture perpetuates or exacerbates social and economic inequalities. Benefits obtained through capture enable the interest group to reinvest in further influence-seeking and maintain and expand its wealth and power. Thus, capture nurtures a vicious circle of inequality.
- Capture can lead to blocked reforms or inadequately enforced policies to protect entrenched interests. It can also redirect ongoing reforms away from the public interest.
- Capture is likely to decrease trust in government, fostering the perception that politics are unfair and unduly influenced. It can erode government credibility and legitimacy, and hamper effective policy implementation. Even the appearance of undue influence can have these detrimental effects.
- Capture also entails health, environmental and security threats, e.g. by providing lower-quality services or neglecting safety. Capture of the justice system by organised crime facilitates its operations. Capture of health or educational policies may further contribute to a vicious circle of inequality.

Key recommendations

Mitigating the risks of capture through a comprehensive system that fosters a culture of integrity and accountability in public decision making is vital for levelling the playing field among interests. The interplay of four mutually reinforcing strategies that operate at different levels can prevent policy capture and help safeguard the fairness of public decision making.

1. **Levelling the playing field**: Balancing views by engaging stakeholders with diverging interests ensures an inclusive decision-making process that is more resilient to capture by narrow interests, as one interest group will find it more difficult to influence decisions without resistance from other groups. This also requires promoting integrity and transparency in lobbying activities and political financing.
2. **Enforcing the right to know:** Ensuring transparency and access to information is a necessary, yet not sufficient, precondition for effective participation and stakeholder engagement and social control over decision-making processes. External actors need access to reliable, timely and relevant information.

3. **Promoting accountability through competition authorities, regulatory agencies and supreme audit institutions**: External control, effective competition and regulatory policies enable accountability in both the public and private sectors. The agencies responsible for these processes are particularly likely to become targets of undue influence, and should be shielded from capture.

4. **Identifying and mitigating capture risk factors through appropriate organisational integrity policies**: Decisions that could be captured are taken by individuals acting in an organisational environment. Defining clear standards of conduct, promoting a culture of integrity in public organisations, and ensuring a sound control and risk-management framework can help embed organisational resilience to capture.

Chapter 1

No country is immune to policy capture

This chapter clarifies the concept of policy capture, particularly in relation to corruption and lobbying. It reviews the detrimental consequences of capture, and emphasises its impact on perpetuating and aggravating inequalities, failing to achieve policy goals, and eroding public trust and government legitimacy.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

> "Institutions are not necessarily or even usually created to be socially efficient; rather they, or at least the formal rules, are created to serve the interests of those with the bargaining power to create new rules."
>
> Douglas C. North (1994)

The incentives and opportunity to capture public decisions

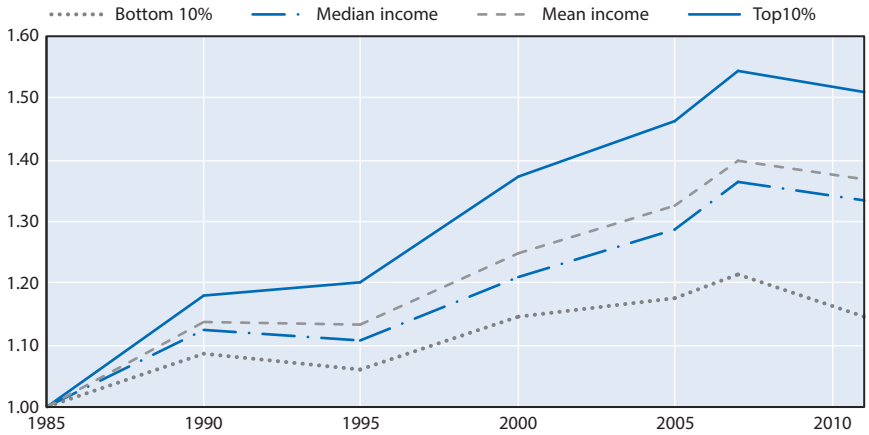
To a large extent, public decisions over public policies determine the quality of citizens' daily lives. Public policies are processes in which changes are made to the formal "rules of the game" – including laws, regulations and institutions – to address a problem or achieve a policy goal (OECD, 2006). In democracies, citizens generally judge their governments based on both their policy performance (i.e. their ability to deliver tangible positive outcomes for society) and their democratic performance (i.e. the degree to which government decision-making processes live up to democratic principles). Inclusive public policy and law making processes built on integrity, participation and transparency are crucial to designing and implementing legitimate and effective policies, thus maintaining citizens' trust in their government.

While public policies are in principle expected to pursue the public interest, they need to acknowledge in practice the existence and concerns of legitimate groups with competing interests and clear stakes in influencing political decisions over laws, regulations and policies. Real "win-win" situations are rare, as policies usually entail both winners and losers. Increasingly complex policy issues have made policy making more challenging, as well as more difficult to understand and communicate. Interest groups' high stakes in specific policy decisions create incentives and opportunities to influence and even manipulate decisions. As a result, the short-term gains for specific groups sometimes override the long-term gains that may benefit society as a whole. In turn, transparent, inclusive and deliberative policy-making processes, often including some compensation for the loser, allow societies to reach policy consensus.

Proximity to public decision-makers can be a valuable asset (Box 1.1). Problems usually arise when interests groups do not have the same power and opportunities to influence policy making. Some individuals with common interests may not even be in a position to form a group to make their voices heard in the policy arena; the more diffuse the group of individuals with common interests, the lower the value for each individual, and the lower the ability to organise as an interest group; this problem has been coined as the dilemma of collective action (Olson, 1965). Additionally, a long recovery from the financial crisis and widening income gaps have further concentrated economic resources in the hands of fewer people: in 2010, the gap between the richest 10% and the poorest 10% was at its highest point since 1985 (Figure 1.1).

Figure 1.1. **Trends in household disposable income by income group, 1985-2010**

Percentage change, index 1985=1, OECD17,[1] total population[2]



Source: OECD (2015a).

Notes: 1. OECD is the unweighted average of 17 countries: Canada, Germany, Denmark, Finland, France, United Kingdom, Greece, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, Norway, New Zealand, Sweden and United States.

2. 1985 refers to 1983 for Sweden, 1984 for France, Italy, Mexico and United States and 1986 for Finland, Greece, Luxembourg and Norway; 1990 refers to 1989 for France and United States and 1991 for Italy and Sweden, and is corrected to include Greece, Japan, Luxembourg, Mexico and Norway; 1995 refers to 1994 for Greece, Mexico and United Kingdom and 1996 for France and Luxembourg; 2005 refers to, 2003 for Japan and New Zealand, 2004 for Germany, Finland, Mexico, Norway and Sweden and 2006 for Italy; 2007 refers to 2006 Japan and 2008 for Germany, Finland, France, Israel, Mexico, Norway, New Zealand, Sweden and United States: 2011 refers to 2009 for Japan 2012 for Mexico, Netherlands and United States.

Box 1.1. **The value of connections to government: An overview of available evidence**

Anecdotal evidence indicates that a private company's proximity to the government may yield benefits. But just how much do such connections matter? Fisman (2001) used data from Jakarta's stock-exchange composite index, combined with rumours concerning the late President Suharto's health, to estimate the value of political connections of Indonesian companies; the author found that companies that were well-connected with President Suharto lost significantly more value than other companies, suggesting that the bulk of their value derived from their political connection.

Box 1.1. **The value of connections to government: An overview of available evidence** *(continued)*

Faccio (2006) later examined 20 202 publicly traded companies in 47 countries to determine whether they had political connections, narrowly defined as whether "… at least one of its large shareholders … or one of its top officers … is a member of parliament, a minister, or is closely related to a top politician or party." The author showed that political connections (prevalent in 35 of the 47 sample countries) were quite common – although less so in the presence of more stringent regulation of political conflicts of interest – and were particularly prevalent in countries with higher levels of perceived corruption. Faccio (2006) also found that the announcement of a new political connection significantly increased the company's market value.

Further empirical evidence along the same lines documents that:

- In Italy, political connections result in 5.7% more revenues on average. The benefit is even more significant (up to 22%) in regions characterised by high public-expenditure and corruption levels, suggesting that gains in market power do not stem from higher productivity, but rather from public demand shifts towards politically connected firms (Cingano and Pinotti, 2013).
- In Pakistan, politically connected firms borrow 45% more from government banks and have 50% higher default rates. These political rents increase according to the status of the politician to whom the company is linked and whether the politician (or the politician's party) is currently in power, and decrease with the degree of political participation in the politician's constituency (Khwaja and Mian, 2005).
- In Italy, mayors who stayed in office for an extra term were associated with lower procurement outcomes (e.g. lower number of bidders, higher prices, steeper local procurement concentration and higher probability of a local firm winning the bid). This indicated that the local heads of administration used their time in power to build a collusive network with bidding companies to capture local public-procurement spending (Coviello and Gagliarducci, 2010).
- In the United States, companies with boards connected to the winning party in the 1994 House and Senate elections experienced a significant increase in procurement contracts (Goldman, Rocholl and So, 2013).
- Also in the United States, financial industry spending on lobbying, and network connections between lobbyists and legislators, were positively associated with the probability of a legislator changing positions in favour of deregulation between 1996 and 2006 (Deniz and Mishra, 2014).

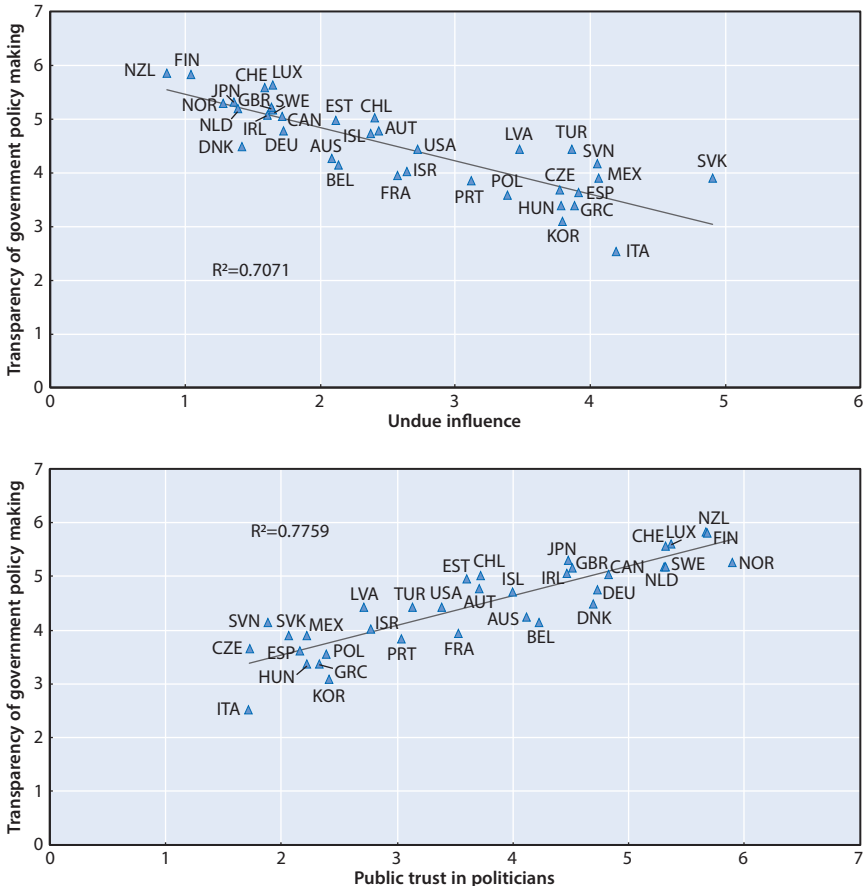
Box 1.1. **The value of connections to government: An overview of available evidence** *(continued)*

- In Denmark, a company's profitability can rise significantly if a family member is related to a local politician. This indicates that even in low-corruption environments, corporate rent-seeking at local governmental levels matters (Amore and Bennedsen, 2013).
- In Spain, productivity is significantly lower in sectors with stronger public-sector influence (e.g. through licensing or regulations), but unrelated to the level of required skills, innovation or financial dependence. New companies also face higher market distortions than established companies (García-Santana et al., 2015). A potential explanation for these empirical findings is that in areas with an important public sector, political connections are more important than productivity.
- In Hungary, the companies with the largest market share before the election of the new government in 2010 lost about 25-30% of their combined market share after the election. This change was accompanied by a comparable increase in the total market share of companies dominating the post-election market (Fazekas, King and Tóth, 2013).
- Politically connected companies (450 companies from 35 countries over 1997-2002) are more likely to be bailed out by governments than non-connected companies (Faccio, Mazulis and McConnell, 2006).

Sources: Amore and Bennedsen (2013); Cingano and Pinotti (2013); Coviello and Gagliarducci (2010); Goldman, Rocholl and So (2013); Faccio (2006); Faccio, Masulis and McConnell (2006); Fazekas, King and Tóth (2013; Fisman (2001); García-Santana et al. (2016); Khwaja and Mian (2005).

Arguably, this rising inequality has also heightened the risk of unequal access to policy-making processes – which in turn is often mirrored in decisions reflecting narrow vested interests. Such non-inclusive policy making can perpetuate or exacerbate social inequalities, fostering the perception of politics as unfair and unduly influenced, and eroding governments' credibility and legitimacy (OECD, 2016a). Indeed, transparency in policy-making correlates positively with trust in politicians and negatively with the level of perceived undue influence (Figure 1.2).

Figure 1.2. **Correlation between public trust in politicians, level of perceived undue influence and transparency in government policy making, 2014-15**



Source: Based on data from the World Economic Forum (2015), www.weforum.org/gcr.

Notes: The scores for the "undue influence" indicator have been inverted to reflect that higher scores mean higher levels undue influence. The World Economic Forum calculates the indicator based on the responses to two questions, relating to judicial independence ("In your country, to what extent is the judiciary independent from influences of members of government, citizens, or firms?") and favouritism ("In your country, to what extent do government officials show favouritism to well-connected firms and individuals when deciding upon policies and contracts?").

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The grey area between due and undue influence on public decisions

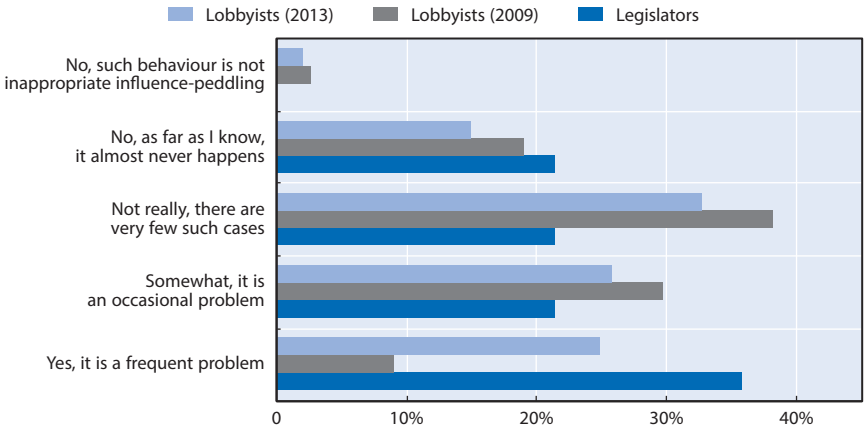
In part, ensuring that policy decisions are reached inclusively and objectively, without reflecting the narrow interests of powerful groups or individuals, rests on preventing and prosecuting corrupt practices. International conventions, such as the United Nations Convention against Corruption (United Nations Office on Drugs and Crime, 2004)) state that bribing a legislator, regulator or public official to obtain legal protection or favourable decisions is illegal and subject to prosecution. But unlike corrupt practices such as bribery (e.g. to obtain a contract), capture is not related to a specific transaction, but is usually characterised as a more stable (undue) relationship achieved over time through both legal (e.g. lobbying and financial support to political parties or electoral candidates) and illegal instruments and channels.

Capture can be defined as the result or process by which public decisions over laws, regulations or policies are consistently or repeatedly directed away from the public interest and towards the interests of a narrow interest group or person, by the intent and action of this group or person (see also Carpenter and Moss, 2014). Undue influence can even be achieved without directly involving (and without the knowledge of) public decision-makers, by manipulating information or establishing close social or emotional ties with them.

When does legitimate advocacy become capture? Political legitimacy rests on citizens' explicit or tacit consent of the government and its actions, meaning that the political system should create and maintain a common belief that the existing political institutions best fit the needs of a given society (Lipset, 1983). Although the channels for obtaining and maintaining legitimacy are unclear, in representative democracies legitimacy is generally linked to citizens' inclusion in political processes. While lobbying is a legitimate aspect of democracy, many legislators – and even lobbyists themselves – acknowledge that the practice of inappropriate influence-peddling, such as courting official favours with gifts or misrepresenting issues, is an issue. According to OECD surveys on lobbying (OECD, 2009b, 2014a), the number of lobbyists who believe it is a frequent problem increased between 2009 and 2013 (Figure 1.3).

Such inappropriate influence-peddling and corrupt practices erode the social contract on which democracies are built, along with the credibility and legitimacy of the overall system. History shows that countries developed by becoming more inclusive and allowing a greater number of individuals to participate in the economy and political processes (Acemoglu and Robinson, 2012, North, Wallis and Weingast, 2009). Capture – policy making in the interests of the few – is exclusive and poses a threat to sustainable, inclusive development. Capture abuses the trust and power citizens have placed in their democratic governments. While capture is not necessarily illegal, it is always illegitimate, and violates core democratic values.

Figure 1.3. **Inappropriate influence-peddling by lobbyists is a frequent or occasional problem**



Source: OECD (2009a); OECD (2014a).

Note: Respondents were asked the following question: "Generally speaking, do you think that inappropriate influence-peddling by lobbyists, such as seeking official favours with gifts or misrepresenting issues, is a problem?"

Capture may even characterise countries with active, well-institutionalised markets and democratic politics. Johnston (2014) coined the expression "influence market corruption" to describe a situation where private wealth interests seek influence over specific processes and decisions within strong public institutions (Box 1.2). Johnson (2016) noted that the very strength of the public institutions in these countries raises the value of influencing them, as the decisions are likely to be implemented effectively and deliver the expected (undue) benefits. Moreover, laws and regulations that have been captured are adopted through legal means and are therefore legally effective. Capture – or influence market corruption – works through the system, rather than undermining it.

Box 1.2. **Influence market corruption**

In *Syndromes of Corruption: Wealth, Power and Democracy*, Michael Johnston (2006) notes that corruption poses a threat to democracy and economic development. At least two major factors create corruption: *1)* the manner in which people pursue, use and exchange power and wealth; and *2)* the strengths and weaknesses of the government and institutions that either restrain or sustain these processes. Johnston argues that different factors create different "syndromes" of corruption, including influence market corruption. In a subsequent book, Johnston (2014) provides examples of this syndrome through case studies on the United States, Japan and Germany.

Box 1.2. **Influence market corruption** *(continued)*

In a context of well-institutionalised markets and democratic politics, private interests may attempt to manipulate public decision-making by directly influencing public officials or directing funds to political figures who put their connections up for rent. Even in open economies with constitutional frameworks, political competition, free media, secure property rights and strong civil societies, legal means can be abused to gain economic and political advantage: Johnston (2006) states that "abuses are often a matter of pushing legal, even desirable, activities and connections to unacceptable extremes". The fact that strong public institutions ensure effective implementation of decisions also raises the value of exerting influence.

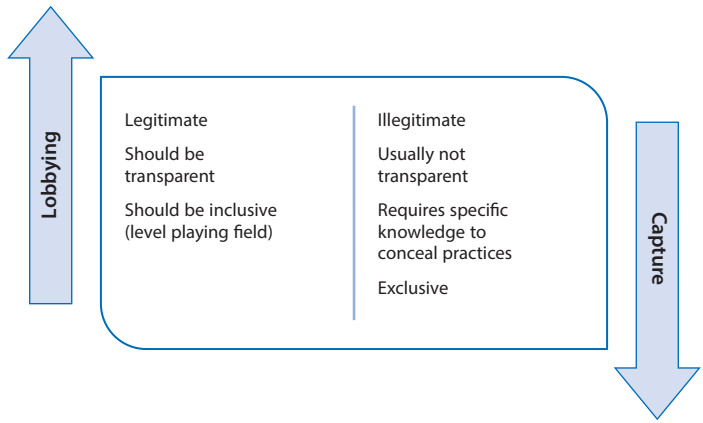
Countries with influence market corruption usually receive good scores in international governance and corruption rankings and are sometimes even perceived as models of anti-corruption reform, despite prevalent corruption. These countries tend to develop policies and institutions that are friendly to private interests and incumbent politicians, reducing the incentive to resort to more obvious corruption practices. Both economic and political interests have an incentive to limit competition and protect their comparative advantage, further concentrating wealth and power. Thus, any reform in these settings must take into account a political system that is shaped significantly by private interests.

Sources: Johnston, M. (2006, 2014).

Figure 1.4 features some broad criteria distinguishing legitimate advocacy from policy capture. Illegitimate capture generally occurs in a non-transparent and exclusive manner, and is therefore only accessible to well-connected groups or individuals. While not all capture practices are illegal, capture is perceived as illegitimate, and usually requires specific efforts and know-how to conceal it. Conversely, legitimate influence-seeking (e.g. lobbying) should be transparent and open, and accessible to all interests.

Rising awareness of the issue of undue influence on public decisions has triggered discussions and calls for increased transparency and stakeholder engagement in policy making (OECD, 2009b), as well as in regulatory design and implementation (OECD, 2012, 2014b). Awareness is also growing of the roles played by conflict of interest (OECD, 2003, 2010), political finance (OECD, 2016a) and lobbying (OECD, 2014a) in shaping policy decisions. Nevertheless, a systematic approach to mitigate capture risks is still lacking, and is developed in Chapter 3. Capture is complex, not only because it often takes advantage of legal loopholes, but also because it requires acknowledging the political economy of public decision-making, i.e. the existence of interest groups and power relations.

Figure 1.4. **Criteria differentiating due influence (e.g. lobbying) from policy capture**



Source: Based on Boehm (2007).

What is being captured: the scope of public decisions potentially subject to undue influence

While capture has been commonly perceived as characterising countries with endemic corruption, it is increasingly prevalent in developing, emerging and developed economies. Evidence is mounting of diverse government functions captured by powerful interests across OECD member countries and non-member economies. The policy areas and sectors captured range from public procurement and the justice sector to trade, taxes and customs policies (Boas, Hidalgo and Richardson, 2014; Bromberg, 2014; Hyytinen, Lundberg and Toivanen, 2008; Fulmer and Knill, 2013; Slinko, Yakovlev and Zhuravskaya, 2004). Regulated sectors, such as telecommunications, energy, transport and water, are also prone to political influence and capture.

By unduly influencing public decisions over laws and policies, i.e. "capturing them", narrow interest groups directly shape the future legal and regulatory environment, making the most out of loopholes and grey areas offering room for discretion. Depending on its needs, an interest group can push for creating new rules, changing or abolishing existing rules, or avoiding new rules. For example, a company or industry may wish to unduly influence the standards regulating the maximum permitted pollution of the water used in production; another interest group may wish to avoid outright new regulations or policies in certain areas; yet another company may wish to push for rules or policies protecting it from competition. Capture may also consist in shaping the way laws, regulations or policies are implemented, monitored and enforced (e.g. inducing a more lenient form of control).

Capturing economic regulations to obtain "legal" protection against competitive pressure may be a more efficient way of obtaining rents than "traditional" mechanisms such as product differentiation, limit-pricing strategies and vertical integrations (Stigler, 1971). Krueger (1974) introduced the famous concept of rent seeking, as well as its costs to social welfare. Put simply, rent seeking can be understood as obtaining benefits (rents) without contributing to creating new wealth, e.g. through production or innovation. Bhagwati (1982) later generalised the concept, coining the expression "directly unproductive, profit-seeking activities". Murphy et al. (1993) argued that rent seeking is particularly detrimental to growth, not only because it implies social costs and has a negative impact on innovation, but also because it is subject to increasing returns (i.e. once an investment in rent seeking has been done, it becomes rational to continue along the same path, e.g. using the established network with public decision makers). Where such undue influence is possible, companies will invest in lobbying, building and maintaining reciprocal networks with the public administration, contributing to political finance and acquiring developing skills related to making corrupt deals. Under certain conditions, being an efficient "captor" may facilitate access to more business opportunities than conventional business strategies.

Policy capture is a broad term encompassing any situation where the decisions taken throughout a policy cycle mainly reflect the interests of a narrow interest group. Policy capture occurs especially during agenda-setting, policy development and policy adoption; some decisions may also be captured during policy implementation or policy evaluation related to implementing or revising these rules (Figure 1.5 and Table 1.1). While capture can take place in different ways and involve different types of actors (Chapter 3), the main dynamics stay the same: by legal or illegal means, private interests influence public actors to (ab)use their discretion in making public decisions to obtain an unfair, special advantage.

Sometimes, the reference to the function being captured is more explicitly stated. **State** capture relates to a situation where the central government is captured at a large scale, including with regard to parliamentary law making (Fries, Lysenko, and Polanec, 2003; Hellman, Jones and Kaufmann, 2003; McLean and McMillan, 2009). It is sometimes also used when organised crime has extended its influence to wide swaths of the government, with the intent to weaken its institutional structures, thereby impeding law enforcement and facilitating money laundering. Such infiltration has been also referred to as state co-optation (Garay et al., 2008). In turn, **regulatory** capture implies capture of a regulator, industry regulatory agency or regulatory process (e.g. Brezis and Weiss, 2013; Wexler, 2011; Etzioni, 2009; Boehm, 2007). For example, capture occurs in regulatory agencies when private actors seeking to reduce the cost of compliance persuade regulators to create, avoid or alter rules, or to show leniency in enforcing them (OECD 2016b; Thomas, Soule and Davis, 2010).

Figure 1.5. **The policy-making process**

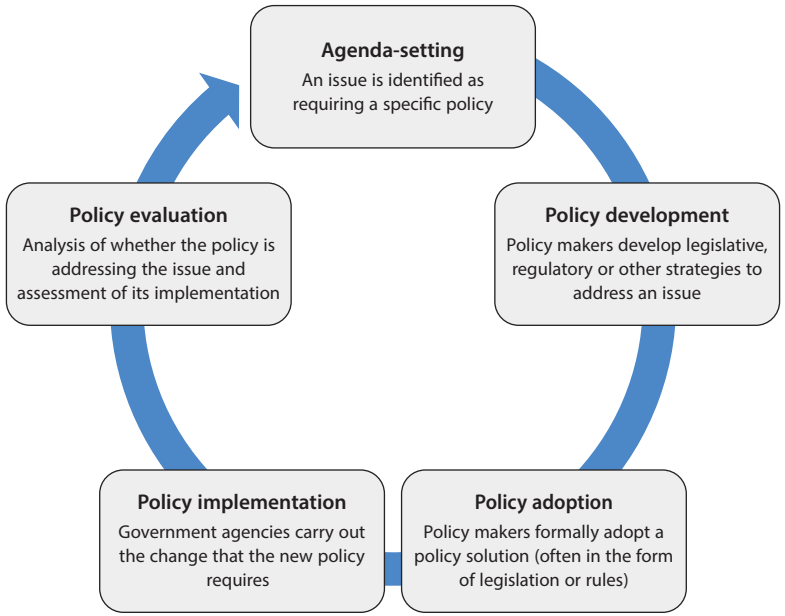


Table 1.1. **Policy capture: Main risks and actors targeted in a policy cycle**

		Agenda-setting	Policy development	Policy adoption	Policy implementation	Policy evaluation
Risk of undue influence on		Priorities	Draft laws and regulations, policy documents (e.g. project feasibility studies, project specifications)	Votes (laws) or administrative decisions (regulations), changes to draft laws or project specifications	Implementation rules and procedures	Evaluation results
Main actors targeted	**Legislative level**	Legislators, ministerial staff, political parties	Legislators, ministerial staff, political parties	Legislators, parliamentary commissions and committees, invited experts	—	Parliamentary commissions and committees, invited experts
	Administrative level	Civil servants, technical experts, consultants	Civil servants, technical experts, consultants	Heads of administrative bodies or units	Civil servants	Civil servants, consultants (experts)

To conclude, policy capture requires meeting three essential criteria (adapted from Carpenter and Moss, 2014):

1. An overarching policy goal(s) must be explicitly defined.
2. The captor (group) must intend to extract rents.
3. The policy-making process, including over related laws and regulations, must have shifted away from the policy goal(s) in the public interest towards the captor/group's interest.

Even when all three criteria are not met, specific actors can still influence a particular policy field (Gordon and Hafer, 2005; Gordon and Hafer, 2007), but cannot be said to have captured the policy process, either in part or in full (Yackee and Yackee, 2006). While policy capture entails clearly identifying and violating policy goals, no particular means of influence are presupposed.

Policy capture has pervasively negative impacts on the economy and society

Capture of public decisions erodes the fundamental idea of democratic decision-making based on dialogue, consensus and openness. As emphasised in the OECD report on the *Governance of Inclusive Growth* (OECD, 2016c): "The consequences [of capture] include the erosion of democratic governance, the pulling apart of social cohesion, and the limiting of equal opportunities for all."

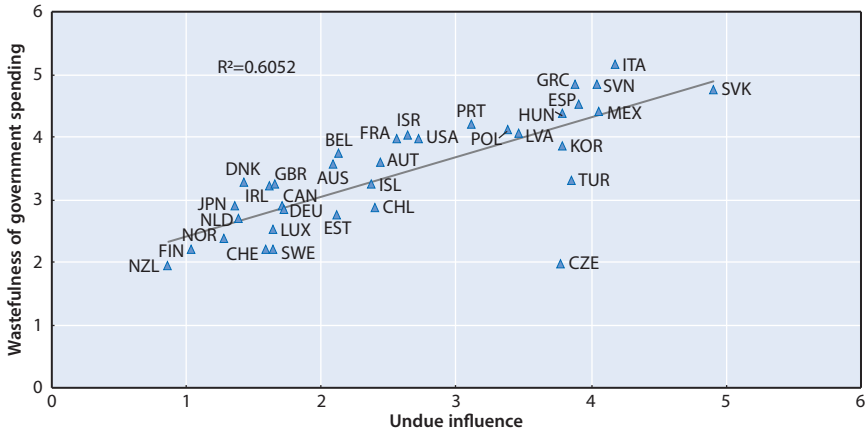
In particular, policy capture is likely to have the following impacts:

- Capture leads to misallocation of public resources. World Economic Forum (2015) data (Figure 1.6) show that higher levels of perceived undue influence go hand in hand with higher levels of perceived inefficiency in government spending. In accordance with good budgetary governance (OECD, 2015b), disbursement of public resources should accommodate specific public policy goals. Public funds not spent in keeping with legitimate policy goals, whether because of captured policy-making or misuse of discretionary power, represent a loss of public resources – i.e. taxpayer's money. Public resources may also be captured when a public official allows a private actor to obtain a contract through unfair competition, leading to inflated prices and/or lower product/service quality. Moreover, a shortfall in public revenues occurs in instances where capture leads to lower levels of tax compliance.
- Capture is likely to have a negative impact on economic productivity by misallocating resources and endangering sustainable growth. Companies that are not part of a capture network face economic disadvantages (OECD, 2016d), e.g. higher entry barriers for small or less influential companies, lack of market access owing to undue granting of monopoly rights to a competing enterprise, or lost profits (e.g. in cases of unfair competition). As a result, private companies

may prefer to invest in unproductive rent-seeking or into developing corruption skills (Lambsdorff, 2002), as these practices are likely to pay off better than building up entrepreneurial skills and innovations, which are crucial ingredients for sustainable growth.

- Capture perpetuates or exacerbates social inequalities. Inequality has increased in most OECD countries over the past three decades, likely accompanied by diminishing opportunities for the less fortunate to participate in public decision-making processes. With unequal access, there is a risk that public decisions will reflect the interests of wealthy minorities, enabling them to maintain and expand their wealth and power, and re-invest part of these benefits in influence-seeking. Thus, capture nurtures a vicious cycle of inequality.

Figure 1.6. **Undue influence and wastefulness of government spending**



Source: Based on data from the World Economic Forum (2015).

Notes: The scores for the "undue influence" indicator have been inverted to reflect that higher scores mean higher levels of undue influence. The World Economic Forum calculates the "undue influence" indicator based on the responses to two questions, related to judicial independence ("In your country, to what extent is the judiciary independent from influences of members of government, citizens, or firms?") and favouritism ("In your country, to what extent do government officials show favouritism to well-connected firms and individuals when deciding upon policies and contracts?"). The "wastefulness of government spending" indicator is based on the question: "In your country, how efficiently does the government spend public revenue?"; it has been inverted so that higher scores mean higher perceived wastefulness.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

- Capture can lead to some countries failing to address problems, because narrow interests have a vested interest in maintaining the status quo (Eleftheriadis, 2014; Fukuyama, 2014). Strikingly, the solutions and policies that should be adopted to address challenges (e.g. climate change, migration, inequality) are often known, but are sometimes not implemented or properly enforced because of their consequences for interests benefitting from the status quo.
- Successful delivery of public policies enhances a government's credibility; consistency in applying democratic values to decision-making processes generates legitimacy (OECD, 2009). Capture is likely to foster the perception of politics as unfair and unduly influenced, reducing both the credibility of policy outputs and the legitimacy of the policy-making process. Citizens' trust in government suffers greatly when policy makers take decisions for their own personal benefit, or for the benefit of powerful interest groups. Even the appearance of unduly influenced public decisions can have detrimental effects on government legitimacy. Moreover, this loss of trust can seriously hamper policy implementation through lower compliance, and entail higher monitoring and enforcement costs.
- Inasmuch as possible, policies are expected to build on objective analysis of the problem at stake, an assessment of progress in implementing existing policies and regulations, and a thorough evaluation of possible (regulatory and non-regulatory) solutions before choosing a course of action (OECD, 2012). Capture can affect the quality and use of the evidence informing public decisions. By unduly weighing on certain solutions or misstating the facts, it can significantly impair governments' capacity to tackle social problems.
- Capture that results in lower quality of services or negligence of safety standards (e.g. when substandard construction material is used to cut building costs) may cause health or environmental harms (Shapiro, 2012). Capture of the justice system by organised crime or terrorism facilitate criminal operations. Capture of health or educational policies may further limit access to these services to a narrower segment of the population and contribute to a vicious cycle of inequality.

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Chapter 2

How does policy capture happen?

This chapter explains capture of public decision-making processes in more detail. It describes the main features of policy capture, the mechanisms through which it can be achieved, and the actors typically involved. The chapter closes with an overview of the main risk factors. This generic risk map is intended to provide guidance to policy makers in diagnosing capture risks.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

The goals and actors of policy capture

The typical favours private interests can expect to receive from public actors range from favourable legislation and regulations (or decisions on their implementation) to obtaining specific contracts, emission-measurement methodologies or the formula to calculate the tariff for a regulated public service contracted out to a private provider.

Documented favours include capture of public decisions at such different levels as:

- the systematic award of public procurement contracts (Fazekas and Tóth, 2014)
- granting tax breaks or state subsidies (Slinko, Yakovlev, and Zhuravskaya, 2004)
- access to public loans (OECD, 2016a)
- the creation and allocation of monopolistic positions in competitive markets (Innes 2014; Portman, 2014)
- the selling of public assets, e.g. prime local authority real estate, below market price (Rádi, 2015).

Actors from both the public sector (i.e. elected officials and civil servants) and the private sector (e.g. business owners or brokers) are involved in capture (Gounev and Bezlov, 2010; Szántó, Tóth and Varga, 2012; Wedel, 2003), acting either as individuals or as part of a group (e.g. members of special-interest or advisory groups). Business owners, former politicians and brokers can also act as professional lobbyists.

In Canada, for example, the Charbonneau Commission found, amongst others, that a network of vested interests, including political parties, private engineering and construction firms, unions and organised crime, had infiltrated and captured the awarding of public contracts in the construction sector. This happened through various channels, including political contributions, practices of influence peddling, and direct monetary bribes (Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, 2015).

Typically, capture relationships involve at least two actors, i.e. one each from the public sector (even if the public actor is not aware of being captured) and the private sector:

- **Elected public officials:** politicians at the national or subnational level are central to political decision-making and in control of public resources. High-level politicians can influence agenda-setting and spending priorities (e.g. what should be procured, and where) and control policy implementation through people loyal to them in the

public administration. They can also provide insider information giving an unfair regulatory or bidding advantage to the companies linked to them. Their role is predicated on their broad discretion in decisions that can help their private-sector connections earn rents directly (e.g. through an individual decision) or indirectly (e.g. through a new law). Given the competition for key decision-making positions, these public actors often rely on private resources – e.g. large campaign-finance donations – to attain these positions, making them particularly vulnerable (OECD, 2016a).

- **Public officials**: as defined in Article 2 of the United Nations Convention Against Corruption (UNCAC), public officials comprise "(i) any person holding an executive, administrative or judicial office, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority: (ii) any other person who performs a public function, including for a public agency or public enterprise, or providing a public service…" (UNCAC). Public officials clearly have a considerable amount of discretion – e.g. in preparing laws and regulations, deciding on the use of public funds, organising and managing the public procurement process (drafting tender specifications, evaluating bids and communicating with contractors), or formulating the rules of economic regulation and competition – and are therefore potential targets for capture (although it should be noted that they may simply be following orders of higher-ranking officials). If directly involved, their readiness to skew their decision in favour of a specific interest can be facilitated by favours (e.g. the promise of a highly paid position in the private sector, the "revolving door") or more immediate benefits (e.g. lucrative gifts). But public officials can also be captured by threats (for instance, the specific interest could use real or fake claims to blackmail a public official) or unawares (by providing false information to skew a decision, or creating social and/or emotional ties with the official).
- **Business owners/managers:** they control the companies that earn rents (such as becoming the sole bidder in a public procurement tender, or benefitting from a monopoly protected by regulation) from a privileged economic position. Business owners and managers can build close relationships with public officials, support their struggle to get key decision-making positions, or simply fund their private consumption (e.g. luxurious travels, expensive cars). State-owned enterprises sit at the intersection of the private and public spheres, allowing for rent extraction as well as rent generation; those that hold key monopolies (e.g. in energy markets) are at particularly high risk of capture. Captured state-owned enterprises, and the rents obtained through them, have been used by powerful individuals to further

their political careers or finance politicians and political campaigns (Romero, 2014; Krauthamer, 2014).

- **Brokers/intermediaries**: while they tend to receive comparatively less attention, brokers can play a decisive role in creating and maintaining capture (Jancsics and Jávor, 2012; Wedel, 2012). Brokers (such as public-procurement advisors or tax-planning experts) often have legal or specialised knowledge; many (such as former public officials or businessmen) are well-connected. Brokers provide knowledge on ways of hiding illegal or unethical activities behind legal entities and procedures (e.g. a seemingly open competition for a government contract). Depending on the interest of the captor group, brokers can also create trust and connect previously unrelated individuals. Their position should therefore not be underestimated.
- **Lobbyists**: while lobbying is a fact of life in all countries, it is often perceived as an opaque activity resulting in undue influence to the detriment of fair, impartial and effective public decision-making. Although lobbying often trains its sights on the legislative branch at the national and subnational levels, it also targets the executive branch of government (e.g. to influence the adoption of regulations or the design of projects and contracts). In most countries, lobbying is seen as perpetuating special interests at the expense of the public interest. The literature has noted that the disproportionate, unregulated influence of interest groups may lead to capture (OECD, 2014a; Kaufmann, Hellman and Geraint, 2000).
- **Advisory/expert groups**: governments in OECD countries make wide use of advisory/expert groups in the guise of advisory/expert groups or subgroups that provide governments with advice, expertise and recommendations. These groups comprise representatives from the public and private sectors, civil society and academia, and are established by the executive, legislative or judicial branches of government. In an OECD survey on lobbying (OECD, 2014a), more than half of the legislators responding said they worked with advisory groups; 82% of OECD country respondents said they regularly consulted advisory groups when drafting primary laws.

Powerful private interests' capture of advisory groups poses a serious risk to the integrity of policy making: for example, when corporate executives or lobbyists advise governments as members of an advisory group, they act not as external lobbyists, but as part of the policy-making process, with direct access to decision-makers. Up to 79% of the legislators surveyed (OECD, 2014a) believed that advisory groups wielded influence over policy making and outcomes; nearly half (47%) felt that advisory groups were driven by special interests, rather than by the public good (OECD, 2014a).

Vehicles of policy capture: How are public decisions captured?

The above discussion of the actors involved in capture has already provided insights on the practical mechanisms of capture. Table 2.1 summarises the channels that can be misused by private individuals and special interest groups to directly or indirectly influence public officials. Most are perfectly legal and legitimate, and may even constitute important means to promote participation in public decision-making. Nonetheless, these channels may be abused for

Table 2.1. **How public officials can be influenced by individuals and special-interest groups**

Direct influence	**Creating a sense of reciprocity** • Illegal payments • Favours, such as: - political campaign funding - hosting receptions - offering future jobs - other benefits, such as expensive presents • Providing research and analysis • Threats against public decision-makers **Building on existing personal ties** • Family and other close relationships • Networks • Affiliations • SOEs • Politicians as board members • Revolving doors **Building on strategic communication** • Meetings, conferences, study trips
Indirect influence	**Building on strategic communication** • Broad concerted action through media ownership • Writing media comments, articles, columns or letters to the editor • Issuing press releases, holding press conferences • Participating in public hearings and consultations • Grassroots lobbying **Building on expertise** • Publicising analytical reports and other research • Participating in expert or advisory groups and consultations • Using think tanks to produce research • Responding to requests for comment • Providing manipulated information and expertise

capture purposes – participation then shifts from promoting inclusion to become a tool for exclusion.

While some types of influence (particularly direct influence) can be clearly identified as illegal practices – e.g. illegal payments (bribes) or manipulating information submitted to policy makers (fraud) – many forms of influence can be either illegal or legal, depending on the specific circumstances and applicable national laws. For instance, gifts can be illegal if they exceed a specific threshold, and if the public official does not report acceptance of the gift to a supervisor/relevant contact person.

Public decision-makers can also be threatened in various ways by certain interest groups (Dal Bo and DiTella, 2003). Physical violence is only the most extreme kind of threat; more subtle threats include smear campaigns, negative rumours or misinforming the media. Interest groups can also abuse justice to harass public officials, e.g. by initiating litigation aiming to show the illegality or administrative incompetence of a decision taken by the official, or levying accusations about some real or fictitious crime. Even if the public official eventually wins the case, significant costs and reputational damage would arise (Dal Bo and DiTella, 2003). Faced with such threats, even honest public decision-makers may make biased policy choices.

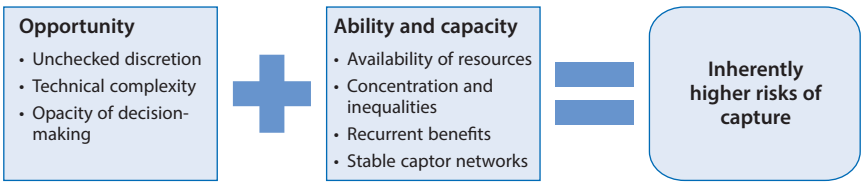
Indirect influence can be exerted by interest groups providing biased information. For example, while public officials are likely to have less information than manufacturers or traders, they need information to take decisions (e.g. on specific technologies). Private actors could provide information leading to captured policy making, either directly – by delivering data, information or studies directly to public officials – or indirectly – by providing the information to relevant government advisors (Helm, 2010).

Finally, capture can also simply result from repeated interaction between public officials and companies or other powerful pressure groups. For instance, energy regulators and regulated energy companies, or health-policy makers and the pharmaceutical industry, are likely to meet, exchange information and establish social ties on a regular basis. Over time, this interaction may create growing opportunities for an interest group to collude with the relevant public officials. Public attention may also gradually wane, and with it the pressures to deliver policies in the public interest, making it easier for public officials to tailor policies favouring the interests of those with whom they interact continuously (Martimort, 1999).

A risk map: Inherent factors facilitating and enabling policy capture

The previous sections allow drawing conclusions on several inherent risks and factors facilitating capture, such as opportunities stemming from structural characteristics and weaknesses, the ability and capacity of captors to organise and exert undue influence, and (closely related) the ability to overcome the collective-action dilemma and organise as an effective pressure group (Figure 2.1).

Figure 2.1. **Factors facilitating capture of public decision-making processes**



The risk factors related to existing opportunities for policy capture are:

- **Unchecked discretion**: the means of exerting influence described above (Figure 2.1) illustrate that the mechanisms for establishing and maintaining capture, while diverse in nature, regularly rely on discretion in the public and/or private sphere. Unchecked and unaccountable discretion makes capture possible (Warren, 2003). Policy fields differ from one another in their susceptibility to capture (and the likely forms of capture), depending on capture opportunities and the effectiveness of existing controls (Lambsdorff, 2007; Nye, 1967; Rose-Ackerman, 1999). This makes some areas of government spending and regulation more fertile ground for capture: policy areas allowing individual decisions and a high degree of discretion in decision-making are more prone to capture. The smaller the number of public officials required to seal and implement a deal, the easier it is to establish and maintain a captor relationship in the absence of appropriate accountability mechanisms (OECD, 2016b; Koske et al., 2016).
- **Technical complexity**: a technically complex issue may be the subject of limited public interest and control. In that context, external analysis and opinions, even if recognisably biased by a special interest, can be considered useful guidance in the execution of a public official's functions.
- **Opacity of decision making**: capture thrives when decisions are not visible to the public. Limited transparency, coupled with a lack of appropriate accountability mechanisms and records of

decision-making processes, increases the risk of capture. For example, in the tax-regulation field, the secrecy of individual tax deals creates wide room for discretionary decisions benefitting specific companies and individuals. Decisions on whether to pursue or terminate a tax investigation are internal to the tax authorities, making public scrutiny difficult – unless a whistle-blower comes forward with insider information.

The risks factors related to the capacity to exert undue influence are:

- **Availability of resources**: economic elites can mobilise ample financial resources to influence policy making. While the sheer amount of wealth may not directly translate into capture, the resources and status being passed on from parents to their offspring (including the formation of political dynasties) heighten the risk of capture (Dal Bó, Dal Bó and Snyder, 2009; Eleftheriadis, 2014; Glaeser, Scheinkman and Shleifer, 2003). Financial resources can be used in various ways: to finance political campaigns, conduct lobbying activities, or convey the necessary messages and arguments to targeted audiences through the media and academics (Solimano, 2014). Meanwhile, depending on the country, candidates for political positions rely on large monetary donations to finance their election campaigns; the higher the need for financial support, the higher the risk of capture. In addition, public officials who decide on the expenditure of public funds are often targeted for capture.
- **Recurrent benefits**: recurrent rent flows allow beneficiaries in both the private and public sectors to plan ahead and stabilise their influence network. In areas where transactions are infrequent and can be postponed or eliminated, capture cannot establish itself as strongly as where transactions are recurrent and not easily terminated. For example, the energy sector's regular and indispensable services allow for recurrent benefits and are therefore very attractive capture prospects.
- **Concentrated rents and inequalities**: the concentration of rents in the hands of a few makes capture a very attractive means to extract rents. For instance, energy production is mainly concentrated in a few facilities (such as nuclear power plants) and in the hands of a few large corporations, making the concentration and extraction of rents relatively easy to organise. In addition, inequalities between the private and public sectors can facilitate capture: for example, high wages in the private sector may lead public officials to believe they are receiving uncompetitive salaries and feel justified in earning additional money and benefits to "compensate"' for this perceived injustice (rationalisation).

- **Stable policy networks**: a stable policy network facilitates capture of public decision-making processes. Repeated interactions over time may facilitate capture, as it becomes easier to establish reciprocity, manipulate information, or test the public official's willingness to take biased decisions. A smaller-size network may facilitate collective action on the part of the captor group.
- **Expectations**: the mere knowledge that a favour is expected encourages co-operation within a captor network. For example, public officials who receive private campaign financing or gifts may feel pressured to grant favours in return.

This generic risk map helps improve understanding of capture dynamics, and can serve as a guide to more in-depth and context-dependent risk analysis, as well as a basis for designing targeted mitigation measures (see Chapter 3). The following two sections discuss in more depth concrete cases of energy and taxation policies.

Policy capture in practice: Two case studies

Capture of tax policy

The media, as well as the academic and policy literature, widely discuss corruption and capture in taxation. Taxation is a cross-cutting government function; it is a compulsory fee or levy, as defined by national and international laws and regulations, paid by individuals and corporations, and enforced by tax authorities (OECD, 2014b). Taxes can be levied on income and profits, on payroll, property, and goods and services, and in the form of social security contributions (OECD, 2013).

Not all taxation types are equally prone to capture, and taxes are captured in different ways depending on their collection and evasion methods. For example, while the global corporate-taxation system has been the subject of intense debate, for example at the G20 forum (OECD, 2013), it has emerged as particularly prone to capture (International Consortium of Investigative Journalists, 2015; Shaxson and Christensen, 2014). The sheer size of potential tax gains from avoiding a mere fraction of corporate taxes amply demonstrates the attractiveness of capturing tax policy.

When it comes to personal income taxes**,** while the total incomes of the richest has greatly increased in many advanced economies (Piketty, 2014), their effective tax rate has declined, effectively reversing tax progressivity, particularly in the United States (Piketty and Saez, 2007). But the rich also pay fewer taxes than tax principles would suggest in emerging economies, such as India (Associated Press, 2013).

In taxation, the key public resource up for capture is the tax that can be avoided. This can be achieved in two main ways:

- enacting preferential tax laws and regulations allowing for "legal" tax evasion (EUbusiness, 2014; International Consortium of Investigative Journalists, 2015)
- evading tax collection and tax-code enforcement, which occurs when the captor group directly penetrates the tax authority, influencing how it collects taxes and whom it audits.

Use of these two strategies largely depend on the captor group's capacity to penetrate high-level politics or a bureaucracy (such as the tax authority). While tax fraud, avoidance, or evasion are ends in themselves, they often go hand in hand with a range of other corrupt and capture activities, such as illegal party financing (Anderson, 2014).

The archetype of capture involving the highest echelons of the society (particularly high-level politicians) is legislatures creating loopholes in impartial tax laws enabling preferential treatment of selected domestic or multinational companies (International Consortium of Investigative Journalists, 2015; Slinko, Yakovlev and Zhuravskaya, 2004). Such domestic tax regulations violate international tax treaties (Cellan-Jones, 2014; EUbusiness, 2014). While the originator of such capture relationships remains unclear, what is clear is that high-level politicians' role in keeping conducive tax laws in place is paramount. It is also possible that domestic tax principles and the integrity of law making are violated when local companies are granted explicitly preferential treatment (Slinko, Yakovlev and Zhuravskaya, 2004).

Evidence is increasingly surfacing that tax havens and jurisdictions with high financial secrecy combine preferential tax deals with secret money flows to lure both legal and illegal global capital (Shaxson and Christensen, 2014; Tax Justice Network, 2013). When the financial sector represents up to 50% of gross domestic product (GDP), the risk of capture in taxation, finance and company registration is particularly high. Such jurisdictions are likely to inflict costs not only on their own economies and societies, but also on countries whose tax base is eroded, or whose corrupt politicians can preserve their illicit income safely and tax-free (The Economist, 2013). High-level politicians can stand on both the supply and demand sides of tax-policy capture, as they not only create the opportunities for tax evasion and avoidance through tax havens, but themselves use these opportunities to hide income and avoid paying taxes. In some cases, high-level politicians play a different role: instead of capturing tax legislation, they can prevent the creation of a strong and independent tax bureaucracy. These actions hamper effective tax administration, creating a range of entry points through which captor groups can control tax policy implementation for their own benefit.

Civil servants play a crucial role in capturing tax policies, either by implementing favourable tax laws (in which case the public administration is not necessarily part of the captor network, as it is simply carrying out political decisions) or by directly supporting corruption through preferential implementation of otherwise impartial rules (in which case the bureaucracy is an indispensable player: the administration is either acting as the captor's main public-sector counterpart, or in tandem with supportive political leadership). In some countries, more complex capture schemes have emerged: organisational units of tax authorities dealing with taxation of large corporations facilitate large-scale rent extraction, with high-level politicians and benefiting corporations actively supporting the network (Anderson, 2014; Hungarian Spectrum, 2015).

Given the complexity of taxation – and particularly of international tax deals – recent high-profile cases worldwide have highlighted the crucial role played by brokers, such as the "Big 4" accounting and consultancy firms. Brokers actively recruit corporations; they possess the crucial technical expertise to make illegal or unethical tax deals (sometimes even drafting the tax code that allows them), generating trust in these arrangements from both public and private parties. Hence, they greatly decrease transaction costs, and increase the trust and stability of captor networks (International Consortium of Investigative Journalists, 2015).

The empirical examples identify a number of channels for establishing and maintaining influence within the captor network (e.g. revolving doors, political financing and ideological influence) that are common across policy fields (Shaxson and Christensen, 2014). Brokers can pull together and maintain extensive tax-policy capture networks by interconnecting disparate actors and providing stable relationships for capture purposes (International Consortium of Investigative Journalists, 2015).

While the two major types of tax-policy capture targeting tax legislation or the tax authorities share common traits (and influence channels), they differ in terms of the transparency of capture and the corrupt deals that are brokered. Tax-policy capture deals are not transparent by default, either for the wider public or for other members of the captor network. By contrast, public procurement, energy-policy capture or tax-legislation capture typically involve key transactions that are transparent both to the wider public and the captor network. The lack of transparency in individual deals creates a need for strong trust and reliable brokers who maintain fair standards for the captor organisations. However, tax-policy capture and individual benefits are such that individual companies' rents are independent from each other, allowing for a loose, no necessarily co-ordinated, captor network to emerge.

The highly technical and complex nature of tax law creates a relatively wide berth for parliamentary and governmental discretion to insert loopholes

and preferential tax treatment. However, the decision-making processes and transparency of most tax regulations limit the scope for discretionary decisions. In the implementation of tax regulation, by contrast, the secrecy of individual tax deals creates wide room for discretionary decisions favouring specific companies or individuals. Tax authorities decide internally on whether to pursue or terminate a tax investigation; this makes public scrutiny more difficult, unless a whistle-blower comes forward with insider information. Tax-policy capture appears most stable when legislation works in tandem with tax-implementation capture. Moreover, the lack of a high-quality tax administration, built on meritocracy and staffed with skilled and dedicated bureaucrats, make capture more easy to establish and maintain (Grzymala-Busse, 2008).

Capture of energy policy

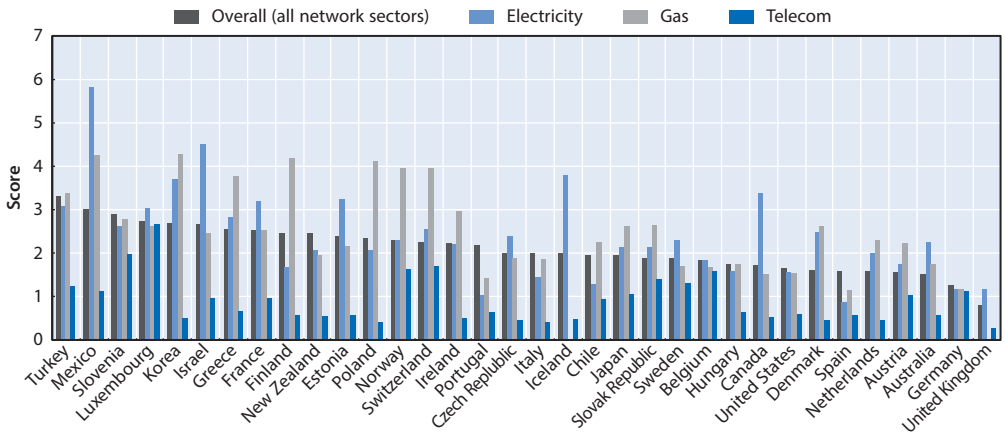
Energy policy concerns the regulation, generation, transmission and purchase of energy, including fossil-fuel extraction. Given that energy products (such as electricity or gas) are homogenous goods, the primary parameter for capture is the price paid by users to energy producers and transmitters. Despite their relative coherence and apparent interdependencies, energy policies tend to be organised along industry lines, e.g. renewables, nuclear, oil and gas, or coal (IEA/OECD, 2014). In addition, while closely related, the regulatory and institutional frameworks governing the exploration and extraction of energy resources are typically very different from those governing energy production, transfer and consumption. By implication, different parts of the energy landscape facilitate different types of capture.

Energy generation is a substantial component of GDP, accounting for 2-4% of GDP in European countries in 2012 (Eurostat). While this percentage only captures a fraction of economic activity in energy markets (e.g. it does not take into account the substantial income from extraction in resource-rich countries), it does indicate the vast volume of potential rents involved. Energy production is largely concentrated in a few facilities (such as nuclear power plants) and in the hands of a few large corporations, making the concentration and extraction of rents relatively easy to organise. As most energy products (such as electricity or gas) are uniformly priced within a country, even a small price advantage translates into large profits. The profits and stability of rent extraction are further underpinned by inelastic demand for electricity and (both household and industrial) heating.

The essential character of energy supply for modern economies (and most voters) means that regulating energy markets is a key concern for governments worldwide (IEA/OECD, 2014). In most OECD countries, energy markets are thus more regulated than other network industries, such as telecommunications (Figure 2.2). The combination of value and concentrated

rents with extensive government intervention in energy markets creates opportunities to abuse public resources through capture (Chang and Berdiev, 2011; van Koten and Ortmann, 2008).

Figure 2.2. **Regulation in network sectors (energy, transport and communications), 2012, OECD and OECD partner countries**



Source: OCED (n.d.), Indicators of Product Market Regulation Homepage, www.oecd.org/economy/growth/indicatorsofproductmarketregulationhomepage.htm#indicators.

Notes: All data is for 2013, except for the United States (2008).

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Capture of energy policies can target any one or a combination of the following benefits, depending on the capacity to capture public and private organisations, and the organisation of regulatory and supervisory powers. Capture targets can be state-owned enterprises involved in fossil-fuel extraction and energy generation or distribution. Capture can also modify prices to generate and extract rents under the guise of:

- preferential extraction rights and royalties (Portman, 2014)
- guaranteed prices for producers (Clemente, Sen and Jonker, 2011)
- special transfer, import or export rights (Magyari, 2015)
- preferential end-user prices (Boehm, 2007).

Depending on the size and governance structure of a given country's energy industry, high-level politicians can play diametrically different roles in capturing energy policies. On one extreme, the capture of energy industries (most importantly oil and gas extraction) is intimately intertwined with top-level politics, autocratic rule and the government apparatus. On the other extreme, politicians play a limited role in energy-policy capture when energy-market regulation is delegated to independent regulatory authorities, although politicians can still try to influence these agencies' decisions by curtailing (or threatening to curtail) their resources or exercising undue pressure on individuals. Interestingly, the crucial role of energy prices for citizens in most OECD countries and the concentration of suppliers in some countries, also create capture opportunities, where an energy-rich country captures domestic energy policies in a buyer country through a combination of personal corrupt deals and high-level political agreements (Yardley and Becker, 2014).

When energy-market regulation is delegated to a regulatory agency, the bureaucrats controlling it are key, given that they determine market access rights, prices and a range of other parameters of rents to be extracted. Some bureaucrats may be motivated to play an active part in capture, while others may simply be passive enablers by failing to counter it. The highly regulated nature of energy markets also create opportunities for capture without the active involvement of bureaucrats, simply by relying on hierarchical relationships and impersonal formulas. For example, if the companies receiving preferential electricity prices on justifiable grounds – e.g. their higher production costs from producing green energy – are stipulated by law, the bureaucratic organisation simply implements the policy. However, if the captor group can select the companies benefiting from the regulation at the legislative stage, capture is achieved at the top, while the bureaucracy automatically delivers corrupt rents.

Business executives can play different roles depending on which part of the supply chain their companies control, from natural-resource extraction to final energy consumption. State-owned enterprises holding key monopolies (such as transmission or extraction) in energy markets are at a particularly high risk of capture. The strategic nature of capture is fully evidenced when captured state-owned enterprises, and the gains achieved through them by powerful individuals, are used to further their beneficiaries' political careers.

Many high-profile scandals in the energy sector have highlighted the role of analysts, experts and academics in the capture process: because risk assessments or price calculations require highly specialised scientific expertise, co-opting key experts in a given energy field can greatly enhance the influence and stability of the capture network. The strategic use of biased scientific expertise to influence environmental regulations of energy generation is also common: in many countries, polluting energy companies fund biased research to underpin their business case, and lobby policy makers

at great expense to use the resulting evidence. Use of offshore companies, secret financial flow, and consultancy firms to channel bribes and rents are also common practices worldwide (U.S. Department of Justice, 2010).

Energy industries are run by influential people from similar educational and professional backgrounds, who have formed longstanding relationships with each other. While these relationships serve as channels for forming and maintaining captor networks. This is most frequently observed in policy fields with strong technical backgrounds spanning the public and private spheres. Energy companies hiring former politicians (the "revolving door") or regulators bringing in industry experts are but a few of the frequently observed patterns of personal ties underpinning government favouritism (Dal Bó, 2006; Makkai and Braithwaite, 1992). Standard lobbying can also serve to introduce and maintain influence over key decisions on energy policy, e.g. through directly drafting energy laws (Cserpes et al., 2010) or dominating key expert groups (Greenpeace, 2015). State-owned enterprises that directly bridge politics and business represent a particularly frequent means to create captor networks – which can sometimes endure despite government changes. Controlling key positions in state-owned monopolies, and using the income earned to finance political contestation and strategic action on the part of the captor group, is one highly successful strategy (U.S. Department of Justice, 2010; Yakovlev, 2006).

In summary, the degrees of discretion differ in various sections of the energy business, just as the techniques for granting decision-making freedoms differ on the private or public sides. Nevertheless, the technically complex and global nature of energy markets makes it relative easy to hide favourable decisions under the guise of good policies.

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Chapter 3

Policy measures to prevent policy capture

This chapter provides guidance on mitigating risks of public decisions being captured. It highlights the relevance of a coherent and comprehensive approach to fostering a culture of integrity and accountability in public decision-making, and proposes four complementary strategies for mitigating capture risks: 1) ensuring decision-making processes that promote inclusiveness and social accountability; 2) fostering transparency and access to information; 3) enabling the external accountability of decision-makers through supreme audit institutions and regulatory enforcement agencies; and 4) addressing capture risks through integrity measures at the organisational level.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

A comprehensive strategy against policy capture

The complex and sometimes legal nature of capture strategies requires measures that go beyond narrow anti-corruption policies to improve inclusiveness and accountability, as well as promote values in addition to formal rules. A comprehensive strategy against capture entails actions that complement and reinforce each other in four key areas (Figure 3.1):

Figure 3.1. **Four complementary strategies against risks of policy capture**



- **Levelling the playing field**: Balancing views by engaging stakeholders with diverging interests ensures an inclusive decision-making process that is more resilient to capture by narrow interests, as one interest group will find it more difficult to influence decisions without resistance from other groups. This also requires promoting integrity and transparency in lobbying activities and political financing.
- **Enforcing the right to know:** Ensuring transparency and access to information is a necessary, yet not sufficient precondition to enable effective participation and stakeholder engagement, and facilitate social control over decision-making processes, external actors need access to reliable, timely and relevant information.
- **Promoting accountability through competition authorities, regulatory agencies and supreme audit institutions**: external control, effective competition and regulatory policies enable accountability in both the public and private sectors. The responsible agencies are particularly likely to become targets of undue influence, and should be shielded from capture.

- **Identifying and mitigating capture risk factors through appropriate organisational integrity policies**: decisions that could be captured are taken by individuals acting in an organisational environment. Defining clear standards of conduct, promoting cultures of integrity in public organisations, and ensuring a sound control and risk-management framework provide guidance on embedding organisational resistance to capture.

Levelling the playing field

Ensuring the inclusive and fair participation of different interests in public decision-making processes is a key tool against policy capture: an inclusive process involving different interests is more likely to be resistant to the risk of a single interest capturing the process. In essence, capturing a process or decision equates excluding others from it.

At least three types of policies are required to achieve more inclusive policy-making processes:

- policies fostering integrity and transparency in lobbying activities
- policies ensuring transparency in political finance
- policies promoting stakeholder engagement and participation.

Fostering integrity and transparency in lobbying activities

First, lobbying is a legitimate activity that can improve policy making by providing valuable data and insights. However, a sound framework for transparency is crucial to safeguarding the public interest and promoting a level playing field for different interests, thereby avoiding capture by powerful interest groups. In 2010, the OECD adopted the *Recommendation of the Council on Principles for Transparency and Integrity in Lobbying* (OECD, 2010) to help decision-makers address the concerns raised by lobbying practices. The OECD series of comparative reports on *Lobbyists, Government and Public Trust* (OECD, 2009a, 2012a, 2014a) examines lobbying regulation and self-regulation, and reviews country experiences; the last two in the series (OECD, 2012a and 2014a) takes stock of progress made in implementing the 2010 *Recommendation* (OECD, 2010).

To increase transparency in the interactions between public officials and private actors, several countries run specific lobbying registers; the amount and type of information disclosed to the public varies widely depending on the resources available, the country's specific concerns and the maturity of the system in place. Additionally, most OECD countries require that membership, agendas, minutes, participant submissions and other information relating to advisory groups should be made publicly available, so that stakeholders can scrutinise their work (Table 3.1).

Table 3.1. **Framework for ensuring transparency and integrity in lobbying**

Policy objectives		Policy options
Build an effective and fair framework for openness and access	Grant all stakeholders fair and equitable access	Fair and equitable access to participate in the development of public policies Allow public consultation through: • Informal consultation • Public meetings • Advisory groups • Online tools Allow free flow of information Address lobbying concerns
	Ensure comprehensive rules and guidelines on lobbying	Build a consensus on the scope of lobbying rules and guidelines Avoid replicating rules and guidelines from one jurisdiction to another Consider the scale and nature of the lobbying industry within their jurisdictions Consider the administrative burden of compliance
	Ensure consistent rules and guidelines on lobbying	Lobbying rules and regulations should be in line with the regulatory framework in place, such as: • Stakeholder engagement through public consultation and participation • The right to petition government • Freedom-of-information legislation • Rules on political parties and election-campaign financing • Codes of conduct for public officials and lobbyists • mechanisms for keeping regulatory and supervisory authorities accountable • Effective provisions against illicit influencing
	Define the terms "lobbying" and "lobbyist" clearly	Clearly determine actors covered by lobbying rules and regulations, e.g. by targeting those who receive compensation for performing lobbying activities, such as consultant and in-house lobbyists Define the types of communication with public officials that are or are not considered lobbying
Enhance transparency	Require disclosures	Disclosure should provide pertinent information, such as: • Name • Contact details • Employer's name • Names of clients • If the lobbyist was previously a public official • Source and amount of any government funding received • Contribution to political campaigns
	Enable scrutiny	Provide timely, reliable, accessible and intelligible public disclosure of reports Create an accessible, up-to-date, searchable and sortable public registry Ensure disclosure of legislative footprint

Table 3.1. **Framework for ensuring transparency and integrity in lobbying** *(continued)*

Policy objectives		Policy options
Foster a culture of integrity	Provide clear rules and guidelines of conduct for public officials	Provide principles, rules, standards and procedures that give public officials clear directions on how they are permitted to engage with lobbyists Communication between public officials and lobbyists should be in line with relevant rules, standards and guidelines Establish restrictions for public officials leaving office to: • Prevent conflict of interest when seeking a new position • Inhibit the misuse of "confidential information" • Avoid post-public service "switching sides" in specific processes in which the former officials were substantially involved Impose a "cooling-off" period that temporarily restricts former public officials from lobbying their past organisations, and appointing or hiring a lobbyist to fill a regulatory or advisory post
	Promote self-regulation among lobbyists	Develop a code of conduct Develop a monitoring-and-enforcement system
Ensure effective implementation, compliance and review	Involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance	Design and apply a coherent spectrum of strategies and mechanisms, including properly resourced monitoring and enforcement to: • Raise awareness of expected rules and standards • Enhance skills and understanding of how to apply them • Verify disclosures on lobbying and public complaints Encourage organisational leadership to foster a culture of integrity and openness in public organisations, and mandate formal reporting or audit of implementation and compliance Involve key actors in establishing and implementing rules and standards
	Appraise the rules and guidelines on a regular basis	Balance risks with incentives for both public officials and lobbyists to create a culture of compliance Review the implementation and impact of rules and guidelines on lobbying to better understand what factors influence compliance Refine specific rules and guidelines, and update implementation strategies and mechanisms

Ensuring transparency in political finance

Second, money in politics is a necessary component of democracy. However, the increasing concentration of economic resources in the hands of ever-fewer people represents a significant threat. If the financing of political parties and election campaigns is not adequately regulated, money may be a means for powerful special interests to exercise undue influence and capture the policy process.

The *OECD Framework on Financing Democracy* (OECD, 2016a) addresses three key questions: What are the risks associated with the funding of political parties and election campaigns? Why are existing regulatory models still insufficient and not fully implemented to tackle those risks? What are the links between money in politics and broader frameworks for integrity in the public sector? The report (OECD, 2016a) provides good practices that can be applied to other countries (Table 3.2). One way to promote transparency in political finance is to disclose information on funding sources for political parties or candidates. A full 91% of OECD countries make public the information contained in the reports of political parties and/or candidates (OECD, 2016a). Moreover, country experiences show that civil-society organisations can be effective watchdogs and have proven instrumental in advancing transparency and anti-corruption efforts in campaign finance.

Table 3.2. **Financing democracy for better policies: Framework for preventing undue influence through political finance**

Policy objective		Policy options
Promote a level playing field	Balance funding through direct and indirect public contributions	Provide direct funding, entailing a monetary transfer to parties or candidates: • Based on clear and equitable criteria, such as equal access and proportionality
		Provide indirect funding, including tax exemptions, subsidised access to media and meeting rooms
	Frame private funding	Ban certain types of private contributions, particularly: • Foreign interests • Corporations with government contracts or partial government ownership • Corporate donations, trade unions, etc. Limit anonymous donations
	Apply spending limits	Clear limits based on absolute amount, % of total public funding, certain amount per citizen in the electoral district, etc.
	Limit privileged access to state resources	Control abuse of state resources: • Ban the use of state resources for political purposes • Ban state resources being given to or received by political parties or candidates (except for regulated public funding) • Ban disproportionate government spending on advertising before or during campaigns, hiring new public servants and signing large public contracts
		Prevent reimbursement of donations or retaliation against opposition: • Ban use of state resources in favour or against a political party or candidate • Reform vulnerable sectors to ensure that campaign donations do not generate kickbacks to donors (e.g. through public procurement, PPP, licenses, privatisations, concessions, public loans, tax benefits)

Policy objective		Policy options
Ensure transparency and accountability	Require disclosures	Require comprehensive reporting, including: • Timely provision of information Include private donations in reporting, in addition to information on how public funds have been spent
	Enable scrutiny	Provide timely, reliable, accessible and intelligible public disclosure of reports Promote media and civil-society scrutiny
Foster a culture of integrity	Apply the integrity framework in the public sector	• Establish a code of conduct • Enforce conflict-of-interest and asset-disclosure provisions • Provide disclosure on lobbying Ensure inclusive policy making, public consultations, etc.
	Promote standards of professionalism, integrity and transparency in private donors	Promote: • Self-regulation of financing of political parties and electoral campaigns • Private sector codes of conduct • Responsible lobbying
Ensure compliance and review	Assure independent and efficient oversight	Strengthen independence of monitoring body and process: • Independent appointment of members • Ensure security of tenure to members • Provide independent budget for the body to conduct monitoring Provide capacity: • Sufficient resources • Specialised auditing capacities and methodologies
	Provide for dissuasive and enforceable sanctions	Design proportionate and dissuasive sanctions, for example: • Loss of public subsidies • Confiscation of illegal donations or funds • Fines • Criminal charges, such as imprisonment • Ineligibility: loss of elected office, forfeiting right to run for elections • Deregistration or suspension of a political party Enforce sanctions in a timely manner
	Appraise the system	Review periodically (with the involvement of stakeholders) the functioning of the system and make necessary adjustments • Identify new risks to the system's policy objectives • Identify mitigation strategies
	Support political parties	Provide support to help political parties comply with regulations. • Establish a support agency or unit within the monitoring agency dedicated to supporting compliance. • Establish dialogue between parties and monitoring agencies to facilitate adherence to the rules and allow for better understanding of political finance

Promoting stakeholder engagement and participation

Third, stakeholder engagement can be leveraged to make the policy-making process more inclusive and informed. This will result in policies that are fairer and closer to citizens' needs, and may help prevent policy capture (Table 3.3). Inclusion means not only that all citizens should have equal opportunities and multiple channels to access information, but also that they should be consulted in policy making (OECD, 2015a, OECD, 2015b). The *OECD Recommendation on Regulatory Policy and Governance* (OECD, 2012b) stresses the importance of providing meaningful opportunities (including online) for the public to contribute both to the process of preparing draft regulatory proposals and the quality of the supporting analysis. Consultation and engagement can help policy makers gather the necessary inputs and evidence to deal with the multidimensional nature of policy objectives and identify trade-offs. Engagement also enables external social control of the decision-making process and strengthens the accountability not only of government but also of individual civil servants.

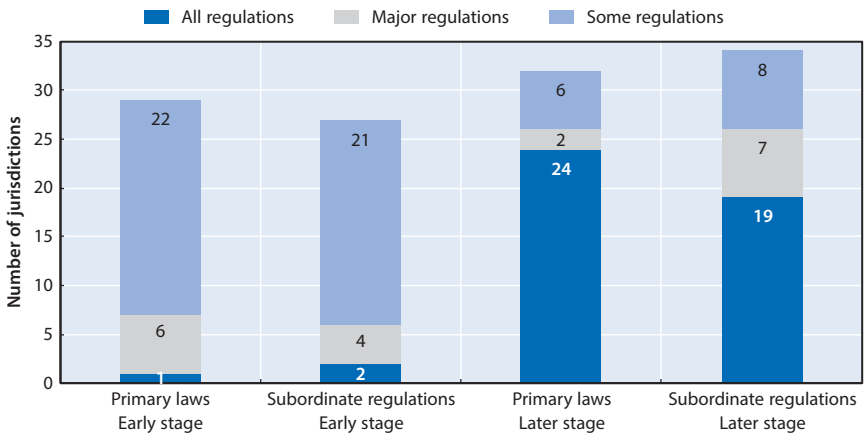
Table 3.3. **Examples of stakeholder-engagement measures to reduce capture risks along the policy cycle**

Agenda-setting	Policy development	Policy adoption	Policy implementation	Policy evaluation
• Promote participative discussion platforms and channels over priorities (e.g. participative budgeting) • Conduct public consultations when appropriate • Independent media should hold political parties accountable for their electoral commitments	• Extend broad invitation to public consultations • Facilitate collective action by interests facing problems to organise and participate effectively (e.g. consumers, users of public services) • Ensure involvement of parties with relevant expertise, especially in topics involving high degrees of complexity and technicality	• Limit participations of officials who appear to be in a conflict-of-interest situation • Limit the opportunities to limit the time for legislative debates • Impose restrictions on omnibus draft legislation	• Enable interested parties to follow implementation status, e.g. through ICT tools • Ensure appropriate accountability mechanisms for those in charge of implementation	• Invite external and independent experts • Share evaluation with broader audiences

Note: The measures above require the existence of regulations promoting participation and consultation across government, as well as comprehensive lobbying regulations.

Establishing the legal framework for stakeholder engagement is not a sufficient condition to ensure its effective implementation: its timing and scope are also important. For instance, typical engagement on regulatory proposals takes place at the final stage of the process, through a public consultation over the internet or consultation with selected groups (e.g. business associations and trade unions). This timing is often too late to influence the process, and may indicate use of the tools of stakeholder engagement as a mere formality (Figure 3.2).

Figure 3.2. **Consultations on primary and subordinated regulations**



Source: OECD (2014b), "Regulatory Indicators Survey results", www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Notes: Based on data from 34 countries and the European Commission as of December 2014. "Early stage" refers to stakeholder engagement that occurs early to appraise officials on the nature of the problem and inform discussions on possible solutions. "Later-stage" consultation refers to stakeholder engagement where the preferred solution has been identified and/or a draft version of the regulation has been issued.

Effective stakeholder engagement is not without challenges, including:

- low administrative capacity; weak mandates, planning or incentives; or a non-supportive administrative culture
- difficulties in accessing hard-to-reach social groups, particularly underrepresented populations (e.g. in terms of social or economic backgrounds; ethnic, cultural or gender-based identity; or location)
- weak participation – e.g. owing to issues of literacy, accessibility, or the perceived time and effort required to engage – leading to a collective-action problem, where individuals with common interests do not actually manage to organise into groups.

Even with the best intentions and framework conditions in place, stakeholder engagement may still fail to be inclusive, and may be captured if not properly handled. These processes can also be hijacked by powerful lobby groups, meaning that special attention should be paid to the processes, timing and modalities for stakeholder engagement, to prevent it from becoming an avenue for skewing the decision-making process (OECD, 2016b).

Thus, governments are expected to look beyond traditional consultation processes, targeting the "willing but unable" and the "able but unwilling" to support inclusive growth. Some social groups, hampered by a lack of awareness, low participation literacy and information overload, are unlikely to engage effectively ("willing but unable") even when given the opportunity; by contrast, well-organised interest groups use traditional channels of communication with government more effectively. Governments should strive to appeal to people who are "able but unwilling" to participate because of subjective barriers, such as a low interest in politics and a lack of trust in the meaningful use of popular input in the consultation process (OECD, 2009b). Civil-society networks or umbrella organisations (e.g. "Involve" in the United Kingdom, which co-ordinates public involvement in open government) could partner with the government to reach out to wider society. Table 3.4 provides a framework for managing stakeholder engagement to mitigate capture risks.

Table 3.4. **Managing stakeholder engagement to prevent policy capture**

Policy objectives		Policy options
Ensure transparency and accountability	Set a clear objective and define the scope of the engagement	Identify objectives and desired outcome of the engagement: • Seek expert knowledge? • Obtain buy-in from stakeholders? • Etc. Define the roles and responsibilities of all parties and required level of engagement. Consult, collaborate and empower, etc.
	Actively disseminate balanced and objective information on the issue	Make relevant information publicly available through channels such as web sites, newsletters and brochures
	Allow information disclosure	Provide access to information upon demand by stakeholders • Freedom of Information law Promote media and civil-society scrutiny Establish independent oversight body to ensure appropriate disclosure

Table 3.4. **Managing stakeholder engagement to prevent policy capture** *(continued)*

Policy objectives		Policy options
Enhance quality and reliability	Target groups relevant to the issue	Find the right mix of participants and ensure that no group is inadvertently excluded • Stakeholder mapping and analysis • No marginalise of "usual suspects"
	Incorporate knowledge and resources beyond public administration	Consult with experts and leverage their expertise through means such as expert group workshops and deliberative polling
	Promote co-ordination within and across governmental organisations	Ensure policy coherence, void duplication, and reduce the risk of consultation fatigue. • Establish a central agency or unit focusing on intergovernmental co-ordination
Promote implementation and compliance	Allow adequate time	Undertake stakeholder engagement as early in the policy process as possible to allow a greater range of solutions and raise the chances of successful implementation
	Enhance confidence in the decisions taken	Build mutual understanding to increase the likelihood of compliance
	Manage expectations and mitigate risks	Identify and consider risks earlier in the process, thereby reducing future costs
Provide comprehensive support and capacity	Introduce new forums and technologies for outreach	Develop online engagement tools • Participative web • Social media • Etc.
	Support stakeholders	Provide support to stakeholders to help them understand their rights and responsibilities • Raise awareness and strengthen civic education/skills • Support capacity-building
	Develop internal capacity in the public sector	Provide guidance/code of conduct to foster an organisational culture supporting stakeholder engagement Provide adequate capacity and training, i.e. • Sufficient financial, human and technical resources • Access to appropriate skills, guidance and training for public officials
	Evaluate the process together with stakeholders	Assess the effectiveness of engagement and make the necessary adjustments • Identify new risks to the system's policy objectives • Identify mitigation strategies

Ensuring transparency and access to information

Achieving transparency in the public decision-making process by allowing the participation of diverse stakeholders is an important component of good governance. A transparent process gives stakeholders access to relevant information, leading to more inclusive decision-making as well as social accountability. Not only does transparency give citizens the power to hold public decision-makers and representatives accountable for their actions, it can encourage representatives to take more impartial policy decisions by forcing them to eliminate self-interested arguments that would not prevail in an open debate (Naurin, 2005). Generally speaking, transparency is a necessary – but not sufficient – condition for promoting accountability and fostering confidence in public institutions (Box 3.1).

Box 3.1. **Empirical evidence on the effects of transparency**

The principal-agent model can be used to understand the relevance of transparency: in a democracy, the citizens of a country can be understood as the principals, while the public officials are the agents entrusted to take the decisions on behalf of the principals. An issue arises when the agents have the incentive and opportunities to act in their own interests and against the interests of the principals – i.e. against the public interest – because the principals cannot fully observe their actions (asymmetric information). Transparency at least partially solves this problem and can increase the probability that the principal will identify any wrongdoing or activities conducted for the agent's private benefit. However, the empirical evidence from various cross-country and experimental studies highlights the fact that the effects of transparency are dependent on certain conditions and should be evaluated in context-specific ways.

For instance, Bauhr and Grimes (2014) use individual and country-level data to evaluate the theoretical model linking transparency to institutional quality. The authors argue that information can have different effects on public views and behaviour, depending on the institutional contexts. The empirical analysis is based on four dependent variables: political interest, political involvement, institutional trust and an index based on the three variables. One of its main predictions is that greater transparency in highly corrupt countries may prompt resignation (i.e. withdrawal from political matters and even self-serving behaviour) by citizens who engaged, but were disappointed by the government's lack of reaction: the findings show that if the principals (the public) do not have the institutional means to use the information to hold agents (public officials) accountable, information may then result in negative outcomes such as resignation (i.e. less civic engagement) instead of indignation

Box 3.1. **Empirical evidence on the effects of transparency** *(continued)*

(i.e. accountability). The study suggests that transparency reforms in highly corrupt countries need to be accompanied by other broad institutional reforms, such as establishing meaningful participatory processes.

De Fine Licht et al. (2014) argue that the idea that transparency can produce legitimacy provides incentive for the elites to support – or at least not hinder – the trend towards increased transparency in politics and public administration. They contend that the relationship between transparency and legitimacy is complex, and that the effects of transparency are context-specific. The authors conducted an experimental study in a school, where students were presented with a scenario where new rules of conduct were to be decided; the students were randomly allocated texts featuring different versions of the decision-making process, ranging from different levels of transparency to no transparency at all. The study found that transparency can generate legitimacy. Even incomplete transparency devoid of a fully open decision-making process can improve legitimacy, simply by justifying ex post a decision taken behind closed doors. The authors found that only a deliberative process generated more legitimacy than closed-door decision-making with ex-post justifications.

Costas-Pérez, Sole-Olle and Sorribas-Navarro (2012) evaluate the effects of availability of information concerning corruption scandals on electoral outcomes in Spain. Using data on incidences of corruption, as well as press coverage of corruption scandals and judicial interventions over 1996-2009, the authors examined whether voters responded to the amount of information (number of news articles on the scandal) or to information indicating the severity of the scandal (judicial intervention). The results show that when press coverage of corruption scandal was extensive, the incumbent's vote loss after the scandal increased by as much as 14%. The quality of information provided by the press also mattered: when the press provided information on judicial intervention related to the corruption scandal, voters were able to differentiate between unfounded and founded accusations of corruption. The findings suggest that information provided by the press influences voters' beliefs about the prevalence of corruption.

Kolstad and Wiig (2008) argue that transparency and access to information have a significant effect on corruption. Transparency heightens the riskiness of corrupt acts; it makes politicians more accountable to the public, makes it easier for the public to select honest and efficient politicians, and helps sustain standards of integrity and trust. However, the authors note that these effects are only significant in specific circumstances. For example, transparency can only play a role if the public makes use of the heightened access to information. The study presents the findings in the context of resource-rich countries, providing an example of

Box 3.1. **Empirical evidence on the effects of transparency** *(continued)*

the Extractive Industries Transparency Initiative, one of the key transparency initiatives in revenue collection from oil, gas and mining. The authors conclude that the effect of transparency depends on the electorate's educational level, the amount of stakeholder power in holding government accountable, and the private or collective nature of goods for which information is provided.

Peisakhin and Pinto (2010) conducted an experimental study in India to evaluate whether transparency is an effective anti-corruption strategy. They examined whether transparency benefits the poor in highly hierarchical societies characterised by a wide power gap between government officials and poor citizens. The experimental study analysed whether New Delhi's slum dwellers used the Right to Information Act (RTIA), enacted in 2005 to give citizens better access to information on government activities, to obtain basic public service instead of paying bribes. The findings showed that the urban poor in New Delhi who used the RTIA were more likely to access public services than those who followed the standard application procedure. The study also showed that making use of the RTIA was as effective as paying bribes. The authors conclude that as a rule, information can be used as "substitute for wealth" when the poor try to access public services from corrupt or inefficient governments.

To further highlight the context-specific effects of transparency on corruption, Escaleras, Lin and Register (2009) used annual data on 128 countries covering 1984-2003 to conduct a propensity-score matching analysis. The authors found no significant relationship between transparency and public-sector corruption, except in developing countries, where the authors found that Freedom of Information Acts were strongly associated with increasing levels of corruption. The authors suggest this may be due to the impact of a country's institutional arrangements on the effective implementation of the Freedom of Information Acts.

Sources: Bauhr and Grimes (2014); Costas-Pérez, Sole-Olle and Sorribas-Navarro (2012); De Fine Licht et al. (2014); Kolstad and Wiig (2008); Peisakhin and Pinto (2010).

Transparency does not systematically entail providing vast amounts of information. However, inadequate provision of information may in fact have a negative effect on citizens. As a matter of principle, tools to increase transparency should be based on timely, reliable, accessible and intelligible information (Pfeiffer and Speck, 2008):

- Timely information is particularly key when civil-society organisations become involved as watchdogs. Information made available too late makes the information less relevant for public discussion. Long delays in reporting also facilitate falsifying information.

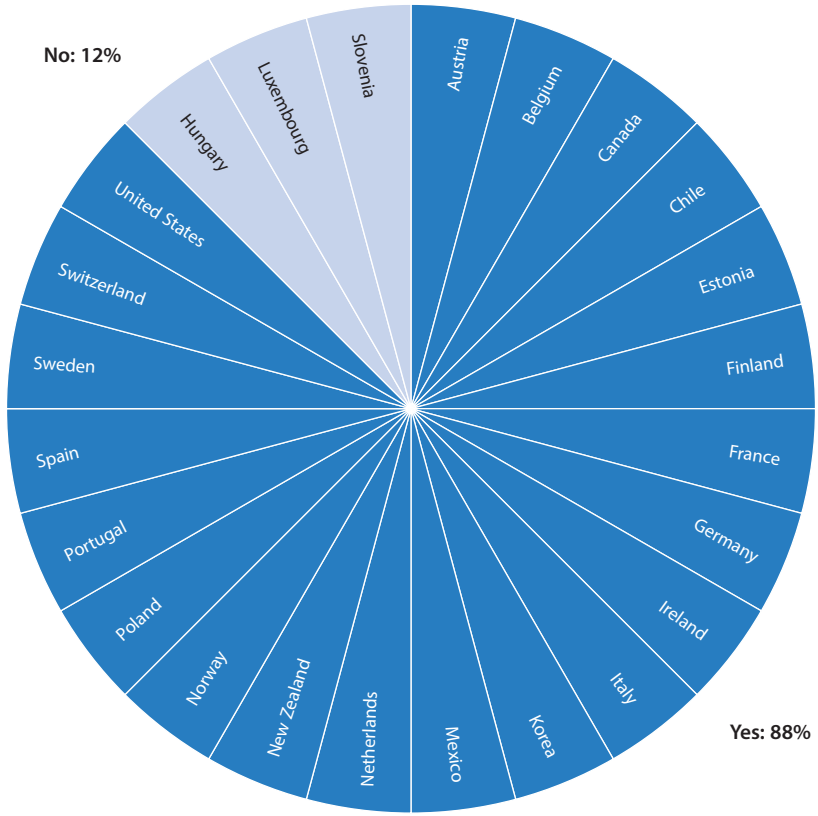
- Information might not be reliable when the data are first disclosed, but public scrutiny of information and enforcement by government agencies make the data more reliable over time.
- Reports are often not accessible, either because no legal ground exists for disclosure, or because most people find it difficult and time-consuming to access reports.
- Even when data are disclosed, the information might not be in a readable format. For disclosure of information to make sense and duly inform citizens, the data need be organised in an intelligible and user-friendly manner.

Meaningful transparency involves two types of actors: *1)* the actors who influence or potentially influence the policy-making process; *2)* the actors' special interests. Disclosing the right amount and types of information is crucial to achieving adequate levels of transparency, but determining what constitutes the "right" information is not always easy. How much information needs to be made publicly available to shine light on special-interest interests and address related concerns – particularly the risk of biased decision-making – will depend on the proposed measure. The objective is not necessarily to make the whole process transparent, but rather to shed light on the influence process. The momentum of the decision – i.e. what happens after the influence process – remains the prerogative of policy makers, who are the guardians of the public interest and balance all considerations for adopting a policy in that light.

Countries have increasingly made use of public records – including formal presentations to legislative committees, public hearings and consultations in legislative processes, and communications with public officials – to increase transparency in the policy-making process. Governments can choose to make public the names of organisations and people who seek to influence the legislative process; most OECD countries, for example, government officials disclose the identities of the people they consulted when drafting legislation, leaving a legislative footprint that facilitates public scrutiny (OECD, 2014a, Figure 3.3).

Table 3.5 provides examples of concrete measures that can help mitigate policy-capture risks throughout the policy cycle.

Figure 3.3. **When developing policy decisions, OECD governments provide information on who is consulted and how decisions are reached**



Source: OECD (2014a).

Table 3.5. **Examples of transparency-based policy capture-mitigation measures**

Agenda-setting	Policy development	Policy adoption	Policy implementation	Policy evaluation
• Publish background studies • Publish relevant data in open-data format • Publish names of donors to political parties and candidates • Enhance transparency in the budget process • Disclose relevant officials' private interests • Make publicly available information on meetings with external stakeholders	• Ensure timely publication of draft laws, regulation and policies • Publish background studies • Publish relevant data in open-data format and limit exceptions • Make publicly available the rationale underlying policy • Make publicly available information about meetings with external stakeholders	• Publish legislative and administrative footprints • Publish names of donors to political parties and candidates • Disclose relevant officials' private interests • Make publicly available information about meetings with external stakeholders	• Share widely the rules of the game related to the implementation of policies • When appropriate, publish policy-implementation milestone reports • Limit restrictions on open government policy	• Publish evaluation reports, underlying methodologies and data

Note: The measures in this table require the existence of regulations promoting both active (access to information) and passive transparency.

Promoting accountability of public and private actors through independent SAIs, competition authorities and regulatory agencies

The *2017 OECD Recommendation on Public Integrity* emphasises the crucial role of external oversight and control bodies in promoting accountable public decision-making (Box 3.2). It notes that the capture risks of laws and policies can be mitigated through effective oversight by SAIs, which can control and hold accountable public-sector actors. In addition, regulatory and competition authorities can both ensure that private-sector actors play by the rules of the game and hold them accountable.

SAIs are the autonomous bodies responsible for controlling and holding government accountable for its use of public resources. SAIs do not set the government agenda or select policy tools; however, they oversee the government institutions and processes that perform these tasks, and can inform the process through their audits, evaluations and advice. SAIs assess the effectiveness and efficiency of internal control and governance systems in detecting and acting upon illegal undue influence.

Box 3.2. The role of external oversight and control in the 2017 OECD Recommendation on Public Integrity

Reinforce the role of **external oversight and control** within the public integrity system, in particular through:

a. facilitating organisational learning and demonstrating accountability of public sector organisations by providing adequate responses (including redress, where relevant) to the sanctions, rulings and formal advice by oversight bodies (such as supreme audit institutions, ombudsmen or information commissions), regulatory enforcement agencies and administrative courts;

b. ensuring that oversight bodies, regulatory enforcement agencies and administrative courts that reinforce public integrity are responsive to information on suspected wrongdoings or misconduct received from third parties (such as complaints or allegations submitted by businesses, employees and other individuals);

c. ensuring the impartial enforcement of laws and regulations (which may apply to public and private organisations, and individuals) by regulatory enforcement agencies.

Source: OECD Recommendation on Public Integrity.

To prevent capture of public decision-making processes, SAIs mainly work through four channels.

First, by conducting compliance audits, SAIs monitor government entities' adherence to existing laws and regulations. For example, many SAIs audit political-party financing to determine whether parties are complying with existing laws. Such audits are a core function of SAIs, but can have limited ability to detect capture: specifically, compliance audits are not designed to detect undue influence on the rules of the game through *legal* means. However, performance and impact evaluations allow SAIs to show ex-post instances where a policy does not serve the public interest or clearly benefits a narrow interest group, leading to questioning whether capture might be the underlying reason. Publicising the results of such evaluations can help prevent capture, since actors beyond the narrow interest groups become aware of the unequal distribution of benefits stemming from the policy.

Second, SAIs can ensure that executive-branch agencies design and execute effective internal control systems. "Controlling the controls" in accordance with laws, regulations and standards can help deter the use of existing procedures to favour narrow interests. This is especially true when SAIs, through their

performance audits, provide insights and recommendations on effective control environment, including conflict-of-interest management and broader internal integrity policies. By strengthening controls and dedicating audit resources to declarations of assets and financial interests, conflict of interest, pre- and post-public employment, lobbying arrangements and practices, and political finance, SAIs can help address implementation gaps and existing weaknesses in administrative capacity. Ultimately, these actions can reinforce an "anti-capture environment".

Third, and more indirectly, SAIs can be anti-capture catalysts by highlighting cross-cutting issues and making information publicly available through their reports and online presence. For instance, SAIs may conduct audits of government-wide, cross-cutting transparency and integrity laws and policies to reduce capture. For example, a report by the U.S. Government Accountability Office (GAO, 2010) analysed the budgeting process of the U.S. Army Corps of Engineers and recommended ways to increase decision-making transparency and prioritise projects. Executive branches must think beyond treating the transparency and integrity elements in the law and policy-making processes as "tick-the-box" exercises. Instead, they should put in place the necessary controls to facilitate external control by interested third parties, thereby mitigating the risk of capture or ineffective regulation.

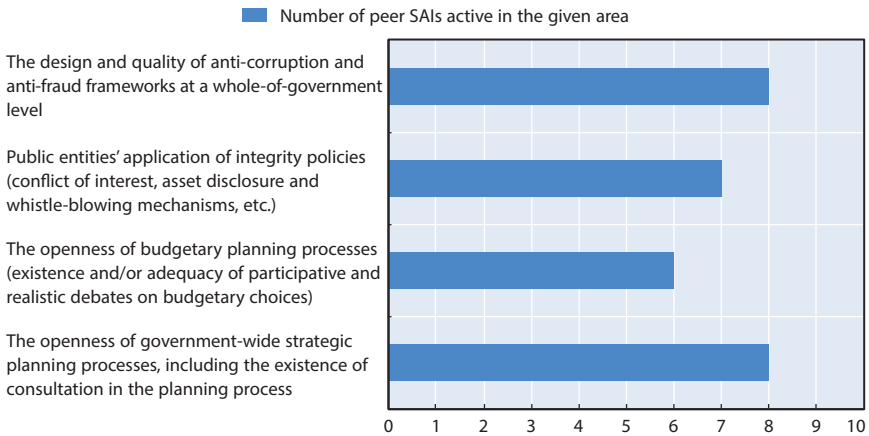
Fourth, through their ex-post work, SAIs can determine whether all the relevant actors participated in the policy-making processes, in keeping with existing regulations on stakeholder engagement. For example, SAIs can verify whether a coherent, detailed, evidence-based and reliable Regulatory Impact Analysis (or equivalent tool) accompanied the drafting of laws and regulations. Such analysis includes verifying whether all the relevant stakeholders had the necessary qualitative input and opportunity to participate in, and comment on, the draft regulation during the initial phase of the process. This helps ensure that the expected impact on aspects such as employment, social cohesion, equal access and the relation with existing legislation were thoroughly examined and documented, and that the data were made available to all interested parties.

As demonstrated in the OECD (2016d) report *SAIs and Good Governance: Oversight, Insight and Foresight,* SAIs increasingly engage in activities that can help prevent capture. The OECD surveyed 10 leading SAIs to understand trends in external audit institutions. The findings show that SAIs usually assess every stage of the policy cycle; most SAIs actively control the effectiveness of mechanisms to prevent corruption and fraud, contributing to transparency and accountability in a broader sense (Figure 3.4).

Given the importance of external control on legislation, policy formulation and implementation, the activities performed by SAIs (as shown in Figure 3.3) are critical. However, SAIs and other external control bodies must also

take steps to insulate themselves from undue influence (Lima Declaration, INTOSAI, 1977) and maintain independence. In line with their status as independent bodies, SAIs require full discretion and broad mandates (INTOSAI, 2013). Moreover, a SAI should operate on the fundamental principles of independence, transparency, accountability, ethics and quality control to effectively hold government accountable for its stewardship of public resources (INTOSAI, 2013). An independent and professional SAI holds itself accountable to the same principles it expects of other public sector entities.

Figure 3.4. **SAIs are increasingly ensuring proper application of anti-corruption and integrity measures**



Source: OECD (2016d).

In addition to exerting external control on the public sector through SAIs, effective public policies can foster private-sector accountability and mitigate capture risks indirectly, by ensuring that companies are exposed to market competition, controlling for market concentration and collusion, or regulating markets where competition is not possible or desirable (e.g. natural monopolies).

All OECD countries rely on competition laws and policies to promote long-term economic growth, innovation and productivity. In competitive markets, companies that best meet their customers' needs thrive, while companies producing inferior or overpriced goods fail. Effective competition can prevent companies from gaining too much power and dominance, raising both the opportunities and incentives to capture government regulations and policies. The same competitive pressure, however, may induce businesses to try to avoid competition in the first place, by unduly influencing governments to grant them a protected position – hence the need to shield public authorities from capture.

Dominant firms have the ability to raise prices and restrict output, harming both consumers and efficiency. While businesses should not be penalised for achieving a dominant position by competing legitimately, they should be deterred from attaining or maintaining dominance by preventing or destroying competition. Dealing with anti-competitive conduct by dominant firms is one of the most challenging areas of competition law, because distinguishing abusive conduct from legitimate competition can be difficult.

To promote fair competition effectively, competition laws generally prevent:

- firms from colluding with their competitors to restrict competition, either through price-fixing or market-sharing arrangements
- firms with significant market power from abusing it to exclude competitors and limit competition
- mergers between competitors that are not justified by efficiency gains which would outweigh any loss of competition.

More specifically, fostering competition in sectors dominated by legally created monopolies or powerful conglomerates is key to increasing competition for influence and thus helps reduce capture risks. Countries address this issue by restructuring key monopolies and removing entry barriers and anti-competitive advantages, improving the investment climate, promoting different forms of interest representation among existing firms and strengthening anti-monopoly agencies.

Independent authorities with the necessary powers to enforce the rules are the most qualified to ensure effective competition. Competition authorities should be able to study and decide cases, and enforce their decisions if needed. Fines are the most common form of deterrence. Other sanctions include imprisonment, disqualifying business executives from holding corporate management positions, and disqualifying a company from participating in future tenders for a specific period.

Some sectors – especially energy, telecommunication, transport and water – are characterised by relatively strong market failures. Introducing effective competition in these sectors is no easy task: although it is possible to introduce competition in some areas of the sectors through vertical disintegration, that is to break the production process of a monopoly into different independent companies, other areas are still monopolistic, or maintain considerable market power even after introducing these reforms. For instance, while competition has been introduced in electrical production, commercialisation and (to some degree) distribution, the long-distance transport of electricity remains a natural monopoly, and it would be inefficient to build two or more transmission lines. In the case of water and sewerage, competition *in* the market is hardly conceivable at the local level. These challenges mean that economic regulation is required to enhance allocative and productive

efficiency in these sectors while guaranteeing companies' financial viability, and protecting consumers and companies from abuses of monopoly power (in sectors that remain in the hands of a single private or public company) over prices and quality (Boehm, 2009).

The past 20 years have seen an increase in the number of regulatory agencies that are independent, at arm's length, from governments responsible for regulating key network industries (e.g. communications, energy, transportation and water). These agencies are expected to ensure a certain degree of stability of regulated prices and technical regulations, beyond the electoral and political cycle, to facilitate long-term investment.

As they operate at the intersection between the public and private sectors, they can be subject to undue influence from government, regulated industries and powerful consumer groups. The *OECD Best Practice Principles on the Governance of Regulators* (OECD, 2014c) identify these agencies' decision-making processes, the features defining their governing bodies, and the accountability mechanisms ensuring that regulatory decisions are taken objectively, without conflict of interest or bias. Further analysis conducted by the OECD Network of Economic Regulators has identified the areas where undue influence can be exercised, including on staff and leadership nominations and appointments, the allocation of resources, and the accountability mechanisms fostering a culture of integrity and independence (OECD 2016b, 2016c, Box 3.3). Building on this work, the OECD is developing guidance on protecting regulators from undue influence.

Indeed, SAIs, competition authorities and regulatory agencies are a natural target for capture. Undue influence on these bodies may result in well-connected businesses breaking the law with impunity, regulated companies abusing their monopolistic positions, and even competition authorities serving as tools to punish businesses that are out of favour, thereby reinforcing cartels.

Key elements to ensure that external control, competition and regulation entities are shielded from undue influence and can operate independently include (OECD, 2016b, 2016c; Koske et al., 2016):

- **Institutional design**: the entities should be independent from political influence. A transparent nomination and appointment process for decision-makers, protecting them from arbitrary dismissal, bolsters a culture of independence and integrity.
- **Powers and duties**: the entities should be empowered by law to act independently of any interference, and recommend or enforce remedies where necessary. Governments should refrain from interfering in external controls, competition law and economic regulation on specific decisions. The entities' role and functions should be set clearly in legislation or other policy documents, to minimise opportunities for undue influence.

- **Resources and staff**: to be credible and efficient, the entities should have enough resources to enforce their statutory powers. Budgetary allocations should be predictable. Heads of entities should be subject to fixed-term employment periods, as well as clear procedures governing their selection and removal.
- **Organisational integrity policy**: to augment their resistance to capture, the entities should adopt a coherent internal strategy guided by risk analysis to promote a culture of integrity and accountability. The generation and use of accessible and assessable information, as well as regular reporting, not only helps improve the entities' performance, but also enhances external accountability and transparency. The following section presents organisational-integrity measures in more detail.

Box 3.3. **Sources of undue pressure on regulatory agencies in 26 OECD countries**

The OECD Network of Economic Regulators conducted a survey (OECD, 2016b) on the practical aspects of independence. The survey covered 48 regulators from 26 OECD and partner countries representing institutional arrangements such as formally independent regulatory institutions, ministerial regulators, and single and multi-sector regulators (including those responsible for competition).

The survey finds that undue pressure can be exercised at different points in the life of a regulatory agency, including on the nomination and appointment of boards and agency heads, staff recruitment and retention, and the appropriation and management of the agency's budget. For example:

- A full 88% of the regulators that receive their budgets from the executive receive annual rather than multi-annual budget allocations, which can increase the risk of undue influence and affect their financial independence.
- Most of the regulators have their head appointed by the government's executive branch. In 15% of cases, the appointment is made by parliament. Only eight regulators use a search committee for hiring a new Chair.
- Over half the regulators place no restrictions on pre-or post-employment of professional staff, opening the risk of "revolving doors" and conflict of interest with industry.
- Only a quarter of the regulators are given a government statement of expectations on their conduct. Such formal public statements can be useful to clarify roles, goals and activities in a transparent and accountable way.

Source: OECD (2016b).

Addressing inherent capture risks through organisational-integrity policies

Beyond the broader measures presented above, more specific countervailing measures can be implemented at the organisational level to address the inherent risk factors that facilitate capture (see Chapter 2, Figure 2.2). This task requires an internal control mechanism with effective internal audit and risk-assessment functions, as well as specific strategies to foster an organisational culture of integrity.

The *OECD Recommendation on Public Integrity* highlights the importance of defining clear standards of conduct and cultivating a culture of integrity in public organisations. Specifically, the *Recommendation* provides guidance on setting high standards of conduct for public officials, for instance by incorporating integrity standards into organisational policies (e.g. codes of conduct or ethics) to clarify expectations and serve as a basis for disciplinary, administrative, civil and/or criminal investigations. Beyond identifying the expected behaviours and values of public officials, high standards also involve setting clear and proportionate procedures to prevent violations of public-integrity standards, and identify and manage actual or potential conflicts of interest. Furthermore, these standards and values should be communicated externally to the private sector, civil society and individuals, who should all be asked to follow them in their interactions with public officials.

Likewise, capture risks can be mitigated through cultures of integrity that encourage organisations to invest in integrity leadership, promote a merit-based professional public sector, provide sufficient training and timely advice to public officials on integrity issues, and support an open culture that is responsive to integrity violations. Investing in organisational-integrity leadership could involve making it an organisational requirement, including for recruitment and promotion to management positions. Additionally, organisations can promote managerial responsibilities for identifying and mitigating public integrity (including capture) risks, and assess managers' performance against this management framework. Perhaps most importantly, organisations can foster a culture of integrity by providing training and guidance to public officials at both the management and employee levels, with an emphasis on officials in vulnerable positions. Such training can help public officials identify potential conflicts of interest and corporate strategies to establish reciprocal relationships with outside interest groups.

Creating a merit-based, professional public sector that is dedicated to public-service values and good governance is another useful strategy for preventing inherent organisational capture risks. Ensuring a fair and open recruitment, selection and promotion system based on objective criteria and a formalised procedure, and enforcing an appraisal system supporting accountability and a public-service ethos – especially for at-risk positions in

the executive, legislative and judiciary – can prevent private interests from taking over the public interest. Similarly, public organisations can ensure that human-resource management consistently applies basic principles, such as merit and transparency, to prevent favouritism and nepotism, protect against undue political interference, and mitigate risks of abuse of position and misconduct. Other human-resource measures (such as separating or rotating functions) can also help organisations tackle these risks.

Organisational cultures cannot effectively prevent capture without ensuring open and free discussion of ethical dilemmas, public-integrity concerns, and errors by employee representatives and leadership. Likewise, providing guidance and timely advice to public officials can encourage reporting and open discussion of ethical dilemmas without fear of sanctions. Equally important are effective whistle-blower channels, incentives and protection for all employees. These should be based on clear rules and procedures for reporting suspected violations of integrity standards, and should protect individuals reporting abuses in good faith and on reasonable grounds from all types of retaliation.

Guidance on identifying and managing conflicts of interest is particularly relevant to mitigating capture risks. Public decision-makers need to be able to identify, avoid or manage situations in which outside interest groups try to lure them into a conflict of interest, e.g. by giving them gifts, establishing close relationships, or inviting them to restaurants, clubs or cultural/sports events. The OECD *Guidelines for Managing Conflict of Interest in the Public Service* (OECD, 2004a) and the OECD toolkit for managing conflict of interest (OECD, 2005, Table 3.6) provide guidance for public officials. Specifically, disclosing relevant information regarding (potential) private interests helps minimise the risk of capture by special interests. Country practice shows that policy-makers' disclosure of private interest is broadening; countries are also increasingly including information about public officials' previous employment (OECD, 2015c). To balance transparency and privacy, most public registers of private interest (e.g. in Germany) primarily feature elected officials. Where civil servants are concerned, the higher the office and the greater the discretionary power, the stronger the argument for public disclosure (OECD, 2004b).

Finally, effective internal control and risk-assessment functions are important safeguards against capture. To that end, a control environment setting clear objectives for management commitment to public integrity can provide a reasonable level of assurance on the organisation's efficiency, performance, and compliance with laws and practices. Likewise, an effective risk-assessment function involves assessing risks to public integrity, addressing control weaknesses (including building warning signals into critical processes), and ensuring the efficient functioning of a monitoring and quality-assurance mechanism for the risk-management system.

Table 3.6. **Managing conflict of interest in the public service**

Framework for curbing vulnerabilities to create a better decision-making process

Policy objectives		Policy options
Ensure the early identification of vulnerabilities	Provide a clear and realistic description of circumstances and relationships that can lead to a conflict-of-interest situation	• General description of conflict-of-interest situations should be consistent with the fundamental idea that situations exist in which the private interests and affiliations of a public official create, or have the potential to create, conflict with the proper performance of official duties
		• The description should also recognise that public organisations have the responsibility to define situations and activities that are incompatible with their role or public duties
		• The policy should give a range of examples of private interests which could constitute conflict-of-interest situations
		• More focused examples of unacceptable conduct and relationships should be provided for those groups working in at-risk areas
	Ensure that the conflict-of-interest policy is supported by organisational strategies and practices to help identify the various conflict-of-interest situations	• Laws and codes, as primary sources, should state the necessary definitions, principles and essential requirements of the conflict-of-interest policy
		• Guidelines and training materials, as well as advice and counselling, should provide practical examples of concrete steps for resolving conflicts of interest
Support transparency and scrutiny	Ensure that public officials know what is required of them in relation to identifying and declaring conflict-of-interest situations	• Initial disclosure on appointment or taking up a new position • In-service disclosure in office • Complete disclosure • Effective disclosure process
	Set clear rules on what is expected of public officials in dealing with conflict-of-interest situations	• Dealing with conflicting private interests • Resolution and management options • Recusal and restriction • Resignation • Transparency of decision-making such as registrations and declarations of private interests
	Identify preventive measures that deal with emergent conflict situations	• Meeting procedures • Recusal • Screening processes • Periodic system assessment
	Ensure wide publication and understanding of the conflict-of-interest policy	• Publish the conflict-of-interest policy • Provide regular reminders • Ensure that rules and procedures are available • Provide guidance • Provide assistance

Table 3.6. **Managing conflict of interest in the public service** *(continued)*

Policy objectives		Policy options
Support transparency and scrutiny	Develop an open organisational culture where dealing with conflict-of-interest matters can be freely raised and discussed	• Involve employees and their representatives in reviewing existing conflict-of-interest policies • Consult on future prevention measures • Enhance understanding by providing training for public officials • Provide support mechanisms to help managers review and improve their skills in identifying and resolving or managing conflicts
Ensure enforcement and compliance	Provide procedures for establishing a conflict-of-interest offence, and proportional consequences for non-compliance with conflict-of-interest policy including disciplinary sanctions	• Personal consequences • Management measures
	Develop monitoring mechanisms to detect breaches of policy and consider any gain or benefit that resulted from the conflict	• Ensure that management and internal controls are in place, as well as external oversight institutions • Develop complaint mechanisms to deal with allegations of non-compliance and devise effective measures to encourage their use • Provide clear rules, procedures and protection for whistle-blowing
	Co-ordinate prevention and enforcement measures, and integrate them into a coherent institutional framework	• Ensure policy responsibility by identifying a central function as responsible developing and maintaining the conflict-of-interest policy and procedures • Ensure synergies by considering the combined use of complementary instruments to support related policy objectives • Ensure consistency of laws by harmonising existing laws with the conflict-of-interest policy to remove conflicts and enable effective enforcement of the policy
	Review "at-risk" areas for potential conflict-of-interest situations	• Additional employment • "Inside" information • Public procurement • Gifts and other forms of benefits • Family and community expectations • "Outside" appointments • Activity after leaving public office
	Support the business and other stakeholders	Provide support to stakeholders to help them understand their rights and responsibilities • Raise awareness and strengthen civic education/skills • Support capacity-building

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