



Accountability Standards

An accountable government is one which makes itself answerable to the public, observing standards of behaviour and integrity required by that public, and both explaining and taking responsibility for its decisions and actions.

Accountability mechanisms therefore include the rules, regulations and mechanisms in place that govern the behaviour of elected and public officials in their exercise of public power and the spending of public funds. Such rules will require that public officials (elected politicians and civil servants) act with integrity, carrying out their public functions in the interests of the public good, and not any personal or private interests.

Specific and detailed measures are required to reduce corruption risks, to identify and prevent potential conflicts of interest, and to guard against illicit enrichment. These will include a regulatory and practice framework which ensures that public officials are not engaged in decisions where their judgment might be affected by their private interests (for example because of previous or potential future employment or personal connections). Controls of the income of public officials should include transparency of income and detailed declarations of assets.

Accountability mechanisms will also require that public bodies and elected officials give account for their actions, providing reasoned and evidence-based justifications for policy and program decisions, and will establish means by which public officials assume responsibility for the consequences of their decisions. To this end, that sufficient information must be provided to permit ongoing public scrutiny of the actions of public bodies.

In a modern democratic state the mechanisms which ensure accountability and integrity and which guard against conflicts of interest and corruption are multiple and interwoven. They range from codes of ethics and good administrative behaviour, to provisions of the criminal code and sanctions which may include prison sentences for breach of the rules.

For accountability mechanisms to be effective, they have to be enforced by institutions which guarantee compliance. Hence it is necessary that there exist independent bodies which oversee the exercise of public power; these can range from Ombudsman institutions to supervision of public services and public spending (audit offices) to oversight by the legislative and judicial branches.

Transparency is an essential part of any accountability and integrity system: rules must be in place requiring that there is good record keeping of the administration of public power and the spending of public funds and that the actions and decisions of public officials are reasoned and justified with full information made available to the public.

Complementary mechanisms to protect public officials who reveal wrongdoing must also be established, in particular, there must be protection for whistleblowers as well as mechanisms which react to disclosures of wrongdoing when these are reported to oversight bodies or made public.

In these Open Government Standards, we have developed the standards for information which should be collected and disclosed in each of the following areas, as well as corresponding legal mechanisms:

- » Code of Conduct
- » Assets disclosure
- » Conflict of interest prevention mechanism
- » Transparency of lobbying
- » Whistleblower protections
- » Procurement

In addition, we note the need for **independent enforcement mechanisms** which should have specific competences and powers for each of the accountability mechanisms.

The Open Government Standards make particular reference United Nations Convention against Corruption¹ as well as the standards developed by other inter-governmental organizations (such as the OECD²) which recommend the legal frameworks and mechanisms needed to reduce corrupt practice in public service.

1. Codes of Conduct: Clear standards of behaviour

Standard: That there exist norms and standards of behaviour in public life, such as a code of conduct. This should be enforced by institutions guaranteeing the accountability and responsibility of elected and unelected public officials for their actions and decisions, ensuring that they avoid engagement in decisions or judgments affected by their private interests. Public officials should also be required by codes of good administrative behaviour to keep a true and complete record of their actions, setting down a record of all decision-making and legislative processes, and capturing all inputs into such processes, which should records of meetings with lobbyists and interest group representatives.

What is it? Public officials, elected or unelected, should carry out their work and duties according to a code of conduct that encourages good (administrative) behaviour. The code of conduct itself should be simple, clear and place emphasis on key values. A code of conduct exists to prevent decisions or judgements taking place that may not be in the best interests of the public, but that have been influenced by private interests. In order to guarantee the professionalism of public officials, a code needs to have an independent body to enforce it.

¹ UNDOC (2004) UNCAC http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

² OECD (2011) <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

Why is it important? Citizens expect public servants to serve the public interest with impartiality, legality, integrity and transparency on a daily basis. Core values guide the judgement of public servants about on how to perform their tasks in daily operations. Clear standards of behaviour help to institutionalise a culture of professionalism of public administrations and officials. Codes of conduct also provide public officials with the basic expectations and guidance that avoids corruption, malpractice and conflicts of interest in daily operations as well as in decision making.

How can it be effective? Codes of conduct can be made effective by combining aspirational values with more detailed standards on how to put them into practice. In addition to the general standards applicable to all public servants, codes of conduct can be made more effective by making supplementary codes for specific positions, in particular public office holders and senior civil servants, as well as professions working in sensitive areas, such as law enforcement, judiciary and national defence; the financially sensitive sectors (e.g. tax and custom administrations) and the professions with a tradition of self-regulation (doctors, medical personnel, lawyers).

What is the role of civil society? Civil society can help to make sure that codes of conduct are adhered to by raising the alarm when they are not and by taking cases of malpractice to the relevant ombudsman or independent enforcement body. It is also the role of civil society to highlight positive practices and encourage these further throughout public officialdom.

What are the standards? There are a number of codes of conduct that serve as good examples of Codes of Conduct, Administrative Behaviour, or Ethics.

The key features of such a code should include requirements that:

- » Public officials should act in accordance with the law and ethical standards;
- » Public officials should serve the public interest and not be act in manner motivated by political allegiances or private interests;
- » Public officials should strive to conduct their work as effectively and efficiently as possible in the public interest;
- » Public official shall be act with honesty and integrity, and with courtesy towards members of the public;
- » Discretionary powers should be exercised with utmost impartiality taking into account relevant information to reach the best possible decision in the public interest;
- » Gifts and interests should be declared according to the systems in place;
- » Improper offers, be they monetary or of another nature, should both be rejected and reported to superiors and/or appropriate anti-corruption mechanisms;
- » A public official should never use his or her position for private gain nor for favours or gain of kin or others known to them;
- » A public official should keep an accurate and detailed written record of their actions;
- » A public official should ensure the transparency of all their actions, with the exception of the limits permitted by national and international standards on the right of access to information taking into account the public interest in knowing the information.

Further reading

Council of Europe Model Code of Conduct for Public Officials

http://www.coe.int/t/dghl/monitoring/greco/documents/Rec%282000%2910_EN.pdf

EU Code of Good Administrative Behaviour

http://ec.europa.eu/transparency/civil_society/code/index_en.htm

UK Civil Service Code

<http://www.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf>

2. Conflict of Interest Prevention Mechanisms

Standard: That potential conflicts of interest in decision making are avoided through a clear regulatory and practice framework which ensures that public officials are not engaged in decisions where their judgment might be affected by their private interests.

What is it? Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties. Private interests could include any advantage to the public official or to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business, employment, or political relations.

Particular measures must be put in place to avoid the concerns that the “revolving door phenomenon” does not result in public officials having a particular interest while in office because of previous or potential future employment. The OECD has also stated that while all public officials have legitimate interests which arise out of their capacity as private citizens, a conflict of interest “involves a conflict between the public duty and private interests of a public official, in which the public official has private interests which could improperly influence the performance of their official duties and responsibilities”.

Codes of conduct can never suffice to replace legal mechanisms which are designed to prevent potential conflicts of interests, by requiring that interests be disclosed and by setting in place mechanisms to prevent public officials from taking part in any decision-making process where there may be an actual or perceived conflict of interest.

Why it is important? Public decisions must be taken in the greater public interest after an impartial weighing of the evidence available to the public officials at the time at which the decision is taken. Every effort should be made to exclude a public official's private interests from the decision-making process. Similarly, the influence of lobby groups should not weigh unduly on a decision-making process. The standard mechanisms for preventing such conflicts are designed to create a level playing field and ensure both impartiality in taking decisions and accountability after the decisions have been taken.

Putting in place measures which guard against the possible negative influences of the revolving door phenomenon is essential prevent “regulatory capture”, where officials are overly sympathetic to the industry they must regulate because they used to work in that industry.

How can it be effective? Conflict of interest is effective when it prevents conflicts from arising rather than imposing sanctioning after the fact. The Organisation for Economic Cooperation and

Development's (OECD) 2007 definition states that: "Conflict of interest occurs when an individual or a corporation (either private or governmental) is in a position to exploit his or their own professional or official capacity in some way for personal or corporate benefit." Conflict of interest mechanisms must be preventative.

What is the role of civil society? Monitoring of conflict of interests is one of the most important areas of civil society engagement in anti-corruption work, precisely because of the insidious effects which conflicts of interest have on decision-making. Civil society can track, evaluate, and raise concerns about potential conflicts of interests. Often CSOs and investigative journalists are able to expose interests which have not been declared and which oversight bodies have no way of knowing.

The Open Government Standards on preventing conflict of interest:

1. Declaration of interests:

- » Public officials who occupy a position in which personal or private interests might impact upon official duties must be required by law to declare those interests. Such declarations shall include carrying out activities, whether paid or unpaid, or accepting positions or functions outside his or her public service employment, which would have a bearing on their public role. Public official should declare membership of, or association with, organisations that could detract from proper performance of the duties as a public official.
- » Declarations of interest must be made on taking up a post, and at regular intervals thereafter and whenever there are any changes to the nature or degree of those interests.
- » Declarations of interest must be made proactively available to the public, in an open machine-readable format, and must be regularly updated.

2. Prohibition of incompatible outside interests:

- » The legal framework must prohibit public office holders from having any external interests which would result in a probable (possible) conflict of interest with their current post and decision-making responsibilities.
- » Public officials should be prohibited from engaging in any activities, either paid or unpaid, which would be incompatible with or would detract from the performance of duties as a public official.
- » Public officials may be permitted to belong to political parties but should ensure that political involvement does not impair the confidence of the public and the actual ability to perform impartially the duties as a public official.

3. Revolving Door Mechanisms

- » Conflict of interest declarations shall be specifically designed to identify and guard against the 'revolving door' phenomenon and hence to prevent abuse of office by

those who may use their influence while in office to shape a policy or to ingratiate themselves with companies which might later hire them.

- » Public officials shall be prohibited from engagement in decisions where their judgment would be or might possibly be swayed because of their previous involvement in a particular sector.
- » Limitations shall be placed on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure. (UNCAC).
- » A mandatory “cooling off” period of two years shall be imposed which prohibits employment in economic activities which are directly related to areas where the public officials was previously in a decision-making position or where they hold privileged information which would be of unfair benefit to that business.
- » Measures taken to prevent conflicts of interest under revolving door mechanisms must be made proactively available to the public, in an open machine-readable format, and must be regularly updated.

3. Assets Disclosure

Standard: An effective and transparent assets disclosure regime creates as a framework under which illicit enrichment during public service can be prevented.

What is it? An assets declaration is the disclosure of the income and assets of elected officials and public servants.

Why it is important? An effective and enforced assets-declaration regime is an important tool for accountability and anti-corruption during public service. Disclosing this information helps to highlight and prevent illicit enrichment through corruption, bribery and financial irregularity whilst in public service.³

Public disclosure of assets by public figures can provide confidence in leadership by showing they have nothing to hide. The OECD highlights the prevention of illicit enrichment and conflicts of interest as well as to increase public confidence as reasoning behind assets disclosure regimes.⁴

How can it be effective? Measures to disclose assets and make them public in itself without thorough analysis and auditing is not sufficient to ensure that illicit enrichment is discouraged. Around the world there are a variety of systems in place that provide oversight to effectively

³ Global Integrity, T/AI (2011) Opening Government

⁴ OECD (2011) pg.12 <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

prevent and sanction illicit enrichment.⁵ The body charged with such enforcement of an assets disclosure regime must be an independent agency, both to ensure that it acts with probity and also to establish trust in the mechanism.

The oversight body also must have the power to oblige the filing of assets disclosures by public officials with the ability to analyse and audit them as well as impose sanctions for non-compliance or irregularity especially where a culture of disclosure is not present⁶. There should also be a legal framework in order to investigate cases of corruption and illicit enrichment with the ability to impose criminal sanctions.

Even with an oversight body, transparency is essential to the effectiveness of an assets disclosure regime: members of the public in particular civil society organisations and journalists must be able to access and review the detailed assets disclosures, comparing and contrasting them with other information, and raising the alert should the information appear to be incorrect.

What is the role of civil society? The publication of assets disclosures increases trust in the mechanism by enabling citizens and civil society to monitor the effectiveness of the system to hold those in power accountable.

Reports by StAR as well as Global Integrity and T/AI state that public access to assets disclosures can influence and improve policy on the assets disclosure mechanism whilst civil society can play an important role in monitoring and reporting on it⁷.

Without publication of assets declarations, citizens and civil society are unable to hold those in power accountable over potential illicit accumulations of wealth or irregular decision-making whilst in power.

What are the civil society standards on assets disclosure?

- » A transparent assets disclosure regime is guaranteed by law, with independent enforcement mechanism, and both administrative and criminal sanctions for a range of breaches of the legal requirements.
- » Assets disclosure is made by elected and non-elected officials and institutions at the national, regional and local level with (significant influence over) decision-making power such as, but not limited to; Head(s) of State, Members of Government, Delegates of the Legislature, Judges and Magistrates, Civil Servants, Advisors, Heads of Organisations/Companies using public funds.

⁵ StAR initiative (2012) pg. 27

<http://star.worldbank.org/star/sites/star/files/Public%20Office%20Private%20Interests.pdf>

⁶ OECD (2011) pg.16 <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

⁷ StAR Initiative (2012) Pg.93/94

<http://star.worldbank.org/star/sites/star/files/Public%20Office%20Private%20Interests.pdf>

- » Assets disclosure should include declarations relating to spouses, and children of officials. Disclosures relating to assets held in conjunction with other family members could be required. In any case, the oversight body should be empowered to require disclosure of information about other family members should this be necessary as part of an investigation.
- » Filing of assets declarations is mandatory at regular intervals which should include: upon taking office, annually thereafter, upon a change in assets, upon leaving office and three years after leaving office.⁸
- » Assets disclosures as well as audits, analyses and reports thereof by the independent enforcement body are published timely (or automatically) and are electronic, centralized and searchable.
- » Assets disclosures as well as audits, analyses and reports thereof are freely accessible in open and reusable formats.
- » Data to be included in assets disclosure should include:

| Income from: | Assets | Gifts | Liabilities |
|---|---|---|--|
| <ul style="list-style-type: none"> • Public employment • Private employment, including ownership of businesses • One-off income from consultancies, boards of directors, honoraria for conference, writing, etc. • Returns on Investments and Property • Gambling • Any other sources (to be specified) | <ul style="list-style-type: none"> • Primary residence • Other property (second/holiday homes) • Land • (Financial) investments • Bank accounts/Cash • (Life) insurance policies • Business assets (companies owned, farms, rental properties, patents, copyrights, etc) • Vehicles • Jewellery • Art • Other movable or immobile assets | <ul style="list-style-type: none"> • Gifts received in a public capacity • Gifts received in the form of hospitality, holidays, etc. <p>[possible lower limit of a few Euros/dollars]</p> | <ul style="list-style-type: none"> • Debts/Loans • Obligations • Credits • Mortgages • Guarantees |

⁸ StAR Initiative (2012) Table A.2 pg. 99

<http://star.worldbank.org/star/sites/star/files/Public%20Office%20Private%20Interests.pdf>

Note: Personal data protection: by taking up public office, public officials surrender some of their personal data protection rights in the public interest. At the same time, it is acceptable to withhold some information such as bank account numbers from public disclosure even if these are required to be included in the assets declaration; the name and location of the bank should be sufficient.

4. Transparency and Regulation of Lobbying

Standard: That lobbying is subject to regulatory controls accompanied by sufficient transparency to ensure that the public has oversight of the influence of private or group interests in public decision making.

What is it? Lobbying is an action by which interest groups – representing either private or public interests – try to persuade decision makers and legislators to adopt policies and laws which are in line with the particular interest they are representing. Lobbying is not per se something problematic: the interest groups often represent legitimate sectors of the society and put their views forward, for example, representing small-scale organic farmers or associations of parents of schoolchildren. There are however concerns that big businesses are better resourced to engage in lobbying and hence will have more possibility to press for their interests to be taken into account. To address this, there needs to be regulation which controls the lobbying process and ensures that it is transparent.

Why it is important? Lobbying regulation and transparency is essential to permit the public to monitor the decision-making process and to ensure that decisions were taken way which is in line with the greater public interest and to ensure that all relevant considerations fed into that decision in a balanced way. Lobbying transparency is part of the process or ensuring a level playing field and preventing conflicts of interest in key decision-making moments.

How can it be effective? To be effective lobbying regulation has to be comprehensive and mandatory. The experience across Europe and in the United States shows that voluntary regulation does not work and there is a clear tendency to shift towards mandatory regulation.

What is the role of civil society? Even with a mandatory register of lobbying, it is a challenge for oversight bodies to verify the information disclosed. The role of civil society is to carry out monitoring of the lobbying process, and to identify where there are discrepancies between the information declared and the behaviour of lobbyists, looking in particular at whether more is being spent on lobbying than is declared, in terms of events, human resources, etc.

Open government standards on lobbying regulation:

- » A mandatory register of lobbyists should be created. It should adopt a wide definition of a lobbyist as “anyone who arranges and facilitates contact with officials on behalf of a specific interest group in order to influence the decision-making or policy-making process”.
- » Registration should be mandatory for: trade unions, think tanks, large as well as small charities, pressure groups, companies, public affairs agencies, law firms and in-house

lobbyists. Further recommended that registration should take place once two-way communication has been established with a public official.

- » Registration and reporting should apply to contact with the executive (administrative) and legislative branches of power and to private bodies performing public functions or exercising public authority.
- » Information contained in the register must be accessible to the public, easy to compare, machine-readable and presented in an open format.
- » The register should be update regularly, with the organisations in it required to verify their data at least quarterly.
- » The details to be captured in the register should include:
 - the organisation lobbying,
 - the name of individual lobbyist(s),
 - information on any public office held by the lobbyist in the past five years,
 - the public body being lobbied,
 - the name of public official with whom contact has been made, a summary of what is being lobbied on (whether legislation, regulation or policy or government contract or grant),
 - the amount of money spent on lobbying (a good faith estimate).
 - what the money is being spent on gifts, dinners, events etc. and where that money comes from.
 - whether individual lobbyists have a personal relationship (friend or family) with a public official.
- » Public officials should be required to refuse to meet unregistered lobbyists. This does not, of course, prevent them from meeting with members of the public – indeed, both civil servants and in particular members of parliament should be open to communications and contact with members of the public, and in the case of parliamentarians they should develop strong relationships with their constituents.
- » All meetings on any decision-making or legislative matter or other matters of public policy should be declared and made public. This can be easily and effectively achieved through publication of agendas of public officials, and through the publication of records of meetings. In order to comply with standards of personal data protection established by the European Court of Justice, written permission must be secured at the start of all meetings for publication of the names of those present. Whilst there can be exceptions to this (parliamentarians meeting with constituents), public officials must be required to refuse to continue meetings with registered lobbyists who do not agree to have their names and professional affiliations and the details of the meeting made public.
- » An independent body should manage the register – given the transparency dimension, in many countries the ideal body would be the Information Commissioner (or equivalent Commission).
- » This independent body should be given the means and the power to fulfill the following functions:

- Regularly and systematically checked, including scanning for missing information and checking declarations that report low lobbying expenditure. They should have the power to request supporting documents and formal legal declarations from the interest group.
- To sanction those that violate the requirements of the register.
- To make recommendations as to how to strengthen the legal framework and/or improve the practice so that the register is more effective.

NB: See Annex II for a Check List of questions about lobbying regulation

5. Whistleblower mechanisms and protections

Standard: That there are channels by which public officials can reveal corruption, wrongdoing, mismanagement or waste within government and that there are protections in place for those who raise the alert, whether they do so internally or by going public with the revelations. There should also be sanctions for failing to report wrongdoing.

What is it? A whistleblower is somebody who raises the alert about wrongdoing. There are essentially two ways in which they can do this: reporting concerns to superiors or an independent body (an oversight body or a prosecutor) or by making the information public, for example releasing by passing it to the media or to a non-governmental organisation. Mechanisms should be established whereby whistleblowers can raise the alert without fear of reprisals; there should also be a legal framework which protects those who disclose to the public information which reveals wrongdoing. Such a mechanism is complementary to access to information laws in that it permits the disclosure of information which is in the public interest but which has not been made public by other means.

Why it is important? In all areas of activity of public bodies and the spending of public funds there is a risk of wrongdoing (corruption, mismanagement, waste, etc) and some areas such as public procurement there are particularly high risks for which specific safeguards must be put in place. If public officials believe that others are acting in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with codes of good administrative behaviour they should be able to raise the alarm without fear of reprisals or sanctions.

The European Court of Human Rights has issued a number of rulings in which it protects the rights of whistleblowers (key cases include *Guja v. Moldova* [GC], no. [14277/04](#), and *Heinisch v. Germany*) no. [28274/08](#)), as part of the protected right to freedom of expression; the Court has also upheld the rights of journalists who publish such information, again under the Article 10 freedom of expression protections.

How can it be effective? A well functioning transparency regime (legal mechanisms which guarantee protection of the right of access to information and strong proactive disclosure in practice) should greatly reduce the need for whistleblowers to leak documents to the media or NGOs. Nevertheless, there will be attempts to circumvent transparency measures, particularly

in areas of high corruption risks, and in these cases, ensuring whistleblower protection is necessary as an anti-corruption mechanism.

For the internal reporting mechanisms to be effective, they must result in genuine and transparent investigations into the concerns raised by the whistleblower. With adequate and effective internal accountability mechanism, it should not be necessary for a whistleblower to leak information to the public.

For the protections for public blowing of the whistle to be effective, the authorities should ensure that whistleblowers are indeed protected from reprisals for exposing wrongdoing. If this is not the case, then the consequences faced by a few whistleblowers will have a chilling effect and discourage others from coming forward with their revelations. This in turn will have damage society as a whole because it will reduce exposure of corruption, thereby perpetuating the negative effects of corruption (decisions taken for private gain, waste of tax-payers funds, etc.) Hence an effective response mechanism by public authorities to the allegations and concerns raised by whistleblowers and appropriate treatment of those persons is essential.

What is the role of civil society? Representatives of civil society organisations and journalists are among those to whom information is leaked. In addition to having the role of exposing wrongdoing by public officials, CSOs and the media have a responsibility towards the whistleblower to ensure that they do not suffer unduly as a result of the revelations made. In some cases this may mean refusing to reveal the name of the whistleblower even when requested to do so by a court. There is jurisprudence from the European Court of Human Rights to support such a position in many cases (save those, for example, where lives may be at risk should the source of the information not be obtained, which is very rarely the case).

What are the Open Government Standards on Whistleblowing?:

- » The legal framework should establish mechanisms by which a public official can report any concerns about unethical or illegal behaviour to the competent authorities (either internally or to an oversight body).
- » The legal framework should ensure both that there are mechanisms by which such complaints will be investigated, and that no prejudice will be caused to the public official who in good faith reports any evidence, allegation or suspicion of unlawful or criminal activity.
- » The legal framework should establish an oversight body to which a whistleblower can turn to raise concerns and/or seek protection should there be no response or an unfavourable response from the public body for which he/she works.
- » Complementary legislation must protect the right of journalists (widely read to include citizen journalists and bloggers) as well as civil society organisation representatives from having to testify as to their sources where this would reveal a whistleblower who has chosen to remain anonymous.

6. Procurement Transparency

Standard: That there is full transparency of the public procurement process with the goal of reducing the opportunities for corruption and ensuring effective spending of public funds, as well as creating a level playing field of business opportunities.

Why it is important? A significant proportion of public expenditure takes place through public procurement: tax-payers funds are spent to buy products and services from private suppliers. If this is done without transparency then the risk of corruption is much greater as it is much harder to ensure that public funds are not being distributed so as to benefit those close to the public officials involved. Even without corruption concerns, it is hard to ensure that the public sectors is securing best value for money in the products and services which it contracts if there is no transparency.

For businesses seeking to do business with public bodies, it is essential that they can be ensured of a level playing field and that the effort which goes into preparing a bid in a public procurement process will have a fair chance; this is something which is particularly important when it comes to foreign investment as foreign companies may be reluctant to seek to do business in a country where there is not an equality of arms when competing for government contracts.

How can it be effective? Experience from around the world has shown that the most effective public procurement anti-corruption mechanism is transparency: by ensuring transparency of the entire public procurement process, not only is the public able to scrutinise the

A corollary benefit of transparency is that it can **reduce the cost of public procurement:** when different public bodies are able to see how much other public bodies are paying for the same services and products, they are in a better position to negotiate reasonable prices with suppliers. There are a range of examples of this, from purchase of medicines in Argentina and the UK to purchase of office supplies in Slovakia.

Concerns are often raised about **commercial secrets** in relation to public procurement transparency. Whilst this is a legitimate and understandable concern, there are decisions from various information commissioners around Europe which make clear that given the importance of the public procurement process, and the public interest in ensuring that public funds are well spent, there is an overriding interest in full transparency. Such transparency includes publishing information about the bids received.

Public procurement transparency does not only extend to the tender process, but should apply to the **full cycle of public procurement activity**. It should start well before it, with the decision-making which leads to the opening of such as process, and should continue beyond it with transparency of the evaluation of the carrying out of the public procurement contract. This is particularly important when it comes to public works contracts, as it is often the case that such projects run over budget (requiring contract amendments and spending of additional public funds), or are not completed on time (with consequences for the public which was supposed to benefit from the particularly project). The evaluation of compliance and any sanctions imposed on the contracted companies should also be part of the package of materials

which is made transparency in order to guarantee accountability of the public procurement process.

What is the role of civil society? Civil society has the role of promoting full transparency of public procurement in law and practice. Monitoring of the information made available by anti-corruption watchdog NGOs and by investigative journalists is essential to ensuring that the transparency is effective as an integrity promotion mechanism.

What are the standards:

The legal framework around public procurement will stipulate when the spending of public funds has to be done through a tender process, and will specify what procedures must be followed, where announcements must be made, what the timeframes are, the mechanisms and criteria for evaluating and taking decisions on bids, etc.

In addition to these mechanisms, there must be robust transparency requirements, which it is recommended be put into effect through a public procurement portal which contains all the relevant information in a regularly updated, open format.

The data to be made public should include:

- » **Procurement Process data:** for each of the public procurement process:
 1. Copies of the invitations to tender / tender announcement.
 2. Details of publication of the invitations to tender including the dates, with information on amount of time between publication and closure of bidding.
 3. Data on the number of bidding companies, their names and value of each offer.
 4. Criteria: the tender approval decision procedures, the list of criteria (costs, quality) and the weighting given to these criteria.
 5. Evaluation report (scoring) of the tender decision committee or minutes of the meeting.
 6. Background Checks: additional documentation (if created) which contains any background checks were carried out on the bidders, particularly on the winning bidder, into issues such as whether any other public body had previously imposed sanctions on the bidder, or whether the bidder had been found guilty of any breaches of law (financial, corruption, environmental, health and safety, labour practices, etc).
 7. Potential Conflict of Interest: documentation (if in existence) with details of checks made for potential conflicts of interest between the bidders and/or winning bidder and the public body.
- » **List of all contracts**, organised and searchable by public body and by supplier (Slovenia is best practice here), tagged by the name of the contractors, the value of the contract, and a summary of the nature of the goods/services to be provided.
- » **Copies of contracts:** the actual contract in a complete and downloadable format. Best practice (Slovakia) is that contracts are not valid until they have been published on line.
- » **Reporting:** Information about the reporting obligations of the Contractor to the Public Institution. All copies of reports submitted.

- » **Inspections & Evaluations Procedures:** Documents which set out the mechanisms for evaluating compliance with the terms and timeframes of contracts, including whether random checks are made or if it is systematic for all contracts.
- » **Findings of evaluation mechanisms:** Details of any inspections or evaluations of the particular contract; copies of reports of these inspections / evaluations, with specific data on any problems identified related to non-compliance.
- » **List of all sanctions** - financial, administrative, etc. - imposed on contractors for failing to comply with the terms of contracts, including on grounds of deliver timeframes, non-delivery of services/goods, substandard quality of services/goods, etc.
- » **Complaints & Appeal Mechanisms:** Information about where other suppliers (competitors) and members of the public can raise concerns about any public procurement process, how these complaints and appeal mechanisms work; the number of complaints received, and details of all outcomes and settlements.

7. Independent Enforcement Bodies:

Standard: That there exist independent bodies which oversee the exercise of public power; these can range from Ombudsman institutions to supervision of public services and public spending (audit offices) to oversight by the legislative and judicial branches.

What is it? Accountability mechanisms require oversight by independent bodies which are able to verify and force compliance.

Why it is important? Promoting integrity, rooting out conflict of interest, preventing and exposing corruption, and controlling lobbying are essential to the functioning of a democratic society in which decisions are taken in the public interest. A series of checks and balances has to be set in place to achieve this (as detailed in these standards) and to be enforced by independent bodies with the authority to require compliance and sanction breaches of the rules.

How can it be effective? There are three keys to the effective work of independent enforcement or oversight bodies. The first is that they are established in a way which gives them genuine independence from the executive power. This means that the oversight body should not be linked to any particular ministry and it should have its resources approved by parliament. (For the judiciary a separate set of standards clearly applies, which are well established for guaranteeing independence of the judiciary).

The second key criterion is that the independent enforcement bodies have sufficient resources to carry out its work. The financial resources (approved by the parliament) should be sufficient to equip it with the staff and material resources necessary to process complaints and conduct investigations in a thorough and timely manner.

The third key is that the independent enforcement bodies have the powers to carry out their work. This must include powers of inspection (for example, being able to visit a public or private body and require access to documents), the powers to initiate ex officio investigations (as well

as acting on complaints), and the powers to sanction public office holders for breaches of the rules.

What is the role of civil society? Representatives of civil society can contribute to the work of independent oversight bodies by sharing information, taking complaints and reporting on the outcomes of their monitoring. Civil society should also monitor the processes by which the oversight bodies are established (in particular verifying that nomination processes are open and fair) and should evaluate the work of the oversight bodies, where necessary making recommendations for improvements in mandate, powers, resources, or practices.

Open Government Standards on Independent Enforcement:

All bodies which oversee compliance with accountability mechanisms should meet the following standards:

- » Independent from executive power with resources allocated by parliament
- » Senior figures nominated and appointed through transparent, participatory processes
- » Well resourced (measured by sufficient resources to conduct their mandated functions in a timely manner)
- » Powers of investigation, including powers to conduct on-site inspections;
- » Powers to impose sanctions (disciplinary, administrative, and fines) for breaches of rules;
- » Mandate to promote compliance through training of public officials and educational materials aimed at the public.

Annex I: Checklist table for Assets Declarations

| Is there a transparent assets disclosure regime guaranteed by law? | | Assets declarations made by: | | | | | | | |
|--|--|------------------------------|----------------------|----------------------------|------------------------|--|----------|---|---|
| | | Head of State | Members of Executive | Members of the Legislature | Judges and Magistrates | Civil Servants with decision-making powers | Advisors | Heads of Organisations or Companies operating with public funds | Spouses, Children of officials (other family) |
| The enforcement body... | Is independent? | | | | | | | | |
| | Can demand ad hoc assets disclosures? | | | | | | | | |
| | Makes regular (annual) reports/audits of assets disclosure analysis? | | | | | | | | |
| | Can investigate assets disclosures? | | | | | | | | |
| | Can impose sanctions? | | | | | | | | |

| | | | | | | | | | | | | | | | | | | | |
|---|--|---|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Are assets disclosures made ... | Upon taking office? | | | | | | | | | | | | | | | | | | |
| | Annually during office? | | | | | | | | | | | | | | | | | | |
| | Upon a change in assets? | | | | | | | | | | | | | | | | | | |
| | Upon leaving office? | | | | | | | | | | | | | | | | | | |
| | Within 3 years of leaving office? | | | | | | | | | | | | | | | | | | |
| Are assets disclosures, audits, investigations, reports thereof published... | In an automatic (or timely) fashion? | | | | | | | | | | | | | | | | | | |
| | In an electronic format? | | | | | | | | | | | | | | | | | | |
| | In a centralised system? | | | | | | | | | | | | | | | | | | |
| | In an easily searchable format? | | | | | | | | | | | | | | | | | | |
| | And downloadable in open and reusable format(s)? | | | | | | | | | | | | | | | | | | |
| Does the data required by an assets disclosure include | Income from: | Public employment? | | | | | | | | | | | | | | | | | |
| | | Private employment, including ownership of businesses? | | | | | | | | | | | | | | | | | |
| | | One-off income from consultancies, boards of directors, honoraria for conference, writing, etc? | | | | | | | | | | | | | | | | | |
| | | Returns on Investments and Property? | | | | | | | | | | | | | | | | | |
| | | Gambling? | | | | | | | | | | | | | | | | | |
| | | Any other sources (to be specified)? | | | | | | | | | | | | | | | | | |
| | Assets | Primary residence? | | | | | | | | | | | | | | | | | |
| | | Other property (second/holiday homes)? | | | | | | | | | | | | | | | | | |
| | | Land? | | | | | | | | | | | | | | | | | |
| | | (Financial) investments? | | | | | | | | | | | | | | | | | |
| | | Bank accounts/Cash? | | | | | | | | | | | | | | | | | |
| | | (Life) insurance policies? | | | | | | | | | | | | | | | | | |
| | | Business assets (companies owned, farms, rental properties, patents, copyrights, etc)? | | | | | | | | | | | | | | | | | |
| | | Vehicles? | | | | | | | | | | | | | | | | | |
| | | Jewellery? | | | | | | | | | | | | | | | | | |
| | | Art? | | | | | | | | | | | | | | | | | |
| | | Other movable or immobile assets? | | | | | | | | | | | | | | | | | |
| | Gifts | Gifts received in a public capacity? | | | | | | | | | | | | | | | | | |
| | | Gifts received in the form of hospitality, holidays, etc. ? | | | | | | | | | | | | | | | | | |
| | | [possible lower limit of a few Euros/dollars]? | | | | | | | | | | | | | | | | | |
| | Liabilities | Debts/Loans? | | | | | | | | | | | | | | | | | |
| | | Obligations? | | | | | | | | | | | | | | | | | |
| | | Credits? | | | | | | | | | | | | | | | | | |
| | | Mortgages? | | | | | | | | | | | | | | | | | |
| | | Guarantees? | | | | | | | | | | | | | | | | | |

Annex II: Check list on Lobbying Transparency

| Check List Questions on Lobbying Transparency | |
|---|---|
| Registration regulations | Who has to register? Is it mandatory or voluntary? Is there a Code of Conduct for lobbyists? Is there ethics regulation for public officials? |
| Targets of lobbyists defined | Members of the legislature and staff? Executive and staff? Agency heads and public servants/officers ? Courts? Central banks? |
| Spending disclosure | Annual income? Payments from clients? Budget for each lobby project? - what bandwidths? e.g. 10,000€ |
| Electronic Filing | System for online registration? Is information checked at registration? |
| Public Access | List of lobbyists and their spending disclosures available, detailed and updated frequently online? |
| Enforcement | Are there mandatory reviews and audits? Is there independent monitoring? Are the sanctions for non-compliance? |
| 'Revolving door' provision | Is there a cooling-off period before former legislators can register as lobbyists? |
| Participation in expert groups | Are there any rules about lobbyists' participation in expert groups? |
| Information | Up to date What type of information: - names of individual lobbyists? - names of clients? - legislation or decisions lobbied on? - politicians contacted? - budget? - methods of lobbying? |
| Presentation | Searchable Reusable Downloadable Comparable |

Annex III: Public Procurement Transparency Check List:

| Category | Classes | Information which must be collected & made public |
|-------------------------------------|---|---|
| General Contract Information | List of contracts | List of all contracts held by the Public Institution with external suppliers of goods, services, including the name of the contractors and the value of the contract and a summary of the nature of the goods/services to be provided. |
| | Evaluation mechanism | Documents which set out the mechanisms for evaluating compliance with the terms and timeframes of contracts, including whether random checks are made or if it is systematic for all contracts. Reports summarizing the findings of these evaluation mechanisms, in particular reports on any problems identified related to non-compliance. |
| | Sanctions | List of all sanctions - financial, administrative, etc. - imposed on contractors for failing to comply with the terms of contracts, including on grounds of deliver timeframes, non-delivery of services/goods, substandard quality of services/goods, etc. |
| Specific Contract Info | Contract | Copies of all contracts between a public body and external contractors |
| Public Procurement / Tender Process | public bidding guidelines details of publication of tender | For each of the public procurement process: 1. Copies of the invitations to tender / tender announcement. 2. Details of publication of the invitations to tender including the dates, with information on amount of time between publication and closure of bidding. 3. Data on the number of bidding companies, their names and value of each offer. 4. Criteria: the tender approval decision procedures, the list of criteria (costs, quality) and the weighting given to these criteria. 5. Evaluation report (scoring) of the tender decision committee or minutes of the meeting. 6. Background Checks: additional documentation (if created) which contains any background checks were carried out on the bidders, particularly on the winning bidder, into issues such as whether any other public body had previously imposed sanctions on the bidder, or whether the bidder had been found guilty of any breaches of law (financial, corruption, environmental, health and safety, labour practices, etc). 7. Potential Conflict of Interest: documentation (if in existence) with details of checks made for potential conflicts of interest between the bidders and/or winning bidder and the public body. |
| Compliance with Contract | Reporting | Information about the reporting obligations of the Contractor to the Public Institution |

| | | |
|-------|-----------------------------------|--|
| Terms | | All copies of reports submitted. |
| | Evaluation | Details of any inspections or evaluations of the particular contract Copies of the reports related to these inspections/evaluations. |
| | Sanctions report from Public body | Details of any sanctions - financial, administrative, etc. - imposed on this particular contractor related to the terms of the contract. |

Further Reading:

Institutional declaration of assets UK:

<http://www.official-documents.gov.uk/document/cm70/7022/7022.pdf>

UNDOC (2004) UNCAC

http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

OECD (2011) <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

Global Integrity, T/AI (2011) Opening Government

OECD (2011) pg.12 <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

StAR initiative (2012) pg. 27

<http://star.worldbank.org/star/sites/star/files/Public%20Office%20Private%20Interests.pdf>

OECD (2011) pg.16 <http://www.oecd.org/daf/anti-bribery/47489446.pdf>

Lobbying

Lobbying Disclosure Act of 1995:

<http://www.asaecenter.org/Resources/whitepaperdetail.cfm?ItemNumber=12224>

<http://lobbyingdisclosure.house.gov/lda.html>

Honest Leadership and Open Government Act of 2007:

<http://www.govtrack.us/data/us/bills.text/110/s/s1.pdf>

<http://www.alter-eu.org/>

<http://www.lobbyingtransparency.org/>

<http://www.chiff.com/society/lobby.htm>

Whistleblowers

- US, Whistleblower protection Act
http://en.wikipedia.org/wiki/Whistleblower_Protection_Act
- UNCAC: Article 8, 4, and Article 33
- Inter-American Convention Against Corruption:

Article 3, 8: Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems.

- Transparency intl

http://archive.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers/the_need_for_whistleblower_protection

- OCDE

<http://www.oecd.org/cleangovbiz/>

- Otros:

http://www.anstageslicht.de/DokZ_files/GS/AT_GS_20110525_5.pdf

- Romania, Whistleblower Protection Act (Law 571) in 2004:
<http://www.drasmuszodis.lt/userfiles/Romanian%20whistleblower%27s%20law.pdf>

Independent enforcement bodies:

http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2939&context=faculty_scholarship

other: <http://www.oecd.org/mena/governance/38403668.pdf>

<http://www.oecd.org/gov/regulatory-policy/39954493.pdf>

http://www.rff.org/Documents/Events/090622_Risk_Regulation/090622_Wiener.pdf