

Revolving doors / *pantouflage*
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1. New approaches in public sector management such as public/private partnerships, contracting out, privatization, and civil service reform, along with expanded employment opportunities and the increase in the use of lobbyists, have changed the relationships of the public service and the private sector and the public's perception of those relationships. The need to maintain the public's trust particularly during periods of change, emphasizes the importance of developing and maintaining systems that address conflicts of interest including those that arise from the movement of public officials to the private sector. GRECO approached this movement of public officials during the Second Evaluation Round through the evaluation of recruitment, retention, codes of conduct and conflicts of interest in public administration.

2. By the end of the second round, a majority of the members evaluated (26 of 40) had received recommendations to establish or enhance their systems for regulating the movement of officials to the private sector. Few members had designed systems to specifically address this movement, although a number had laws that prohibited the disclosure of certain types of information both during and after public service and/or criminal laws that could reach the acceptance of private employment in exchange for an official act.

3. Of the fifteen members who received a recommendation on regulating the movement of public officials to the private sector and who have now gone through a compliance review, only two have satisfied the recommendation. In part, this rate of compliance reflected the time required to develop, adopt and implement appropriate legislation or guidelines. This compliance rate also reflected the difficulties members were encountering in determining how best to approach the issue.

4. At the end of 2007, as a part of an effort to assist members in compliance, GRECO used this topic for a *tour de table* so that members would have an opportunity to share good practices as well as pitfalls. Representatives of members with four different systems made presentations about their systems. France described its system to address *pantouflage* including the role of ethics committees which are to advise administrative bodies on the compatibility of the proposed private activities of their civil servants and subordinate staff. The UK described its general employment prohibitions for Crown Servants that included a prior approval system for individually-tailored modifications to that general prohibition. The U.S. described its criminal and administrative regulation of all executive branch officials for the full range of revolving door concerns: entry into public service with agreements to return to a specific employer; seeking and negotiating for employment while in government service; and representational bars for former public officials. Latvia described its limitations on official acts for officials who have come into public service from a private sector enterprise and its

restrictions on ownership of and activities with entities who hold public contracts. The type, length, and specific purpose for as well as the range of officials covered by each system differed and each member was able to identify both strengths and weaknesses in their systems.

5. What is clear from discussions during the consideration of evaluation and compliance reports and during the *tour de table* is that tailoring a regulatory system to the legal framework and needs of each member presents significant challenges. There is no best model. There are, however, some common considerations in the development or enhancement of any such system.

6. In addition to the fundamental goal of promoting public trust, the most common goals of a system to address the movement of public officials from public service to the private sector are: (1) help ensure that specific information gained while in public service is not misused (2) help ensure that the exercise of authority by a public official is not influenced by personal gain, including by the hope or expectation of future employment; and, (3) help ensure that the access and contacts of current as well as former public officials are not used for the unwarranted benefits of the officials or of others. In some degree, almost any individual who carries out a public function, whether he or she is elected, appointed, or hired under contract, whether serving full-time or part-time, whether paid or unpaid, should be accountable to some standards designed to help meet these goals.

During public service

7. Effective systems that address the movement of public officials into the private sector must pay attention to the activities of current public officials. A current public official has access to the most up-to-date information, has the most access to other public officials, has official authority and power, and is under more internal and public scrutiny. It is during current service that official information, authority and access can readily be used by an official in hopes of securing a position from a prospective employer or to benefit a future employer. Conflicts of interest can arise, but may not necessarily do so, with an official's agreement to return to or move to a specific private employer, the process of an official's seeking private employment (submitting applications for advertised positions, sending inquiries, proposals or resumes in an attempt to try to develop opportunities), or an official's responding to unsolicited approaches by private employers. A variety of standards and procedures can address these types of potential conflicts and need to be considered in an overall system that addresses the conflicts of current officials. Further, as a part of an integrated system of standards for both current and former officials and in order to promote general acceptance of both, care should be taken to ensure that standards and procedures for the outside employment or non-official activities of current employees logically complement the standards and procedures for the activities for former officials. For example, is it logical to allow (or not prohibit) a current official to have outside employment with a

specific enterprise yet prohibit the public official after leaving public service to continue the very same job he had been doing for the enterprise? Or should a current public official be allowed to represent (or not be prohibited from representing) private clients or employers to a public agency, but prohibited from making those same representations after leaving government service? Rarely would standards for the same private employment or activity properly be less restrictive while in public service than after public service.

Post public service (post-service) restrictions

8. The establishment of any public policy almost always requires a balance of interests. The development of post-service restrictions is no different. During discussions, members indicated that public policies in addition to those involving integrity of public officials, had been or needed to be taken into consideration in developing their approaches to post-service restrictions. These included the desirability of promoting the recruitment and retention of the most qualified individuals to public service, the ability to access those with specific technical expertise that might not always be immediately available in the civil service, the need for short-term assistance, the expectation of public service as a career, the expectation of periodic changes of senior political personnel as a result of changes in government, the promotion of an exchange of understanding of the public and private sector vis-à-vis one another, and the high value a particular country's society places on free movement in the labour force. Other public policy interests included the need to require some specific commitment to a length of public service in exchange for educational opportunities, the receipt of severance payments for early termination, and/or payments under a pension system. Experience of members shows that systems designed to meet one public policy need not preclude others. The challenge is to strike an appropriate balance.

9. In general, GRECO members used three approaches (or a combination) to address post-service activities. These are (1) prohibitions on employment, either general or for narrowly defined groups; (2) restrictions on representations of private entities by former public officials back to public entities (representational bars); and (3) prior approval of and/or reporting of intended or current post-service activities. Which public officials were subject to the various prohibitions/restrictions/reporting requirements, the type and length of a prohibition/restriction/requirement, and the penalties/enforcement mechanisms varied among the approaches and, in some cases, within each approach.

10. From information in evaluation and compliance reports, at least fifteen members indicated that they utilized employment prohibitions of varying natures and seven members indicated they used representational bars. At least 7 members indicated they had some system that required prior approval, notice and/or reporting of post-service activities. Most, but not all, required that the post-service activity be compensated in order to be restricted or require approval (a probable reflection of the difference in theory between a

system that prohibits employment and a system that restricts representations). Most restrictions or reporting requirements lasted from 1 to 3 years, although at least one member had restrictions that could extend to 5 years. The United States noted a representational bar (“switching sides”) that could extend for a substantially longer period because bar is tied to the life of the matter that is the subject of the representation.

11. In general, employment prohibitions and representational bars serve somewhat different concerns. Employment prohibitions typically focus on who a former public official can be employed by, not the type of activities in which the person can engage. A general employment prohibition can be used to actually create individually crafted restrictions by requiring officials to seek case-by-case approvals before engaging in employment. Most often, however, employment prohibitions are used to address concerns that arise with the type of function that the individual had engaged in as a public servant. For example members noted specific employment prohibitions for officials who carry out such functions as procurement or contracting oversight, tax officers, inspectors or controllers of banks and members of securities services. Targeted employment prohibitions are described by the type of function carried out by the former official (or employing public agency/department) and the type of entity the individual is prohibited from being employed by. Thus, procurement officials might be prohibited from being employed by any businesses with contracts the officials supervised or controlled, or bank examiners prohibited from being employed by the banks they had audited or reviewed in the past two years. Broadly applied as opposed to targeted employment prohibitions have a more serious effect on recruitment and retention particularly where public service salaries and benefits are not competitive with the private sector or if there is a high degree of uncertainty about whether prior approval for a modification of a general prohibition will be granted.

12. Representational bars focus on what a former official does after public service, not for whom it is. Whether the former official receives compensation for his representational activities is not a necessary element of the restriction. Representational bars that describe which public entities or which position, level or type of public official a former public official may not make representations to can be useful for elected officials, political assistants and senior civil servants when addressing the concern regarding influence and access to current public officials. Subject matter-targeted representational bars can be written to apply broadly across the public service but yet have little impact on the actual post-service activities of most of the public officials to whom it applies. If the former official participated in certain types of matters regardless of where in the public service he or she was employed, then there is a representational bar on those matters (no switching sides). These matters are typically described in general terms but encompass those matters where there is often access to specific information about individuals or businesses or the government’s strategy (i.e. investigations; administrative cases; procurement negotiations; audits). The U.S. describes these types of matters as “particular matters involving specific parties in which [the official]

has personally and substantially participated [in his official capacity]". Representational bars, while helping to accommodate recruitment and retention concerns, do not directly address the behind-the-scenes assistance that can be offered by former official. They may also require more education and training so that officials and potential employers can fully understand the extent of the restrictions.

13. Establishing an appropriate length of time for the duration of either an employment prohibition or a representational bar is also a challenge and requires a balance of considerations. Length should be reasonable and tied to the purpose of the restriction. How long is it before certain types of information become stale or available to the public generally, or before the special access or treatment that might be shown a former senior official reasonably will no longer occur, or before specific types of matters which were under the former official's supervision should be expected to be resolved? If the length of the restriction is unreasonably long, it has the real possibility of affecting recruitment and retention; it may easily promote cynicism regarding public service conduct standards in general, and may affect enforcement.

Penalties/Enforcement

14. A variety of penalties and enforcement systems are used and/or are available for the conduct of current as well as former officials. These include, individually or in combination: criminal sanctions, civil forfeiture, administrative and judicially imposed fines, and specific penalties set forth in employment contracts. In addition, disciplinary sanctions are available for current and in some instances for former officials; reduction or elimination of early termination (severance) payments or pensions could be available for former officials. Current and former officials who engage in activities requiring a license (such as the practice of law) may be subject to sanction from the licensing authority and both can be struck from eligibility lists. Damage to personal reputation through unflattering attention of the press and public opprobrium is always a possible consequence for any public official but it may be the only consequence for public officials subject to aspirational codes of conduct with no formal enforcement mechanisms.

15. The need for appropriate systems to address the movement of individuals in and out of public service is and will continue to be a concern for all members. The complexity and the changing nature of modern governments assure that. Experiences of GRECO members show that there is no 'best' solution to addressing this movement; there are significant challenges in creating and maintaining any appropriate system that meets this need. GRECO continues to watch with interest as members develop their systems; those with systems in place can always learn from the creative solutions of others.

16. *In GRECO's view, this chapter will no doubt be of major interest to a large audience, including policy makers and academics. It very much hopes that its members will arrange for the chapter to be translated into their national language, where appropriate, and to be disseminated as widely as possible.*