

# Summary

In recent decades, the public sector has developed more and closer contacts with the private sector. New actors, privatisations, increased public procurement and the more prominent role of lobby organisations are some of the aspects of this trend. The exchange between the public and private sectors is largely positive. However, it can lead to an increased risk of various types of conflicts of interest. One example is when politicians or public officials leave their posts and move to companies or stakeholder organisations within areas over which they had considerable influence in their previous positions.

We have seen several examples of this in recent years. High-ranking military officials have moved to the defence industry. Former state secretaries have been recruited to companies in sectors over which they had influence in their previous political duties. Officials in the financial markets area have taken on new roles within the financial sector. A number of politicians have a background as PR consultants and numerous former elected representatives and politically appointed officials are now working in the consultancy sector.

There is a risk that public officials may be tempted to allow their decision-making to be influenced by outside considerations, with the promise of a well-paid job with a private employer. There is also a risk of sensitive information, knowledge or former contacts being exploited at the new place of employment in a way that jeopardises competition or otherwise runs counter to public interests. This can in turn lead to economic or other damage to the state. Merely the suspicion of this risks undermining confidence in the state. There may therefore be a need for rules and routines to deal with mobility between sectors.

The aim of the report is to make visible the risk of conflicts of interests in connection with the transition from the public to the

private sector. The study is mainly limited to central government, but the problems also apply to municipalities and county councils.

The report notes that a large number of countries have drawn attention to the problem of conflict of interests in connection with what is known as the 'revolving door'. Through legislation and the introduction of codes of conduct, restrictions have been introduced in several OECD countries.

Until now, the Swedish position has been uncertain and a little naive. The management of the Riksbank (Swedish central bank) has strict rules prescribing that directors may not, as a matter of principle, engage in any secondary occupations at all, and after completing service they are placed in quarantine for up to a year. In other areas in which inappropriate influence could result in similar negative economic damage or damage to confidence, there is no regulation whatsoever. When introducing international conventions in the area of corruption, Sweden has been relatively quick to ratify agreements, but this has not led to any legislative amendments; instead, the view has been taken that Swedish legislation is already adequate. Information about international conventions is now available on the Ministry for Foreign Affairs website.

The ethical guidelines drawn up for state employees address secrecy legislation, the Insider Act and legislation against bribery and corruption. Nowhere is the issue raised about how offers from a potential new employer are to be dealt with. The Swedish position could even be summarised in the following way: as far as domestic politics are concerned, corruption is a non-issue. But insofar as it affects Sweden, it is primarily seen as a problem for the business sector. Insofar as it may affect the public sector, this is a matter for municipalities and county councils. And if, despite everything, it were to be a matter for central government, the main thing to remember is not to accept lunch invitations or small gifts. The offer of a new, well-paid job within the sector one was appointed to regulate, procure from or exercise supervision of, is not mentioned in this context.

On a few occasions, the Riksdag (Swedish parliament) has pointed out that there may be reason for the Government to review the possibility of taking suitable measures during transitional periods, e.g. in the form of a time quarantine. The Council of Europe Group of States against Corruption (GRECO) has recommended that Sweden introduce rules to avoid conflicts of

interests in situations in which public employees move to the private sector. The Government has presented three main arguments against this. Firstly, the legislation already in place is considered to be adequate. Secondly, reference is made to the principle of public access to official documents. Thirdly, it is claimed that the Swedish administrative model means that government agencies decide themselves which guidelines are to apply internally.

A review of the legislation shows that it mainly targets the static situation whereby a person is either employed in the private sector or works for a public authority. Moreover, the legislation is based on the assumption that loyalty to the new employer takes precedence and that obligations to the former employer are exceptional. In actual fact, employees are often the subject of double loyalties: on the one hand, secrecy obligations and company secrets should be respected, but on the other hand, the employee should be loyal to their new employer and pursue the latter's interests. Getting this balance right is currently entirely up to the individual. One additional problem is that the knowledge that the employee possesses comprises a mixture of information that is available to the public, information that is internal but not classified as secret, and information that is classified as secret. This can undoubtedly give the new employee a competitive edge, but it also means that it is difficult to prove that a violation of the secrecy legislation has taken place.

The principle of public access to official documents is an important pillar of Swedish public administration. Research indicates that there is a clear negative covariance between openness and corruption. But the degree of openness can also be linked to legislation, legal rights, education levels and the development of various democratic institutions. For this reason it is not a given that the principle of public access to official documents provides sufficient protection against inappropriate influence.

With regard to the Swedish administrative model, government agencies decide themselves on internal guidelines. The report describes how some agencies have tried to deal with this problem. At the same time, one could ask whether the state should not have a common, overarching framework, both to provide a clear legal basis for the collective agreements that may be needed, and to signal that this is something the agencies must observe. Furthermore, delegating the issue to agency level does not solve

the problem of the need to regulate restrictions for the highest level, i.e. ministers, state secretaries and directors-general.

The report contains statistics that describe staff mobility within the state. Total staff mobility among state employees is relatively stable at around 11–12 per cent, and the majority of mobility cases concern a move to another state authority. Mobility towards the private sector varies considerably between various state-controlled activities. Unsurprisingly, the most notable mobility occurs within activities where there are considerable points of contact with business sector activities. This is also where the risk of conflicts of interest is greatest. This could involve agencies with important tasks in the areas of supervision and consideration of permits or major procurement departments, and agencies that are active in areas where various decisions may have major economic consequences for the business sector.

The report also contains a review of state secretary mobility during the period 1998–2010. How the ‘revolving door’ is dealt with for these types of high-ranking positions can be considered to have a major impact on confidence in the public sector. The review shows that there is a considerable level of mobility towards the private sector for both state secretaries and ministers. One issue that is discussed is mobility to and from various consultancy companies. One problem in this context is the lack of openness in the sector concerning which clients and interests a company represents.

To sum up, mobility between the state and the private sector is not a major general problem affecting the entire state administration. Although it is not possible to estimate the extent of the problem in advance, there is cause to consider rules as a preventive measure and to maintain confidence in the public sector. However, tight restrictions affecting all state employees are not a matter for current consideration. It is more a question of a number of positions where a move between the state and the private sector may entail a risk of economic damage or damage to confidence. It is important to introduce restrictions for these specific activities and functions.

The final section of the report contains an outline of how a Swedish regulation could be designed. Important elements of such a regulation should be:

- a general possibility to impose a year-long quarantine for ministers, state secretaries, directors-general and equivalent;
- a statutory regulation that clarifies the possibility of concluding collective agreements on quarantine provisions and agreements for certain key persons;
- the establishment of an independent review board for ministers;
- guidelines on a disclosure obligation when one applies for, or is negotiating, an appointment that may lead to a conflict of interests; and
- a recommendation to lobby organisations to report more clearly which clients and interests they are representing.

A restriction on transitions from an elected position or a state appointment to another appointment or assignment should be designed as an option to impose a period of quarantine. Thus, it is not a matter of a benefit or choice for the employee. The option should belong only to the person or persons to whom the elected representative or state employee is accountable.

Under the OECD's guiding principles, public officials should, in a timely manner, disclose their seeking or negotiating of employment and offers of employment that could constitute a conflict of interest. A comparison can be made with regard to the disclosure obligation that currently applies concerning secondary employment. This requirement is subject to special integrity requirements placed on the employee by their public office. The same reasons should apply to the obligation to disclose an application for, or negotiation of, an appointment in cases where a conflict of interests could arise.

The introduction of restrictions in connection with transitions is associated with certain costs. A regulation or agreement on quarantine must be considered reasonable. Therefore, one premise is that the employee receives his or her salary during the quarantine period. The direct costs depend on the extent to which the quarantine will need to be used. Concerning the highest levels, such as ministers, state secretaries and directors-general, there are currently provisions on severance pay and in some cases income guarantees. Quarantine rules should be seen in this context. A review of mobility among these groups indicates that this concerns quite a limited number of people for whom a quarantine provision would need to be imposed. For the level below director-general, it

is more difficult to judge the extent of the problem, and the challenges vary. Beyond the direct costs, the restrictions may in some cases make recruitment more difficult and also affect the terms in the long run.

When introducing restrictions, a reasonable balance must be struck between the individual's wishes and the right to take up employment on the one hand, and the requirements of the public sector to safeguard economic and democratic values on the other. The potential costs of these restrictions must, therefore, be placed in relation to the risk of economic or other damage to the state. Ultimately, this is a question of the citizens' confidence in the public sector.