

Working Party of Senior Budget Officials

Network of Parliamentary Budget Officials and Independent Fiscal Institutions

Briefing Note:

Access to information for Independent Fiscal Institutions (IFIs)

Virtual meeting of the OECD Network of Parliamentary Budget Officials and Independent Fiscal Institutions (PBO Network), Thursday, 10 September 2020

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38. Some of this can be mitigated by providing early warning of needs where possible. Realistic timescales need to take account of both needs of the IFI and practicalities of obtaining and processing information. Provisional information may be available in some cases as a stopgap.

Austria's Parliamentary Budget Office has encountered delays in obtaining information, particularly where this is detailed and requires some commentary.

Victoria's (Australia) Parliamentary Budget Office recorded that only 43% of information requests were responded to on time.

By contrast, the federal **Australian** Parliamentary Budget Office receives over 95% of information requested on time or early.

In **Israel**, the Knesset's Department of Budget Control has found that the government can sometimes take a very long time to respond to requests, and there is little that can be done to hasten responses.

Lack of detail or redactions

39. Economic and behavioural models may depend on having detailed information.

40. Sometimes the data may not be available or be provided to a suitable level of granularity, for instance because the models are not sufficiently refined, information is not collected at a lower level or decisions on the detail is taken later.

41. Sometimes the provider may cite confidentiality or personal data protection issues as a reason for withholding detail of data. Sometimes confidentiality clauses are arguably abused. While the IFI may be willing to give undertakings on confidentiality, legal barriers or lack of trust may prevent the provider from allowing access to the detailed data.

42. Some information may be confidential for other reasons, for instance national security or commercial reasons.

43. There can also be disagreement between the provider and the IFI over what constitutes confidential information.

In **Israel**, the Knesset Department of Budget Control encounters difficulties since the government supplies only three levels of budget detail during a given fiscal year, instead of the usual four levels published regarding previous years. According to the government, the detailed information is internal and sometimes not accurate enough for publication during the year.

The **Austrian** Parliamentary Budget Office has found the government sometimes reluctant to supply the necessary level of detail, possibly because envisaged analysis this would require separate data evaluations or commentaries.

The **Slovak** Council for Budget Responsibility has encountered some differences of view with the Slovak Statistical office over whether information can be provided. The Statistical Office has argued that this information cannot be provided for reasons of confidentiality.

In **Portugal**, the Public Finance Council has encountered difficulties in obtaining social security information from the Ministry of Labour and Social Security. After some dialogue and criticism from the CFB some, although not all, of this information is now being provided.

In the **UK**, the House of Commons Scrutiny Unit has been seeking, through revised requirements for Estimates memoranda, more consistent levels of programme and project level detail of government

budget proposals. While the moves have been largely successful, there remain cases where the government claims decisions on detail have not been taken, or the detailed information can only be very roughly estimated.

Information may not exist

44. Sometimes the information simply may not be collected. The government may not need to collect it; or it may be something that is difficult to measure. There may be high cost involved in collecting or analysing the data, with little benefit to the government or provider.

45. In such cases, the IFI may have to explore with the information provider what options are available for the future, reconsider information needs or see if alternative information can be provided from elsewhere.

46. It could be that the government simply does not see the release of information sought as important, so does not devote the energy, attention or importance to it that the IFI seeks. In this situation, regular and frequent dialogue with the provider is likely to help in order to explain the rationale for seeking the information and the consequences of not providing it.

Scotland's Fiscal Commission publishes an annually updated "statement of data needs". This stems from a recommendation of a parliamentary committee that highlighted gaps in data provision. Government data providers have responded to the annual statements by making improvements to data collection and recognising where new data needs arise, due to new policies or powers. The most recent version of the statement showed an improving situation i.e. the government and statistical bodies have begun to respond to the gaps in need identified.

The information provider may have other difficulties in providing

47. Lack of resource, capacity, skills or other practical problems may cause problems for the information provider. There could be lack of money, staff, or systems to provide the information in an effective and timely manner. New data may need to be collected which involves new costs.

48. The IFI may be able to mitigate some of the impact of this by planning and communicating the information requirements to the government in advance, considering ways in which requests for information can be designed to reduce unnecessary effort on the part of the provider.

49. Some types of information or data may be more difficult to provide than others. For instance, routinely provided information for forecasts is likely to be easier to plan for and produce than ad hoc requests for forward costings, which may require collection and some element of estimation or analysis by the provider, themselves.

Other reasons

50. Some governments and information providers guard information extremely zealously. There may be a culture of caution or lack of transparency.

51. Some agencies may have concerns about sharing information because they are charged with its protection. In this case the IFI must show the agency that it will protect information as well as the agency would. Similarly, statistical agencies may not want to share private information because certain uses could threaten those agencies' ability to get information —survey response rates would drop. The IFI must demonstrate that it will use the information for statistical purposes and will present results that are sufficiently aggregated.

For the **United States** Congressional Budget Office, the ability to get information is closely tied with its ability to protect it. Security is incredibly important as a breach would harm both the individuals and businesses who were directly affected and the agency's ability to obtain data in the future. The Congress has provided the CBO with the resources necessary to protect information and members may assert legislative privilege to further protect disclosure if necessary.

The Congressional Budget Act 1974 provides that CBO must provide the same level of confidentiality as the agency from which CBO receives the information. That provision imposes a duty on CBO to protect information. It also is an exception to what must be publicly disclosed under freedom of information requirements. As a consequence, outside groups generally do not try to get confidential executive branch data from CBO. This gives executive branch agencies the confidence that they can provide information to CBO.

52. Security issues have also been raised recently in regards to remote access to information – which has been necessary for some IFIs working remotely during the COVID-19 crisis. IFIs may negotiate the ability to move information to the cloud; to remotely access data systems of other agencies; or to conduct analysis in dedicated enclaves on those systems. The latter option also has implications for the IFI in terms of disclosure as the agency could discern what question the IFI is trying to answer based on the analysis performed.

53. Generally, the entire impetus to create an IFI is to increase transparency, and to provide impartial, non-partisan economic or fiscal expertise and advice. Inevitably, this means an IFI's analysis may be used against a government by its opponents. Fear of this happening can explain why governments can on occasion prove reluctant to relinquish information to enable the IFI to do its work.

54. Information can reveal embarrassing trends or have political consequences for instance if a policy is seen not to be working. There may be no perceived incentive for the government to provide the information, particularly if it is likely to be used by political opponents. The short-term impact of release of information may be viewed as more damaging to the government than a continued good relationship with the IFI.

55. Information may be withheld, perhaps without good reason. The Government may argue information is not required and see no advantage in releasing it, particularly if holding suspicions that such information could form the basis of assumptions or analysis that could be used against the government. Or other reasons may be cited, when the primary motivator for non-release is the government does not want to share the information.

56. In extreme cases if the IFI is prevented from fulfilling its statutory function effectively or the government is in breach of a legal requirement to supply information, the government body could be subject to legal sanctions. Whether such a route is advisable or likely to be effective would have to be weighed up against the difficulties caused to the IFI by not having access to the information.

Overcoming obstacles.

Building and developing good informal relations with information providers

57. The relationships between IFI and information providers are critical. Fostering those relationships and developing sound and trusted lines of communication can make the difference between confrontation and collaboration, and degrees of co-operation in between.

58. Well-developed relationships and frequent and regular contact between information providers are also more likely to enable those providers to understand the needs of IFI, and for the IFI to understand the constraints (of timing, resource and politics) within which information providers operate.

59. Many different communication and liaison arrangements have developed over time between different IFIs and information providers. Some of these are described below, but this is by no means an exhaustive list. Some are variations on others and there is necessarily some overlap between them.

- **Frequent informal liaison meetings.** Some IFIs meet weekly, monthly or, during critical times, more frequently, to discuss arrangements and timing of information provision. Informal meetings of this type may have fluid membership, be in response to specific needs, or be regular fixtures that provide opportunity to raise multiple issues.
- **Working groups.** A working group may be established and tasked with developing an agreed approach to a particular output or resolving a particular difficulty. (For example, both Portugal's CFB and the UK's OBR participate in such groups, alongside the providers of information.) Once an arrangement is agreed, progress and implementation could also be monitored through such a group.
- **Designated contact points.** Designated contact points can help both parties to deal with issues more rapidly and allow for those contact points to build up knowledge and to put opposite numbers in touch with particular experts. They may also allow for a route for informal, or even formal, escalation. They need to be at a suitable level of seniority to allow for decision-making and to have clout within the organisation they represent.
- **Informal working level contacts** are important complements to the more formally designated contact points and allow for quick resolution or discussion of particular issues, perhaps deciding where to raise with the more senior staff. Many IFIs view good informal working level contacts as even more vital than more formal arrangements.
- **Networks.** Informal and professional networks can allow for development of connections and contacts between those working in similar fields, and in similar areas of expertise, sharing of information and joint resolution of problems.
- **Joint planning for events.** Even where arrangements and contacts are well developed it can be beneficial to meet more intensively and plan specifically for particular fiscal events and outputs, such as the production of a forecast or the costing of a manifesto platform.
- **Meeting new appointees when they arrive.** Investing in developing relationships at an early stage will help prevent misconceptions and misunderstandings developing.
- **Secondments and staff exchanges.** Exchange of staff could be a way of building understanding and knowledge of the others' perspectives and of working together, although the individual needs to be protected from conflicts of interest. While there are some IFIs who employ or have employed staff on loan from, or after having worked in, government or for supreme audit institutions, it is not clear whether many government finance departments have reciprocal arrangements for loan of IFI staff, even though such arrangements might offer benefits in raising awareness of IFI needs within government.
- **Seminars and training events:** joint events can be used to boost understanding and help to share problems and their resolution. They can also enable contacts to be established and help break down barriers.'

60. In addition to the above, at times IFIs may find it useful to request the same information from another independent agency such as the supreme audit institution. If they have already received similar information, many of the objections to sharing information will have already been overcome.

Developing a new MOU or obtaining changes to the legal framework

61. Many IFIs already operate within a clear legal framework, specifying the purposes, circumstances or types of information the IFIs has a right of access to.

62. Conversely, some IFIs operate without any such framework.

63. Where such a framework or MOU does not currently exist and is felt to offer benefits to the IFI, the sort of questions which need to be considered before and during the development of any formal framework arrangements include:

- What is the issue that the change is seeking to address?
- How could the change proposed improve the situation?
- What vehicle (e.g. legal or MOU) would best serve this objective?
- What objections could information providers potentially have to the change?
- How can these objections be addressed?
- How will what information is covered be defined?
- Who would need to agree the change?
- What is the process for getting the change agreed?
- What arrangements does the change include for dealing with disputes?
- Is the arrangement flexible enough to deal with changes in the remit or function of the IFI?

64. It is important that any arrangement goes into sufficient detail so as to set realistic expectations on access to information and avoid any potential ambiguity or misunderstanding.

What should be covered by a model MoU?

Where an MoU covers access to information, matters which it could cover include:

- What information the arrangement covers;
- Timescales for provision of information;
- The form in which information is provided;
- Who the arrangement applies to;
- Respective responsibilities;
- Dispute resolution; and
- How the arrangement can be amended or revoked.

65. What information is covered under any such an arrangement is most critical. Defining the coverage too specifically could mean that it is also defined too narrowly and interpreted inflexibly. Conversely, too broad a definition could also mean that its scope is open to interpretation. Any definition needs to strike the right balance and manage expectations.

In **Spain**, legislation provides that all public administrations should co-operate with the Independent Authority for Fiscal Responsibility (AIReF). But there are no specific MOUs defining a right to access to information although AIReF has been trying to develop some.

Slovakia's Council for Budget Responsibility has contracts with each institution from which it seeks information, but they do not specify timescales.

The **Canadian** Parliamentary Budget Office has agreed five MOUs with ministries for the new election costings mandate.

The **UK's** Office for Budget Responsibility has a multi-layered approach to agreed information provision: legislation; a "framework" document; and a joint MOU with three government departments - Treasury, Revenue & Customs and Work & Pensions.

The **United States'** Congressional Budget Office has a multi-layered approach to obtaining information. It has statutory rights to data; it obtains information from federal agencies informally; and it has entered

more than 65 data use agreements (MOUs and contracts) with federal agencies and private entities.

Scotland's Fiscal Commission updates and publishes an annual statement of data needs. This stems from a recommendation of a Scottish Parliamentary Committee highlighting gaps in data provision. The statement has proved successful in identifying and addressing gaps in data provision.

What should be covered in a MoU?

- What information the arrangement covers;
- Timescales for provision of information;
- The form in which information is provided;
- Who the arrangement applies to;
- Respective responsibilities (including for example, security arrangements for confidential information);
- Dispute resolution; and
- How the arrangement can be amended or revoked.

Dispute resolution and escalation processes

66. Whether there is a formal requirement to provide information or not, there may be instances where action is deemed necessary to obtain information that is not forthcoming.

Informal processes

67. Some IFIs have arrangements – either developed through custom and practice or set out in an MOU – to escalate an issue of non- provision of information.

68. Often this will take the form of raising the issue at a more senior level (initially between higher-level officials of the IFI and information provider, or ultimately through the Speaker to the Leader of the House). This may involve no more than a telephone conversation, agenda item or informal word.

69. In many cases, it appears that such an approach may remove the blockage or holdup. Informality does run the risk that the provider does not face public embarrassment or sanction where it fails to provide such information.

A more specific agreed process, with stages

70. Alternatively, a MOU may set out clearly what the steps to be taken to resolve a dispute over lack of provision of information. This offers the benefit of clarity on the part of both sides over what to do in such circumstances where information is not provided.

71. Like any method, it does not guarantee success- and there is unlikely to be a neutral third party to mediate, but it does allow for openness about where there are issues and consistency in the way they are dealt with.

In the **Netherlands** the Bureau for Economic Policy Analysis has informal channels enabling escalation through via a director, helped by the CPB's own director being part of the executive.

In **Scotland**, requests by staff in the Scottish Parliament Information Centre (SPICE) may have to be escalated by the head of SPICE's FSU talking to the relevant director in the government.

Victoria's Parliamentary Budget Office) has a robust follow up process, with the PBO contacting the public sector body head according to an internal escalation process.

Israel's Research and Information Centre found that they had some problems getting information from one ministry, which they had to raise with the Speaker.

The **UK's** Office for Budget Responsibility contains a provision in its MOU which states that "if neither bilateral nor Forecast Liaison Group resolution procedures succeed, dispute resolution will be the responsibility of the Chair of the OBR and Permanent Secretaries." (para 2.7).

Parliamentary powers

72. Depending on the relationship between the IFI and the Parliament and its committees, it may be possible, with willing members, to put pressure on the government through Parliamentary channels.

In the **UK**, the House of Commons Scrutiny Unit can invite the appropriate select committee to write, but there is no guarantee of success.

Similarly, in **Austria**, the Parliamentary Budget Office can inform the Budget Committee that information has not been forthcoming and invite the committee to write.

In **Israel**, a 2008 amendment to the law required Government Ministries and other relevant bodies to provide information needed for parliamentary work to the Knesset's Research and Information Center without delay.

A more formal option available in some jurisdictions is to table a report in Parliament, or a censure of the government in Parliament, such as arose in **Canada** in the early days of the Parliamentary Budget Office. More recently, tensions have lifted, and it would be more normal for the PBO to raise the matter at a regular weekly meeting with the Leader of the House.

Formal objections

73. Where legislation governs an IFI's rights to access to information, there is the option to take more formal action, through the courts or otherwise. IFIs in Canada and Spain chose to bring legal challenges which ultimately led to improvements to their access. Although generally viewed as an option of last resort, the knowledge that legal mechanisms are in place, and have been deployed by IFIs successfully, may help foster better cooperation. More often, legal provisions provide a foundation for the IFI to publicly state that an information provider has breached its obligations and put the onus on that provider to justify its action. This may provide a lever to put pressure upon the information provider to relent or to offer a compromise.

In **Spain**, the Ministry of Finance sought to more closely define – and hence restrict – research and access to information through secondary legislation. In May 2016, AIReF took the hard decision to file a legal challenge against the central government. The legal challenge sought to repeal or amend the provisions in two pieces of secondary legislation as violating the access to information provisions in its

Organic Law 6/2013. In response to this legal challenge, Ministerial Order HEP/1287/2015 was partially repealed by a further Ministerial Order in March 2014 and access to information has improved.

In **Portugal** the Public Finance Council can post a notice on its website stating the nature of the information not supplied and the parties involved. It can also formally advise the President of the Court of Audit, the Governor of the Bank of Portugal, the Parliament and the President of the Republic as a last resort. To date the CFP has invoked the first step, in relation to information sought from the Ministry of Labour and Social Security but not the second. Some of the social security information sought is now being provided.

Other possible remedies

74. Any escalation process may take time or may ultimately be unsuccessful.

75. IFIs may need to consider alternative ways in which they can carry out their functions in the absence of the information they are seeking.

Seeking alternative sources of information or greater use of estimation

76. This could include seeking the same information via another source or similar information, for example, from another jurisdiction, which could be used to provide a reasonable estimate.

77. Most likely, this is used when other techniques fail. In many cases, an alternative source of reliable information will not be readily available.

78. Using a greater degree of estimation or drawing on similar information to draw conclusions is likely to introduce greater inaccuracy into the IFI's output. In such cases, the IFI is likely to want to draw attention to the shortcomings of the estimate. The likelihood is that regardless of this, the output is attributed to the IFI, perhaps without such qualification, so such a step does carry reputational risk.

In **Spain**, AIReF has the option of approaching regional governments if the federal government is uncooperative or slow in responding. So far, these have always complied with requests.

In **Canada**, in the early days of its existence, the Parliamentary Budget Office sought information on the costs of Canadian military involvement in the Middle East. In the absence of full information being provided by the government, the PBO made use of comparable costings available from other countries within the coalition to produce estimated costings.

Decision not to include or assess

79. Another alternative in some situations may be that failure to provide information by a certain date leads to its non- inclusion in the relevant assessment. This may impact the quality, completeness, of the IFI's work- for instance its ability to provide a reliable estimate or forecast.

80. Where the overriding requirement is to provide an output, such as an overall assessment or forecast, by a certain date, the assessment or forecast may simply have to state that it takes account of all information provided by a certain point.

The UK's Office for Budget Responsibility sets a deadline of the Friday before the Chancellor's Budget for inclusion of policy costings within its scorecard and the economic forecast. Anything that misses this date is not included in the Budget forecast, and the OBR makes this clear upon publication. The costing is picked up in a subsequent forecast instead.

Recommendations and Conclusions

81. There is a wide range of different experiences in relation to access to information by IFIs across OECD members. What works best in one set of circumstances may not work best in another.

82. For instance, while the Austrian Parliamentary Budget Office feels the lack of formal powers is a handicap and would welcome a legal provision guaranteeing access to the information it requires; the Netherlands CPB feels that the absence of a codified arrangement is a benefit and fears that any attempt to introduce one would risk reducing its currently enjoyed access.

83. Nevertheless, there are some general conclusions that can be drawn from experiences to date:

- IFIs need to establish early on what their information needs are, who the providers will be and the timescales, format and frequency required, as well as security arrangements. This should be communicated to the information providers, with, where necessary, an explanation of why the information is needed. Where needs change, providers need to be alerted at an early stage and any issues resolved.
- Informal, frequent, two-way contact at all levels between the IFI and information provider is hugely important. Good working relations foster better understanding of needs and practicalities and avoid unnecessary bureaucracy and delay. Working groups, contact points, agreed timescales and formats for delivery of information all help.
- IFIs' rights of access to information are likely to be supported and stabilised by recognition in law and/or a Memorandum of Understanding. This is easiest to achieve at the outset, when a body is first established. Where changes are proposed, the benefits and costs need to be considered carefully. An MOU can clarify the rights of access to information of the IFI, rather than leaving it dependent on past practice, individuals and relationships.
- Any law or MOU should define information needs according to the remit of the IFI, allowing for both regular and *ad hoc* needs. Care needs to be taken to avoid either defining the needs too narrowly, risking excluding what is needed, or too vaguely, allowing scope for avoidance.
- Tracking the timeliness and quality of responses to requests for information can help to identify information supply problems. This may provide evidence that can be used in dialogue with the information provider to address common weaknesses or problems. Making such information public may be helpful for IFIs with persistent access to information problems.
- A well-understood channel for communicating and escalating issues relating to the non- or late supply of information to the IFI is helpful, particularly if informal and proportionate. This could be set out in any MOU. Where issues around access cannot be resolved informally, it is also useful to have a more formal process to fall back on.
- Parliament may need to be involved if informal efforts prove unsuccessful and escalation is necessary. This could mean involving Parliamentary committees, the Leader of the House or equivalent, or seeking a motion of censure drawing attention to the failure.

- Alternative sources of information may need to be sought if delays and difficulties persist. These may be less than optimal, but better than delaying or not providing the necessary output at all. IFIs will probably want to highlight any inaccuracies or reputational risks that result.

84. In conclusion, good access to information is vital to the work of IFIs. Relations between information providers and IFIs are generally good on a day-to-day basis, but can encounter practical or political problems from time to time. New institutions need to consider how access to information should be defined at the outset and whether it needs to be formally set out in legislation. Established IFIs will often benefit from MOUs or other agreements governing their information access, and thought should be given to informal, and if necessary, formal escalation procedures should information not be forthcoming.

85. More than anything else, effort needs to be invested continuously in building and maintaining relationships and channels of communication between IFIs and information providers, to maximise the likelihood of any issues being avoided or resolved quickly. Not all information access problems will be resolved by good relations, but the chances of such problems being resolved promptly are clearly enhanced the more good relations are developed.

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Written submissions

- Anthony Close, Parliamentary Budget Office, **Victoria, Australia** (17 January 2020)
- Colin Brown, (federal) Parliamentary Budget Office, **Australia** (11 February 2020)
- Mark Hadley and Bob Sunshine, Congressional Budget Office, United States (14 May 2020)

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