

Conflict of Interest

1. CONFLICT OF INTEREST AND INTEGRITY CHALLENGES IN THE WESTERN BALKANS

In order to pursue and protect the public interest, persons working in the public sector are under the obligation to make decisions that have an impact on citizens' rights and interests. It is necessary that public regulations and decisions that affect individuals be passed in an impartial and professional manner, thus contributing to the preservation and advancement of public interest while leaving personal or other extraneous interests aside.

Conflict of interest implies situations in which the private interest of public officials affects or could affect their impartiality in the performance of the delegated tasks of public interest. All public officials are individuals who have their own private interests. These private interests may be of such nature that they might affect the independent and objective performance of the official duties and activities in the public interest. That is how numerous situations may arise in which public sector employees are (potentially) in a conflict of interest, which distorts "the socially acceptable balance between the personal interests of the public sector employees and the public interest."¹ A conflict of interest may arise as a result of an attempt to avoid personal losses, but also to ensure personal gain by using professional or official capacities.² It should certainly not be disregarded that such controversial situations can simply be the result of a set of objective, external circumstances.

8 Categories of Conflict of Interest

- Acting with the aim of personal benefit
- Accepting benefits
- Trading in influence
- Using state property
- Using confidential information
- Additional employment
- Post-office employment
- Personal behaviour

1 F. M. Popa, "Conflict of Interest and Integrity in Public Administration in CEE Countries. Comparative Analysis", *Journal of Public Administration, Finance and Law*, No. 4/2013, 58.

2 See the last Chapter for more detailed examples of conflicts of interest in practice.

Defining the public interest is not the prerogative of the public officials alone. An important factor in making this decision are the citizens, observing from outside and assessing whether the activities of public authorities are in line with the state values, moral standards, and legal principles. When the citizens are convinced that actions are appropriate and that decisions are adopted impartially and in compliance with law, they will have trust in public institutions and perceive public officials as persons of integrity. Maintaining public trust in the work of public institutions is a key task that can be achieved by promoting and preserving the personal integrity of public officials. That in turn promotes further development, institutional and social integrity.

However, the mere suspicion that public officials have acted in their private interest and not in the public interest will cause a loss of trust in the integrity of a public institution. In order to preserve the citizens' trust in institutional integrity, public officials must ensure that a **perceived conflict of interest** does not exist and that the institutional integrity has been well protected. Therefore, the mere existence of a **potential conflict of interest** requires a public official to eliminate the possibility of any such conflict, in order to prevent the perception of any wrongdoing. **In situations in which there is a real conflict of interest**, there is an obligation to take the necessary steps to resolve the conflict situation, and to ensure that the decision-making process is in line with the public interest. The following table shows some of the basic forms of conflict of interest.³

Any suspicion that the public sector employees act in their own personal interest, rather than the public interest, undermines the confidence in the integrity of the institutions. However, the mere existence of contradictory interests may not necessarily have negative effects. First of all, good governance principles have been developed, requiring disputable situations to be resolved in an adequate manner before decisions or further actions have been made. A failure to report a potential conflict of interest situation or a failure to take the necessary actions to resolve it, may damage the public interest and create an impression that it favours personal interests. Conflicts of interest are often equated with corruption which, by definition, implies the abuse of public position or power for personal gain.⁴ However, it should be noted that sometimes a conflict of interest may be present without it leading to corruption, and vice versa. Only in cases when public interests have **indeed** been side-lined by private interests, one can talk about corruption. In other words, only the failure on the part of public official to act and resolve

3 F. M. Popa, "Conflict of Interest and Integrity in Public Administration in CEE Countries. Comparative Analysis", *Journal of Public Administration, Finance and Law*, No. 4/2013, p. 59. Also, L. Esadze, *Guidelines for the Prevention of Conflict of Interest*, Belgrade 2013, p. 8.

4 I. Amundsen, *Political Corruption: an Introduction to the Issues*, Chr. Michelsen Institute, Bergen 1999, available at <http://www.cmi.no/publications/1999/wp/wp1999-7.pdf>, 3.3.2017.

a potential conflict of interest, and not its very existence, creates a breeding ground for corruption and its prevalence.

It is exactly the domain of conflicts of interest that can be a powerful tool in establishing and maintaining the citizens' trust in public institutions. In that respect, the conflict of interest rules should not in themselves eliminate the possibility that public officials will have their personal interests, and they should rather contribute to maintaining the integrity of the public institutions, recognising that unsolved conflicts of interest may easily lead to abuse of power. Primarily, by not taking part in handling and deciding on the issues in which they themselves have a personal interest, as that could easily lead to abuse of power. A leading principle for public institutions should be impartiality. This principle, followed by effective mechanisms in order to eliminate personal interests, should be institutionalised. As a basic principle of good governance, it provides a sound foundation for building public trust in the integrity of public institutions.

It is clear that public sector employees have a crucial responsibility for maintaining the public trust in public institutions, since "individual responsibility is both a starting and an end point on the integrity route in public service."⁵ The additional part of that responsibility, however, lies with the public authorities and institutions themselves: they must have clear rules and procedures in order to handle and prevent conflict of interest situations. Furthermore, they are under the obligation to inform the employees of the conflict of interest rules, and to sanction failure to comply with them. Otherwise, the sense of responsible personal behaviour will be lost, and all efforts to achieve the institutionalisation of integrity will remain unsuccessful. In addition, that creates fertile ground for unethical behaviour to become acceptable.

During the last decade, the Western Balkan countries have adopted numerous regulations on the handling of conflicts of interest. The importance of regulating this complex issue was recognised in the course of the European integration process. In addition, membership of the Council of Europe and the United Nations also required dedication to the regulation of conflicts of interest in the public sector. Many of the legal regulations adopted are either directly or indirectly connected to the handling of conflicts of interest, along with a number of rulebooks, instructions, codes of ethics, and the like. Since the legislation mostly includes provisions that are general and need to be specified further, numerous internal secondary acts on conflicts of interest have also been adopted. To ensure successful implementation of the adopted

5 C. W. Lewis, S. C. Gilman, *The Ethics Challenge in Public Service*, Jossey-Bass, San Francisco 2005, pp. 16–17.

primary and secondary legislation, efforts have been made to strengthen the capacities of public institutions as the key stakeholders.

However, a number of reports (OECD/SIGMA, European Commission) clearly indicate the remaining shortcomings in the implementation of the conflicts of interest regulations. Therefore, this issue remains one of the major challenges in the overall anticorruption efforts. Some of the main obstacles for the successful implementation of the relevant regulations include a lack of political will and a lack of independence from direct political influence within the institutions and agencies responsible to handle conflict of interest issues. It is beyond dispute that a certain level of awareness about this problem exists; however, a conflict of interest is still perceived as an abstract issue and its consequences are not fully understood. Consequently, the primary and secondary legislation on handling and eliminating conflicts of interest is applied inconsistently and incompletely, while the persons competent to monitor potential public officials' conflicts of interest are often not appointed.

The problem of conflicts of interest becomes even more complex when one considers the ever-closer cooperation between the public sector, on the one hand, and the private sector on the other. Such cooperation may give rise to a number of new situations that may imply conflict of interest, a fact that is still not recognised in the relevant legislation.⁶

Regulations on the handling of conflicts of interest envisage various forms of sanctions for public officials for unethical behaviour. In addition to the procedures for the prevention of conflicts of interest, the agencies that are set up to implement these regulations are also under the obligation to inform the relevant authorities about any disciplinary, misdemeanour or criminal proceedings. However, such proceedings are not necessarily initiated.⁷ When public officials see that the sanctions envisaged in the laws and other regulations are not implemented in practice, they may easily conclude that they are free to act in accordance with the unwritten rules and old practices, neglecting the norms and standards of new legislation. Moreover, the sense of being accountable for their own actions is not developed, compromising the efficiency of the prescribed rules and the success in their implementation.

6 Some examples include public-private partnership, sponsorship, exchange of staff, the create of new jobs in the public sector that change the usual labour relation rules.

7 For more details on the number of criminal and misdemeanour proceedings (not)initiated in Western Balkan countries see J. Meyer-Sahling, "Civil Service Profesionalisation in the Western Balkans", *SIGMA Papers* No. 48, OECD Publishing, Paris 2012. Also see European Commission Staff Working Document, Serbia 2016 Report, Accompanying the document "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions", 2016 Communication on EU Enlargement Policy, Brussels 2016.

All these shortcomings make the entire system and its integrity vulnerable, since they provide room for ignoring the rules and regulations on conflicts of interest and failing to report or handle a conflict of interest situations. As the final result, new legislation is not consistently implemented and the desired change of behaviours in the public sector is not achieved.

2. WHAT ARE THE INTERNATIONAL STANDARDS IN THE FIELD OF CONFLICT OF INTEREST?

2.1. LEGAL SOURCES OF INTERNATIONAL STANDARDS

Public officials often find themselves in the situations characterised by a discord between public and private interests. The successful resolution or prevention of conflict of interest requires the existence of and adherence to specific guidelines and standards. Such resolution contributes to competent and professional performance of public office and duties and the respect for the principles of impartiality and integrity.

Given that the need to resolve conflicts of interest is relevant in almost all countries in the world, a large number of international agreements have been adopted in this field. The main international legal acts governing this field are the following: “Twenty Guiding Principles for the Fight against Corruption of the Council of Europe”⁸ especially the principles under ordinary numbers; The Council of Europe Recommendation of the Committee of Ministers to Member States on “Codes of Conduct for Public Officials”;⁹ UN Convention Against Corruption,¹⁰ OECD’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;¹¹ United Nations Code of Conduct for Civil Servants,¹² as well as the Anti-Corruption Initiative of the South-East Europe Stability Pact.

8 The Council of Europe Resolution on the “Twenty Guiding Principles for the Fight against Corruption”, No. 97/24. Even though conflicts of interest are not mentioned explicitly, it can be concluded that certain principles also apply to policies related to conflict of interest resolution. These are principles number 1, 3, 7, 9, 10 and 20.

9 The Council of Europe Recommendation of the Committee of Ministers to Member States on “Codes of Conduct for Public Officials”, No. 200/1.

10 UN Convention against Corruption, General Assembly Resolution, No. 55/61.

11 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 21.11.1997.

12 United Nations Code of Conduct for Civil Servants, available at <http://icsc.un.org/resources/pdfs/general/standardsE.pdf>, 10.4.2017.

Some of these legal acts prescribe only the general obligation of the signatory states to establish measures for the prevention of conflicts of interest in accordance with their internal legislation,¹³ while others include concrete recommendations on the appropriate behaviour of public officials. For instance, the Code of Conduct for Public Officials, adopted by the Council of Europe, provides recommendations on the appropriate conduct of public officials. Its addendum includes a Model Code, proposing how to treat situations that may result in a conflict of interest concerning public officials, such as accepting gifts, using public funds, etc.¹⁴

Article 8 paragraph 5 of UN Convention Against Corruption

Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

Article 13 paragraph 3 of the Model Code

Since the public official is usually the only person who knows whether he/she has a conflict of interest, the public official has a personal responsibility to:

- be alert to any actual or potential conflict of interest;
- take steps to avoid such conflict;
- disclose to his/her supervisor any such conflict as soon as he/she becomes aware of it;
- comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

2.2. CONTENTS OF INTERNATIONAL STANDARDS

The international standards on resolving conflicts of interest include limitations, prohibitions and obligations that public officials must adhere to, as well as the rules for reporting conflicts of interest. Furthermore, the standards include the registry keeping rules, which facilitate the monitoring and prevention of

¹³ Article 7, paragraph 4 of UN Convention against Corruption. OECD's Recommendation on Guidelines on managing conflict of interest in the public sector proposes efficient measures for countering corruption that can be taken by member states. This primarily refers to criminalisation of bribing foreign public officials in the fields of banking, finance, accounting and the like.

¹⁴ Council of Ministers Recommendations suggests in a clear fashion that the recommended Model Code of Conduct for public officials should be a part of national legislation, and to be adjusted so as to meet the needs of the public administration of each member state.

conflicts of interest, contributing considerably to transparency. The national legal systems differ in terms of the scope of such limitations and obligations, as well as the quantity and contents of the information that needs to be disclosed.

Identification and reporting of situations that may result in conflict of interest: One of the main standards related to conflict of interest resolution is the obligation to report private interests that may potentially affect objective performance of duties. This shows readiness to avoid contentious situations, by being aware of (potential) threats to personal and institutional integrity. Real or potential conflict of interest can be reported when taking a certain position (in the form of a declaration of assets and income¹⁵) or during the performance of an office (in the form of a report on contentious or debatable situations). Filing such a report ensures transparency and helps identifying conflict of interest situations, to exclude a public official from performing public duties and from participating in the decision-making process.

Certain ambiguities still remain as to the scope of information that should be declared, for example, about the circle of those who should be obliged to file a report or be included in the report.¹⁶ Another example is whether a declaration of assets should have an important role in controlling and preventing conflicts of interest of elected local officials and members of parliament. Given that controlling these reports requires is time intensive and costly, it is recommended not to require all civil servants to file them, and rather limit this obligation to those who hold positions and work in the sectors that are prone to conflicts of interest.¹⁷ Instead, the assets and other financial interests of civil servants may be controlled on a random basis.

Concurrent or additional employment and occupations: Concurrent engagement outside of public office may result in a conflict of interest, and that is why the relevant authorities should have the power to decide on the compatibility of public office and additional employment. An assessment that such additional work may potentially cause a conflict of interest should lead to a denial of consent for additional employment to those performing public duties.¹⁸ A precise definition of the conditions for allowing additional

15 Declaration of assets of persons who hold public offices is not necessary if a report on assets already exists, but it may contribute to the control of officials and persons appointed on political grounds.

16 This resulted in the practice of having officials' family members also declare assets, which is assessed as problematic from the constitutional standpoint.

17 SIGMA, "Conflict-of-Interest Policies and Practice in Nine EU Member States: A Comparative Review", *SIGMA Paper*, No. 36, OECD publishing, 2007.

18 All OECD countries have limitations with regards to additional employment of politically appointed persons, including members of the government, civil servants and (judges), whilst these conditions are even more strict in Spain, France, Germany and Poland.

employment, and the public authority or institution that should decide on whether the conditions are met, is an important step in the establishment of a preventive system that would minimise conflicts of interest.

Official decision-making and advising policy: Other fields in which public officials must demonstrate that their impartiality and objectivity in the performance of their duties are negotiations, drafting and implementation of contracts, and decision-making on compensations and sanctions. This particularly relates to the need to prevent giving a privileged position or certain benefits to the natural or legal persons that are related to the public decision-maker, contrary to the legal procedures and solely on the basis of their personal relationship. One of the ways in which a conflict of interest in this field can be prevented is to prohibit the public officials from concluding contracts on behalf of the state if they are or may be perceived as related to the interested persons.¹⁹

Gifts and privileges: Gifts, privileges and other benefits acquired by persons who perform public office do not by definition constitute a conflict of interest, as long as they may not be seen as potentially influencing the public official concerned. On the other hand, public officials must not solicit any gifts or economic gain or privilege from the private sector that cooperates with the Government for the performance of the duties included in their job description. For example, when the public sector cooperates with the private sector, gifts and other advantages may be seen, by definition, as bribes, which obviously leads to corruption.

Conflicts of interest will not arise when gifts and other benefits are rare, of small value, or a part of regular protocol or courtesy as they cannot endanger or compromise personal or institutional integrity. However, there is a fine line. That is why the public officials who make decisions that might directly benefit the persons or companies that provide gifts and other benefits need to be particularly careful.

However, accepting any other gifts, regardless of whether they were given as a token of true gratitude or a remuneration for a service rendered, may cause suspicion about the independence and impartiality of public officials. It is therefore necessary to define and prescribe which gifts may be accepted and under what conditions. With the exception for token gifts (for example, a pen or plaque with a logo), most countries prescribe an obligation to keep relevant registers, which are available to the public in a transparent manner.

¹⁹ This also relates to situations including contracting with companies owned by their relatives or friends.

Limiting the potential use of confidential information in the private sector after the termination of public office: The fact that someone has held public office should not deny him/her the possibility of taking a new job. However, when seeking new employment, former public officers should be under the obligation to eliminate any potential conflict of interest between their new job and the responsibilities they had while they were in the public office. For example, for a certain period of time after their employment in a public authority, a former public official should not accept the appointment to the managing board, or employment in the companies with which he/she had frequent cooperation or a business relationship during a period of one year prior to the termination of office. Furthermore, former public officials should not represent persons before the organisations with which they had frequently officially cooperated during that period. The key reason behind such a time-limited quarantine is the potential risk of a public disclosure of the internal information linked to their former public work or public programmes and policy that are not otherwise available.

Setting clear rules on what is expected from public officials in case of a conflict of interest: a public official should accept his/her personal responsibility if it has been established that he/she has relevant private interests that may be or are in contradiction with his/her public duties. Options for resolving such conflict of interest are the following: deprivation or suspension of private interests; limiting access to certain information or stepping aside from decision-making in the area in which a conflict of interest exists or may arise; reassignment of duties and responsibilities; transferring the conflicting interest to a proxy; termination of employment or resignation of the public official from his/her current position.

Efficient implementation of the conflicts of interest policies: In addition to establishing the principles for regulating and resolving conflicts of interest, efficient conflict resolution requires adequate mechanisms that would enable the implementation of these principles in practice. For example, a procedure for reporting noncompliance with the conflict of interest rules to an independent body (whistle-blowers). Such mechanisms contribute largely to the prevention of the conflict of interest situations.²⁰ However, to accomplish this standard, it is necessary to establish bodies that would investigate potential conflict of interest situations, identify noncompliance with policy or regulations, and prescribe appropriate sanctions, which would be consistently implemented.

²⁰ Rules on these kinds of mechanisms must include, inter alia, protection from retaliation for whistleblowers, as well as eliminating the possibility of abuse of anonymous warnings or reports.

Sanctions for noncompliance with the conflict of interest policy or regulations in the public sector should be differentiated, depending on the gravity of the violation. They may range from a simple entry of the contentious interest in the relevant register, a formal warning, a disciplinary sanction, to filing corruption charges or abuse of position charges. Other measures that may effectively deter those who wish to ensure personal gain by such violations of regulations and abuse of delegated powers may also be developed.²¹

3. WHAT IS THE LEGAL FRAMEWORK FOR MANAGING CONFLICT OF INTEREST IN THE WESTERN BALKANS COUNTRIES?

3.1. ALBANIA

Legal sources:

- **Law on Prevention of Conflicts of Interest in the Performing Public Office,**²²
- **Law on the Declaration and Audit of Assets, Financial Obligations of the Elected Persons and Certain Public Officials,**²³
- **Law on the Rules of Ethics in the Public Administration,**²⁴
- **Law on Civil Servants**²⁵

The main obligation of all persons employed in the public administration is to prevent or resolve as soon as possible any situation that constitutes a potential conflict of interest.²⁶ If he/she is not sure whether a conflict of interest exists at all, the public official is obliged to consult his/hers superior, who will take further necessary actions.²⁷

21 Examples of such measures include retroactive annulment of wrongfully made decisions, passed by a person who had conflicting interests, and recusal from future involvement in certain public tasks of persons who have acted in contradiction with conflict of interest rules.

22 Law on Prevention of Conflicts of Interest in Performing Public Office, *Official Gazette of the Republic of Albania*, No. 9367, dated 07 April 2005.

23 Law on the Declaration and Audit of Assets, Financial Obligations of the Elected Persons and Certain Public Officials, *Official Gazette of the Republic of Albania*, No. 9049, dated 10 April 2003.

24 Law on the Rules of Ethics in the Public Administration, *Official Gazette of the Republic of Albania*, No. 83/2003.

25 Law on Civil Servants, *Official Gazette of the Republic of Albania*, No. 152/2013.

26 Article 3, paragraph. dh of the Law on the Rules of Ethics in the Public Administration, Article 46 of the Law on Civil Servants.

27 Article 6 of the Law on Prevention of Conflict of Interests in Performing Public Office.

Reporting private interests and registering conflicts of interests: In the course of performing public office, public officials, as personnel defined by the Law on Prevention of Conflicts of Interest in Performing Public Office²⁸ (hereinafter public officials) are obligated to report any personal private interest that may cause a conflict of interest. In addition to self-reporting, interests can be reported also at the order of the superior.²⁹ The existence of public officials' personal interests can be identified based on the information obtained from other officials, public institutions, interested parties, third parties, the media, etc.³⁰ The public authorities maintain registers of interests that include the details about the public official, the manner and reasons for the emergence of a conflict of interest, sources of information, actions taken, and decisions adopted. A separate law also stipulates the obligation of **civil servants** to report their private interests to their superior.³¹

Actions to manage conflicts of interest: A public official who has timely established the existence of a conflict of interest has at his/her disposal several actions he/she can take: transferring the private interest to another person, exclusion from the decision-making procedures, withdrawing from private activities, office or engagements that are in conflict with his/her public office, or resigning from public office. The public official must notify his/her superior about his/her actions, who may also order specific actions to be taken to resolve the conflict of interest.³² These would include: withholding certain information from the public official who is in a conflict of interest, excluding the public official from certain decision-making procedures, changing the public official's responsibilities, taking actions to avoid appointing the public official to a position in which he/she might come into conflicts of interest, etc.³³ Unless appropriate actions have been taken to address the conflict of interest, contracts concluded under such circumstances would be null and void and would have no legal effect.³⁴

28 Law on Prevention of Conflicts of Interest in Performing Public Office, *Official Gazette of the Republic of Albania*, No. 9367, dated 07 April 2005. The Law is applicable to the following personnel: elected personnel, members of the Government, directors of independent institutions, judges and prosecutors. The Law also covers all decision-making processes: legislative, administrative (local and central Government) and judicial (civil, penal and administrative).

29 Similar obligations are stipulated also for any person employed in the public administration in Article 4, paragraph 3 of the Law on the Rules of Ethics in the Public Administration.

30 Articles 8, 9 of the Law on Prevention of Conflict of Interests in Performing Public Office.

31 Article 47 of the Law on Civil Servants.

32 Article 37, paragraph 4 of the Law on Prevention of Conflict of Interests in Performing Public Office.

33 Articles 37 and 38 of the Law on Prevention of Conflict of Interests in Performing Public Office, Article 5, paragraph 1 of the Law on the Rules of Ethics in the Public Administration.

34 Article 40 of the Law on Prevention of Conflict of Interests in Performing Public Office.

Concurrent additional employment and work: The Law on the Rules of Ethics in the Public Administration stipulates a general prohibition for all persons employed in the public administration to engage in additional employment and work if that could jeopardize or impede in any way their duties within the public administration. The superior must be informed in advance of any additional employment.³⁵

Prohibition on contracting: A public official cannot enter into a contract with public or commercial companies in which he/she has an interest. In addition, contracts are prohibited between a public institution and a natural or legal person or a company, if the public official has a key decision-making role in the evaluation of the bidders and the award conditions, and if at the same time he/she has an interest in a potential counterparty.³⁶

Prohibition to hold financial interests in companies: A public official must not have shares or interests in companies that are exempt from paying taxes or that do business in a tax-free zone, if he/she is competent to decide on granting of the above privileges.³⁷ In addition, a public official who is a representative of a public institution holding interests in a company during the performance of public office must not receive gifts from that company, buy shares in that company or receive any other benefits from the clients of the company.³⁸

Gifts: A public official must not receive or solicit gifts, services or any other privileges, except token or appropriate gifts, as a compensation for performing activities within the scope of his/her office.³⁹ A public official must refuse all gifts that have been gifted, and must return the gift to the gifter. In the event that this is not possible, he/she must hand the gift over to his/her superior. In addition, a public official must inform the superior about any offer that has been made, providing as much information as possible about the event (indicating who offered the gift, and his/her reasons for such conduct, etc.).⁴⁰

Asset declaration: Asset declaration rules apply to office holders, defined by the Law on the Declaration and Audit of Assets, Financial Obligations of the

35 Article 8, paragraphs 1, 2 of the Law on the Rules of Ethics in the Public Administration.

36 Article 21, paragraph 3 of the Law on Prevention of Conflict of Interests in Performing Public Office.

37 Article 22, paragraph 1 of the Law on Prevention of Conflict of Interests in Performing Public Office.

38 Article 22, paragraph 2 of the Law on Prevention of Conflict of Interests in Performing Public Office.

39 The same rule is stipulated for all employees in the public administration in Articles 10 and 11 of the Law on the Rules of Ethics in the Public Administration.

40 Article 23, paragraph 3 of the Law on Prevention of Conflict of Interests in Performing Public Office.

Elected Persons and Certain Public Officials.⁴¹ Office holders and their family members and related persons are required to declare their assets and the origin of their assets.⁴² Assets must be declared upon entering the office, and upon its termination, on a regular basis – annually or upon request by the Senior Inspector for Asset Declaration and Valuation and Conflict of Interest.⁴³

3.2 BOSNIA AND HERZEGOVINA

Legal sources:

- **Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina (BiH)**⁴⁴
- **Law on Civil Service in Governmental Institutions of BiH**⁴⁵
- **Law on Conflict of Interest in Governmental Institutions of the Federation of Bosnia and Herzegovina (FBiH)**⁴⁶
- **Law on Civil Service in Governmental Institutions of the FBiH**⁴⁷
- **Law on Prevention of Conflict of Interest in the Government of the Republic of Srpska (RS)**⁴⁸
- **Law on Civil Servants of RS**⁴⁹

41 Article 3 of the Law on the Declaration and Audit of Assets, Financial Obligations of the Elected Persons and Certain Public Officials defines the personnel who are subject to the obligation to make a declaration and will be referred to in this section on Albania as office holders.

42 Article 1 of the Law on the Declaration and Audit of Assets, Financial Obligations of the Elected Persons and Certain Public Officials, Article 47 of the Law on Civil Servants.

43 Articles 6–9 of the Law on the Declaration and Audit of Assets, Financial Obligations of the Elected Persons and Certain Public Officials.

44 Law on Conflict of Interest in Governmental Institutions of BiH, *Official Gazette of BiH*, Nos. 16/02, 14/03, 12/04, 63/08, 18/12. The Law is applicable to the following personnel: elected officials (Members of Presidency BiH, delegates and members of the Parliamentary Assembly of BiH, secretaries of both Houses of Parliamentary Assembly of BiH, directors, deputy directors, assistant directors of State administration authorities, institutes, agencies and directorates appointed by the Council of Ministers of BiH or the Parliamentary Assembly of BiH, or the Presidency of BiH, executive office holders (Ministers and deputy ministers in the Council of Ministers), advisors (advisors to the elected officials and to the executive officeholders) in the institutions of government in exercising their duties – which will be referred further in this section **public officials**. Similar definitions are also contained in the legislation of FBiH and RS.

45 Law on Civil Service in Governmental Institutions of BiH, *Official Gazette of BiH*, Nos. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10, 40/12, 87/13, 41/16.

46 Law on Conflict of Interest in Governmental Institutions of the FBiH, *Official Gazette of the FBiH*, No.70/08.

47 Law on Civil Service in Governmental Institutions of the FBiH, *Official Gazette of the FBiH*, Nos. 29/03, 23/04, 39/04, 54/04, 67/05, 8/06, 4/12.

48 Law on Prevention of Conflict of Interest in the Government of the RS, *Official Gazette of the RS*, No. 73/08.

49 Law on Civil Servants, *Official Gazette of the RS*, Nos. 118/08, 117/11, 37/12, 57/16.

The regulations of all three levels of government (BiH, FBiH and RS) contain similar definitions of conflict of interest. In accordance with the above regulations, it will be considered that conflict of interest arises when the private interest of elected officials, executive officials or advisors affects, or may affect, the lawful, objective and impartial performance of public office.⁵⁰ Such negative effects on the performance of public office require placing public interest and citizens' interests above any private interest.⁵¹ This is achieved by respecting legal regulations, professional ethics, avoiding personal relationships of dependency on persons that may affect the impartiality of public office.⁵²

Incompatible duties: All three levels of government prescribe the incompatibility of a public office with different types of engagement of the public sector employees. The performance of public office is incompatible with membership in the management or supervisory boards, assembly or other management of public companies and the Privatization Agency, as well as with employment in private companies.

In addition to prohibiting elected officials, executive officials and advisors to perform concurrently the above incompatible duties during their term in public office, this prohibition is also for a certain period after their leaving public office. The duration of this period varies. Thus, at the level of the BiH and the FBiH, the prohibition is set to last for 6 months,⁵³ while in the RS it lasts 3 months after the termination of public office.⁵⁴

Additional restrictions are specified in the regulations at all levels of government for the membership of elected officials, executive officials and advisors in assemblies, supervisory boards and management of **private companies** in which the authority in which those persons are employed has invested capital during a period of four years prior to these persons entering public office, as well as during their term in public office. In addition to this restriction, the law also stipulates that they are not allowed to be members of assemblies, the management or supervisory boards, or to be appointed directors, of companies that cooperate with the state authorities or local government authorities, during their term in public office. In addition, an

50 Article 1, paragraph 4, subparagraph č of the Law on Conflict of Interest in Governmental Institutions of BiH; Article 2, paragraph 1 of the Law on Prevention of Conflict of Interest in the Government of the RS.

51 Article 2, paragraphs 5 and 7 of the Law on Conflict of Interest in Governmental Institutions of BiH.

52 Article 2 of the Law on Conflict of Interest in Governmental Institutions of the Federation of Bosnia and Herzegovina.

53 Articles 4, 5 of the Law on Conflict of Interest in Governmental Institutions of BiH, Article 5 of the Law on Conflict of Interest in Governmental Institutions of the FBiH.

54 Article 5, paragraph 1 of the Law on Conflict of Interest in the Government of the RS.

additional condition prescribed by the above regulations is that the value of the engagement must exceed the prescribed threshold. The prescribed amount varies at different levels of government. At the RS level, the law stipulates that the value of the engagement must exceed KM 30,000.⁵⁵ At the level of the FBiH and the BiH, this additional condition is defined in a slightly different way. Namely, it is envisaged that elected officials, executive officials and advisors cannot be members of the assembly, management and supervisory boards, nor have the status of an authorised person of any private company that concludes contracts whose value exceeds the amount of KM 5,000 with the bodies financed from the budget at any level of government.⁵⁶ Public officials are obliged to resign from any incompatible duty or job on the following day upon entering office.⁵⁷

Elected officials, executive officials and advisors must refrain from voting and from taking official actions relating directly to any commercial company in which they have a financial interest. Otherwise, their vote or the decision would be null and void.⁵⁸

Civil service regulations at all levels of government stipulate certain forms of incompatibility of the performance of civil service with some forms of additional activities. At the level of the FBiH and the BiH, it is stipulated that, for two years after their termination of service, a **civil servant** cannot be employed with the persons to whom he/she was a superior, or in a company that was controlled by him/her. In addition to the prohibition of employment with these persons or in these companies, during the same period after their termination, they are not allowed to receive any compensation from them.⁵⁹

The RS Law on Civil Servants regulates the incompatibility of the civil servant status and the performance of an independent activity. In such events, a civil servant's employment is terminated.⁶⁰ In addition, the civil servants in the RS are prohibited from being members or founders of political parties, from being members of the management, supervisory or other bodies, and from acting as councillors, deputies or to hold any other executive office in the

55 Article 6, paragraphs 1 and 2 of the Law on Prevention of Conflict of Interest in the Government of the RS.

56 Article 6, paragraph 2 of the Law on Conflict of Interest in Governmental Institutions of the FBiH, Article 6, paragraph 2 of the Law on Conflict of Interest in Governmental Institutions of BiH.

57 Article 10 of the Law on Prevention of Conflict of Interest in the Government of the RS.

58 Article 7 Law on Conflict of Interest in Governmental Institutions of BiH, Article 7 Law on Conflict of Interest in Governmental Institutions of the FBiH, Article 6, paragraph 2 of the Law on Prevention of Conflict of Interest in the Government of the RS.

59 Article 16, paragraph 1, sub-paragraph b of the Law on Civil Service in Governmental Institutions of BiH, Article 19, paragraph 1, sub-paragraph b of the Law on Civil Service in Governmental Institutions of the FBiH.

60 Article 22 of the Law on Civil Servants.

authorities at both the republic and at the local government levels.⁶¹ Also, in order to prevent them from having personal gain, the civil servants in the RS are prohibited from participating in any decision-making that may affect the financial or other interests of the civil servant himself/herself or his/her closely related persons.⁶²

At the level of the FBiH and the BiH, with regard to the political engagement of civil servants, certain restrictions apply – from the moment when the candidacy of a civil servant for public office is confirmed or when he/she is appointed to a position in any legislative or executive body at any level of government, it is considered that the civil servant is absent from the civil service. Within one month after loosing in the elections or termination of public office or termination of mandate, a former civil servant may return to the civil service.⁶³

Prohibition of taking action in the event of conflict of interest: At all three levels of government (BiH, FBiH, RS), prohibition of taking action has been stipulated for the public sector employees in cases where there is a real or possible conflict of interest. If elected officials, executive-officials or advisers find themselves in a position to vote or to take official actions on any matter in relation to any private company in which they have a financial interest, **they must refrain from voting and cede the official actions to another competent body.**⁶⁴ Otherwise, their decision or vote will be considered null and void.

Personal services contracts: Elected officials, executive officials and advisers are not allowed, during their term in public office, to enter into a personal services contract with any public company or with any private company that does business with the authorities at any level of government in the BiH, FBiH and RS.⁶⁵

Gifts: The prohibition for public sector employees to receive gifts is defined in the same way at all levels of government. These persons may not receive gifts or other services to perform their public function, they may not receive any additional fees on top of their salary for the activities that are in the

61 Article 23, paragraph 1, Article 24, paragraph 1 of the Law on Civil Servants.

62 Article 23, paragraph 5 of the Law on Civil Servants.

63 Article 19, paragraph 1 of the Law on Civil Service in Governmental Institutions of the FBiH, Article 16, paragraph 1, sub-paragraphs c, d of the Law on Civil Service in Governmental Institutions of BiH.

64 Article 7 of the Law on Conflict of Interest in Governmental Institutions of BiH, Article 7 of the Law on Conflict of Interest in Governmental Institutions of the FBiH, Article 6, paragraph 2 of the the Law on the Prevention of Conflict of Interest in the Government of the RS.

65 Article 8 of the Law on Conflict of Interest in Governmental Institutions of the FBiH, Article 7 of the the Law on the Prevention of Conflict of Interest in the Government of the RS, Article 7 of the Law on Conflict of Interest in Governmental Institutions of BiH.

scope of their public function. Gifts up to a certain value can be kept and do not have to be reported. However, any gifts in the form of securities or cash cannot be kept under any circumstances.

The regulations at the level of the BiH, FBiH and the RS differ from one another in terms of the value of the gift that may be kept. Elected officials, executive officials and advisors in the governmental institutions of the BiH and the FBiH are allowed to receive gifts as a compensation for the performance of public office if the value of such gifts does not exceed 200 KM.⁶⁶ All gifts exceeding that value must be handed over to the authority on whose behalf the elected officials perform the executive office,⁶⁷ or to the bodies that appointed or elected them and on whose behalf they perform their public office.⁶⁸ Also, if there are any doubts about the value of a gift, a person performs a public office may request the bill from the gifter. The prohibition to receive gifts applies not only to persons who perform public office, but also to all persons who receive gifts on their behalf.⁶⁹

At the level of the BiH, it is envisaged that institutions are obliged to submit data on received gifts to the Commission for Decision on Conflict of Interest, which maintains the central registry of all gifts received by elected officials, executive officials and advisers during the performance of their public office. The elected officials, executive officials and advisors in the RS may keep a gift whose value does not exceed KM 300. If its value of the gift exceeds that limit, or if it is in the form of money or cheques, irrespective of the value, they are obligated to report it to the Republic Commission for the Establishment of Conflict of Interest and hand it over to the authorities that appointed or elected them and on whose behalf they perform their public office.⁷⁰ The prohibition for civil servants to receive or offer gifts for personal gain applies also to the civil servants in the RS, as well as to the civil servants in the BiH and FBiH.⁷¹

Concurrent additional employment and work: During the performance of public office, elected officials, executive officials and advisors must not

66 Article 11, paragraph 2 of the Law on Conflict of Interest in Governmental Institutions of the FBiH.

67 Article 11 of the Law on Conflict of Interest in Governmental Institutions of BiH.

68 Article 11, paragraph 4 of the Law on Conflict of Interest in Governmental Institutions of the FBiH.

69 Article 10, paragraph 8 of the Law on Conflict of Interest in Governmental Institutions of BiH.

70 Article 11 of the Law on Prevention of Conflict of Interest in the Government of the RS.

71 Article 23, paragraphs 2, 3 of the Law on Civil Servants, Article 17, paragraph 3, sub-paragraph b of the Law on Civil Service in Governmental Institutions of the FBiH, Article 14, paragraph 3, sub-paragraphs b of the Law on Civil Service in Governmental Institutions of BiH.

act as representatives of and represent any foundation or association that is financed from the public budget in the amount exceeding KM 10,000 annually (at the level of the FBiH and the BiH),⁷² or exceeding KM 100,000 (at the level of the RS). If the foundation or association is not financed from a public budget, these restrictions do not apply.

As far as civil servants are concerned, restrictions are imposed at all levels of government in terms of carrying out additional activities.

At the level of the BiH and the FBiH, it is stipulated that a civil servant must not perform additional work if he/she receives remuneration for such work, unless that has been approved by the Minister or the manager of the institution in which he/she is employed.⁷³ In the Republic of Srpska, the Government adopts a separate Decree specifying the conditions and circumstances in which civil servants are allowed to have additional work and adopts a decision on each individual civil servant's request for approval of additional work.⁷⁴

Asset declarations: Persons who perform public office at the level of the BiH and the FBiH are obliged to submit a declaration to the BiH Central Election Commission, and to disclose their personal financial situation.⁷⁵ This obligation of persons performing public office exists also in the territory of the Republic of Srpska, where these persons report on their personal financial status and circumstances to the Republic Commission for the Identification of Conflicts of Interest.⁷⁶

Civil servants in the BiH and the FBiH governmental institutions are also obliged to disclose all information relating to their personal assets upon entry into service. In addition, the above information must be provided also for the civil servant's close family members.⁷⁷ At the level of the RS, this obligation of civil servants has not been stipulated.

Competence for the implementation of laws on conflict of interest: To ensure the implementation the Law on Conflict of Interest, a Commission

72 Article 11 of the Law on Conflict of Interest in Governmental Institutions of BiH, Article 12 of the Law on Conflict of Interest in Governmental Institutions of the FBiH, Article 8 of the the Law on the Prevention of Conflict of Interest in the Government of the RS.

73 Article 16, paragraph 1, sub-paragraph a of the Law on Civil Service in Governmental Institutions of BiH, Article 19, paragraph 1, sub-paragraph a of the Law on Civil Service in Governmental Institutions of the FBiH.

74 Article 24, paragraph 2, 3 of the Law on Civil Servants.

75 Article 12 of the Law on Conflict of Interest in Governmental Institutions of BiH, Article 13 of the Law on Conflict of Interest in Governmental Institutions of the FBiH.

76 Article 12 of the Law on Conflict of Interest in Governmental Institutions of BiH, Article 13 of the Law on Conflict of Interest in Governmental Institutions of the FBiH.

77 Article 16, paragraph 2 of the Law on Civil Service in Governmental Institutions of BiH, Article 19, paragraph 2 of the Law on Civil Service in Governmental Institutions of the FBiH.

for Deciding on Conflicts of Interest has been established at the level of Bosnia and Herzegovina, while in the Republic of Srpska, this function is performed by the Republic Commission for the Identification of Conflicts of Interest. At the level of the Federation, the Central Election Commission is in charge of determining whether a particular situation is a conflict of interest in accordance with the Law on Conflict of Interest in Governmental Institutions of the FBiH.

3.3. KOSOVO*

Legal sources:

- **Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials;**⁷⁸
- **Law on Prevention of Conflict of Interest in Discharge of Public Functions**⁷⁹
- **Law on the Civil Service.**⁸⁰

The above laws stipulate the obligations of public officials and civil servants to subordinate their private interests to the public interest, as well as a number of actions that they must take to prevent and resolve conflicts of interest to preserve their personal integrity and the integrity of the institution in which they perform public office, or public service.

A separate article prohibits a series of acts by senior public officials that may give rise to a conflict of interest, which boils down to: soliciting or receiving compensation in connection with the performance of public office or voting in a certain way, using confidential information obtained during the performance of public office or using influence for personal gains.⁸¹

Consulting and reporting obligation: In the event that a senior public official⁸² has any doubts that he/she is in a situation of a conflict of interest, he/she should consult his/her immediate supervisor or his/her managing

78 The Law No. 04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials and the Law on Prevention of Conflict of Interest in Discharge of Public Functions are applicable to restricted number of officials, which will be referred to further in this section as **public officials**.

79 Law on Prevention of Conflict of Interest in Discharge of Public Functions, Law No. 04/L-051.

80 Law on the Civil Service, Law No. 03/L-149.

81 Article 9 of the Law on Prevention of Conflict of Interest in Discharge of Public Functions.

82 A detailed definition of the term “senior public officials” is contained in Article 4 of the Law on Prevention of Conflict of Interest in Discharge of Public Functions.

body.⁸³ Upon consideration of the official's submission, his/her superior or managing body may propose appropriate actions to resolve the conflict of interest or may contact the Anti-Corruption Agency.

In every particular case when he/she identifies his/her private interest in the decision-making procedure in a specific matter, a senior public official **must declare the existence of the interest** to his/her supervisor or the managing body.⁸⁴ The obligation to notify the superior or the managing body exists also when a senior public official estimates that there is an attempt to influence his/her will or a pressure to vote or decide in a certain way. In addition to reporting attempts to influence his/her will, a senior public official is obligated to try to determine the source of such influences, and to try to provide witnesses of such events, in order to eliminate any suspicion that he/she has succumbed to such influences and has decided or acted contrary to the legal principles.

Concurrent additional employment and work: In the course of the performance of public office, a senior public official may perform office in a political party, as well as duties in the area of sport, science, and culture activities.⁸⁵ In addition, he/she may be a member of the management board of a non-governmental organisation in the fields of sport, culture or any other humanitarian activity, without the right to receive remuneration.⁸⁶ If a senior public official who is at the same time a member of the management board of an NGO had a possibility to influence the decision on the allocation of funds from the state budget, that NGO would not be eligible to receive budget funds.

Transfer of management rights in companies: In the course of the performance of public office, a senior public official is obligated to transfer his/her management rights in a company to another natural or legal person.⁸⁷ For his/her part, a senior public official must not give the person to whom he/she has transferred the management rights any information or any other instructions, while the person to whom the management rights have been transferred must notify the senior public official of all business relations of the company with public companies, companies with more than 5% of public equity or any other public institution.

Incompatibility with public office: A senior public official cannot be appointed member of the management board or the supervisory board of

83 Article 8 of the Law on Prevention of Conflict of Interest in Discharge of Public Functions.

84 Article 13 of the Law on Prevention of Conflict of Interest in Discharge of Public Functions.

85 Article 10 of the Law on Prevention of Conflict of Interest in Discharge of Public Functions.

86 Article 11 of the Law on Prevention of Conflict of Interest in Discharge of Public Functions.

87 Article 14, paragraph 2 of the Law on Prevention of Conflict of Interest in Discharge of Public Functions.

a company, while this restriction does not apply to public companies, non-profit organisations or organisations in the field of science, sport, culture, or education.⁸⁸ A senior public official is not allowed to engage in private activities such as advocacy, notary activity, consulting, legal representation, or acting on behalf of for-profit or non-profit organisations.⁸⁹

Post-public office restrictions: For a period of one year upon leaving public office, a senior public official is not allowed to enter into employment in a public or private company, to be appointed to a managerial position in a public or private company, or to control their operations if he/she used to be responsible for controlling their operations during a period of the two years prior to the termination of public office.

Gifts: A senior public official is not allowed to receive gifts or any other privileges for himself/herself or for his/her family members as a remuneration for actions performed in the course of his/her official duties, with the exception of appropriate and token gifts. A senior public official is not allowed to receive any gift in the form of money, irrespective of its value.⁹⁰

If he/she was unable to refuse a gift, and if the gift was given to him/her without prior notice, a senior public official is obligated to notify his/her superior. All gifts that have been received must be registered in a special register, maintained by an official authorised to maintain the register of gifts for the public authority.⁹¹ The register of gifts is submitted regularly to the Anti-Corruption Agency for scrutiny. The possibility has also been stipulated for the Anti-Corruption Agency to allow a gift to be kept, if that would not pose an unauthorised influence on the performance of public office.

Civil servants are not allowed to solicit or receive gifts, favours, or any other privileges as a remuneration for actions performed in the course of their official duties for themselves, their spouses, or family members.⁹² They may receive only token gifts of no real market value or token gifts if they obtain an appropriate approval from the competent authorities. In addition to that, civil servants are not allowed to offer gifts to other equal, higher or lower-ranked civil servants for personal gains.

Asset and income declarations: A separate law regulates the obligation of senior public officials and their family members (parents, spouses, underage

88 Article 15, paragraphs 1, 2, 3 of the Law on Prevention of Conflict of Interest in Discharge of Public Functions.

89 Article 16, paragraph 2 of the Law on Prevention of Conflict of Interest in Discharge of Public Functions.

90 Article 11 of the Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials.

91 Article 12 of the Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials.

92 Article 53 of the Law on the Civil Service.

children) to declare their assets and income.⁹³ They are obligated to declare assets and income upon entry to public office, annually, upon leaving public office, and upon request by the Anti-Corruption Agency.⁹⁴

3.4. MACEDONIA

Legal sources:

- **Law on Prevention of Conflicts of Interest**⁹⁵
- **Law o Prevention of Corruption**⁹⁶

The Law on Prevention of Conflicts of Interest stipulates that public officials (as personnel defined by the Law on Prevention of Conflict of Interest)⁹⁷ and **civil servants** must not be guided by private, family, or religious interests, and must not succumb to the pressures and promises by their superiors.⁹⁸ To that end, a separate article lists the actions that public officials and civil servants must not take, as they can give rise to a conflict of interest.⁹⁹ Some of the prohibited actions are soliciting gifts, remuneration, or counter favours for performing public office and civil service activities, abuse of power, promising employment, imposing unlawful influence on the decision-making in a public authority to ensure personal or closely related person's interest.

Conduct in case of conflict of interest: If a public official or a **civil servant** suspects that there is a conflict of interest in a particular case, he/she is obliged to contact the State Commission for the Prevention of Corruption. In

93 Articles 5, 13 of the Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials for all public officials determine the exact contents of the information that is to be declared.

94 Articles 6–10 of the Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials.

95 Law on Prevention of Conflicts of Interest, *Official Gazette of Republic of Macedonia*, No. 70, adopted on 5 June 2007.

96 Law o Prevention of Corruption, *Official Gazette of Republic of Macedonia*, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010.

97 The Law on Prevention of Conflicts of Interest is applicable to the following personnel: the President of the Republic of Macedonia, appointed Ambassadors and envoys of the Republic of Macedonia abroad and nominated persons by the President of the Republic of Macedonia; elected or appointed functionary in the Assembly of the Republic of Macedonia, the Government of the Republic of Macedonia, the authorities of the state administration, courts and other authorities and organisations performing certain expert, administrative and other duties within the framework of rights and obligations of the Republic of Macedonia, the municipalities and the City of Skopje, as well as other persons discharging public authorisations.

98 Article 5 of the Law on Prevention of Conflicts of Interest. Similar obligation is stipulated also in Article 2, paragraph 2 of the Law on Prevention of Corruption.

99 Article 6 of the Law on Prevention of Conflicts of Interest.

addition, he/she must take the necessary actions to prevent the influence of the private interest on his/her actions.

If a public official or a civil servant finds that there are circumstances that clearly indicate a conflict of interest, he/she must request to be exempted from or must cease to perform certain activities.¹⁰⁰ He/she may also be excluded against his/her will from carrying out certain activities, in accordance with a decision by the superior or upon request of the person having an interest in that particular matter.

In case of a discussion within the public authority in which a public official or a civil servant performs his/her public office or public service about matters in which he/she has a private interest, the public official or the civil servant must declare his/her personal interest before the beginning of the discussion.¹⁰¹

Transfer of interest in companies: If a public official or a civil servant, when entering public office or civil service, has an interest in a company, he/she must transfer the management rights to another natural or legal person.¹⁰²

Contractual relations: An elected or appointed public official, as well as any other civil servant in a public company or institution, cannot enter into contracts or any other business relations with any legal person founded by him/her or a member of his/her family or with a legal person in which a member of his/her family is a responsible person. If such business relationships have been established before this person has entered public office or civil service, the public official or the civil servant is obliged to exclude himself/herself from the decision-making process.¹⁰³

Performance of other activities: A public official or a civil servant who, when entering public office or civil service, is engaged in specific activities must delegate such activities during his/her term in public office, i.e. serving in civil service, to another person that he/she chooses.¹⁰⁴

Performance of other offices: A person who has been elected or appointed cannot perform any office, duty or activity that is not in accordance with his/her public office. In addition, he/she cannot perform any other profit-making activity that is incompatible with the public office. A public official cannot concurrently hold the position of a responsible person or member of the

100 Article 12 of the Law on Prevention of Conflicts of Interest.

101 Article 13 of the Law on Prevention of Conflicts of Interest.

102 Article 9 of the Law on Prevention of Conflicts of Interest.

103 Articles 22, 23, 24 of the Law on Prevention of Corruption.

104 Article 10 of the Law on Prevention of Conflicts of Interest.

managing body of a public company, public institution, or other legal person with a specific percentage of state equity.¹⁰⁵

Deciding on recruitment: A public official or a civil servant who decides on recruitment, or who is member of the body responsible to decide on that matter, is obliged to notify his/her manager of all recruitment procedures that may give rise to a conflict of interest. After the superior has established the nature of the relationship between the candidate for employment and the public official, or the civil servant, the superior must take all actions necessary to prevent such conflict of interest.¹⁰⁶

Gifts: The law expressly prohibits public officials to receive gifts whose value exceeds EUR 100, while gifts in the form of money, securities, gold and other valuables must not be received regardless of their value.¹⁰⁷ If a gift could not be returned, public officials must report the acceptance of the gift to the competent authority, indicating the witness and providing other evidence.¹⁰⁸ Also, public officials are obliged to submit a written report of the receipt of the gift to the appointing authority within 48 hours.

With respect to **civil servants**, the Law on Civil Servants contains only one provision on the prohibition of receiving gifts. Any action that is contrary to this provision is considered a disciplinary violation.¹⁰⁹

Post-office restrictions: For a period of one year after the termination of office, or civil service, a former public official, or a former civil servant, is not allowed to perform audit in any legal person, in which he/she used to perform auditing or control activities during a period of one year before the termination of office. Also, during the same period, a former public official, or a former civil servant is not allowed to enter into contractual or any other business relations with the public authority in which he/she was previously employed. For a period of two years after the termination of public office, or civil service, a public official, or a civil servant, is not allowed to represent or act on behalf of a legal or a natural person before the public authority in which he/she was previously employed if he/she participated in the decision-making in that specific case.¹¹⁰

All persons employed in the public sector who, during a period of three years after the termination of service or office, wish to establish a company or to start

105 Article 21 of the Law on Prevention of Corruption.

106 Article 11 of the Law on Prevention of Conflicts of Interest; Article 29 of the Law on Prevention of Corruption.

107 Article 15 of the Law on Prevention of Conflicts of Interest; Article 30 of the Law on Prevention of Corruption.

108 Article 16 of the Law on Prevention of Conflicts of Interest.

109 Article 68 of the Law on Civil Servants.

110 Article 17 of the Law on Prevention of Conflicts of Interest.

an activity to generate profit in the area in which they performed their office or service must notify the State Commission for the Prevention of Corruption.¹¹¹ In addition, during the same period after the termination of office or service, public sector employees cannot acquire interests in a private company which they supervised during their term in public office or civil service.¹¹²

Membership in companies' management or supervisory boards: A public official or a civil servant who is a member of the managing body of a company, during his/her term in public office or civil service, must transfer his/her rights in the company to another person who will perform them on his/her behalf. In addition, he/she cannot be appointed member of a company's supervisory board.

The above restrictions do not apply to the membership of a public official or a civil servant in the managing or supervisory board of non-profit organisations, citizen associations, or other legal persons that perform their activities in the field of sports, science or culture. It should be noted that in these circumstances they do not have the right to receive remuneration.

A public official during his/her term in office, or a civil servant during the performance of public office, and for a period of three years after their termination, cannot acquire an interest in a company in which he/she or the public authority in which he/she was employed exercises or exercised supervision over the operations.¹¹³ If they do acquire an interest in such a company, they must notify the State Commission for the Prevention of Corruption.

Abuse of information: A public official or a civil servant who is concurrently a member of a citizen association must not abuse any information that he/she may obtain in the course of performing office, or civil service, and must not secure any gain for himself/herself or his/her closely related persons in the course of performing activities in such association.¹¹⁴

Asset declaration: The Law on Prevention of Corruption stipulates the obligations of public officials and civil servants to file an asset declaration upon entering office, or upon entering the civil service. Upon termination of office, or civil service, he/she must file an asset declaration. In case of any change in their assets status, a public official or a civil servant must report it to the State Commission for the Prevention of Corruption.¹¹⁵

111 Article 27 of the Law on Prevention of Corruption.

112 Article 28, paragraph 1 of the Law on Prevention of Corruption.

113 Article 19 of the Law on Prevention of Conflicts of Interest.

114 Article 20 of the Law on Prevention of Conflicts of Interest, Article 31 of the Law on Prevention of Corruption.

115 Articles 33–36 of the Law on Prevention of Corruption.

3.5. MONTENEGRO

Legal sources:

- **Law on Prevention of Corruption**¹¹⁶
- **Law on Civil Servants and State Employees**¹¹⁷

The Law on Prevention of Corruption governs the issue of conflicts of interest in the course of performing public office. The Law is applicable to a special group of public officials,¹¹⁸ and specifies the rules for how to manage it and prevent it. The civil servants' rights and obligations where it relates to conflicts of interest are governed by the Law on Civil Servants and State Employees.

The main obligation of any public official and any civil servant is to subordinate his/her private interests to the public interest, as well as to avoid conflicts of interest.¹¹⁹ In addition, **civil servants** are obligated to act in a manner that would not jeopardize the citizens' trust in them as public servants, the reputation of the authority for which they work, the impartiality of their work, and to eliminate any possibility for the creation and development of corruption.¹²⁰

Should a public official have any doubt about the existence of a conflict of interest, or that it influences the performance of public office, he/she is obligated to take actions to resolve the (potential) conflict of interest situation and to inform the Agency of the situation, so that the Agency may issue an opinion about it.¹²¹

Aware of the importance and danger of potential conflicts of interest, the legislator has foreseen the obligation of civil servants to report such situations.¹²² In that respect, **a civil servant** must inform his/her immediate superior about:

116 Law on Prevention of Corruption, *The Official Gazette of of the Republic of Montenegro*, No. 53/2014. The Law on Prevention of Corruption is applicable to the following personnel: persons elected, appointed or assigned to a post in a state authority, state administration body, judicial authority, local self-government body, local government body, independent body, regulatory body, public institution, public company, or other business or legal person exercising public authority, as well as persons whose election, appointment or assignment to a post is subject to consent by an authority – which will be referred to further in this section as **public officials**.

117 Law on Civil Servants and State Employees, *The Official Gazette of of the Republic of Montenegro*, Nos. 39/11, 50/11, 66/12, 34/14, 53/14, 16/16.

118 The definition of the term “a public official” is specified in Article 3 of the Law on Prevention of Corruption.

119 Article 7 of the Law on Prevention of Corruption; Articles 8, 69 of the Law on Civil Servants and State Employees.

120 Article 67 of the Law on Civil Servants and State Employees.

121 Article 28 of the Law on Prevention of Corruption.

122 Article 70 of the Law on Civil Servants and State Employees.

- any private interest in connection with the activities of the public authority in which he/she performs public service,
- any financial interests or any other interests he/she holds in companies for which the public authority in which he/she is employed has administrative duties according to its competencies,
- any natural or legal persons with which he/she has had contractual or business relations during a period of two years prior to becoming employed in a public authority, in case the public authority in which he/she is employed has administrative duties in relation to these natural or legal persons according to its competencies.

Participation in discussions: A public official who, in a public authority, needs to participate in discussions or to decide on a matter in which he/she or his/her related persons have a private interest, is obligated to inform the other participants in the discussion or the decision-making process. Such information is to be submitted to the authority in which he/she performs public office, which will in turn request the opinion of the Agency on the existence of a conflict of interest. If, in the opinion of the Agency, a conflict of interest does exist, the public official cannot participate in that discussion or decision-making process.

Performance of other public duties: A public official may, without limitations, be involved in sport, science, education, culture or art activities.¹²³ The only obligation is to report to the Agency any income he/she may obtain from such activities.

A civil servant may engage in additional work outside working hours or provide services to a natural or legal person if he/she has obtained the approval of the head of the public authority, and provided that the public authority does not supervise these activities and work, if such additional work does not give rise to a conflict of interest or poses a hindrance for the proper performance of his/her civil servant duties. For performing work in the area of science, sport, or humanitarian activity, as well as for publishing professional papers and giving lectures at seminars, it is sufficient to notify the head of the public authority in advance.¹²⁴

Management rights in companies: Upon entry into public office, a public official is obligated to transfer to another natural or legal person his/her prior management rights or duties in a company or an institution. If a public official is a member of the management body of such a legal person, he/she is

¹²³ Article 9 of the Law on Prevention of Corruption.

¹²⁴ Article 74 of the Law on Civil Servants and State Employees.

obligated to resign from that body.¹²⁵ **A civil servant** is also not allowed to establish a company or engage in entrepreneurial activities.

Membership in companies' management bodies: A public official cannot be appointed director, legal representative, member of the management body or the supervisory body, or to be a member of the management of a private company. Upon entry into public office, a public official is obligated to resign from all such offices and duties. In addition, he/she is not allowed to perform such offices or duties in public companies, public institutions, or other legal persons.¹²⁶ If during the term in public office, he/she accepts to perform an additional duty or office, the public official must resign from his/her public office.

A civil servant cannot be appointed chairperson or member of the management body or the supervisory body of a company. Otherwise, a civil servant may perform such duties in public companies, public institutions, or legal persons owned by the state or the municipality, sports and science associations.

Service and business cooperation contracts: A public official cannot enter into service contracts with a public company or with a public authority or a company that is in contractual relationship with the authority in which he/she is employed or works, and if the value of such contracts exceeds EUR 1,000 annually. In addition, the public authority in which the public official is employed or works cannot enter into a contract with a legal person in which the public official or persons related to him/her has a private interest.¹²⁷

Post-office restrictions: Public officials are subject to a set of restrictions relating to any future employment and activities for a period of two years after leaving public office.¹²⁸

During the specified period, a former public official cannot represent or act as a legal representative or attorney of a legal person, entrepreneur, or an international organisation that has a contractual relationship with the authority for which he/she used to work/perform a public office. Also, during the said period, he/she must not enter into employment with a legal person, entrepreneur or an international organisation that would benefit from any decision made by the authority in which the public official used to perform public office.

125 Article 10, paragraph 2 of the Law on Prevention of Corruption.

126 In accordance with Article 12, paragraph 3 of the Law on Prevention of Corruption, a public official may be appointed chairperson, member of the management body or supervisory of science, education, culture, humanitarian, and sport institutions.

127 Article 14, paragraphs 1, 2, 3 of the Law on Prevention of Corruption.

128 Article 15 of the Law on Prevention of Corruption.

Also, upon the termination of public office, a former public official must not represent a legal or natural person in relation to a case in which the public official was responsible to decide during his/her public function. In addition, he/she is prohibited to enter into any contractual or business relationships with the authority in which he/she performed public office. The same restriction applies also to **civil servants**.¹²⁹

Another prohibition that is stipulated is the prohibition for a public official to use the knowledge and information obtained during the performance of public office for personal or another person's gain, or in a way that may cause damage to others.¹³⁰ The same restriction applies also to **civil servants**. With that respect, it should be noted that a former public official is prohibited from performing audit and management activities in any legal person in which he/she used to perform supervisory or controlling activities, during a period of one year prior to leaving office. A similar prohibition on post-service employment applies to any **civil servant** in the capacity of a director, manager or consultant in a commercial company over which the public authority in which the civil servant used to be employed performed auditing or control activities.¹³¹

Receiving gifts and entering into sponsorship contracts: In principle, any public official, his/her spouse or partner and his/her children, are prohibited from receiving gifts, with the exception of token gifts and appropriate gifts whose value does not exceed EUR 50. It is expressly prohibited to receive gifts in the form of money, securities and precious materials, irrespective of their value.¹³²

Any public official is obligated not only to refuse the gift that has been offered, but also to compile a report about any gift offer that has been made. In the event that he/she was unable to refuse a gift, the public official must not keep the gift but hand it over to the authority in which he/she performs public office, where it will be registered in the register of received gifts. Any gift whose value exceeds the value specified for the appropriate gifts becomes the state or municipal property.

On the other side, a public official must not conclude, in his/her own name or in the name of the authority in which he/she performs public office, a sponsorship contract or receive donations that affect or could affect the legality, impartiality or objectivity of the work of the public authority to which he/she is affiliated. That is why a public authority is obligated to submit to

129 Article 77 of the Law on Civil Servants and State Employees.

130 This restriction does not apply to any information that is otherwise available to public.

131 Article 77 of the Law on Civil Servants and State Employees.

132 Article 16 of the Law on Prevention of Corruption.

the Agency a report on all received donations and sponsorships, so that the Agency can evaluate whether they may have influenced the legality, impartiality or objectivity of the work of the authority in which the public official performs public office.

Similarly, **civil servants** are not allowed to receive gifts in the form of money, securities or precious materials, irrespective of their value. If a gift that is offered is appropriate, and its value does not exceed EUR 50, a civil servant may receive it, with the obligation to report it to the public authority in which he/she works. If a civil servant was unable to refuse a gift that he/she is not allowed to receive, he/she must hand it over to the public authority in which he/she works.¹³³

Asset and income declarations: A public official is obligated to submit to the Agency a declaration of his/her income and assets, including income and assets of his/her spouse or partner, and children, if they live in the same household:¹³⁴

- upon entering office
- annually, during the term in office
- in the event of any major changes (an increase in assets over EUR 5,000)
- upon request of the Agency
- upon leaving office, and subsequently, annually, for the following two years.

Sanctions for violation of the provisions of the Law: The Agency conducts a procedure to establish violations of the provisions on the prevention of conflicts of interest, restrictions relating to the performance of public functions, gifts, donations, sponsorships, etc., *ex officio* or upon request by the authority in which the public official used to perform or currently performs public office. It may also take place upon request from the authority competent for the nomination, election or appointment of the public official, or upon request from another public authority, natural or a legal person.¹³⁵

If it is established, in a final and enforceable decision, that the law relating to the prevention of conflicts of interest during the performance of public office has occurred been violated, that is considered negligent performance of public office. The Agency is obliged to inform the authority in which the public

133 Articles 72, 73 of the Law on Civil Servants and State Employees.

134 The contents of the declaration have been specified in detail in Article 24 of the Law on Prevention of Corruption.

135 Articles 31–41 of the Law on Prevention of Corruption.

official performed his/her office, and the authority competent for election and the appointment of a public official in order to initiate the procedure for his/her dismissal, suspension or pronouncement of a disciplinary sanction.¹³⁶

3.6. SERBIA

Legal sources:

- **Law on the Anti-Corruption Agency**¹³⁷
- **Law on Civil Servants**.¹³⁸

The Law on Anti-Corruption Agency stipulates the rules for resolving public officials' conflicts of interest. The Law defines a special category of personnel which are considered to be public officials.¹³⁹ The Law on Civil Servants stipulates special rules that apply to civil servants.

The first provisions of the Law on Anti-Corruption Agency on resolving conflicts of interest specify the obligation of a public official, during the performance of public office, not to subordinate the public interest to his/her private interest, to maintain the trust of citizens through conscientious and responsible performance of public office, and to not use public office for personal gains. The Law also stipulates the general obligation of any public official to refrain from entering into any relationship that could affect his/her impartiality, and when such relations cannot be avoided, a public official is obliged to take every action necessary to protect the public interest.¹⁴⁰

To that end, a public official is obliged, upon entering office, **to notify the Agency and the immediate superior of any suspicion of a potential conflict of interest or to report any existing conflict of interest**.¹⁴¹ If it has been established that the conflict of interest indeed exists, the Agency will notify the authority in which the public official performs public

¹³⁶ Article 42 of the Law on Prevention of Corruption.

¹³⁷ Law on the Anti-Corruption Agency, *Official Gazette of the Republic of Serbia*, Nos. 97/2008, 53/2010, 66/2011, 67/2013, 11/2013.

¹³⁸ Law on Civil Servants, *Official Gazette of the Republic of Serbia*, Nos. 79/2005, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008, 104/2009, 99/2014.

¹³⁹ The Law on the Anti-Corruption Agency is applicable on the following personnel: every person elected, appointed or nominated to the bodies of the Republic of Serbia, autonomous province, local self-government unit, bodies of public enterprises and companies, institutions and other organisations whose founder, and/or member is the Republic of Serbia, autonomous province, local self-government unit and other person elected by the National Assembly which will be referred to further in the text as **public officials**.

¹⁴⁰ Article 27 of the Law on the Anti-Corruption Agency.

¹⁴¹ Article 32 of the Law on the Anti-Corruption Agency.

office about it, including a proposal for actions to eliminate the conflicts of interest. **The obligation to notify** the Agency exists if a public official finds in the course of the performance of public office that he/she is exposed to unauthorised influence.¹⁴²

Prohibition to hold multiple public offices: A public official is not allowed to hold multiple public offices, unless he/she has obtained approval from the Agency for it. The above approval is not required for a public official who has been elected directly by the citizens for the performance of other offices to which he/she has also been elected directly by the citizens.¹⁴³

Concurrent additional employment and work:¹⁴⁴ A public official is not allowed to perform other duties or activities that require full-time engagement during the term in public office. At the same time, the Law on Civil Servants stipulates in principle that a civil servant may perform additional work, subject to the consent by his/her manager.¹⁴⁵

Public officials and all **civil servants** who engage in scientific research, cultural and artistic, or sport activities, provided that that does not jeopardize the performance of public office, or the civil service, do not need any approval from their superior. Otherwise, a public official is obliged to cease to perform any additional work, and a civil servant may be prohibited by the manager to continue to perform such work.

Public officials, as well as **civil servants**, have a possibility to submit to the Agency a request for a consent for additional work. With the request, a public official must submit a positive opinion from his/her appointing authority, while **a civil servant** must submit his/her immediate superior's consent.

If a public official, upon entering public office, is already engaged in another job or activity, he/she is obliged to notify the Agency about it, and the Agency will decide whether this creates a conflict of interest, and whether the public official should cease to perform such job or activity.

Establishing companies: In addition to the prohibition of additional employment and work, public officials are also prohibited to establish companies during their term in office.¹⁴⁶ In addition, a public official is not allowed to manage or represent private equity in a company, institution or any other private legal person. Upon taking office, a public official must transfer his/her management rights in a company to an unrelated person who will

142 Article 37 of the Law on the Anti-Corruption Agency.

143 Article 28 of the Law on the Anti-Corruption Agency.

144 Articles 30, 31 of the Law on the Anti-Corruption Agency.

145 Article 26, paragraph 1 of the Law on Civil Servants.

146 Articles 33, 34 of the Law on the Anti-Corruption Agency.

perform them until the termination of the public office.¹⁴⁷ By transferring the management rights to an unrelated person, that person becomes a related person, and the public official must not give that person any directions or any information, or influence in any way the performance of business activities in the company.

If a legal person in which a public official **owns more than 20% of the stake or shares** participates in a procedure that may end with the award of a contract with public authorities or legal persons with more than 20% of public equity, he/she must notify the Agency about it.¹⁴⁸ The rules on the prohibition of establishing companies and engaging in independent activities that apply to public officials apply also to **civil servants** accordingly.¹⁴⁹

With respect to affiliation in a legal person, **a civil servant** cannot be appointed director, deputy or assistant director of a legal person, and may be appointed member of the managing body only if he/she has been nominated by the Government or a public authority.¹⁵⁰

Post-public office restrictions: Upon leaving public office, for the following two years, the public official is not allowed to enter into employment or business cooperation that is connected with the public office he/she used to hold, unless he/she has obtained consent of the Agency.¹⁵¹

Gifts: The general rule is that a public official, as well as any person related to him/her, may not receive **gifts related to** the performance of public office, and is obliged to refuse them.¹⁵² A public official may receive only token and appropriate gifts, which must not be in the form of money or securities.¹⁵³ Token gifts must be handed over to the competent authority in charge of public assets management, unless the value of such gift is less than 5% of the average monthly wage in the Republic of Serbia. With respect to appropriate gifts, a public official must not keep them if their value exceeds 5% of the average monthly wage.

If a public official was not able to not refuse a gift, the gift must be handed over to the competent authority in charge of public assets management, and the Agency and the superior must be notified about it. A public official is obliged to notify the public authority, organisation or public service in which he/she is employed about all gifts that he/she has received, and a separate

147 Article 35, paragraphs 1, 2 of the Law on the Anti-Corruption Agency.

148 Article 36 of the Law on the Anti-Corruption Agency.

149 Article 28, paragraph 2; Article 31 of the Law on Civil Servants.

150 Article 29 of the Law on Civil Servants.

151 Article 38 of the Law on the Anti-Corruption Agency.

152 Articles 39, 42 of the Law on the Anti-Corruption Agency.

153 Article 39 of the Law on the Anti-Corruption Agency.

register of such gifts must be maintained.¹⁵⁴ The Law on Civil Servants stipulates the same rules for receiving gifts by **civil servants**.¹⁵⁵

Asset declaration: A public official¹⁵⁶ is obliged to submit a declaration of his/her assets and income, including the assets and income of his/her spouse, partner, and underage children, if they live in the same family household, and the contents of such declarations are regulated in detail by the Law on Anti-Corruption Agency.¹⁵⁷ The obligation to declare assets and income applies also to any significant change of the previously declared information that has occurred during the term in public office.

The Agency maintains the Assets Register including the information from the declarations (income level, ownership of immovable assets, vehicles, savings deposits, apartment tenures), based on which public officials' asset declarations are cross-checked with their assets status. The Law also stipulates the Agency's cooperation with financial organisations and companies, if that is necessary to obtain information. If, in the course of the monitoring of the assets status, the Agency establishes any inconsistency between the actual status and the information in the declaration, the Agency is authorised to establish the causes of such discrepancies, to notify the authority in which the public official performs office, and to order the public official to submit the information necessary to assess the actual value of his/her assets.

4. WHAT ARE THE KEY ISSUES RELATING TO THE IMPLEMENTATION OF LEGAL PROVISIONS ON CONFLICTS OF INTEREST, AND HOW TO OVERCOME THEM?

In all the countries analysed in this book, numerous regulations dealing with conflict of interest and strengthening the integrity in the public sector have been adopted. They focus on raising awareness about the potential problem of conflict of interest and its consequences, and establishing the basic mechanisms for their prevention and resolution. The above legislation covers

154 Article 39, paragraphs 2, 3, of the Law on the Anti-Corruption Agency.

155 Article 25 of the Law on Civil Servants.

156 A public official who is a councilor or a member of the management or supervisory board of a public company, institution or organization founded of the municipality or city, or the Republic, is not obligated to declare assets.

157 Article 43 of the Law on the Anti-Corruption Agency.

public officials only, and explicitly prescribe their obligations in cases of conflict of interest. However, a field that requires a more detailed regulation is civil servants who have a conflict of interest. In general, the legislation on civil servants includes a limited number of articles dealing with conflicts of interest, and instead envisages that the rules governing public officials apply accordingly.¹⁵⁸

However, even though mechanisms for detecting and preventing conflict of interest situations have been established, the practice has shown that they are not sufficiently efficient. Some of the key problems relating to only partial implementation include **imprecise provisions in the primary and secondary legislation, and the lack of knowledge of public officials (employees) in relation to the conflict of interest issues**. In addition to the already mentioned problems related to the lack of adequate legal norms, another problem is the fact that the measures envisaged in the existing norms have not been followed up. This primarily relates to a **failure to appoint a competent person to maintain the gift registers, as well as a competent person to monitor the existence of conflicts of interest with an obligation to resolve them**. Only with such mechanisms in place it will be possible to contribute significantly to the successful implementation of the conflict of interest regulations. In addition, the issue of additional employment has also been identified as a source of a significant number of conflicts of interest, which have not been adequately addressed.

Consequently, in order to determine the reasons behind unsuccessful implementation of the adopted regulations, it does not suffice to analyse the primary legislation alone. It is necessary to analyse the secondary legislation, primarily the codes of ethics, which are envisaged to provide more precise rules on the correct behaviour of public sector employees. The norms included in the codes of ethics are often very general, and sometimes simply copied from the legal provision, which does not aim at providing guidance for ethical issues and dilemmas of a more practical nature.¹⁵⁹ By reading largely legal texts, people employed in the public sector cannot be expected to know how to act in certain problem situations – for example, the so-called “grey zones”. Therefore, codes of ethics should be explicit and should provide specific guidelines on how to observe the ethical principles and standards. With codes of ethics formulated in that way, it would be

158 J. Meyer-Sahling, “Civil Service Professionalisation in the Western Balkan”, *SIGMA Paper*, No.48, OECD Publishing, Paris 2012, p. 66.

159 For example, see Articles 7, 8, 9 of the Code of Behaviour of Civil Servants adopted by the Human Resource Management Service or the Code of Ethics of Members of Parliament of Montenegro which, in the part dedicated to the conflict of interest, prescribes the MP’s obligations to comply with the regulations governing the prevention of conflicts between public and private interests but without regulating these obligations in more detail.

easier for public officials to recognise the situations in which there is or could be a conflict of interest. In addition, they should be motivated and aware that they are expected to contact immediately the competent authority in order to address and resolve the conflict of interest situation, and thus prevent any negative consequences. However, that does not always happen, possibly because some public officials find that failure to report conflicts of interest may result in personal gain or, at least, in avoiding a potential loss.¹⁶⁰

In some countries, the problem with the inadequate codes of ethics goes even further – they are either not adopted at all, or they are adopted but they are not published. For example, in Montenegro, there is no code of ethics for members of the government, while in Albania there is no code of ethics for employees in local self-governments. Moreover, in Albania there are examples of codes of ethics that have been adopted, but have never been published, and only to a very narrow circle of people know that they exist.¹⁶¹ Given that the core purpose of codes of ethics is to regulate certain aspects of the employees mutual relationships and their relationships with external parties, such codes must be published on the websites of the institutions in question, and they must be applied by the respective human resource services that may, as part of their work, be in charge of monitoring conflicts of interest. The contents of the codes should be communicated to both the public– sector employees and the public to raise awareness about the importance of addressing conflicts of interest, but also to create certain expectations as to how they should be handled under specific circumstances. Such approach towards codes of ethics serves as a clear indicator of the approach to the problem of conflicts of interest and the importance of educating the public about that problem.

It is safe to conclude that the primary legislation (laws and codes of ethics, as the follow-up of laws) in the Western Balkans generally has approached the regulation of conflicts of interest with insufficient dedication and detail. It is, therefore, necessary to make a closer look at the secondary legislation, that is, or the internal acts and regulations adopted by public authorities and institutions.

Adopting internal acts: The key reason behind the unsuccessful implementation of the existing rules that regulate conflicts of interests is the lack of awareness and information about the phenomenon itself – how to

160 For example, in Croatia, ethical committees, which function as independent bodies, have been appointed; their objective is to contribute to the promotion of the codes of ethics and to their successful implementation. J. Meyer-Sahling, pp. 66–67. A. Dyrnishi, M. Hallunaj, p. 46.

161 A. Dyrnishi, M. Hallunaj, *Integrity Building of the Albanian Public Service, An Analyses of the Ethical Framework Governing the Conduct of Albanian Public Servants*, Institute for Democracy and Mediation, Tirana 2014, p. 49.

recognise the conflict of interest situations and how to act in such situations. It is certainly not possible to list all the situations in which a conflict of interest may arise, and that is exactly why public officials have to be trained and instructed on how to recognise such situations and how to handle them. They have to be clearly explained what conflicts of interest represent, and in which situations they may occur. In parallel, the relevant authorities must be under the obligation to adopt **internal acts that include adequate rules and procedures.**

Such acts should include guidance and mechanisms that, in a practical manner, provide what is needed to recognise and resolve real or potential conflict of interest situations. Clearly stated and explicit rules and procedures in internal acts would provide a basis for the implementation of the mechanisms ensuring the resolution of conflict of interest situations and maintaining the institution's integrity. That would ensure a clear system of accountability and professional duties of civil servants, which would allow them to have a clear understanding of what constitutes conflicts of interest, that they must report it, and a whole set of additional rules. When internal acts are being adopted, it is necessary to take into account the specificities of each institution and their competences. One cannot expect that the same conflict of interest rules can effectively regulate this issue at the local self-government level, in the police, or in schools. Given the diverse nature of private interests that may be involved in different institutional settings, the variations in potential situations in which conflicts of interest may occur are numerous.

Internal acts should explain, at a more general level, what a conflict of interest is, why it occurs, and why it needs to be addressed. The procedures for addressing actual and potential conflicts of interest should indicate to whom such conflicts of interest need to be reported, and further steps that need to be taken. The contents of internal acts could be summarised in the following four basic elements:

- Given that it is not possible to envisage every situation that may involve a conflict of interest, internal regulations need to provide a certain general norm that will help in identifying a (potential) conflict of interest. **A definition of what constitutes a conflict of interest** should be clearly spelt out, as that will assist public officials in identifying situations that are not explicitly envisaged, either in legal statutes, codes of ethics, or internal rulebooks. When drafting future internal acts in this field, a public body should use its core activity as a starting point and, based on that, identify situations in which conflicts of interest may most likely occur. It is clear that some situations, such as receiving gifts, certain kinds of decision-making

in which a public official has a personal interest, personal financial interests (like owning shares and stocks in companies that cooperate with state bodies), are easy to refer to. Clear rules on how to act in such situations can be prescribed. The subsequent internal rules and procedures should clearly set out what should be a public official's further actions when he/she has established – or suspects – that a conflict of interest exists, for example, in terms of how to report it and to whom.

- It should be considered whether the internal act, based on the nature of the institution's responsibilities, should **include relevant concrete examples of private interests that are likely to be in conflict with public interests and the institution's integrity**. In this way, civil servants will become more familiar with the notion of conflict of interest and which situations to avoid. The duty to report such situations should be included in employment contracts when taking office.¹⁶²
- Each individual person is best informed of his/her own personal circumstances and is hence in the best position to recognise whether personal interests may become a source of a conflict of interest. This is why the public officials themselves have the primary obligation to **recognise and report conflict of interest situations**. That obligation should be specifically emphasised in their labour contracts. Of course, not all situations are clear and there may be reasonable doubt whether a (potential) conflict of interest situation exists or not. However, such situations should also be reported. Internal acts should also regulate when (suspicion of) a conflict of interest situation should be reported. The main rule is that such situations should be reported as early as possible to the person or unit with the competence to monitor conflicts of interest. This may be the immediately superior of a public official, the head of the human resources unit, or another person or unit envisaged by the act. That would ensure an outside and objective evaluation of the newly developed situation. Acting contrary to these rules would imply misconduct and an attempt to refuse to "exit" the conflict of interest, the results of which may have a negative effect on citizens' trust in the integrity of public sector in general as well as indicate poor conflict of interest management by public authorities.¹⁶³
- The mere reporting of the existence of a conflict of interest situation obviously is not sufficient in itself. Internal acts should stipulate the obligations for the public body in question, which must provide **rules on further actions to be taken in cases of conflict of interest**, including in cases when there are no explicit rules in primary or in secondary legislation than apply. This primarily refers to time limits

162 *Ibid*, 28

163 Department for Education, Campaign and Cooperation with Civil Society, *Training Manual on Integrity*, Anti-Corruption Agency, Belgrade 2013, p. 26.

within which the person to whom a report of a conflict of interest has been reported should act, the kinds of decision that need to be made, etc. If such rules do not exist, the competent person or unit in a public body must evaluate ***how serious the (potential) conflict of interest is and to what extent the public interest may become jeopardized***. On the one hand, some conflict of interest situations may not be of a serious nature and there may be no need to take any action. In such situations a simple note on the existence of a (potential) but insignificant conflict is sufficient. On the other hand, a conclusion that a conflict of interest situation is serious should lead to the taking of an appropriate action. Measures to be taken include *assigning a certain competence to a different employee, transferring the employee who represents a conflict of interest to a different position, etc.*

If there are indications that a particular conflict of interest situation is unlikely to be frequent, then it would not necessarily be required to take any of the measures outlined above – it may suffice for the public official involved to abstain from taking part in a concrete disputable situation, for example, to withdraw from taking part in certain meetings or in a particular decision. The above proposal not to remove or substitute a person who is in a conflict of interest situation may sound strange and contrary to everything that has been said so far, but sometimes that is inevitable. That is true in very rare and special situations when all persons who are potential substitutes have a conflict of interest.

To prevent the handling of a particular issue from paralysis, it is necessary not to act on a potential conflict of interest will be necessary. Similar outcome may be necessary also when only a small number of people in the entire country possess the relevant knowledge and experience, and they are in high demand in both the private and the public sector. Conflicts of interest are inevitable, especially in small countries, such as the countries included in the analyses. In such situations transparency may be of particular importance, even when general guidelines of how to handle a potential conflict of interest situation may not be fully applied.

Publication of and information on the internal act: In order for the primary and secondary legislation, and internal acts in particular, to be implemented successfully, it is necessary for employees in the public sector to be aware of them and understand what they are and when they apply. One necessary requirement is for such acts to be ***published*** in an appropriate manner. If the public officials are expected to act in accordance with their responsibilities, there is a need for them to be clearly informed of the institution's policy and rules regarding conflicts of interest. Given that questionable situations may occur in people's daily work, public officials should be ***regularly reminded***

of what is expected of them. To provide them with examples of what may be considered “best practice”, is a good approach. Only when they are informed about the rules, as well as past bad and good practice, they may be expected to understand what they are expected to do. Therefore, **continuous communication and cooperation with the public officials** is necessary. The opportunity to seek advice is also important. In fact, the possibility to seek advice, from someone within a public institution or state body, should not be a privilege of public officials but also be available for the general public. Such opportunities may prevent disputes and promote efficiency.

Appointing advisers to help resolve conflict of interest situations: The rules and regulations of the countries included in the analyses envisage the appointment of persons in charge of providing advice on conflicts of interest and how to resolve such situations. These advisers should have considerable responsibility for establishing and maintaining integrity of both public officials and institutions. Or, at least, that is how things should work in practice. When integrity plans were developed in the Republic of Serbia, shortcomings related to ethics and personal integrity were assessed as posing the highest risk to an institution’s integrity. Hardly any integrity plans fail to refer to these issues as problematic. The most commonly recognised integrity risks in the field of conflicts of interest include the **appointment of people who are in charge of advising the other employees on (potential) conflict of interest situations**. The most problematic issue is to what extent the persons appointed to monitor and advise on conflicts of interest are independent in performing their task. Frequently they are unable to obtain the necessary information, particularly from officials they have no authority over, oftentimes precisely those officials who appointed them. In those cases, it is clear why the independence of these designed advisers is questionable. An additional problem for the advisers includes that their activities to monitor whether a conflict of interest is present, usually is not regulated by separate rules or regulations and entails no compensation or incentives for doing a good job. Under such circumstances, they clearly have little motivation to act, and the success of their work relies solely on personal enthusiasm.¹⁶⁴

These persons could considerably contribute to the prevention of conflicts of interest, and generally to the promotion of a focus on integrity. In fact, it might be useful to call them **integrity advisers**. Private interests of

¹⁶⁴ In Albania, the Act on the Prevention of Conflict of Interest in Performance of Public Power (No. 9367, *Fletorja Zyrtare e Republikës së Shqipërisë* No. 31/2005) envisaged that these persons shall receive an additional 15% or more of their monthly salary, but this provision was set aside by subsequent amendments to the law (No. 9690, 5. March 2007).

employees in the public sector that might collide with the particular tasks and responsibilities of the institution could be reported to them during recruitment and later, during employment. Another task for these advisers would be to check whether the submitted conflict of interest declarations are sufficiently detailed to make adequate decisions on resolving a (potential) conflict of interest situation. When the public officials in question have ready access to integrity advisers, it would help create an environment in which it becomes easier to identify and discuss concrete difficulties in implementing all regulations linked to the institution's integrity.

In addition to monitoring conflicts of interest in an institution, integrity advisers could also occasionally **publish reports on steps taken in this area**, examples of problem areas that need particular attention, investigations initiated, etc. In particular, given the fact that conflicts of interest are often overlooked, integrity advisers tasked with monitoring may also be tasked with providing warnings to future partners of state bodies and other public agencies to avoid future conflict of interest situations that may result in suspension of decision-making or other procedures, or the annulment of, for example, a future public contract.

Another mechanism that internal rules and regulations may put in place is the **keeping of a register of assets and interests**. public officials would, with such a mechanism in place, occasionally report their personal assets and other specific interests that might come in conflict with the public interest. As noted above, appointed integrity advisers might be tasked with keeping such registers of personal interests. In that way, that would not be a register of conflicts of interest and would include only information that would serve as indicators, and they would be of great help to persons designated to monitor and identify conflicts of interest. In this way, public sector employees could also be informed in a timely manner and warned that conflicts of interest might occur due to the existence of certain interests and thus they could serve as a preventive measure. Having to report their personal interests would serve to raise the awareness of public sector employees about the problem relating to conflicts of interest. That would help them to avoid situations that might entail a potential conflict of interest.

In order to facilitate the execution of their duties, integrity advisers may use the following checklist in order to ensure that their institutions have established adequate mechanisms for preventing and managing the conflict of interest:

- Are the adequate rules and procedures in place to examine and approve additional employment?
- Are all employees informed about these rules and procedures?

- Are the rules and procedures sufficient in order to avoid possible conflicts of interest that may arise as a result of additional employment?
- Are the rules applied consistently?
- Are the approvals to work in areas that may be prone to involve conflicts of interest checked periodically, to ascertain whether they remain in line with the rules and regulations on conflict of interest?
- Have steps been made to assure that all employees who participate in the drafting, negotiation and execution of contracts, including the related decision-making, have reported their private interests that might potentially be in conflict these tasks and with the public interest?
- Should certain private interests exclude a public employee from participating in the drafting, negotiation and execution of certain kinds of contracts, or from decision-making in certain areas?
- Does the state body or public institution in question have the power to amend or cancel a contract or to annul a decision if it has been determined that there had been a (serious) conflict of interest?
- Will previous decisions also be re-examined to ascertain whether the determined conflict of interest may have affected their validity?
- Have the internal rules and regulations related to receiving gifts, and mechanism for monitoring reception of gifts, been adopted? And if so, are they sufficient and implemented?
- Have the internal rules and regulations on the conditions for additional employment of public employees outside their public institution been adopted? And if so, are they sufficient and implemented?

Appointing people to monitor and register gifts and other benefits: Gifts and other benefits that are received and accepted by public officials may undermine their impartiality and independence and thus negatively affect integrity, even when no compensation in return is involved. The primary as well as secondary legislation regulating conflicts of interest should, therefore, also regulate to what extent public officials are allowed to receive gifts and other personal benefits. In many countries, public officials are not permitted to accept gifts; an exception may be token gifts of little value. At one point, giving gifts to public officials has become a ubiquitous and socially acceptable habit, which may also gradually lead to corruption. As a result of that, access to services from a state body become reserved only for those who provide certain gifts and other benefits to the public officials concerned. Such corruption also opens a considerable space for undue influence on professional and impartial performance of the delegated public duties, posing a direct threat to institutional integrity.

Public officials who find themselves in a situation in which they are offered a gift need to ask themselves the following questions: Have they somehow requested the gift? If they accept it, will they still be perceived as independent and impartial or will their personal integrity be compromised? Also, if they accept the gift, do they feel obliged to return a favour? And perhaps most importantly, whether he/she aware of his/her obligation and willing to hand over the gift and disclose where it comes from to the authorised person in the public institution in which he is employed? Would they be seriously compromised or even be perceived as corrupt if information about the gift becomes public knowledge? The latter is frequently the key to whether a gift should be accepted: does it tolerate transparency?

In many public institutions, internal rules and regulations prescribe that all gifts and other received benefits should be reported. It is important that all employees are aware of such rules – that gifts and other benefits, including who gave them, should be reported to the appropriate person or unit within the institution. In some cases, the rules may prescribe that all gifts that are received should be turned over to the institution and not be privately kept become property of the institution. That is true in case of gifts received during an official visit at which a public official has officially represented his/her institution.

However, even if public officials have decide to report the gift, the problem is that there is no appointed person in charge of registering gifts?

The lack of a transparent and universal mechanism aimed at recording gifts and other benefits associated with the work of public officials sends two important messages – the first one addressed to the general public and the second one to the public officials concerned. The general public get a message that their rights and interests cannot be ensured in a lawful way, and that in reality the procedures in public authorities depend on giving gifts. In addition, it may be seen as an opportunity to buy oneself an advantage in a manner that is not explicitly defined as unlawful. In this way, the integrity of both the public employees and the public sector more generally is undermined in the eyes of the citizens. The public officials on their side get a message that there is no control system in place to monitor receiving inappropriate gifts and conflict of interest, and that there is little danger of being sanctioned. They are actually being tempted to ask for or implicitly indicate that a gift or some other benefit may facilitate a certain kind of decision or public service. The lack of any positive examples of sanctioning encourages public employees to engage in questionable situations. For example, in Montenegro, there is not a single enforceable judgment regarding a conflict of interest against a member of the Government, and according to the available data, not a single misdemeanour proceeding has been initiated. In some countries there is no statistical data on disciplinary proceedings, since public institutions do not necessarily forward the relevant data.

Concurrent or additional employment: As a preventive policy measure with regards to conflicts of interest, all legislation normally envisages certain restrictions on public officials' additional employments in companies or institutions outside of the public sector. Unlike public officials, who are not allowed to have additional employment unless when approved by the relevant body at the public official's request, civil servants in the Western Balkans may, in principle, have additional employment with the employer's consent.

Questionable situations arise when civil servants request or negotiate additional employment in the private sector, while preserving his/her position as a civil servant. Moreover, under such circumstances, a civil servant may find himself/herself in the position to run a private business or provide services in his/her or someone else's private interest and against the public interest, in conflict with his/her public role and responsibilities. Public interests may be jeopardised, or the integrity of the public sector may be undermined if a civil servant has access to confidential internal information and uses it to pursue private interests. Such conflicts of interest may also arise when a civil servant or his/her family members are employed by private companies that are in a contractual relationship with the public institution in which the civil servant is employed. This certainly gives rise to a conflict between private and public interests, which needs to be regulated, and putting one's private interests before the public interests should be sanctioned.

The first step that public institutions should take with regard to regulating what will easily be a grey zone prone to conflicts of interest, is to define the circumstances under which additional employment of civil servants is possible, concurrent with their civil service, and when it is not acceptable and a reason for losing their employment. The main procedural requirement that must be met is the consent of the superior of a civil servant, given in the appropriate procedure. The procedure of giving consent must be must take place under the same conditions for all, so that civil servants would not be discouraged from disclosing additional employment. Consent to additional employment must be given on the basis of transparent rules that are valid for all employees. Unless the tasks and responsibilities of a public institution is of a nature that is incompatible with additional employment, the rules should not in themselves discourage civil servants and public officials from reporting additional employment. Failure to request consent for additional employment, however, should rise to disciplinary action or even dismissal in cases that involve a serious conflict of interest. Designated integrity advisers should be authorised to determine whether additional employment is acceptable or not.

One must not disregard that personal circumstances may change over time, and that the issued consents to additional employment must be subject to periodical revisions.

5. EXAMPLES OF BEST INTERNATIONAL PRACTICES IN THE AREA OF CONFLICT OF INTEREST

This section contains the best practices in the area of conflict of interest of OECD countries, that could be used as sources of inspiration for resolving conflict of interest situations in the Western Balkans.

Box 1

Tailored approach to define conflict of interest

In **New Zealand**, the definition of conflicts of interest is tailored to targeted groups, such as public servants, ministers or board members of crown companies. Nevertheless, these definitions contain common features. For example, they all cover actual and perceived as well as direct and indirect conflicts. Apart from the general definition, secondary legislation also lists possible types of conflict of interest situations, together with concrete examples.

For **public servants**: “Conflicts of interest are defined as... any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties, or the standing of their department in its relationships with the public, clients, or Ministers. This would include any situation where actions taken in an official capacity could be seen to influence or be influenced by an individual’s private interests (e.g. company directorships, shareholdings, offers of outside employment). ... A potential area of conflict exists for public servants who may have to deal directly with members of Parliament who have approached the department in a private capacity.” (*Code of Conduct*)

In **Germany** a general definition of conflict of interest does not exist but the *Act on Federal Civil Servants* and the corresponding *Länder* statutes establish required modes of conduct for *civil servants* on how to serve exclusively in the public interest:

- The obligation of full dedication to the profession as a civil servant, and a corresponding duty to obtain permission for involvement in outside activities.
- An obligation to carry out official duties impartially.
- The necessity of restraint in political activities.
- An obligation of selflessness in carrying out of duties of public office.
- The duty to obtain permission for the acceptance of gifts connected with public office.

For **employees** working in the public service, the obligation to avoid conflict of interest situations usually is laid down in individual employment contracts and collective agreements, in addition to the general labor or public service employment legislation.

Source: *Managing Conflict of Interest in the Public Service*, OECD Guidelines

Box 2 Additional employment in Sweden

Sweden has introduced new stricter laws for certain forms of extra-occupational activities. Before adopting the new regulations, a Committee was appointed by the State to do research on additional employment. Three major types of extra-occupational activities were reviewed in the inquiry, specifically:

- Activities which adversely affected public confidence in an organisation.
- Activities which adversely affected an official's performance.
- Activities which were basically in competition with government.

In the inquiry the following two main concerns emerged regarding the implementation of past regulations:

- The contrast between increased opportunities for state employees to take up extra-occupational activities in comparison with the lack of information or insufficient information provided as to whether these extra-occupational activities were permitted.
- Inconsistency of rules: Individual employees should be provided with coherent legal provisions that help their unambiguous application and interpretation in practice.
- The division of regulations between the Public Employment Statute and the collective agreements was considered as a potential source for differing interpretation.

The results of the inquiry caused the Government to provide unambiguous rules for the conflict of interest policy and particularly clarify the conditions under which extra-occupational activities can be accepted. In addition, the inquiry proposed that regulations should provide clear standards for areas where the risk to public confidence is particularly high. These areas principally include employment and positions in: justice administration, property administration, public procurement, exercise of public authority, supervision, leadership of public administration.

The existing regulations were amended both in scope and form:

- The extra-occupational activities that are considered to *adversely affect public confidence*, are now included in the legislation instead of collective agreements. Moreover, the secondary legislation enacts the rules for employees of municipalities and county councils regarding extra occupational activities that adversely affect public confidence.
- The rules on extra-occupational activities that *adversely affect performance*, and those of a *competitive nature*, are included in collective agreements.

Source: Managing Conflict of Interest in the Public Service, OECD Guidelines

Box 3 Deciding proportional sanctions

In **Canada**, at the federal level the measures and personal consequences are different for public office holders and public servants:

- For **public officials**, the Office of the Ethics Counsellor provides advice along with education about ethical conduct, in order to prevent conflicts and help to resolve ethical dilemmas. In case of complaints regarding alleged breaches to the Code, the Ethics Counsellor will inquire and determine whether a breach actually occurred and make recommendations. Breaches of the Criminal Code can lead to investigation and criminal prosecution.
- For **public servants**, disciplinary actions may include dismissal where the *Conflict of Interest and Post-Employment Code for the Public Service* has been seriously breached. In addition, criminal prosecution is possible in the case of a breach of the Criminal Code

In **France**, where both disciplinary and penal measures can be applied, the following forms of disciplinary sanction can be used in the public service:

- warning
- deletion from the promotion list, reduction in rank, temporary suspension from duty for a maximum of 15 days, transfer of duty.
- demotion, suspension from work from 3 months to 2 years.
- dismissal.

Source: Managing Conflict of Interest in the Public Service, OECD Guidelines

Box 4 Providing information on the policy: Germany

The federal administration makes use of a variety of tools to provide information on the conflict of interest policy. Special training courses are organized for civil servants to:

- provide information on the principles and relevant legal regulations
- give instructions about the concrete measures for avoiding conflict of interest situations
- focus on principles and daily practices of cooperation and management, social competence and responsible behavior.

In addition, training courses for the executive service in the federal administration deal with such issues as self-image, social behavior, communication and management, competence in grassroots administration.

All ministries and subordinate authorities also distribute copies of the Federal Government Directive containing a *Behavioral Code against Corruption*, or make it available to their employees in electronic form.

Source: Managing Conflict of Interest in the Public Service, OECD

Box 5

Holistic approach to develop an open administrative culture: Finland

A leading example of a holistic approach to develop an open administrative culture is to be found in Finland. The key elements of the Finnish approach include:

- measures for promoting awareness – particularly ensuring the clarity of norms, provision of information on the policy and knowledge of its practical application
- preventive mechanisms for safeguarding impartiality of civil servants – especially the hearing of parties, the presentation of grounds for a decision and its publicity, clear provisions for disqualification of civil servants in case of actual conflict of interest
- retroactive measures – legal protection through administrative self-correction, appeal and petition for review
- ensuring transparency of the activities of state administration – decision making is open and documents are public (with the exception of documents specifically defined as secret or confidential) provides critical conditions for close public scrutiny.

Source: Managing Conflict of Interest in the Public Service, OECD

6. TRAINING EXERCISES

The training exercises listed below describe situations in which there may be a conflict of interest. In each one of the first five exercises, three alternative actions are outlined. Decide which one you find most appropriate and how you would react as a public control unit asked to investigate these situations. The answers may then be shared with others, and if different answers have been chosen, the reasons could be discussed in greater detail.

In the remaining six exercises, several courses of action are indicated for each hypothetical situation, together with pro and con arguments and alternative ways of how to evaluate the case, dependent on circumstances. These exercises are well suited for group discussions.

Training exercise No. 1

Tax inspector XY provides consultancy services to companies in his free time. After some time, he realised that this was an excellent source of extra income and registered an accounting/bookkeeping agency using the name of one of his family members. His field of work – direct contacts with tax debtors – indirectly ensured a constant income for “his” private agency, while no one could formally connect him to the agency since it was registered using

another person's name. As a tax inspector, XY has access to information on monthly and annual inspection plans and is, therefore, able to warn tax debtors who are his private clients on when inspection is planned, so that they can put their books in order and make sure to align their operations with the regulations. Those who do not want to voluntarily become clients of "his" private agency are frequently exposed to his frequent visits in his public capacity, as well as to controls and sanctions, and will as a result eventually start using "his" accounting services.

A. You think everything is in order and do nothing. This is one of the best inspectors in your team, who has performed the largest number of inspections and issued most misdemeanour orders and motions for initiating misdemeanour proceedings. You are lucky to have among your staff such true professionals who are capable of giving tax-related advice to the largest private companies.

B. You analyse possible complaints against the work of this inspector and order another tax inspector to check all the tax debtors that make use of the services of the private agency in question.

C. You verify whether the private activities of the tax inspector are in accordance with the law and the code of ethics of civil servants and ask him to forward to you a written approval from his direct superior for performing additional work, as well as a statement on non-existence of conflict of interest, before deciding to take further measures.

Training exercise No. 2

Two police officers, X and Y, provide security services to local discotheques and nightclubs in their free time. Security is increased and police raids involving the discotheques and nightclubs are notably reduced. In the meantime, the business has developed so much that X and Y gradually include other colleagues from other organisational units who want to make extra money, since satisfied club owners demand that only members of the police provide these services.

A. Everyone is entitled to additional work. The pay in the local police is low. It is commendable that the police officers are looking for opportunities to create additional income.

B. This is an excellent opportunity to make the best of both worlds – guests of the clubs must feel safer knowing that armed members of the police force are present on the premises, while potential offenders get a clear message that these clubs are not places they should frequent.

C. You ask the police officers to provide you with a written approval from their direct superior for performing additional jobs, and you assess the potential conflict of interest having in mind the responsibilities of the police as an institution and the specific responsibilities of the organisational unit in which the police officers work.

Training exercise No. 3

A tax inspector (Large Taxpayer Office), is a renowned lecturer in internal seminars and other training events organised by several large taxpayers (telecommunication, IT, pharmaceutical and oil companies). In these seminars, he regularly receives appropriate gifts (phones, fuel vouchers, tablets, laptops, etc.). He has also entered into service contracts for educating the employees and management of the private companies in question. Taxes and levies related to these contracts are regularly paid.

A. You think that the above is not a problem and do nothing.

B. The tax inspector is one of the best professionals in your team and he is entitled to additional employment. The gifts he receives are an appropriate gesture of gratitude.

C. You check the potential conflict of interest, given the institution's competences, and ask the tax inspector to forward to you a list of all the gifts he has received with their exact market values.

Training exercise No. 4

DD, a publicly owned company, discreetly provides monetary support to sports clubs and organisations in which officials of that company are members of the management board. As a token of appreciation, they receive a certain quota of free tickets for sports events in which the athletes from these clubs participate for themselves, their family members, and a limited circle of employees.

A. Everything is fine, this is a good way of providing additional financing to sports organisations and to promote sports.

B. Maybe a public call should be announced for such donations and subsidies, so that all sports organisations and clubs that meet the criteria specified in the call may apply for support.

C. I think that this is a conflict of interest and receiving inappropriate gifts.

Training exercise No. 5

Two civil servants working for a public authority have voluntarily left their positions as public employees. Civil servant X has retired but continues to provide consultancy services to the public authority for which he used to work, based on a consultancy services contract. Civil servant Y is now working as manager in a legal person that is monitored by the public authority in which he used to work.

A. The above situation is unproblematic and a good example of how acquired knowledge and experience in the public sector can be utilised in now jobs.

B. Maybe it would be advisable to check whether any provisions related to employment restrictions after the termination of a labour contract have been violated.

C. Civil servants, or public employees, are not allowed to perform the mentioned jobs before two years after the termination of their work contracts.¹⁶⁵

Training exercise No. 6

Civil servant X works in a public institution that offers funding to community organisations for a range of environmental projects. In her role, X carries out an initial assessment of applications and writes reports for the committee that will consider and make final decisions on funding. Civil servant X also monitors how the funding has been used.

X is also a member of a local association and the association has applied for funding to clean up a local stream and carry out a native shrub replanting program in the community. Normally, this application would be one that X would deal with.

In this situation there is a conflict of interest. Someone could reasonably allege that X will not be completely impartial in evaluating the received applications. The decision on funding may benefit in a significant way the local association and their finances.

Even though X is not one of the managers of the local association, she did not prepare the application, she has no personal financial interest in the matter, and believes she would be capable of considering all applications fairly and professionally, outsiders might perceive it as a clear-cut conflict of interest situation. The association is small, and X is very likely to know its

¹⁶⁵ Examples taken from B. Dulovic, B. Dabanovic *et al.*, *Integrity or corruption? Questions and Answers*, IPA 2010 Twinning Project "Support to Implementation of the Anti-Corruption Strategy and Action Plan", Podgorica 2014.

leaders well and work closely with them. The situation would be different if the association was a large nationwide or international organisation, and the application was from a different branch of that organisation. A direct personal relationship, therefore, may be considered questionable.

A) X should tell her superior about her personal connection and interests in relation to this application. Her superior should consider the nature of her role in processing these sorts of applications, whether her position has a significant influence on decision-making, and whether it is practicable for someone else in the public institution to evaluate the particular application.

B) It may be more prudent of her superior to consider the possibility that all of the received applications for this particular round of funding should be evaluated by another civil servant. If the superior takes this view, it may also be preferable that the other person should not be someone for whom civil servant X has line management responsibility and for whose actions she is accountable. If the application from X's association is successful, X might also need to be excluded from controlling the use of that particular grant.

C) Another possibility is that the above steps are impracticable, because X is the only person in the institution who can do the work. In that case, some other option might have to be used, such as carrying out an additional review of her work.

D) Another option is that no actions should be taken because civil servant X's role is a low-level administrative one and all decisions to grant money are done by others. Also, another possible scenario is that X is the only person in the public institution that can do the work, and that because of that the rules cannot be applied. In this case, other actions must be taken (such as a review of civil servant X's work by other civil servants at the same level of the civil service hierarchy).

Training exercise No. 7

Y is the principal of a secondary school in a small town. She takes a leading role in handling the recruitment of key staff. A vacancy has arisen for the position of finance manager and Y's husband has expressed an interest in applying for the position. Y obviously has a conflict of interest here. The school needs to employ staff on merit, and must avoid perceptions of preferential treatment in appointment decisions, and that one candidate has been favoured in comparison to others.

A) Y should inform the school's board about the situation. The board should ensure that this appointment process is handled entirely by others, and that Y has no involvement in the process. Because of Y's own position, the board

needs to take actions to ensure that the process is truly transparent, so that all those who think that they are eligible could apply, and be considered for the position, eliminating any suspicion that Y may have influenced the decision making in any way.

B) Decision making in the selection process for the vacancy is not the only type of conflict of interest that needs to be considered carefully by the school. Problems linked to impartiality and integrity are also likely to arise in an ongoing working relationship if any issues should arise directly affecting or involving Y, her husband, or other employees at the school. It often happens that two people who are closely related or married/ a couple work in the same organisation. Such a situation, in itself, is not problematic. Indeed, it would be unfair for someone's benefits to be taken away simply because he/ she is closely related to someone, especially in case of a large organisation where two people do not work closely together on a daily basis.

However, sometimes – and depending on the nature of their positions – appointing someone who is a close relative could become a source of future difficulties, even if the procedure has been duly followed. That is particularly true when, for example, a person is in a leader position with direct powers *vis-à-vis* other persons, including the spouse.

That can create the risk of the lack of independence, respect for rules and professionalism in decision-making.

Therefore, in a public entity, it is particularly unwise for relatives to hold two senior positions, in particular when one of them is in a managing position and the other one responsible for financial management.

In Y's husband's situation, the school's board must consider whether the board itself is able to resolve all potential conflicts of interest that may arise if Y's husband is employed. If Y's husband is appointed, their relationship would be such that the husband would have to submit reports to Y or that they would work closely together on managing the school's finances.

It can be difficult to decide the fairest course of action in a situation like this. Here, the school board might decide not to appoint Y's husband because it would be too complex to resolve and manage a conflict of interest in the school.

Training exercise No. 8

X is a civil engineer and works for a state-owned enterprise (SOE) responsible for the national infrastructure network of gas pipes. The SOE is planning to build a major new mains pipeline to increase supply capacity from a refinery

to a large city. The pipeline has to cross a distance of 300 kilometres, and the SOE has come up with several different options for where to construct it, which it will now consider in more detail. The SOE has to acquire land along the route to be chosen. The project is opposed by many people who live along the routes to be considered and who fear that the pipeline will adversely affect the natural environment and destroy their land. X has worked on a number of issues directly linked to the project and has been appointed to the Route Options Working Group (ROWG) that will assess the different route options and make a recommendation to the board. X is also part-owner of a farm that lies directly in the path of one of the route options.

X has a conflict of interest here. He has a personal stake in the decision about which route to choose, because that could directly affect his land. Although the working group is not the final decision-maker in this matter, it does have a key role in analysing the route options. X's role will need to be considered carefully. It may be that X does not mind whether the pipeline ends up crossing his land – he may believe that he would be able to contribute to the ROWG to help it arrive at the best one should bear in mind the risk that X's personal interest will become publicly known, and that others might easily think that the decision has not been made in an impartial way.

The superiors might have to remove X from the working group and assign him to other tasks. It is recommended that X does not have access to confidential information about the decision before it is made public, in case he is considering selling his land.

Therefore, X's expertise may be considered as indispensable to the project, or he may have such a small part in the overall process. In that case, some other arrangement could be considered (for example, a relatively limited role or imposing extra supervision of X's involvement in the process).

Training exercise No. 9

Y is a senior scientist working for a state research institute. The institute has developed a new product that has a significant revenue-earning potential, and Y has worked on the design and development of the product. However, the institute needs help in manufacturing and marketing the product on a large scale and plans to enter into a joint venture with a private company. The institute is considering appointing Y as one of its representatives on the governing body of the joint venture.

Coincidentally, Y is also a shareholder in the private company with which the institute wishes to close a contract. It has to be noted that Y had no role in the selection of the institute's contracting partner.

This situation creates a conflict of interest for Y. The fact that there may be no direct disadvantage to the institute (the joint venture partners expect to be working together for their mutual benefit) does not remove the (potential) conflict of interest. The existence of interest in both the institute and the private company could create confusion about her roles, and also about her primary loyalty. She could be accused of using her official position to ensure her own private interests.

A. Y should inform her manager. It will probably be necessary for Y not to be given any major role in managing the joint venture, as long as she keeps her private interest in the private company. The superior might also need to think carefully about what other work, if any, would be appropriate for Y to do on the project to establish the joint venture, in her capacity as an employee of the institute. This decision may not be clear-cut. Y might be the best person in the institute to carry out certain tasks, but the risk is that she could be regarded as spending a large part of her time as someone who uses the institute's resources for private gain.

B. The superior might judge that some involvement in the project is acceptable (or even necessary), but that it has to be limited. For example, Y's role could be changed so that she does not have any influence on decisions about how the joint venture and the project are run.

C. In addition, Y might be asked to give up one of her roles – that of employee in the institute or that of a shareholder in the private company.

D. If circumstances were to change to a point where the institute and the private company become competitors, Y's situation might become substantially more difficult. In that case, it may become necessary for Y's superior to insist either that she should relinquish her private interest in the private company or leave her job.

Training exercise No. 10

X is a consultant who specialises in project management. His services have been hired by the Government to help it carry out a new building project. As part of this role, X has been asked to analyse the tenders for the construction contract and provide advice to the tender evaluation panel that needs to make a final decision. However, X has a lot of personal knowledge about one of the tenderers for the construction contract. X used that firm to build his own house last year, and he is currently using it to carry out structural alterations on several investment properties that he owns. Because of this, X knows the director of the company very well and has a high regard for their work.

A. This situation may represent a conflict of interest for X. X is expected to impartially and professionally assess each of the tenders, yet he could be regarded as being too close to one of them. Therefore, it is proposed that X should not take part in the evaluation of tenders and that he should be replaced by someone else. Depending on the circumstances, this may not require ending the cooperation between the Government and X. The dealings with the potential constructors are recent and significant. The risk is that it might instigate an outsider to allege that the selected firm had preferential treatment because of private relations.

B. These sorts of situations are not necessarily clear-cut they and do not necessarily mean that something is wrong and in contravention of the law. Particularly in small or specialised industries, people often have had some degree of previous personal contact with someone they now have to decide on. Sometimes previous connections may be judged to be too remote or insignificant, such as, for instance, that the construction company concerned carried out a small job for X several years ago.

C. The circumstances would have been different if the construction company was run by an acquaintance or a very good friend X had known for many years either in private situations or because X used to work for the construction company. In that case, one would have to consider when X worked in that company, for how long, and how long ago. Insufficient significant relation between the construction company and X would exist also if X knew the owner of the company in a casual way through membership of the same sports club.

D. This case demonstrates that public authorities need to have a good strategy whether and how to manage conflicts of interest situations that arise for someone who is not an employee but just a consultant. X's role is important and affects a key decision that the public authority has to make, and therefore may expose the authority to legal and political risks. A potential solution might be to require a consultant to agree to and abide by the relevant conflict of interest rules that exists for the employees. The authorised persons would have to ensure that that person understands the conflicts of interest management policy, and should monitor his/her work in the same way as for other employees.¹⁶⁶

¹⁶⁶ Examples taken from *Managing Conflicts of Interest: Guidance for Public Entities*, Office of the Auditor General, Wellington 2007.