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CONFLICT OF INTEREST

1. INTERNATIONAL STANDARDS

1.1. Introduction

A conflict of interest refers to a conflict between an official's public duty and private interests whereby his/her private interest influences or could negatively influence the discharge of the public function. An actual conflict of interest occurs when a public official adopts decisions under the influence of private (personal or group) interests.³ In addition to this classic form of conflict of interest, there is also an apparent conflict of interest in the circumstances when it appears that a public official's private interest could influence negatively the discharge of his/her duties, even when that is not true. Finally, in the circumstances when a public official has certain private interests that could cause a conflict of interest in the discharge of the public function - that is a potential conflict of interest.

Considering that most public officials may find themselves in a situation when they will have to choose between their public and private interest, there is a need to adopt guidelines and standards that would be binding and respected. Complying with the rules on the prevention and resolution of conflict of interest enables public officials

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³ Cf. SIGMA/OECD, *Conflict of Interest Policies and Practices in Nine EU Member States: A Comparative Review*, SIGMA Paper No.36, June 2007; OECD, *Managing Conflict of Interest in the Public Sector: OECD Guidelines for Managing Conflict of Interest in the Public Service*, Paris, OECD, 2003; A. Toolkit, *Managing Conflict of Interest in the Public Sector*, Paris, OECD, 2005; Transparentnost Srbija, *Sukob javnih i privatnih interesa i slobodan pristup informacijama*, Transparentnost Srbija, 2003; O. Faruk, *Academic research report on conflict of interest*, GenÇkaya, May 2009; C. Demmke et al., *Regulating Conflicts of Interest for Public Officials in the European Union*, European Institute of Public Administration, 2007; K. Kernaghan, JW. Langford, *The Responsible Public Servant*, New York: The Institute for Research on Public Policy, 1990; Ombudsman of Victoria, Newsletter Autumn 2008, http://www.ombudsman.vic.gov.au/resources/documents/Autumn_2008_newsletter.pdf

to discharge their functions in a professional manner and in the public interest, which is their duty.

The main international legal acts that govern this area include: The Council of Europe Resolution on the Twenty Guiding Principles for the Fight Against Corruption⁴, and particularly the principles No. 1, 3, 7, 10 and 20; The Council of Europe Recommendation of the Committee of Ministers to Member States on Codes of Conduct for Public Officials;⁵ United Nations Convention Against Corruption, particularly Articles 5, 7, 8, 48;⁶ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;⁷ United Nations Code of Conduct for Civil Servants;⁸ Stability Pact Anti-Corruption Initiative for South Eastern Europe.⁹

1.2. Sources of International Law

1.2.1. United Nations

The UN Convention against Corruption (UNCAC) was adopted by the General Assembly of the United Nations on 31 October 2003 and entered into force on 14 December 2005. The Convention was signed by 140 states up to now. Pursuant to the Convention, each State Party shall, in accordance with the fundamental principles of its domestic law, endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest. The parties to the Convention are also required to introduce measures and systems on the basis of which public officials have to give statements about their supplemental activities, employment, investments, assets and substantial gifts or benefits, that could lead to a conflict of interest with respect to their service in the public office. After ratification process in

⁴ The Council of Europe Resolution on the Twenty Guiding Principles for the Fight against Corruption, No. 97/24.

⁵ The Council of Europe Recommendation of the Committee of Ministers to Member States on "Codes of Conduct for Public Officials", No. 200/1.

⁶ The Republic of Serbia, Croatia, Bosnia and Herzegovina, Montenegro and Bulgaria are the signatories of this Convention. UN Convention against Corruption, General Assembly Resolution 55/61, 4 December 2000.

⁷ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 21 November 1997.

⁸ United Nations Code of Conduct for Civil Servants, available at <http://www.un.org/en/ethics/pdf/StandConIntCivSE.pdf>, 21 December 2012.

⁹ Stability Pact Anti-Corruption Initiative for South Eastern Europe, available at http://www.iaaca.org/AntiCorruptionAuthorities/ByInternationalOrganizations/NonGovernmentalOrganization/201202/t20120215_805503.shtml, 22 December 2012.

an individual country, the Convention becomes part of a national law and its position in legal sources' hierarchy depends on a national constitutional order. In accordance with Article 63(7) of UNCAC, "the Conference shall establish, if it deems necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention".

UN Convention Against Corruption

Article 7, Para. 4: Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflict of interest.

Article 8, Para 5: Each State Party shall endeavor, 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.

In November 2009, the CoSP adopted the Resolution 3/1 on the Implementation Review Mechanism (IRM), with aim to assist countries to meet the objectives of UNCAC through a peer review process. Under the IRM mechanism each state party is reviewed by two other states parties, with the active involvement of the state party under review. The review of each state is based on the responses of each state to the IT-based comprehensive self-assessment checklist. States parties under review are encouraged to conduct broad consultations including all relevant stakeholders when preparing their responses. A country review report is prepared and agreed to by the country under review and may be made public.

Each review phase is composed of two review cycles of five years. The first review cycle covers chapters III (criminalization and law enforcement) and IV (international cooperation) of UNCAC. The second review cycle, which will start in 2015, covers chapters II (preventive measures) and V (asset recovery), which includes issues of conflict of interest.

1.2.2. Council of Europe

The key Council of Europe legal acts that refer to the conflict of interest are the Code of Conduct for Public Officials that was adopted by the Committee of Ministers of the Council of Europe on 11th of May 2000, and the Resolution (97) 24 on Twenty Guiding Principles for the Fights Against Corruption, which were adopted

by the Committee of Ministers on 6th November 1997. Both acts are applicable to all members of Council of Europe and do not represent hard law, but part of soft law of a Council of Europe member state.

The Code of Conduct for Public Officials contains recommendations on codes of conduct for public officials, and includes, in the appendix, a Model Code of Conduct for Public Officials. The Model Code of Conduct provides suggestions on how to deal with real conflict of interest situations frequently confronting public officials, such as obtaining gifts, use of public resources, dealing with former public officials, etc. The recommendation of the Committee of Ministers makes clear that the recommended adoption of codes of conduct for public officials should be subject to national law and to national principles of public administration. Recommending that such codes should be based on the appended model code of conduct, the recommendation also makes clear that the model should be adapted to meet the circumstances of the particular public service.

Resolution on Twenty Guiding Principles of the Fight Against Corruption represent key general principles that Council of Europe member states should respect in order to effectively combat corruption. The issue of conflict of interest is dealt with within principles No. 9 and No. 10 of this Resolution.

GRECO is responsible for following up on the implementation of both the Code of Conduct of Public Officials and the Resolution on Twenty Guiding Principles for the Fight Against Corruption in all South and East European countries. Up to now, GRECO carried out four rounds of evaluations on all corruption related issues. Issues related to the conflict of interest were evaluated in the second and fourth evaluation. The second evaluation process has been completed and published on the Greco website while the fourth evaluation is still under way.

1.2.3. OECD

The Revised Recommendation (The Guidelines for Managing Conflict of Interest in the Public Service) adopted by the OECD Council on 23 May 1997 invites member countries to “take effective measures to deter, prevent and combat” international bribery in a number of areas. In particular, it elaborates commitments in the fields of: criminalization of bribery of foreign public officials; accounting, banking, financial and other provisions, to ensure that adequate records are kept and made available for inspection and investigation; and public subsidies, license, government procurement contracts or other public advantage that could be denied as sanctions for bribery in appropriate cases. Although the countries analyzed in this Report are not OECD members, this Recommendation also refers to them. The reason for this is the fact that all respective countries have adopted the Stability Pact Anti-

Corruption Initiative, by which they have committed to apply the OECD Conflict of Interest Recommendation, as will be discussed in more depth in the following section. These recommendations do not constitute hard-law of the OECD and Anti-Corruption Initiative member states, but could be subject of review of the organisations which are responsible for monitoring of their implementation.

1.2.4. Stability Pact - Regional Anti-Corruption Initiative

The Stability Pact Anti-Corruption Initiative (SPAI) is a product of the Stability Pact for South Eastern Europe.¹⁰ The SPAI aims to assist South-East European countries to lay the foundations for a sustained fight against corruption. In a Meeting in Sarajevo on 16 February 2000, the Pact's member countries — including the 15 EU States, nine South-East European countries and the international donor community, formally endorsed the Initiative. Seven countries of South Eastern Europe decided to comply with the Initiative's requirements: Albania, Bulgaria, Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia (Serbia and Montenegro), FYROM and Romania. By co-coordinating efforts of the international community and promoting regional cooperation through a dialogue based on a strong monitoring mechanism, the SPAI aims to accelerate building the right institutions and adopting sound practices.

In line with the transformation of the Stability Pact into Regional cooperation Council (RCC) and through a decision of the SEE countries, the Anticorruption Initiative of the Stability Pact (SPAI), has been renamed in October 2007 to the Regional Anticorruption Initiative (RAI). A Steering Group of the RAI¹¹ systematically monitors the adherence by participating countries to the commitments they have made under the Initiative, but no concrete individual monitoring mechanisms have yet been carried out.

¹⁰ Stability Pact for South Eastern Europe was signed on the 10 of June 1999 in order to bring lasting peace, prosperity and stability for South Eastern Europe. It represented a form of regional cooperation through which the EU Member States, the European Commission, the countries of the region, Russia, the US, Canada, Japan, and various financial institutions and international organizations participated in reinforcing peace and stability in the region. Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Montenegro, Romania, Serbia The Former Yugoslav Republic of Macedonia and Moldova are member partners of this Pact.

¹¹ The Steering Group is the decision-making body of the Regional Anti-corruption Initiative. It is composed by representatives of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, the former Yugoslav Republic of Macedonia and Serbia, as well as an additional country as observer (Kosovo).

1.3. Content of standards

1.3.1. Identifying and Declaring Circumstances that May Raise a Conflict of Interest

Due to the nature of the public officials' engagement, there is a need to specify rules that would obligate them to report any circumstance that could potentially result in a conflict of interest. Declaring potential causes of a conflict of interest demonstrates a willingness to avoid problem situations.

In declaring conflict of interest, a difference is made between a declaration of public officials' assets and income and a declaration of potential conflict of interest. Declaration of assets and income is normally submitted at the time of assuming office, and is subsequently periodically resubmitted, while the declaration of circumstances that could raise a conflict of interest is submitted on an ad hoc basis.

Declaration of personal assets needs to indicate the information about real-estate, shares, business interests and partnerships, directorships, other investments, assets in safekeeping, gifts, and sponsored overseas visits. Such a declaration should have a key role in the control and prevention of conflicts of interest of the centrally and locally elected public officials, including members of the national and local parliaments. With respect to other public officials, the recommendation is to make asset declaration mandatory for senior civil servants and for civil servants in specific sectors, which are more prone to conflicts of interest.¹²

An interesting issue, which is a part of the issue of the public officials' asset declaration, relates to private company ownership. Public officials cannot be owners of the private companies on whose operations they decide in the course of their public office or which enter in contracts with the state, as such circumstances would present an ideal environment for a conflict of public and private interest. While owning a small stake or shares in large companies could be tolerated, all cases must be examined on individual basis before it can be concluded that there is no conflict of interest.

Declaration of public officials' personal income is not necessary, but it can contribute to the control of public officials and elected political officials. Obligating all public officials to declare their income would imply excessive costs, and consequently the recommendation is to limit this obligation to senior public officials. In addition to the declaration of personal assets, some countries require also declarations of public officials' core family assets.

Submitting a declaration of potential conflict of interest ensures transparency with the objective to discover situations of conflict of interest and disqualify those public officials from the decision-making process. Depending on the legal system, the control of interests may be internal, and therefore does not require public

¹² SIGMA, *Conflict-of-Interest Policies and Practice in Nine EU Member States: A Comparative Review*, SIGMA Paper No. 36, SIGMA/OECD, 2007.

disclosure of specific information, while in other systems, the practice is to disclose declarations, which would be made available to the public. In these situations, one has to differentiate also between different categories of public officials. Thus, public officials performing functions of the highest national interest would be obligated to disclose and declare any potential private interest that could raise a conflict of interest.

International Code of Conduct for Public Officials

Article 2

Public officials shall not use their official authority for the improper advancement of their own or their family's personal or financial interest. They shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office.

Public officials, to the extent required by their position, shall, in accordance with laws, declare business, commercial, financial and other interests or activities undertaken for financial gain that may raise a possible conflict of interest. In situations when a conflict of interest has occurred, the public official shall comply with the measures established to reduce or eliminate such conflict of interest.

1.3.2. Concurrent Additional Employment and Engagements

Public officials cannot be concurrently additionally employed on free lance terms in appointments that are outside their function if such activities could result in an actual, potential or apparent conflict of interest. The declarations that are submitted for the most part at the time of assuming public office need to indicate all additional appointments, while if such situation occurs during the term in public office, it has to be reported to the superior official or the competent state authorities. While additional appointment of public officials is not by itself illegal, the compatibility of the public function and additional employment has to be decided by the competent state authority.¹³ For these reasons, it needs to be specified in detail under which conditions additional employment is allowed, who decides about it, and which officials can enter in such employment, while retaining their public office. If they recognize the existence of a conflict of interest, the competent authorities may request that the additional appointments on free-lance basis are terminated.

¹³ All OECD countries have restrictions on additional employment of political appointees, including members of government, civil servants, and (judges), Spain, Germany, and Poland have made these conditions even more stringent.

1.3.3. Formal Decision-Making and Advisory Policy (Including Contract Awards)

Public officials must demonstrate objectivity and impartiality in the course of discharge of their functions, which may include contract negotiations, preparation or execution; decision-making on cash benefits or fines, and similar duties and responsibilities. Consequently, in deciding on individual cases, decisions must be adopted exclusively in accordance with law, irrespective of the person's religious, party and political, or ethnic membership or the satisfaction of personal affinities. Furthermore, it is prohibited to put family members, friends, other closely associated persons or legal entities in a privileged position or to grant them access to benefits. In addition, it is prohibited to offer special assistance to persons or legal entities already doing business with the government without the knowledge or approval of the superiors.

A conflict of interest is often raised in a situation when a public official, acting as the authorized person, awards contracts to individuals, as in such situations there is a possibility of giving privileges to legal entities or persons with whom the public official has a special, friendly or business relationship. Public officials should not award contracts on behalf of the state if they stand as interested parties (including also the situations when contracts are awarded to companies whose owners or co-owners are their family members or friends).

1.3.4. Gifts and Privileges

Gifts, privileges and other benefits received by public officials do not necessarily present a conflict of interest. A conflict of interest will not occur if the gifts and other benefits are infrequent and of minimum value; if they originate from the activities that relate to the performance of the civil servant's duty; if they are a part of regular protocol, courtesy,¹⁴ or hospitality; or if they do not impair or compromise the civil servant's or public official's integrity. On the other side, all gifts given as a token of appreciation (and which were, in fact, not asked for) for an activity performed by a public official, which falls under his/her job description; as well as gifts that cannot be presented transparently to the public, and all other gifts and benefits that may raise suspicion about the public officials' independence should be prohibited. Official gifts made to members of government or public officials should be considered as a part of the state ownership.

Public officials must not request gifts, economic gain or other privileges from any person, group or a private sector organisation cooperating with the government.

¹⁴ For example, such gifts could include ball-point pens or pins.

The only exemption from this rule relates to fundraising for the activities officially supported by the state.

1.3.5. Restriction and Control of Benefits After Cessation of Public Office and Engagement in Nongovernmental Organisations

The fact that a person is a former public official should not limit his/her opportunities for new employment. However, in the course of job hunting, former public officials should try to avoid any possibility that may raise a conflict of interest between their new job and their previous responsibilities.

For a certain period of time after the cessation of his/her employment with a state authority, a former public official is expected not to accept an appointment to the board of directors of any legal entity with which he/she formally cooperated to a significant extent in the period of one year before leaving public office or any employment in such legal entity. Furthermore, former public officials should not represent or deputise persons before organisations with which they formally cooperated to a significant extent in the period of one year or even a little longer before leaving public office, nor should they advise their clients disclosing information that is not available to public about the programmes or policy of the aforementioned bodies and organisations.

1.3.6. Setting Clear Rules on What is Expected from Public Officials in Case of Conflict of Interest

A public official needs to accept the responsibility if it is found that he/she has a private interest. The options for the resolution of conflict of interest may include one or more different methods: divestment or cessation of private interest; limiting access to specific information in the disputed field; reallocation of duties and responsibilities; transfer of the disputed interest to a trustee; cessation of employment, i.e. resignation in case of officials.

In cases when there is a low probability that a specific conflict of interest would frequently reoccur, the public official may retain his/her public office under the condition that he/she withdraws from decision-making in all cases which could raise such conflict of interest.

With respect to public officials, they can be required to terminate the disputed relationship if they wished to retain their position. However, if the conflict of interest cannot be resolved in any other way, the official should be required to resign.

1.3.7. Efficient Enforcement of the Conflict of Interest Policy

In addition to specifying the principles underlying the conflict of interest policy, the state needs to develop adequate mechanisms that would ensure that those principles are adhered to in practice. Two elements are crucial for bringing the agreed policies to life: the existence of the organisational system to enable detection of policy breaches and adequate sanctions.

Resolution of conflicts of interest requires the existence of independent bodies, organisations with competent personnel able to detect and establish the existence of conflicts of interest. That is why it is necessary to ensure the cooperation between the administration and internal supervision, as well as external supervisory institutions. This refers primarily to independent auditors and the ombudsman. The existence of a procedure enabling reporting and consideration of potential breaches of the conflict of interest policy would contribute significantly to addressing the issue of conflicts of interest.¹⁵

In case a breach of the conflict of interest policy is established, a developed system of adequate sanctions needs to be in place, which would be applied without any exception. Non-compliance with the conflict of interest policy should be regarded as a disciplinary matter. Less serious forms of such breaches may result in a simple registration of the disputed interest in the relevant registry. Refusal to resolve a conflict between the public and private interests can also be acknowledged, which could in turn undermine the public official's future advancement and the career prospects.

Alternative measures could be developed to provide effective complementary forms of redress for breaches of conflict of interest policy, and can be effective in dissuading those who would seek to benefit from such breaches. Such measures could include, for example, retroactive cancellation of affected decisions and tainted contracts adopted, i.e. closed by the public official, and disqualification of the beneficiaries, both individuals and corporations and associations, from the future processes.¹⁶

¹⁵ The rules for this type of procedure must cover also the issue of the protection from retaliation for the whistle-blowers who reported the irregularities in the public official's activities, as well as the issue of the elimination of possibilities for the abuse of the procedure.

¹⁶ Such exclusion measures may operate for a given period of time or for certain types of activities.

2. CONFLICT OF INTEREST - COMPARATIVE LEGAL ANALYSIS

2.1. Obligation to Declare Assets

2.1.1. Persons Obligated to Declare Assets

The regulations in Serbia, Montenegro, Kosovo, Macedonia, Croatia, Bosnia and Herzegovina, and Bulgaria stipulate the obligation of public officials to declare their assets and their family members' assets to different competent authorities. In the Republic of Serbia, public officials¹⁷ submit declarations of their assets and income, as well as the assets of their spouses, common law partners, and minor children to the Anti-Corruption Agency.¹⁸ In Montenegro, public officials submit declarations of their assets and income, as well as the assets and income of their spouses and children to the Commission for the Prevention of Conflict of Interest.¹⁹ In Kosovo, senior public officials submit declarations of their and their family, parents, adoptive parents, spouses, and minor children's assets to the Anti-Corruption Agency.²⁰ Public officials in Macedonia submit declarations of their assets and the assets of their spouses, children, parents, siblings, stepchildren to the State Commission and the Public Revenue Administration.²¹ Croatian public officials submit declarations of their assets, the assets of their spouses or common law partners, and minor children to the Conflict of Interest Commission.²² In Bosnia and Herzegovina, public officials submit declarations of their assets and the assets of their dependent household members to

¹⁷ The following public officials are exempt from the obligation to declare assets: members of parliament, i.e. members of management or supervisory board in public companies, institutions and other organizations founded by the municipality or the city, as well as members of management or supervisory board in public companies, institutions and other organizations founded by the Republic, Autonomous Province or the City of Belgrade, unless they receive remuneration for their membership, and unless they are explicitly required to do so by the Anti-Corruption Agency.

¹⁸ Article 44 of the Law on Anti-Corruption Agency of the Republic of Serbia (Zakon o Agenciji za borbu protiv korupcije Republike Srbije).

¹⁹ Article 19 of the Law on the Prevention of Conflict of Interest of Montenegro (Zakon o sprječavanju sukoba interesa Crne Gore).

²⁰ Article 40 of the Kosovo Law on Suppression of Corruption, and Articles 5 and 6 of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials.

²¹ Article 33 of the Law on the Prevention of Corruption of the Republic of Macedonia. Along with their assets declarations, public officials are obligated to sign a statement allowing access to all their accounts in the national and foreign banking systems, which has to be verified by a notary public.

²² Article 8 of the Law on the Prevention of Conflict of Interest of the Republic of Croatia (Zakon o sprječavanju sukoba interesa Republike Hrvatske).

the Central Election Commission of Bosnia and Herzegovina.²³ In Bulgaria, public officials are obligated to declare their assets, income, and expenditures in the country and abroad to the National Audit Office.²⁴ The declaration must also indicate all the above information for their spouses and minor children, unless they are divorced, separated or do not live in the same household.²⁵

In most of the countries, the obligation to declare assets applies only to high-ranking public officials and not to all holders of public office. High-ranking public officials are elected either through direct elections (e.g. members of parliament) or by a representative body (e.g. members of government, independent regulatory bodies, etc.), the President of the Republic (e.g. ambassadors) or persons appointed by the government (e.g. assistant ministers, secretaries of ministries, heads of administrative authorities) and the local self-government representative bodies. The exceptions are Bosnia and Herzegovina and Bulgaria, which in addition to high-ranking public officials require all other holders of public office to declare assets. Thus, Article 16, Para. 2, of the Bosnia and Herzegovina Law on Civil Servants (*Zakon o državnim službenicima Bosne i Hercegovine*) stipulates the obligation of all public officials to declare their assets, without specifying the information that must be indicated in assets declarations.²⁶ Similarly, Article 29 of the Bulgarian Law on Civil Service stipulates the obligation of all public officials to declare their financial status to their employer before taking public office, and every subsequent year.

The list of relatives of the public officials subject to the obligation to declare their assets is in accordance with the envisaged international standards. However, it must be borne in mind that family relations in the Balkans are quite strong, and that family members, whether it be close family or more distant relatives, are more closely connected than the case is, for instance, in Germany or Norway. It would therefore be prudent to consider expanding the list of relatives subject to the obligation to declare their assets. One possible solution would be to have such extension cover all relatives that are otherwise covered by the rules on recusal of a judge in civil or criminal proceedings.²⁷ For instance, pursuant to the Criminal Procedure Code and the Civil Litigation Procedure Law of the Republic of Serbia, a judge must be recused if a party to the proceedings, the party's statutory representative or legal representative

²³ Article 16 of the Law on Conflict of Interest in the Bosnia and Herzegovina Government Institutions (*Zakon o sukob interesa u instituciji vlasti BiH*). For the procedure before the Commission see Article 18 and onwards.

²⁴ Article 3 of the Bulgarian Law on Public Disclosure of Financial Interests of High-Ranking Public Officials.

²⁵ Article 4, Para. 5, of the Bulgarian Law on Public Disclosure of Financial Interests of High-Ranking Public Officials.

²⁶ Before taking office, the public official shall disclose all information relating to assets at the disposal of the public official or his/her core family members, as well as to the activities and functions performed by the public official and his/her core family members.

²⁷ Legislations of Serbia, Montenegro and Croatia are used as reference.

are the judges' blood relative in a straight line regardless of the degree of kinship, in a lateral line up to the fourth degree of kinship, or is the judge's spouse, common law partner, or in-law relative up to the second degree of kinship, regardless of whether the marriage is terminated or not. Furthermore, a judge will be recused if he is a guardian, adoptive parent or the adoptee of a party, the party's statutory representative or legal representative or if the judge and the party, the party's statutory representative or legal representative share a common household.²⁸ The provisions of the Croatian Civil Litigation Procedure Act and the Montenegrin Criminal Procedure Law are almost identical.²⁹ However, if such a wide list of relatives subject to the obligation to declare assets were to be accepted, it could considerably burden the existing, often insufficient capacities of the institutions competent for collecting and verifying asset declarations. Consequently, a compromise solution should be considered - the list of relatives subject to the obligation to declare assets should be expanded without jeopardizing the process of collecting and verifying asset declarations. A good example for the countries in the region are the solutions in Macedonian regulations, requiring the declaration of assets not only from spouses/common law partners and children, but also from parents and siblings; this solution can be considered most appropriate for all the countries in the region.

2.1.2. Information Indicated in Assets Declarations and Timeline for Submission of Declarations

The information that must be indicated in an assets declaration is almost identical in all of the countries,³⁰ and includes the following information: ownership rights relating to real assets, movable assets (the value of movable assets that have to be declared varies depending on the country³¹), ownership stakes in commercial companies³², securities, deposits in accounts with banks, savings institutions, and other depository institutions, and all extended loans, debts, assumed guarantees, as well as the annual income (i.e. taxable income). The regulations in the other countries require

²⁸ Article 67 paras 3, 4 of the Civil Litigation Procedure Act of the Republic of Serbia and Article 37, paras 2 and 3 of the Criminal Procedure Code of the Republic of Serbia.

²⁹ Article 71, paras 3 and 4 of the Croatian Civil Litigation Procedure Act and Article 38, paras 2 and 3 of the Montenegrin Criminal Procedure Act.

³⁰ Article 20 of the Montenegrin Law on the Prevention of Conflict of Interest, Article 5 of the Kosovo Law on Suppression of Corruption, and Articles 5 and 6 of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials, Article 46 of the Serbian Law on Anti-Corruption Agency.

³¹ In Montenegro, movable assets subject to statutory registration, e.g. aircrafts, have to be declared; In Serbia and Croatia, high-value movable assets, and in Kosovo, movable assets whose value exceeds 5,000 Euros, in Bulgaria motor vehicles, floating vessels, and aircrafts.

³² Bosnia and Herzegovina and Macedonian regulations do not require this information in assets declarations.

some additional information to be indicated in the declarations. Thus, for example, in Montenegro and in Serbia, rights deriving from copyright, patent, and similar rights, income sources and income from scientific, teaching, sport, and cultural activities, membership in management or supervisory boards in public companies, and other legal entities must be declared. Serbia requires also entitlement to use an apartment for official purposes, and income from other public appointments, functions, and activities, which are in accordance with law, to be declared.

It is interesting to note that, in accordance with the envisaged provisions, only the Macedonian legislature does not define high-value assets,³³ while, on the other hand, it regulates in detail the obligation of high-ranking public officials to declare any changes relating to their or their family members' assets. A change in assets means: building a house or other buildings, acquiring real-estate, securities, motor vehicles or other movables whose value exceeds the amount of twenty average wages (the average wage is calculated based on the average wage in the republic for the past three months). In addition to the specified information, a declaration must indicate also the origin of the declared assets.³⁴

In Bulgaria, high-ranking public officials are obligated to declare their income received in the previous year from other activities, which does not constitute remuneration for holding a public office in a public authority, and which exceeds 1,025 Euros. Furthermore, all cash expenditures for high-ranking public officials, their spouses, and minor children, which were not covered personally by the above persons or institutions that employ them, and which were intended for financing of the costs of education or travel abroad, must be declared.³⁵

High-ranking public officials are obligated to submit their assets declaration before taking office, after termination of or removal from office, in case of any significant changes relating to the composition of assets,³⁶ as well as in some other

³³ Article 33, Para. 1, of the Macedonian Law on the Prevention of Corruption. See http://dksk.org.mk/en/images/stories/PDF/assets_declaration.pdf, 23.10.2012.

³⁴ In Macedonia, money transfer documents and trails are attached to the declaration, and submitted to the State Commission and the Public Revenue Office, which is different from the provision relating to the assets declarations submitted to the Commission. In Bosnia and Herzegovina, this issue is regulated in Article 15, Para. 7, of the Law on Elections (Zakon o izborima).

³⁵ Article 3, Para. 2, of the Bulgarian Law on Public Disclosure of Financial Interests of High-Ranking Public Officials.

³⁶ Articles 7, 8, 9, and 10 of the Kosovo Law on Suppression of Corruption, and Articles 5 and 6 of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials; for Montenegro, Article 19 of the Montenegrin Law on the Prevention of Conflict of Interest, as well as Articles 13, 14 of the Rule of Procedure before the Commission for the Prevention of Conflict of Interest (Pravilo o postupku pred Komisijom za sprečavanje sukoba interesa); for the Republic of Serbia, Article 12 of the Law on the Prevention of Conflict of Interest in Discharge of Public Office (Zakon o sprečavanju sukoba interesa u vršenju javne funkcije), Article 8 of the Law on the Prevention of Conflict of Interest of the Republic of Croatia, Article 33 of the Macedonian Law on the Prevention of Corruption, Article 12 of the Law on Conflict of Interest in Bosnia and Herzegovina Government Institutions, Article 4 of the Bulgarian Law on Public Disclosure of Financial Interests of High-Ranking Public Officials.

situations specified by law. The regulations of Montenegro, Bosnia and Herzegovina, and Kosovo require that the assets declaration is submitted annually. In Kosovo, the declaration must be submitted also additionally, if the Anti-Corruption Agency so requests. The Croatian Law requires the submission of the declaration every four years if the official is re-elected; the Serbian Law requires that the assets declaration is submitted also two years after the termination of office in case of considerable changes relating to assets that occurred during the term of office, while the Montenegrin Law on the Prevention of Conflict of Interest stipulates the obligation to submit the assets declaration also for the year after termination of the public office.

2.1.3. Control of the Contents of Assets Declarations: Competent Institutions and Sanctions

In all of the countries, the competent institutions that receive assets declarations are responsible also for the control of their contents,³⁷ and in all cases they have the right to request additional evidence relating to the declared assets.³⁸ Also, as a rule, the institutions responsible for the prevention of conflict of interest may contact the public authorities in which the official performs his/her office, as well as banks, and other financial institutions.³⁹

All submitted assets declarations are available on the web sites of the institutions that maintain the public officials' assets registries.

The regulations of the analysed countries stipulate different sanctions for public officials who fail to declare or who misdeclare their assets, the most common sanction being a fine imposed in the misdemeanour procedure. Thus, for example, the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts for All Public Officials stipulates a range of fines for all

³⁷ Article 8, Para. 3, of the Croatian Law on the Conflict of Interest, Article 48 of the Serbian Law on Anti-Corruption Agency, Article 28 of the Montenegrin Law on the Prevention of Conflict of Interest, Article 14 of the Kosovo Law on Suppression of Corruption, and Articles 5 and 6 of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials, Article 5 of the Bulgarian Law on Public Disclosure of Financial Interests of High-Ranking Public Officials.

³⁸ In accordance with Article 3, Para. 3, of the Kosovo Law on Suppression of Corruption, and Articles 5 and 6 of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials, any person may submit to the Agency in writing information relating to the declared assets, for the purposes of establishing the truthfulness of the declaration.

³⁹ Article 8, Para. 13, of the Croatian Law on the Conflict of Interest, Article 48 of the Serbian Law on Anti-Corruption Agency, Article 29 of the Montenegrin Law on the Prevention of Conflict of Interest, Article 16 of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials, Article 7, Para. 2, of the Bulgarian Law on Public Disclosure of Financial Interests of High-Ranking Public Officials.

public officials who fail to fulfil their obligation to declare assets.⁴⁰ In addition to fines, it is possible to impose a protective measure of disqualification from holding office for a maximum term of one year.⁴¹ The misdemeanour procedures are initiated by the Agency. In case a failure to fulfil a prescribed obligation comprises also a criminal offence, the Agency files also criminal charges.⁴² The Montenegrin Law on the Prevention of Conflict of Interest also stipulates fines in case a public official fails to declare his/her assets deriving from scientific, teaching, cultural or sports activity, or copyrights, patents or similar rights,⁴³ or if he/she fails to submit the declaration to the Commission (or submits it including misrepresented data). If the Commission, at any stage of the procedure, has a reason to believe that a public official may have committed a criminal offence, it shall file criminal charges to the competent authorities.⁴⁴ The issue of non-declaration of public officials' assets in Macedonia⁴⁵ is sanctioned with fines as well. A similar situation is also present in Bosnia and Herzegovina, where Article 19, Para. 10, of the Law on Elections stipulate fines for all members and delegates of the Bosnia and Herzegovina Parliamentary Assembly and members of the Bosnia and Herzegovina Presidency who fail to declare their assets. State officials in Bosnia and Herzegovina will also be imposed a fine for a failure to submit a declaration of their financial status. In Bulgaria, a public official who fails to submit the declaration within the statutory timeline, or repeats that offence will also be imposed a fine. In case no declaration is submitted or in case a public official shows no intent to cooperate in that matter, the National Audit Office is obligated to inform the National Tax Agency and the State Agency for National Security thereof.

In the Republic of Croatia, in case a public official fails to submit or submits an incomplete assets declaration, the Commission is obligated to issue a written order ordering him/her to fulfil that obligation, before they can apply more serious sanctions. If the public official fails to comply with the written order, the Commission can initiate the procedure against the public official and impose the sanction of the cessation of payment of a portion of his/her net monthly salary or a public disclosure of the Commission's decision.⁴⁶ More severe sanctions will be imposed if a public official fails to submit the declaration, or provides untruthful or

⁴⁰ Article 17, Para. 1, Items. 1, 2, 3, 4, 5 of the of the Kosovo Law on Suppression of Corruption, and Articles 5 and 6 of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials.

⁴¹ Article 17, Para. 4 of the Kosovo Law on Suppression of Corruption, and Articles 5 and 6 of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public.

⁴² Article 17, Para. 5, 4, of the Kosovo Law on Suppression of Corruption, and Articles 5 and 6 of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials.

⁴³ Article 49, Paras. 1 and 8, of the Montenegrin Law on the Prevention of Conflict of Interest.

⁴⁴ Article 38 of the Montenegrin Law on the Prevention of Conflict of Interest.

⁴⁵ Article 63 of the Macedonian Law on the Prevention of Corruption.

⁴⁶ Article 42 of the Croatian Law on the Conflict of Interest.

incomplete information in the declaration in an attempt to hide the real situation, even after he/she has been imposed a sanction. In that case, the Commission may issue a proposal for removal from office, which is submitted without any delay to the public authority that appointed the public official,⁴⁷ or may file criminal charges if such non-declaration includes elements of a criminal offence.

The most severe sanctions for no-declaration of assets are stipulated by the Serbian Law on Anti-Corruption Agency, which specifies that a public official who fails to declare assets or who misdeclares assets will be punished by imprisonment for a term of six months to five years. As a consequence of such conviction, the public official will have his/her public office terminated, and he/she will be disqualified from public office for a period of ten years from the validity of the judgement.⁴⁸ Fines are imposed only in the event of delayed submission of assets declarations, i.e. when the public official declares assets on his/her own after the expiry of the timelines specified in the Law.

2.2. Ownership Stakes in Commercial Companies

During their term in office, the public officials who have ownership stakes in commercial companies are obligated to transfer their controlling rights to other persons. A public official is obligated to transfer his/her controlling rights to a person who is not associated to him/her, and who will exercise such controlling rights in his/her own name, and on behalf of the public official. Such persons to whom the controlling rights have been transferred are known as the “associated”, i.e. “confidential” persons.⁴⁹ In Serbia, exceptionally, a public official may transfer his/her controlling rights to other natural or legal person that is a founder, i.e. member or the

⁴⁷ The public authority may remove the official from office, whereby it is obligated to notify the Commission, or may reject such proposal, providing the reasons for such decision. In the same event of official’s conduct, the Commission may issue the official a request for resignation, which is published in the Official Gazette (Narodne novine), daily newspapers sold in the overall territory of the country, and on the Commission’s web site. These decisions can be contested in an administrative procedure (Articles 46, 47 of the Law).

⁴⁸ Article 72 of the Law on Anti-Corruption Agency.

⁴⁹ For the purpose of the Montenegrin law, an associated party is a public official’s relative by blood or by marriage within the second degree, and in-law in the first degree, a spouse or common law partner, adoptive parent or an adoptee. The Serbian Law stipulates the same definition of “associated party”, adding that the term means also any other natural or legal person that may be justifiably considered, on the basis of other grounds and in other circumstances, associated by way of interest to the public official. The Croatian Law includes all the above persons specified in the Montenegrin and Serbian regulations, and adds siblings to the list. In Macedonia, associated persons include spouses, children, parents, siblings, relatives within the fourth degree, and in-laws within the second degree if sharing household with the official. Only Article 14 of the Kosovo Law on the Suppression of Corruption stipulates that the transfer shall be made to a confidential person.

director of a commercial company in which the public official holds the controlling rights.

During his/her term in office, a public official must not impart information, give instructions, orders, or in any other way be associated to the person to whom he/she transferred the controlling rights, to prevent him/her from influencing the execution of those rights and the duties ensuing from the transferred controlling rights. However, the public official retains the right to be informed about the movements in and the status of the companies in which he/she owns assets. The Kosovo Law on the Suppression of Conflict of Interest Interest in Discharge of Public Office stipulates also that, in case the person to whom the controlling rights have been transferred establishes business relations with the central or local institutions, public companies or companies with more than 5% state ownership, he/she is obligated to notify the public official of such business deals.

The percentage of ownership stake that requires transfer varies from country to country: in Croatia it is 0.5%, in Bosnia and Herzegovina, it is more than 1%, in Serbia more than 3%, in Kosovo more than 5% of shares, i.e. ownership stake, while in Macedonia and Montenegro, the percentage of ownership stake that would require transfer of controlling rights is not specific by law.⁵⁰

The Croatian Law on the Prevention of Conflict of Interest stipulates additional restrictions for public officials relating to ownership of controlling rights in private companies. Any commercial entity in which a public official has 0.5% or more ownership stake cannot enter into business relationships with the public authority in which the public official performs his/her office, and must not be a member of a group of tenderers or subcontractors in such legal relationship. Such defined restriction applies also to commercial entities in which a public official's family members have 0.5% and more ownership stake, as well as when a public official's family member has acquired in any way, directly or indirectly, shares from the public official in the period of two years before his/her appointment to office, i.e. election, and until the termination of his/her office.

The regulations in Serbia and Croatia stipulate also some restrictions for civil servants and employees. In accordance with the Serbian Law on Civil Servants, a civil servant (as well as an official⁵¹) is disqualified from being a founder of a commercial company, public service, or doing entrepreneur business. In case they already have ownership stakes in a commercial company, the civil servants are subject to the provisions specifying the obligation of transfer of public official's controlling rights.⁵²

⁵⁰ Article 15 of the Croatian Law on the Prevention of Conflict of Interest, Article 35, Para. 5, of the Serbian Law on Anti-Corruption Agency, Article 14 of the Kosovo Law on the Suppression of Conflict of Interest in Public Office, Article 7 of the Montenegrin Law on the Prevention of Conflict of Interest, Article 19 of the Macedonian Law on the Suppression of Corruption.

⁵¹ Article 33 of the Serbian Law on Anti-Corruption Agency.

⁵² Article 28, Paras. 1,2, of the Serbian Law on Civil Servants (Zakon o državnim službenicima).

In Croatia, a civil servant is disqualified from generating capital gains or founding a commercial or other legal person, which operates in the same the activity that he/she deals with as a civil servant, or which is associated with the duties under the scope of activities of the public authority in which he/she is employed.⁵³

After termination of public office, public officials (and in Serbia and Croatia civil servants as well) are allowed to reinstate their ownership stakes and controlling rights in commercial entities.

A provision of the Bulgarian Law that relates to this issue specifies that a Bulgarian public official must not dispose of state or public assets, spend budget funds, including EU funds, issue various confirmations or certificates, or perform control of any of the aforementioned activities in order to secure gains for non-profit legal entities, commercial companies in which the public official or his/her associated person is a member of management or supervisory board, director, partner, holder of an ownership stake or shareholder.⁵⁴ Moreover, a public official is disqualified from performing any of the above activities in the interest of the above legal entities in which he/she was a member of management or supervisory board, director, partner, holder of ownership stake or shareholder twelve months before he/she was appointed to public office.⁵⁵

2.3. Membership in Management or Supervising Boards of Commercial Companies Entities and Public Institutions and Publicly-Owned Companies

In addition to the prohibition to own controlling rights in commercial companies during the term in office, the regulations of these countries stipulate explicitly the prohibition for public officials (and in some countries civil servants as well) to sit on management or supervisory boards of some commercial companies and also of publicly-owned companies and public institutions.

The Kosovo Laws on the Suppression of Corruption and on the Suppression of Conflict of Interest in Public Office stipulate that a public official cannot be the manager or member of management or supervisory board of a private company.⁵⁶ A public official is allowed to perform the same functions in public companies, funds or commercial companies in which a central or local government authority holds shares or other rights based on which he/she participates in the management or capital, but in that case he/she loses the right to receive remuneration in addition to the regular pay.

⁵³ Article 32 of the Croatian Law on Civil Servants (Zakon o državnim službenicima).

⁵⁴ Article 9, Para. 1, of the Bulgarian Law on the Prevention and Identification of Conflict of Interest.

⁵⁵ Article 9, Para. 2, of the Bulgarian Law on the Prevention and Identification of Conflict of Interest.

⁵⁶ Article 26, Para. 2 of the Kosovo Law on the Suppression of Corruption, and Article 15 of the Law on the Suppression of Conflict of Interest in Public Office.

Serbia has the identical prohibition of public officials' appointments in the private and public sector. The Law on Anti-Corruption Agency stipulates primarily that a public official during his/her term in office cannot be a founder of a commercial company or public service, and cannot engage in an independent activity. Furthermore, a public official cannot perform a managerial, supervisory or private capital representation function in a commercial accompany, private institution or other private legal person, unless that is a professional association, in which case he/she does not have the right to receive remuneration or gifts deriving from the membership in the association.⁵⁷

The Serbian Law on Civil Servants explicitly prohibits all civil servants to act as directors, deputy directors or assistant directors in a legal person. The only exception from that rule is if they are appointed to those positions by the Government or other public authority.⁵⁸

In Croatia, conflict of interest is raised in case a public official is appointed member of management or supervisory board of a commercial company, supervisory board of extra-budgetary funds, and if he/she performs management functions in commercial entities.⁵⁹ As an exception, Croatian public officials can be members of management or supervisory board of maximum two non-profit associations or institutions, or of funds and societies that are of particular relevance for the local or regional self-government unit, but without the right to receive remuneration or gifts.⁶⁰ Croatian civil servants cannot be appointed members of management or supervisory board of a commercial company that is subject to the oversight by the civil servant. However, outside working hours and subject to the approval of the superior, civil servants may perform activities or provide services to natural or legal persons, in circumstances when such persons is not subject to the oversight by the public authority in which the civil servant is employed, or if such engagement is not prohibited under a separate law. In such circumstances, the civil servant's appointment would not constitute a conflict of interest, or a barrier for due discharge of his/her duties, or impair the reputation of the civil service.⁶¹

Public officials in Bosnia and Herzegovina cannot be appointed members of parliament, supervisory board, board of directors or management, and cannot act as the authorised person in a public company during their term in office, and six months after termination of office. In addition to that, they cannot be members of parliament, supervisory board, board of directors and management, and they cannot act as the authorised person in any private company entering into contracts or other business

⁵⁷ Articles 33, 34 of the Serbian Law on Anti-Corruption Agency.

⁵⁸ Articles 28, 29 of the Serbian Law on Civil Servants.

⁵⁹ Article 14 of the Croatian Law on the Prevention of Conflict of Interest.

⁶⁰ Article 14, Para. 5, of the Croatian Law on the Prevention of Conflict of Interest.

⁶¹ Articles 32, 33, 35 of the Croatian Law on Civil Servants.

arrangements with the institutions financed from the budget at any level.⁶² Civil servants in the Bosnia and Herzegovina government institutions cannot be members of management or supervisory boards of political parties.⁶³

Macedonia has a similar prohibition for public officials to be appointed members of management or supervisory board in a commercial company, but also to acquire, during the term in office and three years after termination of office, on any account or in any form, shareholding rights in a legal person that was subject to his/her oversight or other control during his/her term in office.⁶⁴ Civil servants cannot concurrently be the responsible person or a member of management board in a public company.⁶⁵

The laws of Montenegro include the most problematic solutions in this area. Even though Articles 8 and 9 of the Montenegrin Law on the Prevention of the Conflict of Interest in principle prohibit public officials to be members of company organs and to hold public offices in publicly-owned companies and public institutions, the Law also envisages considerable exceptions. Namely, the majority of public officials, except for the members of Government, judges of the Constitutional Court, judges, the state prosecutor and deputy public prosecutor may, exceptionally, hold a public office in publicly-owned companies and public institutions.⁶⁶ The Law, however, does not further explain the meaning of the term “exceptionally”, which opens the possibility for the majority of public officials to be members of managing or supervisory boards of publicly-owned companies or public institutions without any statutory obstacle. Interestingly enough, the members of the Montenegrin National Assembly, as legislators, have left themselves the option to be members of managing bodies of publicly-owned companies; the same possibility is given to members of local self-government assemblies, and to other officials (e.g. members of the senate of the State Audit Institution, the Ombudsman, the members of the Securities’ Commission and the like). There is no doubt that such solutions do not comply with international standards, since there is ample possibility for a considerable number of officials to hold additional lucrative offices, which can easily result in the prevalence of private interest of that of the public.

⁶² Articles 5, 6 of the Law on Conflict of Interest in the Bosnia and Herzegovina Government Institutions.

⁶³ Article 16, Para. 3, of the Bosnia and Herzegovina Law on Civil Servants (*Zakon o državnim službenicima BiH*).

⁶⁴ Article 19 of the Macedonian Law on the Suppression of Corruption.

⁶⁵ Article 21 of the Macedonian Law on the Suppression of Corruption.

⁶⁶ Article 9, paragraph 1 of the Montenegrin Law on Prevention of the Conflict of Interest.

2.4. Additional Appointments and Engagements

With respect to additional employment and engagements of public officials, in all of the analysed countries, the regulations stipulate multiple restrictions. In accordance with the Kosovo Law on the Suppression of Corruption,⁶⁷ Serbian Law on Anti-Corruption Agency,⁶⁸ Macedonian Law on the Suppression of Corruption,⁶⁹ and Croatian Law on the Prevention of Conflict of Interest,⁷⁰ a public official who performs his/her activity professionally, must not independently or as a part of his/her office, perform professional or other income-generating activities without obtaining a prior approval by his/her supervisor (Kosovo and Macedonia), i.e. the Anti-Corruption Agency (Serbia), the Commission (Croatia). While public officials in Bosnia and Herzegovina must not perform the duties of the authorised persons in foundations and associations that are financed from the budget at any level of the government in the amount exceeding 5,000 Euros annually, they may perform the executive function in foundations and associations that are not financed from the budget at any level of the government.⁷¹ Civil servants in Bosnia and Herzegovina must not perform an additional function for which he/she would be eligible to receive remuneration, unless it is approved by the Minister or head of institution. A civil servant in Serbia may, subject to a written approval by his/her manager, outside working hours, work for another employer, unless additional employment is prohibited under separate regulations and laws, if that does not raise potential conflict of interest or impairs the civil servant's impartiality. A public official in Kosovo cannot perform administrative, oversight or representation functions in commercial companies, firms, institutions, cooperatives, funds or agencies. If the working post he/she occupied at the moment of taking public office is incompatible with the public office, the public official must resign from it or the Agency will initiate the procedure for termination of office.⁷² The restriction stipulated by the Montenegrin Law implies that a public official cannot enter into a contract for provision of services to a public company or other commercial company which is in a contractual relationship with, i.e. performs services for the Montenegrin Government or the municipality, during his/her term in public office, unless the value of the contract is less than 500 Euros annually. Bulgarian civil servants are prohibited from performing functions that are incompatible with their office, and particularly receiving remuneration for such functions.⁷³

⁶⁷ Article 25 of the Kosovo Law on the Suppression of Corruption.

⁶⁸ Article 30, Paras. 1, 4, of the Serbian Law on Anti-Corruption Agency.

⁶⁹ Article 21 of the Macedonian Law on the Suppression of Corruption.

⁷⁰ Article 12, Para. 2, of the Croatian Law on the Prevention of Conflict of Interest.

⁷¹ Article 11 of the Law on the Prevention of Conflict of Interest in Bosnia and Herzegovina Government Institutions.

⁷² Articles 28, 29 of the Kosovo Law on the Suppression of Corruption. A similar provision is contained also in Article 31 of the Serbian Law on Anti-Corruption Agency.

⁷³ Article 19 of the Bulgarian Code of Conduct for Civil Servants.

On the other hand, public officials are allowed to perform functions in the area of science, sports, education, culture and research activities. They are allowed also to receive income deriving from copyrights, patents, and similar rights.⁷⁴ Article 26, Para. 2, of the Serbian Law on Civil Servants regulates this issue identically when it applies to civil servants. Furthermore, the Kosovo Law on the Suppression of Conflict of Interest in Discharge of Public Office contains also a provision prohibiting public officials to perform a private activity such as lawyer, notary public, licensed expert, consultant, agent or representative of profit and non-profit organisations.⁷⁵ A Bosnia and Herzegovina public official, however, must not perform duties of the authorised persons in foundations and associations in the area of sports and culture that are financed from the budget at any level of the government in the amount exceeding 25,000 Euros annually.⁷⁶

Kosovo regulations contain provisions relating to additional employment of public officials in non-governmental organisations, while the Serbian and Montenegrin regulations do not explicitly regulated that issue. Thus, a public official in Kosovo is allowed to be a member of management board of the non-governmental organisations active in the area of humanitarian work, culture, sports or similar activities, but they are not allowed to receive financial remuneration for such engagement. A non-governmental organisation will not receive funding from the state budget if a member of its management board is a public official who has a direct or indirect influence on the decision-making on what non-governmental organisations would receive funding from the Kosovo budget. In the Montenegrin and Serbian regulations, the provisions relating to engagement of public officials in the non-governmental sector cannot be found.

The Serbian Law on Anti-corruption Agency, however, stipulates the issue of the prohibition of discharge of concurrent public offices and the performance of functions in a political party.⁷⁷ A public official may hold only one office, unless the law stipulates concurrent functions or if he/she has obtained the approval of the Anti-Corruption Agency. At the moment of his/her election or appointment or election to another public office that he/she intends to discharge concurrently, the public official is obligated to request the approval of the Anti-Corruption Agency within the following three days. On the other side, the public official may retain the function in the political party, provided that that does not impair the discharging of the public function.

⁷⁴ Article 10 of the Kosovo Law on the Suppression of Conflict of Interest in Discharge of Public Office, Article 6 of the Montenegrin Law on the Prevention of Conflict of Interest, Article 30, Para. 2, of the Serbian Law on Anti-Corruption Agency, Article 13, Para. 3, of the Croatian Law on the Prevention of Conflict of Interest.

⁷⁵ Article 16 of the Kosovo Law on the Suppression of Conflict of Interest in Discharge of Public Office.

⁷⁶ Article 11 of the Law on the Prevention of Conflict of Interest in Bosnia and Herzegovina Government Institutions.

⁷⁷ Articles 28, 29 of the Serbian Law on Anti-Corruption Agency.

The Bulgarian Law on the Prevention and Identification of Conflict of Interest stipulates the a public official must not perform any other function that in accordance with the Constitution or a separate law does not comply with his/her discharge of public office.⁷⁸

2.5. Receiving Gifts and Other Privileges

In all the new countries in the territory of the former SFRY, as well as in Bulgaria, public officials are not allowed to receive gifts⁷⁹ or other benefits relating to the discharge of their office. The term “gift” includes money, various items irrespective of their value, rights and services provided free of charge. Public officials may receive protocolary gifts⁸⁰ and occasional gifts of symbolic value,⁸¹ whereby they must not in any case receive gifts in money, securities and precious metals, irrespective of their value.

Public officials are not obliged to declare gifts of symbolic value. Gifts of symbolic value mean gifts whose value is equivalent up to a certain monetary ceiling. That value is 100 Euros in Macedonia, i.e. 70 Euros in Croatia, 100 Euros in Bosnia and Herzegovina, 50 Euros in Montenegro, while Serbia stipulates that the value of a gift should not exceed 50% of the average monthly wage after tax and contributions in the republic. The provisions relating to this issue in Kosovo stipulate that the value of a gift must not exceed 50 Euros, i.e. that the overall value of gifts must not exceed 100 Euros annually if they are made by the same person. If a public official receives several gifts from the same person, the overall value of all the gifts must not exceed the specified amount. These restrictions apply also to all persons who have received

⁷⁸ Article 5 of the Bulgarian Law on the Prevention and Identification of Conflict of Interest.

⁷⁹ Article 17 of the Croatian Law on Civil Servants, Article 11 of the Croatian Law on the Prevention of Conflict of Interest, Articles 9, 10 of the Law on the Prevention of Conflict of Interest in Bosnia and Herzegovina Government Institutions, Article 15 of the Macedonian Law on the Suppression of Corruption, Article 86 of the Law on Defence (Zakon o odbrani), Article 33 of the Kosovo Law on the Suppression of Corruption, and Article 15 of the Law on the Suppression of Conflict of Interest in Public Office, Article 14 of the Montenegrin Law on the Prevention of Conflict of Interest, Article 39 of the Serbian Law on Anti-Corruption Agency.

⁸⁰ Protocolary gifts mean the gifts given by foreign officials and representative of international organisations during their visits and on other occasions, as well as other gifts given in similar circumstances. A public official cannot receive more than one gift during a year from the same person or institution.

⁸¹ Occasional small value gifts mean the gifts given in various official and private celebrations, holidays, and similar events.

a gift on behalf of a public official,⁸² but also to all persons who share a household with a public official.⁸³

If a public official is offered a gift that he/she is not allowed to receive, he/she is obligated to refuse it, notifying in writing the institution that elected or appointed him/her or on whose behalf he/she discharges a public office thereof.⁸⁴ In accordance with the Macedonia Law of the Prevention of Conflict of Interest, in case a public official cannot refuse a gift, he/she is obligated to forward the gift to the competent authority, and that, within 48 hours, submit a report on the received gift, indicating witnesses and other evidence.⁸⁵

The received gifts, as well as their value, must be declared to the public authority in which the public official performs his/her office, which will in turn register the data in the gifts catalogue,⁸⁶ whose copy is then forwarded to the Agency, i.e. the Commission, Anti-Corruption Agency, Croatian Commission, Bosnia and Herzegovina Central Elections Commission, and the State Commission.⁸⁷ Official gifts and appropriate gifts that exceed the specified monetary value, and are not

⁸² Article 14, Para. 6, of the Montenegrin Law on the Prevention of Conflict of Interest. Article 8 of the Law on the Prevention of Conflict of Interest in Bosnia and Herzegovina Government Institutions. In accordance with Article 42 of the Serbian Law on Anti-Corruption Agency, exceptionally, an associated person may receive a protocolary gift. An official shall not be held responsible if he can prove that he could not affect the behaviour of the associated person who received the gift or if he/she can prove that the gift received is not related to discharge of his public office.

⁸³ Article 11 of the Kosovo Law on the Suppression of Corruption, and Article 15 of the Law on the Suppression of Conflict of Interest in Public Office, and Article 33 of the Kosovo Law Suppression of Conflict of Interest in Public Office, Article 42 of the Serbian Law on Anti-Corruption Agency, and Article 14, Para. 3, of the Montenegrin Law on the Prevention of Conflict of Interest

⁸⁴ Article 15 of the Montenegrin Law on the Prevention of Conflict of Interest, Article 40 of the Serbian Law on Anti-Corruption Agency, Article 33 of the Kosovo Law on the Suppression of Corruption, Article 10(6) of the of the Law on the Prevention of Conflict of Interest in Bosnia and Herzegovina Government Institutions. This provision is not stipulated in the Croatian Law.

⁸⁵ Article 16 of the Macedonian Law on the Suppression of Corruption.

⁸⁶ Article 12, Para. 1, of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials, Article 16 of the Montenegrin Law on the Prevention of Conflict of Interest, and Article 41, Para. 2 of the Serbian Law on Anti-Corruption Agency, Article 5 of the Decree of Gifts Received by Croatian Officials (Uredba darovima koje prima dužnosnik HR).

⁸⁷ Article 12, Para. 5, of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials, Article 17 Montenegrin Law on the Prevention of Conflict of Interest, and Article 41 of the Serbian Law on Anti-Corruption Agency, Article 21 of the Macedonian Law on the Suppression of Corruption, Article 10, Para. 4, of the Law on the Prevention of Conflict of Interest in Bosnia and Herzegovina Government Institutions.

of personal nature, become the property of the state.⁸⁸ Protocolary gifts, as a rule, become the property of the state.

Should it establish that a rule on the declaration of gifts has been breached, the competent authority for the prevention of conflict of interest in the analysed countries is obligated to notify the public authority in which the public official performs his/her office, requiring that the disciplinary measures should be taken against the public official. In case there are reasons to believe that a criminal offence has been committed, criminal charges are also brought.⁸⁹

The gifts registry is public and it is available in the web sites of the competent authorities for the prevention of conflict of interest.

In Bulgaria, the provisions relating to gifts can be found only in the Code of Ethics for Public Officials. In accordance with the above Code, public officials are prohibited to receive gifts, money, other services or benefits for their work that could influence their discharge of public office.⁹⁰ Unlike the other analysed countries, Bulgaria does not stipulate the gifts of certain value that public officials are allowed receive. The Bulgarian Criminal Code in its articles relating to giving gifts and benefits to public officials has no mention either of a specific value over which it would be considered that a criminal offence of giving gifts and accepting bribes has been committed.⁹¹ Similarly, the obligation to declare all received gifts that exists in all the other countries is not stipulated. However, based on the interpretation of Para. 4 of Article 12 of the Bulgarian Law on the Prevention and Identification of Conflict of Interest, it may be concluded that that obligation exists, as that provision stipulates, in principal, the obligation of public officials to declare to the persons who elected or appointed them or to the Commission for the Prevention and Identification of Conflict of Interest any situation in which they have a private interest.

⁸⁸ Article 40 of the Serbian Law on Anti-Corruption Agency, Article 15 of the Montenegrin Law on the Prevention of Conflict of Interest, Article 33 of the Kosovo Law on the Suppression of Corruption, as well as Article 11 of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials, Article 4 of the Decree of Gifts Received by Croatian Officials.

⁸⁹ Article 41 of the Serbian Law on Anti-Corruption Agency, Article 17, Para. 2, of the Montenegrin Law on the Prevention of Conflict of Interest, Article 33 of the Kosovo Law on the Suppression of Corruption, as well as Article 12, Para. 6, of the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials, Article 17 of the Law on Conflict of Interest in Bosnia and Herzegovina Government Institutions, Article 21 of the Law on the Prevention of Conflict of Interest in conjunction with Article 357 of the Macedonian Criminal Code, Article 42 of the Law on the Prevention of Conflict of Interest

⁹⁰ Article 8 of the Bulgarian Code of Conduct for Civil Servants.

⁹¹ See Articles 224, 225, 301, 303, 304 of the Bulgarian Criminal Code.

2.6. Employment After Termination of Public Office

All of the analysed countries in the region adopted the internationally accepted standards relating to restriction of employment after termination of public office to avoid the possibility of establishing corruptive relationships during the term in public office.

In accordance with the Kosovo regulations, after termination of public office, the public official is disqualified from employment and appointments to managerial positions or from participating in the control of public or private companies if his/her duties in the period of two years before the termination of office were linked indirectly to the oversight or control of such companies' operations. The same rule applies also to the engagements of public officers in non-governmental organisations after termination of public office.⁹²

The Montenegrin regulations⁹³ contain similar provisions: for a period of one year (i.e. two years in Macedonia) after termination of office, a public officer is disqualified from acting as a representative or a proxy of a legal person with which the authority in which he/she performed public office has established or establishes a contractual relationship; or representing a natural or legal person before the public authority in which he/she participated in the decision-making. Furthermore, these laws stipulate that a public officer is disqualified also from performing audit and management activities in the legal person in which, for at least one year prior to termination of office, his/her duties were linked to the supervisory or control activities, or from entering into contractual relationships or other forms of cooperation with the authorities in which he/she held office.⁹⁴

The Croatian Law on the Prevention of Conflict of Interest stipulates a period of one year during which a public officer is disqualified from appointments or election to or entering into an employment relationship in the legal person in which he/she was in a business relationship during the term in office, unless he/she has obtained an approval by the Commission.⁹⁵

The Serbian Law on Anti-Corruption Agency simply stipulates that during the period of two years after termination of public office, the official whose office has ceased may not take employment or establish business cooperation with a legal entity, entrepreneur or international organisation engaged in any activity relating to

⁹² Articles 10-17 of the Kosovo Law on the Suppression of Conflict of Interest in Discharge of Public Office.

⁹³ Article 17, Para. 3, of the Macedonian Law on the Suppression of Conflict of Interest.

⁹⁴ Article 13 of the Montenegrin Law on the Prevention of Conflict of Interest, Article 17, Paras. 1, 2 of the Macedonian Law on the Suppression of Conflict of Interest.

⁹⁵ The same Article 20 of the Law also states, "when at the point of appointment, election or contract awards in that specific case it is ensued that he/she intends to enter into a business relationship with the body in which he/she held a public office."

the office the official held, except under approval of the Anti-Corruption Agency.⁹⁶

The Bosnia and Herzegovina regulations stipulate different provisions relating to public official and civil servants. During the term in office and six months after termination of office, public officials are disqualified from being members of management or supervisory board, parliament, board of directors or management, or from acting as the authorised person in a public company. They are also disqualified from being members of management or supervisory board, or the privatization directorate or agency.⁹⁷ The Law on Civil Servants in Bosnia and Herzegovina Government Institutions, in Article 16(b), stipulates, “A civil servant who was released from office may not, within two years after the date of release of office, be employed by an employer over whom, or join a company over which, he/she exercised regular supervision. He/she shall also not receive any income from such employer or company within two years after the date of release from office.”

Bulgarian public officials whose public office was terminated due to a conflict of interest are disqualified from public office for a period of one year. Furthermore, all public officers whose public office was terminated are disqualified from entering into employment contracts or any other contracts for performance of the oversight or control functions in the companies in which they had performed oversight or with which they had closed contracts during the last two years they were in office. They are disqualified also from being a partner, holding an ownership stake, being a director or member of management or supervisory board of such company. The above restrictions apply also to those companies which are in close relations with the described companies.⁹⁸ After termination of service, civil servants are prohibited, in principle, to abuse the information they obtained during their employment in the civil service.⁹⁹

In the regulations of Montenegro, Bosnia and Herzegovina, Croatia, Macedonia, Serbia and Bulgaria, the provisions relating to engagements of public officers in non-governmental organisations after termination of their public office cannot be found.

⁹⁶ Article 38 of the Serbian Law on Anti-Corruption Agency.

⁹⁷ Article 5 of the Law on Conflict of Interest in Bosnia and Herzegovina Government Institutions

⁹⁸ Articles 20a, 21 of the Bulgarian on the Prevention and Identification of Conflict of Interest.

⁹⁹ Article 13 of the Bulgarian Code of Conduct for Civil Servants.

2.7. Official Decision-Making and Advising Policy (Conclusion of Contracts Included)

In the countries in the region, officials must act conscientiously and impartially¹⁰⁰ while in office and must not influence the adoption of decisions by public administration authorities in order to achieve their own interests.¹⁰¹ This obligation is particularly prominent in cases of employment in public administration and in public procurement procedures.¹⁰²

In order to put effect to these principles, almost all the countries analysed in this report have a statutory obligation of public officials to report their private interest prior to a debate or adoption of a decision on an issue related to such interest. Such solutions are found in the statutes governing the conflict of interest in Macedonia,¹⁰³ Bulgaria¹⁰⁴ and Montenegro,¹⁰⁵ and also in the Serbian Law on Civil Servants.¹⁰⁶ A similar solution is envisaged by the Bosnia and Herzegovina Law on the Prevention

¹⁰⁰ See Article 4.2. of the Kosovo Law on the Suppression of Corruption: “An official must perform his/her office conscientiously, professionally, without discrimination and without granting privileges to anyone, with due observance of human freedoms, human rights and human dignity”.

¹⁰¹ See the Kosovo Law on Preventing the Conflict of Interest, Article 11 (v): “An official is prohibited from: influencing a decision of an official or a body for personal material gain or gain of a person he/she is related to, ix) to influence the adoption of decisions passed by legislative authorities, courts or executive authorities, using the position of an official for personal gain or gain of a close person. The same solution is envisaged in the Bulgarian Law on the Prevention and Disclosure of Conflict of Interest.

¹⁰² See Croatian Law on the Prevention of Conflict of Interest, Macedonian Law on the Prevention of Conflict of Interest and Bulgarian Law on the Prevention and Disclosure of Conflict of Interest. Pursuant to Article 7 of the Croatian Law on the Prevention of Conflict of Interest, an official must not “demand, accept or take a value or service in order to vote on any matter, nor affect the decision of a body or person for personal gain or gain of a related person f) promise employment or other right in exchange for a gift or a promise of a gift, g) influence employment or award of public contracts, i) in other way use the position of an official by influencing a decision of the legislative, executive or judicial power in order to attain personal gain or gain of a related person, a benefit or a right, conclude a legal operation or in other way benefit, in terms of interest, to self or a related person. Article 5 paragraph 2 of the Macedonian law envisages that “officials must not influence the passing of decisions in public procurements or in any other way use his/her position so as to influence the adoption of a decision in order to attain personal gain or benefit for self or a related person. ”.

¹⁰³ Article 13 of the Macedonian Law on the Conflict of Interest.

¹⁰⁴ Article 7 of the Bulgarian Law on the Prevention and Disclosure of Conflict of Interest

¹⁰⁵ Article 12 of the Montenegrin Law on the Prevention of Conflict of Interest.

¹⁰⁶ Article 30 of the Serbian Law on Civil Servants.

of Conflict on Interest in Public Authorities.¹⁰⁷ In addition to this solution, which is envisaged in all statutes, pursuant to the Macedonian Law on the Prevention of Corruption, the elected and appointed officials, civil servants and responsible persons in publicly-owned companies must be excluded from the decision-making process with regards to legal persons founded by the official or his/her family members.¹⁰⁸ In Serbia, if an official fails to report the existence of private interest, the individual act in the adoption of which such official had participated shall be declared null and void.¹⁰⁹

The solution which regulates the obligation of the officials to pass decisions impartially in more detail is envisaged in the Serbian Anti-Corruption Agency Law. Namely, Article 36 of this statute envisages that: “a legal person in which an official has more than 20% of stock or share, if undergoing privatisation procedure, participating in public procurement procedure or in other procedure resulting in a contract being concluded with a body of the Republic, territorial autonomy, local self-government, other budget user or other legal person founded by a body of the Republic, territorial autonomy or local self-government or a legal person where over 20% of capital is publicly owned, shall inform the Agency thereof within three days from the day the first actions were taken in the procedure, and also of the final outcome of the procedure within three days from learning that such procedure is concluded.”¹¹⁰

2.8. Conflict of Interest Regulations Relating to Security and Defence Sector

In all the analysed countries in the region, general regulations governing the prevention of the conflict of interest also apply to persons employed at the ministries of defence. Consequently, these regulations apply to ministers of defence, their deputies and assistants, heads and deputy heads of state administration bodies within the ministries of defence.

In addition to the above-mentioned persons, general regulations on the prevention of the conflict of interest in certain states envisage precisely additional persons from the defence sector to which these provisions will apply. This eliminates

¹⁰⁷ Article 7 subparagraph 1: Elected officials and holders of executive offices may not vote on any matter directly concerning a private company in which such official, holder of executive office or interest-related person has financial interest. In such cases, elected officials and holders of executive offices shall refrain from voting and explain the reasons for doing so in an open session. The same solution is envisaged in Article 20(b) of the Bulgarian Law on the Prevention and Disclosure of Conflict of Interest.

¹⁰⁸ Article 22 of the Macedonian Law on the Prevention of Corruption.

¹⁰⁹ Article 32 of the Serbian Anti-Corruption Agency Law, Article 17 (5) of the Croatian Law on the Prevention of Conflict of Interest.

¹¹⁰ Article 36 of the Serbian Anti-Corruption Agency Law.

any doubt as to whether such persons are under the obligation to observe the provisions of the statutes regulating the conflict of interest, such as the obligation to declare assets, decline presents, and the like. Thus, for instance, the Kosovo Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts for All Public Officials applies to "high public officials holding public offices in the security and order structures, such as the commander and deputy commander of the Kosovo Security Forces".¹¹¹ The Croatian Law on the Prevention of the Conflict of Interest also applies to the chief defence inspector, head and deputy head of the General Staff of the Armed Forces, commanders of the Croatian Armed Forces sectors and their deputies and commander of the Support Command, director and deputy director of the Croatian military academy and the head of the Croatian Coast Guard. In Bulgaria, the general regulations concerning the conflict of interest also apply to the director and deputy director of the National Social Security Institute.

In addition to the provisions concerning the prevention of the conflict of interest relating to a limited number of persons in the defence sector, the laws regulating the army in general, as a rule, include a general obligation of all military officials and other employees to avoid any activity which may constitute a real or manifest conflict of interest. Furthermore, the regulations of the countries in the region include certain provisions prohibiting military officials from engaging in specific activities, which undoubtedly result in the conflict of private and public interests. For example, the Law on the Service in the Kosovo Security Forces prohibits the members of Kosovo security forces to engage in other jobs, including private business, except under the approval of their superiors, and to have financial gain, except for their salary originating from their job or the nature of their job in the Security Forces.¹¹² Given that this statute also refers to the application of the Law on Civil Service, it can be concluded that military officials, professional soldiers and employees may not receive gifts or other benefits or privileges, except for protocolary gifts and gifts of small value.¹¹³

The Law on the Armed Forces of Montenegro stipulates explicitly the prohibition to receive gifts, use privileges or other benefits for themselves or their family members, friends and other legal or natural persons with whom they have established a private or business cooperation.¹¹⁴ Also, the civil servants and employees in the Ministry of Defence must not perform any activities that may raise conflict of interest, and subject to the approval of the competent authority, may perform outside working hours activities that will not raise conflict of interest. The performance of activities in the area of scientific research, pedagogy, humanitarian work, sports or

¹¹¹ Article 3 of the Law on Declaration, Origins and Control of Senior Public Officials' Assets and Control of Gifts For All Public Officials.

¹¹² Article 4 of the Law of the Kosovo Security Forces.

¹¹³ Article 52 of the Kosovo Civil Service Law.

¹¹⁴ Article 58 of the Law on the Armed Forces of Montenegro (*Zakon o vojsci*).

any similar activity is not subject to the approval of the superiors.¹¹⁵ Furthermore, the civil servants and employees in the Ministry of Defence are prohibited to receive money and gifts, except protocolary and occasional gifts of small value.

With respect to the Republic of Serbia, the Law on the Serbian Armed Forces (*Zakon o vojsci*) prohibits military officials and servants to receive gifts, prohibits their additional engagement, founding of companies and holding public offices, and participation in management bodies of companies. The problem, however, lies in the fact that the Anti-Corruption Agency is not competent for supervising the implementation of these provisions with regards to the vast majority of military officials, servants and professional soldiers - the supervision is vested with the heads of the Ministry of Defence. In addition, in Serbia, the top army officials are exempted from the obligation to declare their assets, whereby military professionals are exempted, to a considerable degree, from the general regime of the prevention of the conflict of interest.

Military personnel in the Armed Forces of Bosnia and Herzegovina¹¹⁶ are prohibited to, “receive and instigate a person to receive a gift or any other item of material value from any person or organisation that requests the Armed Forces to undertake an official measure, has a business relations or implements certain activities with them, or from those whose financial, professional or personal interests of implementing or not implementing their duties it may significantly influence.” The following Article of the same Law stipulates the exemptions of the above prohibition to receive gifts. Thus, for example, if a gift is made by a foreign country representative, professional armed forces personnel may receive it, but it would constitute the property of Bosnia and Herzegovina¹¹⁷. Furthermore, a person may receive personal gifts and “treats”¹¹⁸ from any person or organisation, provided that their value does not exceed 50 Euros, gifts from subordinate personnel or on behalf of subordinate personnel whose value does not exceed 200 Euros,¹¹⁹ and gifts from subordinate personnel for the superiors in special occasions,¹²⁰ in the value of 200 Euros. All received gifts must be declared to the superior professional armed forces officer.

The Bulgarian Law on Defence and the Armed Forces contains a provision that disqualifies the civil servants serving in the Ministry of Defence, for a period of three years after the termination of their service, from entering into contracts,

¹¹⁵ Article 50 of the Law on the Armed Forces of Montenegro.

¹¹⁶ Article 86 of the Law on Service in the Armed Forces of Bosnia and Herzegovina (*Zakon o službi u oružanim snagama BiH*).

¹¹⁷ Except in exceptional cases, when professional military personnel may become a property of such persons, if stipulated by a regulation adopted by the Minister of Defence. In any case, a person who receives a gift is obligated to notify his/her superior thereof.

¹¹⁸ Treats and gifts include food, services, and small value movables.

¹¹⁹ Gifts may be made in the following events: promotion, retirement, change of command structure or other professional achievements.

¹²⁰ E.g. weddings, birthday parties.

being partners, or holders of ownership stakes or shares, members of management or supervisory board of any commercial company over which they performed oversight or control in their capacity as a civil servant during the last year of their service. The same rule applies also to the civil servants in the Ministry of Defence who participated, during the last year of their service, in the organisation of public procurements or other procedures relating to EU funds. In that case, a former civil servant in the Ministry of Defence cannot participate or represent other persons in such procedures before the Ministry of Defence for a period of three years after the termination of his/her service.

With regards to all other issues concerning the conflict of interest, relevant statutes governing armed forces or army service of the countries in the region envisage that the statute regulating the conflict of interest with regards to civil servants shall apply accordingly to the military officials, servants, but shall not apply to military professionals.¹²¹ In this way professional military personnel, military servants and employees are required to respect the provisions general provisions on conflict of interest, stipulated by the Civil Service Law. Partial exception from this rule is the Law on Service in Armed Forces of BiH, which stipulates that regulations on civil servants and employees will be applied ‘appropriately’ only on military servants and employees and not on professional military personnel.

2.9. Main Problems in Implementing the Regulations

One of the main problems in implementing the regulations governing the conflict of interests concerns the lack of sufficient capacities of competent institutions to which the declaration of assets of public officials are submitted, in verifying such declarations. For instance, the Serbian Anti-Corruption Agency faces the challenge of verifying 20000 asset declarations of public officials¹²² which is a major task, one that, beyond doubt, exceeds the capacities of this recently-established institutions. It should also be borne in mind that in Serbia only high level public officials, and not civil servants, are under the obligation to declare their assets, as opposed to cases of Bosnia and Herzegovina and Bulgaria. The Bosnian Anti-Corruption Agency, which is competent for verifying asset declarations of all public officials and the B&H state level is still not operational, although it was established by a statute back

¹²¹ For instance, Article 8 of the Serbian Law on Armed Forces, Article 11 of the Montenegrin Law on Armed Forces, Article 1 paragraph 3 of the Kosovo Law on the Kosovo Security Forces, Article 14 of the Law on the Service in the Republic of Croatia Armed Forces, Article 3 of the Law on the Service in Bosnia and Herzegovina Armed Forces, Article 188a of the Defence and Security Forces of Bulgaria law. Military professional soldiers are a professional soldier, petty officer and officer.

¹²² Data taken from <http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf/BTI%202012%20Serbia.pdf>, February 10, 2013.

in 2009.¹²³ This renders the provisions on the obligation of public officials to declare their assets pointless. The Kosovo Anti-Corruption Agency also faces the problem of inadequate capacities, which results in a formalistic approach to the verification of asset declarations, without taking the necessary investigative actions in order to establish the true state of facts concerning the property of public officials.¹²⁴

In order to overcome the existing problems steps should be taken primarily towards building the capacities of institutions responsible for collecting and verifying asset declarations. The possibility of narrowing the list of public officials who are subject to obligation to declare assets should also be considered, particularly in cases where there is no pecuniary compensation for the performance of such public office. Pursuant to the accepted international standards and good practice, it is recommended that only the highest state officials should be subject to the obligation to declare assets, as opposed to such obligation being imposed on all public officials (e.g. all state or public officials), which is inspired with the intention to prevent the conflict of interest where it is most likely to occur, at the same time avoiding to overburden the capacities of the competent authorities. On the other hand, consideration should be given to the possibility of expanding the circle of relatives of the highest public officials subject to the obligation to declare assets. The suggestion is to extend this obligation, pursuant to Macedonian legislation, so as to have it cover, in addition to the public officials' spouse and children, the public officials' parents and siblings.

Another important problem for all the countries in the region is the implementation of the recommendations given by independent bodies competent for implementing the regulations concerning the conflict of interest, or rather, the issue of how the state authorities act upon their reports. For instance, the Bosnia and Herzegovina Central Electoral Commission, which is competent for resolving the conflict of interest of MPs, has pronounced several fines to MPs who were in conflict of interest; however, several MPs have refused to pay the fine or were considerably late in paying it.¹²⁵ The Macedonian State Anti-Corruption Agency faces similar challenges, since state institutions, contrary to its recommendations, often completely ignore the procedures aimed at preventing the conflict of interest. Such practice, coupled with a low institutional capacities and highly-politicized institutions constitutes fruitful ground for the corruption to flourish.¹²⁶ Serbian Anti-Corruption Agency is also faced with inadequate co-operation with other state institutions, the public prosecutors' office in particular - on several occasions the public prosecutors' office had refused to initiate criminal proceedings in cases where public officials have failed to declare their assets.

¹²³ SIGMA, *Assessment Report Bosnia and Herzegovina 2012*, SIGMA/OECD, p. 33.

¹²⁴ SIGMA, *Assessment Report Kosovo, 2012*, SIGMA/OECD.

¹²⁵ SIGMA, *Assessment Report Bosnia and Herzegovina, 2012*, SIGMA/OECD.

¹²⁶ SIGMA, *Assessment Report Macedonia, 2012*, SIGMA/OECD.

Finally, one of the major problems in the majority of the countries in the region is the issue of adequate monitoring of the implementation of the conflict of interest regulations with regards to professional soldiers, military officials and servants. The defence sector has two different hierarchies: one within the ministry of defence and one within the army itself. The officials of the ministry of defence are subject to the general regulations on the conflict of interest, the implementation of which is, as a rule, the competence of the specialised anti-corruption bodies. On the other hand, all military personnel, regardless of the rank, are subject to the general regulations applicable to civil servants, the implementation of which is in the competence of the ministry of defence. The major drawback of such a solution is the fact that the persons holding the highest positions in military hierarchy are not monitored by independent anti-corruption bodies, but the ministry. The situation is additionally complicated by the relative complexity and specific nature of security operations, which prevent full public insight, which implies that additional control mechanisms should be introduced in this sector.

3. CONCLUDING REMARKS

Ensuring the observance of ethics and providing quality services in public administration is closely connected to efficient anti-corruption action. The goals so defined must be constantly and consistently reiterated and emphasised, particularly in the context of the reform efforts taken in all the countries in the region in this sector over the past decade. The first step in successful prevention of corruption is to identify and objectively assess the factors and areas in which corruption may take place and develop - the conflict of interest, beyond doubt, being one of them. It is hence necessary for the state to have adequate mechanisms for preventing and sanctioning the conflict of interest between the private interest of the person holding a public office and the public interest, which such person should represent. The observance of internationally accepted standards in the field of prevention of the conflict of interest is one of the best indicators as to whether a state puts enough effort aimed at eliminating the situations where private interest may prevail over public interest.

General statutory regulations concerning the conflict of interest in Serbia, Croatia, Montenegro, Bosnia and Herzegovina, Kosovo, Macedonia and Bulgaria are, to a considerable extent, harmonised with international standards and offer almost identical solutions. The statutes of all analysed countries envisage the obligation to declare assets to relevant specialised anti-corruption bodies. Pursuant to internationally-accepted standard, this obligation should be imposed only to officials, and such solution is adopted in the laws of Serbia, Croatia, Kosovo, Montenegro and Macedonia. A somewhat different solution is adopted in the statutes of Bosnia and Herzegovina and Bulgaria, which require asset declaration not only from high

level public officials but also from civil servants. Even though this solution seems like a sound and comprehensive one, it raises the question of whether it can be efficiently applied in practice, given the capacities of specialised anti-corruption bodies competent for verifying the declared assets.

The comparative analysis has shown that in all analysed countries limits are put in place with regards to the additional engagement of persons holding public offices and their employment once they are no longer in public office. The only exception is the solution found in the Montenegrin Law on the Prevention of the Conflict of Interest, which allows most officials to hold managerial posts in publicly-owned company - this is not in accordance with international standards. The countries in the region also differ with regards to the prescribed periods during which the person who held public office may not engage in certain businesses, due to possible conflict of interest. Similarly, the statutory provisions concerning the acceptance of gifts or the obligation to dispose of shares in companies differ from state to state only with regard to the prescribed values of the gifts and/or shares in companies.

When analysing the regulations of the countries in the region governing conflict of interest in the defence sector, several problems can be identified. One of the most concerning problems is the lack of obligation to declare assets for the top military officials. Namely, the statutory provisions governing the conflict of interest, the implementation of which is, as a rule, in the competence of specialised anti-corruption bodies, do not apply to the top military officials in some countries. The situation is somewhat better in Croatia, Macedonia, Bulgaria and Kosovo, since the provisions of the general statutes governing the conflict of interest to certain army professionals. However, in Serbia, Bosnia and Herzegovina, high military officials are exempted from the general provisions of the statutes governing the conflict of interest and consequently are not under the obligation to declare assets or gifts received in service. The obligation to declare assets commonly also imposed on top military officials in other countries, including Lithuania, China and the USA. These and similar drawbacks must be corrected by precise statutory norms, for, otherwise, they leave ample room for abuse and corruption. Given that the defence sector is a major budget user, the potential damage to the budget is alarming.

A general observation applicable to all the countries in the region concerns the lack of adequate and/or detailed regulations governing the conflict of interest in the defence sector; the existing norms and references to the general regime are insufficient to regulate such an important issue. Namely, in all the countries in the region the provisions concerning the conflict of interest in the statutes governing the status of military officials and military professionals are rare and mainly consist of reference to provisions governing civil servants, which are of general nature and lack clear mechanisms for the monitoring of their implementation. Consequently, the legal framework in the field of the conflict of interest of all the countries in the region in the defence sector can be graded as B, which means it is partly harmonised with international standards.