

**LEGAL FRAMEWORK IN THE FIELD OF
CONFLICT OF INTEREST IN MONTENEGRO
WITH COMPARATIVE OVERVIEW AND
RECOMMENDATIONS FOR IMPROVEMENT**

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CONTENTS

I INTRODUCTION	7
-----------------------	----------

II INTERNATIONAL STANDARDS	8
-----------------------------------	----------

III COMPARATIVE EXPERIENCES	12
------------------------------------	-----------

3.1 General review	12
---------------------------	-----------

3.2. REPUBLIC OF SLOVENIA	13
----------------------------------	-----------

3.2.1. LEGISLATIVE FRAMEWORK	13
------------------------------	----

3.2.2. OBLIGATIONS OF A PUBLIC OFFICIAL	13
---	----

3.2.3. PROHIBITIONS AND RESTRICTIONS ON BUSINESS ACTIVITIES	15
---	----

3.2.4. TEMPORARY RESTRICTIONS ON ACTIVITIES AFTER TERMINATION OF PUBLIC FUNCTION	15
--	----

3.2.5. INCOMPATIBILITY OF FUNCTIONS	16
-------------------------------------	----

3.2.6. PROHIBITIONS AND RESTRICTIONS IN EXERCISING PUBLIC FUNCTION	16
--	----

3.2.7. ACCEPTANCE OF GIFTS BY PUBLIC OFFICIALS	17
--	----

3.2.8. OBLIGATION TO REPORT ASSETS	18
------------------------------------	----

3.2.9. PROHIBITIONS AND RESTRICTIONS ON LOBBYING BY A PUBLIC OFFICIAL	21
---	----

3.2.10. MISDEMEANOR LIABILITY	21
-------------------------------	----

3.2.11. INSTITUTIONAL FRAMEWORK	22
---------------------------------	----

3.3. REPUBLIC OF CROATIA	23
---------------------------------	-----------

3.3.1. LEGISLATIVE FRAMEWORK	23
------------------------------	----

3.3.2. OBLIGATIONS OF OFFICIALS	23
---------------------------------	----

3.3.3. PROHIBITIONS AND RESTRICTIONS IN PERFORMING OTHER BUSINESS ACTIVITIES	25
--	----

3.3.4. PROHIBITIONS AND RESTRICTIONS ON MEMBERSHIP IN ADMINISTRATIVE BODIES AND SUPERVISORY BOARDS	26
---	----

3.3.5. PROHIBITIONS AND RESTRICTIONS RELATED TO COMPANIES	26
---	----

3.3.6. PROHIBITIONS AND RESTRICTIONS AFTER THE TERMINATION OF PUBLIC FUNCTION	27
---	----

3.3.7. ASSETS REPORT	27
----------------------	----

3.3.8. RECEIVING GIFTS	28
------------------------	----

3.3.9. PENALTIES BASED ON VIOLATIONS OF THE LAW	29
---	----

3.3.9.1. Request to initiate misdemeanor proceedings	29
--	----

3.3.9.2. Administrative penalties	29
-----------------------------------	----

3.3.10. INSTITUTIONAL FRAMEWORK	29
---------------------------------	----

3.4 REPUBLIC OF SERBIA	31
-------------------------------	-----------

3.4.1. LEGISLATIVE FRAMEWORK	31
------------------------------	----

3.4.2. OBLIGATIONS OF A PUBLIC OFFICIAL	31
---	----

3.4.3. CUMULATION OF PUBLIC FUNCTIONS	31
---------------------------------------	----

3.4.4. INCOMPATIBILITY OF WORK WITH EXERCISE OF PUBLIC FUNCTION	32
---	----

3.4.5. PROHIBITIONS AND RESTRICTIONS AFTER TERMINATION OF PUBLIC FUNCTION	33
---	----

3.4.6. RECEIVING GIFTS RELATED TO THE EXERCISE OF PUBLIC FUNCTION	33
---	----

3.4.7. INCOME AND ASSET REPORT	34
--------------------------------	----

3.4.8. REGISTERS	35
------------------	----

3.4.9. PENALTIES BASED ON VIOLATIONS OF THE LAW	35
3.4.9.1. Criminal charges	35
3.4.9.2. Request to initiate misdemeanor proceedings	36
3.4.9.3. Initiative to inaugurate disciplinary proceedings	36
3.4.9.4. Administrative penalties	36
3.4.10. INSTITUTIONAL FRAMEWORK	37
3.5. MONTENEGRO	39
3.5.1. LEGISLATIVE FRAMEWORK	39
3.5.2. OBLIGATIONS OF A PUBLIC OFFICIAL	39
3.5.3. PROHIBITIONS AND RESTRICTIONS ON THE PERFORMANCE OF OTHER PUBLIC AFFAIRS AND FUNCTIONS IN COMPANY	40
3.5.4. PROHIBITIONS AND RESTRICTIONS ON EXERCISING PUBLIC FUNCTIONS IN PUBLIC ENTERPRISES AND PUBLIC INSTITUTIONS	41
3.5.5. PROHIBITIONS AND RESTRICTIONS REGARDING SERVICE AGREEMENTS AND BUSINESS COOPERATION	42
3.5.6. PROHIBITIONS AND RESTRICTIONS AFTER TERMINATION OF PUBLIC FUNCTION	42
3.5.7. PROHIBITIONS AND RESTRICTIONS REGARDING THE ACCEPTANCE OF GIFTS	42
3.5.8. RESTRICTIONS REGARDING SPONSORSHIP AND DONATIONS TO AUTHORITIES	43
3.5.9. ASSETS AND INCOMEREPORT	44
3.5.10. LEGAL EFFECT OF DECISIONS	46
3.5.11. MISDEMEANOR LIABILITY	47
3.5.12. INSTITUTIONAL FRAMEWORK	47
3.5.13. REVIEW OF THE WORK OF THE CORRUPTION PREVENTION AGENCY	50
IV Conclusions and recommendations	53
LITERATURE	55

I Introduction

More than five years and eight months have elapsed since Montenegro started implementing the Law on Prevention of Corruption (hereafter referred to as the Law) and established the Agency for Prevention of Corruption (hereafter referred to as the Agency) as an autonomous and independent body in charge of preventing conflicts of interest, restrictions on the performance of public functions, verification of reports on income and assets of public officials and other issues relevant to the successful fight against corruption. That's long enough period to make an assessment application of the Law and efficiency of the work of Agency.

The expectation placed on the Law and Agency was for them to align Montenegro with international and European Union standards in addressing corruption and preventing conflict of interest.

Since Montenegro is in the process of accession to the European Union, its progress in addressing problem of corruption is subject to monitoring and annual reporting by the European Commission. Therefore, the European Commission reports represent the most relevant external assessments of Montenegro's efforts in the fight against corruption.

The Study shares the Commission's positive view that as a result of recent changes to the Agency's leadership in 2020, "the Agency has embarked on a proactive approach to the challenges of its independence, integrity, impartiality, transparency, non-selective approach and quality of its decisions, improving overall performance." However, the Study shares the European Commission's view that significant work is needed to address the Agency's overall effectiveness, and that improved results and public confidence in Agency will depend on the Agency's continued efforts to ensure its integrity, impartiality and accountability.

This Study accordingly, taking into account the European Commission's reports and Agency performance data, gives a comparative review of regional approaches that offer a set of good practices, and undertakes its own analysis to generate recommendations for improving both the Law and the performance of the Agency. The Study intends to assist the Ministry of Justice, Human and Minority Rights, the Agency and the Parliament of Montenegro in maintaining the latter's momentum in improving its performance and considering amendments to the Law as part of this process.

In this regard, the target group of this publication is legal practitioners working on legislative development and conflict of interest issues in the field.

When it comes to the methodological aspect and following this introduction, the Study presents the most relevant legal instruments in this area, focusing on the standards of the United Nations, the Council of Europe, and the European Union, and a segment from the last European Commission Report on Montenegro. Then, due to their similar legal heritage to Montenegro, the Study evaluates the legal frameworks for the prevention of conflicts of interest, restrictions on the exercise of public office and the reporting of income and assets of the republics of Slovenia, Croatia, and Serbia. Next, the legal framework of Montenegro is presented, with an additional focus on the work of the Agency being the key anti-corruption body in charge of preventing conflicts of interest, restrictions on exercising public functions and reporting on income and assets in Montenegro. This resulted in a separate chapter at the end of the publication containing specific recommendations for improving the situation in this area, with emphasis on the necessary amendments to the legislative framework, as well as key recommendations regarding the work of the Agency for Prevention of Corruption and continuing cooperation with the European Commission.

II International standards

At the global level, the most important anti-corruption standards come from the United Nations Anti-Corruption Agency. The Council of Europe Criminal Law Convention on Corruption, the Civil Law Convention on Corruption and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime are regional conventions that set standards. These standards are contained and expanded in a number of so-called “Soft law” documents, including the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, UN General Assembly Resolution 51/59 on Action against Corruption, Council of Europe Ministerial Recommendation (97) 24 on twenty guiding principles for the fight against corruption, and Council of Europe Recommendation (2000) 10 on codes of conduct for public officials.

At the OSCE level, the fight against corruption is an integral part of the OSCE participating States’ commitments, as most recently highlighted in the document from 2012, the OSCE Council of Ministers’ Declaration on Strengthening Good Governance and Combating Corruption, Money Laundering and terrorist financing. Standards specifically relating to anti-corruption agencies or bodies can be found in the Jakarta Statement of Principles for Anti-Corruption Agencies and the Standards of Anti-Corruption Bodies (hereinafter referred to as the “EPAC standards”) and ten guiding principles against corruption (hereinafter “EPAC principles”) of the European partners.

In the following, we will refer to the most important international standards and relevant recommendations of international bodies as follows:

- **Criminal Law Convention on Corruption of the Council of Europe**

The CoE’s Criminal Law Convention on Corruption aims to develop common standards for certain corruption offenses. The Convention also deals with issues of substantive and procedural law, which relates to these crimes, and seeks to improve international cooperation. By harmonizing the definitions of individual criminal offenses of corruption, the signatories of the Convention are able to meet the criterion of dual criminal responsibility, while the purpose of the provisions relating to international cooperation is to enable direct and rapid communication between the competent institutions of the states.

- **Council of Europe Civil Law Convention on Corruption**

The CoE Civil Law Convention on Corruption aims to encourage signatory states to legislate effective measures to compensate persons for damage caused by corruption, to enable those persons to defend their rights and interests. The Convention is the first attempt to define common principles and rules at the international level in the field of civil law and corruption. The Convention also addresses the definition of corruption, as well as issues of liability and negligence as contributing factors to corruption, statute of limitations, contract validity, employee protection, accounting and auditing, evidence taking, interim measures and international cooperation.

- **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism**

The Convention emphasizes that the fight against serious crime requires the use of modern and effective methods at the international level. One of these methods consists in confiscating illicit proceeds and objects obtained by criminal offense of perpetrators of criminal offenses. To achieve this goal, an efficient system of international cooperation must be established.

- **Council of Europe Group of States against Corruption (GRECO)**

At the turn of the century, the Council of Europe has set up a supervisory body to assess compliance with these standards – Group of States against Corruption (GRECO). GRECO is a mechanism for mutual evaluation and “pressure of honor” between partners – with strict compliance with the equal rights and obligations of all its members. The group collects information through question-

naires as well as during field visits to member countries. Evaluation reports are considered and adopted at GRECO plenary meetings. They contain specific recommendations, subject to ex-post evaluation.

GRECO concludes that Montenegro has acted satisfactorily in implementing eight of the eleven recommendations contained in the Report on the Fourth Round of Corruption Prevention Evaluation in relation to MPs, judges and prosecutors. Of the remaining recommendations, one was partially implemented and two were not implemented.

- **OECD Convention on the Suppression of Bribery of Foreign Civil Servants in International Business Transactions**

The Convention encourages states to enact laws that treat bribery of foreign officials as a criminal offense. The Convention encourages states parties to investigate and prosecute persons who offer, promise or bribe foreign public officials in the context of international business transactions, and to impose appropriate sanctions on such persons.

- **OECD recommendations for improving ethical conduct in the public service**

The recommendations contain 12 principles for the establishment of systems and mechanisms for the promotion of ethical conduct in public services.

- **Recommendations of the Committee of Ministers of the Council of Europe on the Code of Conduct for Public Officials and the Model Code of Conduct for Public Officials**

This document contains detailed recommendations regarding codes of conduct for public officials, and includes, inter alia, provisions on resolving conflicts of interest and asset reports, as well as provisions on the treatment of gifts received during the term of office.

- **Resolution of the Committee of Ministers of the Council of Europe on twenty guiding principles in the fight against corruption**

The resolution promotes the effective repression and fight against corruption. Principles include raising awareness of corruption, improving investigative and prosecution procedures, promoting the specialization of anti-corruption bodies, and enhancing international cooperation.

- Comparative overview of excerpts from the annual reports of the European Commission on Montenegro for 2019 and 2020 and the Unofficial European Commission Working Document for Chapters 23 (Justice and Human Rights) and 24 (Justice, Freedom and Security) from May 2021, which refers to the period from October 2020 especially, when the Report of the European Commission for 2020 was published.

Balance sheet results in the field of repression and prevention of corruption

The EC Report on Montenegro for 2019 states: “In the coming years, Montenegro should in particular: improve the balance sheet of results in repression and prevention of corruption, including the application of effective sanctions. “However, the need for proactive work and sustainable efforts remains in both the prevention and repression of corruption.” “Montenegro has made some progress in establishing a balance sheet results in the prevention of corruption.”

The EC Report on Montenegro for 2020 states: “Despite the measures taken and the more proactive work of the new Agency for Prevention of Corruption Council, following challenges still remain: The Agency and its staff must ensure maximum transparency, integrity, impartiality, independence, non-selective approach, and uniform and full application of relevant laws.”

While the Unofficial EC Working Document of May 2021 states in the fight against corruption part that improved results of, and public confidence, in the Agency for Prevention of Corruption will depend on the Agency’s continued efforts to ensure its integrity, impartiality and accountability, and to correct the lack of decision-making.

Defining the priorities of the Agency

The EC Report on Montenegro for 2019 states: “Challenges still need to be addressed”
While the EC Report on Montenegro for 2020 states: “Challenges remain.” However, **in the Unofficial EC working document from May 2021, this challenge was not addressed.**

Credibility

The EC Report on Montenegro for 2019 states: “Challenges still need to be addressed”
While in the Report on Montenegro for 2020 and the Unofficial Working Document of the EC from May 2021, this challenge is not addressed.

Selectivity

The EC Report on Montenegro for 2019 states: “In order to strengthen public confidence, the Agency and its employees must ensure maximum transparency, integrity, impartiality, independence, non-selective approach, as well as uniform and full application of relevant laws.”

The EC Report on Montenegro for 2020 states: “The Agency and its employees must ensure maximum transparency, integrity, impartiality, independence, non-selective approach, and uniform and full application of relevant laws.”

While in the Unofficial EC working document from May 2021, this challenge was not addressed.

Proactive approach

The EC Report on Montenegro for 2019 states: “Nevertheless, the need for proactive work and sustainable efforts remains in the prevention and repression of corruption.”

The EC Report on Montenegro for 2020 states: “The Agency has yet to show a proactive approach in all its competencies, including the protection of whistleblowers, control of the financing of political entities and election campaigns, and supervision in the lobbying area.”

While the Unofficial EC Working Document of May 2021 states: “Agency for Prevention of Corruption capacity building has continued through capacity building activities and technical support. Following the changes in the Agency’s Council and its leadership in 2020, the Agency has embarked on a proactive approach to the challenges of its independence, integrity, impartiality, transparency, non-selective approach and quality of its decisions, improving overall performance.

Prevention of conflicts of interest

The EC Report on Montenegro for 2019 states: “In the coming years, Montenegro should especially: ensure the independence of Agency for Prevention of Corruption and eliminate shortcomings in its work, as established by court decisions.”

The EC Report on Montenegro for 2020 states: “However, there are still challenges regarding its independence, setting priorities, selective approach and the quality of decisions made.”

While in the Unofficial EC Working Document from May 2021, this challenge was not addressed, but the balance sheet results was presented.

Verification of income and assets

The EC Report on Montenegro for 2019 states: The Agency is recommended to conduct more

in-depth inspections of randomly selected officials as well as high-ranking public officials, including detection of illicit enrichment, alteration and transfer of property, and identification of property origins. These types of checks have not been conducted when it comes to recent allegations concerning high-ranking officials” “More in-depth checks are necessary to check the accuracy of the data, and in this regard, the **development of an adequate methodology** would be useful.”

The EC Report on Montenegro for 2020 states: “During 2019, the **Agency investigated 31 cases of unexplained acquisition of property but did not identify any irregularities.**”

While **in the Unofficial EC working document from May 2021, the need to increase the balance sheet results in cases** of unexplained enrichment is not addressed.

Analysis of regulations in relation to the risks of corruption

For the first time in the Unofficial EC working document from May 2021, since the establishment of the Agency, the balance sheet results in the field of analysis of regulations in relation to the risks of corruption is mentioned. “The agency has prepared opinions on four legislative initiatives.”

III Comparative experiences

3.1. General review

For the purposes of this document, the legal framework in three countries that are geographically, historically and politically closest to Montenegro is analyzed, and yet, in its own way, each is to some extent in the forums and processes in which Montenegro is an actor: The Republic of Slovenia and the Republic of Croatia as members of the European Union and the Council of Europe and the Republic of Serbia as a member of the Council of Europe and a candidate for membership in the European Union.

A comparative review of the conflict of interest policy of public officials analyzed four countries and the first conclusion to be drawn is that all countries have established a legal framework in line with Council of Europe and UN standards. As a result of the establishment of the legislative framework, anti-corruption bodies have been established, which, among other things, deal specifically with the issue of conflicts of interest of public officials. The activities of the bodies in all these states are aimed at preventing, minimizing or ultimately sanctioning the occurrence of conflicts of interest in performing a public function, i.e., a situation in which an individual performing a public function subordinates the public interest to the private one. The common denominator in the established institutional framework in this area is that all states, without exception, have established independent bodies or bodies dealing with the prevention of corruption and the gradual introduction of relatively new standards for the states of this region in exercising public functions. Practice has shown that the formation of such bodies was justified, not only from the aspect of the implementation of the above-mentioned international standards concerning the establishment of independent bodies, but the institutions have come to life in practice. What needs to be worked on in the coming period is to strengthen their independence and autonomy.

The members of the council of anti-corruption bodies are elected by the Parliament, which supervises their work. Only in the case of the Republic of Slovenia, the members of the Commission for the Prevention of Corruption are elected by the President. Depoliticization is ensured by the fact that members of these bodies are prohibited from membership in the bodies of political parties.

By establishing a specific framework in this area, restrictions have been imposed on public officials in exercising public functions, especially related to the issue of incompatibility and cumulation of public functions, then obligations which public officials must perform separately (reporting the situation and any major changes in income and assets, etc.), thereby influencing greater responsibility in the exercise of public office. These issues are described in more detail below.

When it comes to the definition of a public official, Slovenia, Croatia and Serbia list who are public officials who are subject to the provisions of the law governing the issue of conflict of interest, while in the case of Montenegro a general definition of a public official is given. In addition to public officials in all analyzed countries, the obligation to report income and assets has been extended to certain categories of civil servants, depending on the sensitivity of the work they perform in certain bodies. Unlike certain countries where this is regulated by special laws, only in Slovenia is the definition of these persons given in the umbrella anti-corruption law.

In relation to the imposition of penalties for non-compliance with the law, the Republic of Serbia has an extremely restrictive approach because failure to report property or providing false information about property is subject to criminal liability, for which a public official is sentenced to six months to five years, and such an approach does not correspond to international standards regarding the establishment of anti-corruption bodies.

3.2. REPUBLIC OF SLOVENIA

3.2.1. LEGISLATIVE FRAMEWORK

The key regulation regulating the issue of preventing conflicts of interest of public officials in the Republic of Slovenia is **the Law on Integrity and Prevention of Corruption** ("Official Gazette of the Republic of Slovenia", No. 69/11 and 158/20) (hereinafter: the Law).

Relevant laws applicable in this area are, inter alia: *Law on Civil Servants, Law on Companies, Law on General Administrative Procedure, Law on Deputies, Law on Misdemeanors, Law on State Holding, Law on Employment, Law on Public Procurement, Law on Civil Procedure, etc.*

Bylaws applied on the basis of law are: *Regulation on the Work of the Commission for the Prevention of Corruption* ("Official Gazette of the Republic of Slovenia", No. 105/14), *Regulation on Restrictions and Obligations of Public Officials Regarding the Acceptance of Gifts* ("Official Gazette of the Republic of Slovenia", No. 53/10 and 73/10) and *Regulation on the disposal of gifts received by public officials* ("Official Gazette of the Republic of Slovenia", No. 17/15).

3.2.2. OBLIGATIONS OF A PUBLIC OFFICIAL

A conflict of interest is a circumstance in which the private interest of a public official affects or appears to affect the impartial and objective exercise of his public function and work.

A public official is obliged to pay due attention to any conflict of interest in connection with his/her function and job, as well as to avoid it.

The Law in Article 4, paragraph 1, item 9, states that public officials in the sense of this law are: public officials, senior officials and other public sector officials employed in Bank of Slovenia, managers and members of management and supervisory boards of public sector entities. (see Scheme 1.)

A public official may not use his function and the information obtained on the basis of its performance, in order to pursue the private interest or the private interest of another person.

Legal provisions **requiring a public official to pay due attention in order to avoid a conflict of interest are binding**, and it is the same immediately after taking over the public office or during its performance, when he detects circumstances that may affect or appear to affect the impartial and objective performance of a public function, he is obliged to immediately inform his superior of that circumstance (*Article 37*).¹

Article 38 prescribes the manner in which conflicts of interest are avoided. Namely, when a public official detects the circumstances of a conflict of interest, he is obliged to stop doing his job and to inform his superior about the exemption and the circumstances of the conflict of interest, which will decide whether to exempt a public official from making any decisions concerning a particular issue or to allow him to continue his work, whereby it can give him binding guidelines and explanations on how to decide in order to pursue the public interest. There is no legal remedy in relation to this decision.

The provisions of the law inherently require that all relevant circumstances of each particular case be taken into consideration.

¹ In the event of persons who do not have the status of a public official under this law, a conflict of interest may arise in accordance with other laws, statutes or codes of conduct.

Scheme 1: Legal binders

PUBLIC OFFICIALS
<p>„Public officials“: <i>Members of the National Assembly, Members of the National Council, The President of the Republic, The Prime Minister, Ministers, State Secretaries, Judges of the Constitutional Court, other judges, State Prosecutors, Secretary General of the Government, Secretary General of the President of the Republic, Head of the Cabinet of the President of the Republic, Deputy Secretary General of the President of the Republic, Advisor to the President of the Republic, Secretary General of the National Assembly, Secretary of the National Council, officials in other state bodies and local communities, members of the European Parliament from the Republic of Slovenia, unless their rights and obligations are otherwise prescribed by regulations of the European Parliament and other holders of public office from the Republic of Slovenia which work in European and other international institutions appointed to their positions by the Republic of Slovenia and members of the Board of Directors of the Bank of Slovenia, unless their rights and obligations are otherwise determined by law relating to the work of the Bank of Slovenia and other regulations binding on the Bank of Slovenia.</i></p>
<p>„Officials in a managerial position“: <i>directors general, secretaries general of the Ministry, heads of ministerial bodies, heads of government cabinets, persons with special powers in the Bank of Slovenia, heads of administrative units and directors or secretaries of municipal administrative bodies.</i></p>
<p>„Managers“: <i>directors and members of collective management bodies, namely: public agencies, public funds, public institutes, public utility institutes and other subjects of public law that are indirect users of the state budget or the budget of the local community, legal entities founded by the state or local community, public enterprises, commercial enterprises and other legal entities in which the state or local communities are controlling shareholders or have a dominant influence.</i></p>

During 2019, the Commission initiated 101 proceedings (based on reports and on its own initiative) related to the suspicion of violation of the provisions obliging to avoid conflicts of interest, of which in 14 cases it was determined that there was a violation of the law.

Table 1.1: *Identified violations of the law related to the obligation to avoid conflicts of interest for the period 2014-2019*

Year	2014	2015	2016	2017	2018	2019
Number of identified violations of the law	15	8	12	16	13	14

Source: Annual Report 2019, Commission for the Prevention of Corruption, March 2020.

In the period from January 1 to June 3, 2020, the Commission issued 65 opinions and explanations related to the elimination of conflicts of interest.

3.2.3. PROHIBITIONS AND RESTRICTIONS ON BUSINESS ACTIVITIES

The provisions of the law on **prohibitions and restrictions on business activities of public officials** protect domestic and European Union (EU) funds from [mis]use motivated by private interest. They do not apply to activities based on contracts concluded before taking over the public office. These provisions of the law apply exclusively to the bodies and organizations in which „public officials“, in the way they are recognized by law, exercise a function. For public sector institutions headed by officials in managerial positions, the provisions on restrictions on business activities are defined by the Law on Civil Servants. The law distinguishes between two categories of business activities based on the risk of corruption or private use of public funds:

- *Business activities with an absolute ban* (Article 35, paragraphs 1 and 2), by which public sector bodies or organizations in charge of conducting public procurement procedures, granting concessions or other forms of public-private partnership, cannot order goods, services or construction works or conclude public-private partnerships, or grant special and exclusive rights to entities in which the public official or a member of his/her family is manager, board member or legal representative, or if he/she has more than a 5% share in the rights, management or capital. The same ban is it also applies when the holder of a public office or a member of his family acts as a natural person.
- *Conditionally allowed business activities* (Article 35, paragraph 3), are those not listed in Article 35, paragraphs 1 and 2, which indicates that they are not subject to the above prohibitions, but only on condition that the provisions of this or other regulations relating to conflicts of interest and the obligation to avoid conflicts of interest are respected or that the public office holder is excluded from all stages of the decision-making procedure on the execution and conclusion of transactions. If a public official or family member violates the provisions on avoiding conflicts of interest or exemptions from decision-making procedures, the consequences for him will be the same as in the case of a business activity with an absolute ban.

The system of restriction of business activities aims to exclude, as far as possible, the formal and informal influence of the public office holder at all stages of obtaining a job or allocating public funds when the public official has a (partial) private interest in obtaining the job.

The Commission shall publish on a monthly basis on its website a list of economic operators subject to the restrictions referred to in Article 35, paragraphs 1 and 2. The list shall be compiled on the basis of information submitted to the Commission by the public authorities in which public official exercises a public function, and on the basis of the data submitted by the public official to the Commission one month after taking over the office, i.e. eight days from the occurrence of any changes. Business entities that are subject to restrictions remain on the list of the Commission for one year after the termination of the mandate of the public office holder.

The contract concluded contrary to the stated prohibitions and restrictions are null and void.

3.2.4. TEMPORARY RESTRICTIONS ON ACTIVITIES AFTER TERMINATION OF PUBLIC FUNCTION

Restrictions extend to the period after the termination of the term of office of the public office holder. Namely, the holder of public office may not act as a representative of an economic entity that has established or will establish business contacts with a public sector body or organization in which the holder of public office was in office *until the expiration of two years from the termination of his office* (Article 36, paragraph 1). This legal solution prevents the so-called occurrence „*revolving doors*“, which is increasingly regulated by the laws of different countries and is part of the practice of the Council of Europe and the OECD.

Also, the body or organization of the public sector in which the holder of public office performed the function may not have a business arrangement with an entity in which the former holder

of public office has more than 5% participation in ownership rights, management or capital. A former holder of a public office may not, as a natural person, regardless of whether it is a direct participation or through another legal entity, enter into business arrangements with the body or organization of the public sector in which he held office, *until the expiration of one year from the termination of the mandate*.

3.2.5. INCOMPATIBILITY OF FUNCTIONS

Simultaneous performance of a public function with certain functions and types of work or activities, the legislator has explicitly prohibited by the legal institute of *incompatibility*. Incompatibility is one of the mechanisms for preventing corruption and preventing conflicts of interest. Its purpose is to ensure the independent performance of the functions established by the Constitution and the law. Although “functions, jobs or activities” that are not covered by an incompatibility are permitted by law, the holder of a public office must be aware of a potential conflict of interest at all times and must do everything in his power to avoid it.

Pursuant to Article 26, *a public office holder who exercises a public function professionally is **prohibited from performing any professional or other activity which generates revenue or other activity*** in the exercise of public office, except in exceptional cases where approved by the Commission (with the possibility of prescribing conditions and restrictions in performing other activities), after considering the prohibitions prescribed by other laws, and in particular considering the public interest and the degree of risk that the performance of that activity creates for the objective and impartial performance of a public function or for its integrity. Some of the conditions that must be met in order for the Commission to allow the performance of additional activities are that it is not prohibited by any other regulation, as well as that, in case of approval, the holder of public office waives the salary in connection with public office.

Prohibition of performing other activities during the exercise of public office, does not refer only to performing: *pedagogical and scientific research, artistic, cultural, sports and publishing activities, farm and own property management*. Even in their case (except for sports and publishing activities and management of the farm and their own property), the holder of a public office may perform them only if he obtains a permit from the body in which he exercises the function. In addition, if the Commission assesses that there is an incompatibility of a public function with any of the above activities, given its scope and nature, as a result of which it is assessed to pose a disproportionate risk to the objective and impartial performance of a public function or endangering its integrity, may decide to prohibit the performance of another activity or to impose conditions or restrictions during its performance.

If the public office holder violates the conditions or restrictions prescribed by the Commission in connection with the performance of another activity or performs a public function or other activity in a manner that interferes with the objective and impartial performance of the public function, the Commission will revoke his license to perform other activities. In an administrative dispute against the Commission’s decision to revoke the license, the Administrative Court will give priority to this issue.

In the period from January 1 to June 30, 2020, the Commission made 2 decisions to holders of public office who professionally exercise the function, related to the performance of activities that generate income.

3.2.6. PROHIBITIONS AND RESTRICTIONS IN EXERCISING PUBLIC FUNCTION

Pursuant to Article 27, a public office holder who performs a professional function may not be a member of a company, for-profit association, cooperative, public institution, public fund, public agency or other body or be involved in the management, supervision or rep-

resentation of such bodies, with the exception of associations, institutions and political parties. This prohibition exists for *holders of public office who are not professionally engaged in exercising public office*, only in the case of those entities that are previously mentioned, and whose work, in accordance with the competencies from the public function, the holder of the public function performs direct supervision.

Prohibition concerning membership and performance of management, supervision or representation in public institutes, public funds, public agencies and other bodies to which public authorizations have been given or which provide public services, it will also apply to mayors and deputy mayors who are not professionally engaged in the performance of that public function, and who perform it in the municipality associated with the aforementioned entities in terms of establishment, ownership, supervision and financing.

Article 28 obliges the holder of a public office, who before taking office performed an activity or exercised a function that is incompatible with the current public office, to cease performing the activity or function **no later than 30 days from the day of election or appointment or approval of the mandate. Also, the holder of a public office is obliged to immediately upon entering a public office**(preferably on the same day or in the next few days)resigns or requests to resign from the position of a member of the body of representation, management or supervision in an entity, if the same is incompatible with a public office pursuant to this Law.

If the holder of public office, within the deadlines defined by law, does not cease to perform the activity or function, as well as if he does not terminate the membership in the body, in accordance with the above prohibitions and restrictions, the Commission will define the deadline for the public office holder to do so. The Commission shall also warn the holder of public office who, after taking over the public office, starts the activity, acquires membership or takes over the function which is incompatible with the public function in the sense of this law and defines the deadline by which he must eliminate this incompatibility.

If the holder of the public office violates the deadlines defined above, the Commission will inform the body responsible for proposing or initiating the procedure for dismissal of public office holders, with the exception of directly elected public office holders, but also in their case, when the Commission finds that they have violated the law on these grounds, it will inform the public of its findings and publish them on its website. (*Article 29*).

3.2.7. ACCEPTANCE OF GIFTS BY PUBLIC OFFICIALS

By precisely and comprehensively regulating the receipt of gifts in connection with the exercise of public office, there remains less opportunity for doubt in the proper performance of office by a public official. In this regard, pursuant to Article 30, **a public official, and a member of his family, may not receive gifts or other benefits in connection with the exercise of public office.** This does not apply to protocol gifts (*a gift given by a foreign or Slovenian legal or natural person at official events*) which, regardless of its value, will become the property of the body in which the public official exercises a public function.

Exceptionally, a public official may accept a gift that is traditionally or customarily given at certain events (*cultural events, ceremonies, events marking the end of education and training programs, holidays, etc.*) or when conducting diplomatic activities, the value of which does not exceed €100, regardless of the type of gift and the number of persons giving the same gift.

For every other gift, the public official (and a member of his family) is obliged to inform the provider about the ban on accepting gifts and to refuse the offered gift. Referring to the provisions of the law, in such situations which are part of a ceremonial, diplomatic or other custom when gifts are given to a public official as an expression of respect for his office, the public official avoids possible inconvenience and misunderstanding regarding the (non)acceptance of gifts. If the giver

insists on giving a gift, a public official or a member of his family is obliged to hand over the gift to the body in which the public official performs a public function.

Notwithstanding the above, **an absolute ban on accepting gifts** by a public official or a member of his family exists if:

- giving or accepting such gift is considered a criminal offense;
- it is prohibited in accordance with another act or regulation adopted on the basis thereof;
- the gift represents: money, securities, vouchers or precious metals;
- acceptance of a gift affects or appears to affect the impartial and objective performance of public office.

The Commission keeps a **Register of Gifts**, on the basis of the List of Gifts submitted by the body in which the public official performs a public function, and in which all gifts are listed, including their value. The Register, which is published on the Commission's website and is updated annually, includes gifts related to a public official, a member of his family and protocol gifts, the value of which exceeds €50.

The manner of handling gifts, the manner in which their value is determined, the manner in which the Gift List is kept, and other practical issues related to this issue are determined by the relevant bylaws.

The above restrictions and prohibitions do not apply to enterprises in which the state or local self-government units have controlling ownership or dominant influence, except for those established on the basis of this law.

During 2019, the Commission concluded 5 proceedings related to the alleged violation of the provisions of the law concerning the receipt of gifts. The Commission also consolidated the Register of Gifts Received in 2018, according to which 251 bodies and organizations submitted a statement of acceptance of gifts. In 47 bodies and organizations, gifts were received by public officials. Some of the public officials handed over all applications to the authority in which they hold public office, while others kept the gifts received (e.g., books, local handicrafts or tickets for performances).

In the period from January 1 to June 30, 2020, the Commission issued 22 opinions and explanations related to gifts.

3.2.8. OBLIGATION TO REPORT ASSETS

Supervision of the property of persons who are obliged to report it is one of the basic conditions for achieving transparency and trust in the public function, which is thus an inseparable element of the integrity of the public sector. Monitoring and supervision of assets strengthens transparency in the processes and procedures by which competencies are exercised, exercise a public function and manage public affairs. With this in mind, the rules contained in the law regarding the monitoring and supervision of assets are binding on a wide group of **persons who have the obligation to report assets**. Persons who, in accordance with the law, **are obliged to report assets** are:

- ⇒ Public Office Holders who are professionally engaged in performing public office;
- ⇒ Mayors and deputy mayors who are not professionally engaged in performing public functions;
- ⇒ Civil servants in managerial positions;
- ⇒ Managers;
- ⇒ Persons in charge of public procurement, which are defined in Article 4, paragraph 1, item 10 of the Law;
- ⇒ Civil servants from the National Commission for Audit of Public Procurement Procedures;
- ⇒ Citizens of the Republic of Slovenia who hold office in EU institutions, other EU bodies and other international institutions to which they have been appointed or elected on the basis of a proposal from the Government of the Republic of Slovenia (hereinafter: the Government) or the

National Assembly and whose obligation to declare property is not regulated by documents of EU institutions, EU bodies and other international institutions for which they perform competencies from their function.

- ⇒ Members of the European Parliament from the Republic of Slovenia, unless their rights and obligations are otherwise prescribed by regulations of the European Parliament and other holders of public office from the Republic of Slovenia working in European and other international institutions appointed to their positions by the Republic of Slovenia.

Members of the Board of Directors of the Bank of Slovenia, unless their rights and obligations are otherwise determined by the law relating to the work of the Bank of Slovenia and other regulations binding on the Bank of Slovenia.

Pursuant to the Law on State Holding ("Official Gazette of the Republic of Slovenia", No. 25/14), the following persons are also obliged to report data on assets to the Commission:

- ⇒ Members of the Management Board of the National Holding of Slovenia;
- ⇒ Members of the Supervisory Board of the National Holding of Slovenia;
- ⇒ Representatives of the National Holding of Slovenia;
- ⇒ Appeals Officer;
- ⇒ Members of management boards, supervisory boards and representatives of companies in which the National Holding of Slovenia has majority ownership or predominant influence;

The bodies in which the persons obliged to report assets are employed, and the contracting authorities operating in accordance with public procurement legislation, shall submit to the Commission a list of these persons. Information on citizens of the Republic of Slovenia performing functions in EU institutions, other EU bodies and other international institutions to which they have been appointed or elected on the proposal of the Government or the National Assembly shall be submitted to the Commission by the Government or the National Assembly.

The above-mentioned persons are obliged to report the property to the Commission, **no later than one month after taking office or position and one month after the termination of their mandate**. A person whose public function or position has ceased is obliged to report the property even **one year after their termination**. Persons in charge of public procurement (if, in the previous calendar year, they participated in the public procurement procedure provided for in Article 4, paragraph 1, item 10 of the Law) and civil servants from the National Commission for the Audit of Public Procurement Procedures are required to report assets once a year, by January 31 of the current year.

Article 42 states which personal data and data on property in the Republic of Slovenia and abroad a public official is obliged to report. It is understood that complete and accurate information must be reported.

Data on the property and the list of persons obliged to register assets are available on the Commission's website. The report on assets can be submitted via the E-Government portal, which is a modernization of the registration system that entered into force on 1 January 2020 and thus removes the administrative barriers previously noted by the Commission.

A person who has the obligation to register assets (*except for persons in charge of public procurement and civil servants from the National Commission for Audit of Public Procurement Procedures*), is obliged to *report any change in personal data* concerning the personal name, function or job he/she performs, which is the basis for the obligation to report property, as well as data on any other function or activity he performs, within 30 days from the resulting change. This person is also obliged to report any change in assets by January 31 of the year following the year in which the change occurred. As for changes in individual items of property, which are reported only if they exceed a certain value defined in Article 42, paragraph 2, the taxpayer will report an increase in the value of the property when the threshold for reporting a certain type of property is reached. In the case of previously reported individual asset items, the change will be reported when the value of the asset increases or decreases by more than €10,000. The Commission may at any time require the person

declaring the property to provide comprehensive information regarding the change in the property.

If the Commission determines that the person liable for registration of property has not submitted data on his: function, activities, assets and income in accordance with the law, it will be requested that person to submit previous data within the set deadline, The Commission will decide to reduce that person's salary by 10% each month from the expiration of the term violated, but not below the minimum wage.

The Commission monitors the accuracy, timeliness and completeness of the reporting of data on the property and all its changes, and in case of suspicion of a breach of the obligation to report assets and the suspicion of a disproportionate increase in the property, The Commission compares the data on the reported property with the data obtained from the competent authorities that have the requested data (in accordance with Article 16 of the Law). If in the initiated procedure, there is a suspicion that since the last application, the property has increased disproportionately compared to the income derived from exercising the function or activity that this person performs in accordance with the provisions and restrictions of this and other laws, or if the value of that person's assets, which is the basis for assessing tax liabilities, significantly exceeds the reported value of that person's assets (*disproportionate increase in assets*) or if this person owns property of unknown origin, the Commission will initiate proceedings due to the suspicion of a proportional increase in assets (*a situation in which there is a difference between actual and reported assets*). In establishing the facts, the Commission may propose to other bodies, including the body responsible for the prevention of money laundering, to, within its competences, establish the facts concerning the person's property in the Republic of Slovenia and abroad.

If during the proceedings, the Commission suspects that this person has concealed property by transferring it to members of his family or that these persons are indirectly acquiring property from third parties which certainly derives from the function and work performed by this person, The Commission may extend the supervision of the property of this person's family members.

Pursuant to Article 45, if the person who is the subject of the initiated procedure on the suspicion of a disproportionate increase in property, fails to explain the manner of the increase or the origin of the property, or fails to do so in a convincing, credible and clear manner, The Commission will immediately submit the case with all the collected data to the State Prosecutor's Office, which will consider the possibility of undertaking activities related to regulations related to confiscation of illegally acquired property, or to the competent tax authority to assess the possibility of undertaking activities under tax legislation.

The state body/organization in which this person performs the function or performs the tasks or the body in charge of his/her selection or appointment must, based on the notification by the Commission, in accordance with the Constitution and the relevant act, to initiate the procedure of termination of office or dismissal or other ways in which the person will take responsibility.

If, during the procedure, the Commission assesses that there is a risk that this person will alienate, conceal or misappropriate property of unknown or unexplained origin, they may propose to the State Prosecutor's Office or the competent authority in the field of anti-money laundering or financial supervision to take all necessary steps within their legal powers to suspend transactions and secure money and property, in order to confiscate illegally acquired income, earnings or money and property of illegal origin. Persons who, in accordance with the law, are obliged to report property, will be subject to supervision in relation to the disproportionate increase of property, during the term of office, as well as one year after its termination.

In order to strengthen transparency and public confidence in the work of public officials, data on changes in assets: Members of the National Assembly, President of the National Council, President of the Republic, Prime Minister, Ministers, State Secretaries, Mayors and Deputy Mayors, regardless of whether they are engaged to perform their duties professionally or not, members of the Board of Directors of the Bank of Slovenia, holders of public office in independent and autonomous state

bodies acting as supervisors or their deputies and judges of the Constitutional Court, will be publicly available on the website of the Commission for the entire term and one year after its termination. In addition, the Commission may publish its findings on the accuracy, completeness and timeliness of the property declaration. Data on the property and its changes, other persons who are obliged to register them are not considered information of public importance.

As of December 31, 2019, the Commission had **17,164 persons in the register with the obligation to report assets**.

During 2019, the Commission received 13,911 reports related to the property of officials, of which the largest number (7199) referred to the entry in the register of persons obliged to report assets. In particular, with regard to the declaration of assets, the Commission received *4,178 reports* on the assets. On this basis, during 2019, the Commission issued 12 warnings and 3 decisions.

Table 1.2: *Number of asset-related reports for the period 2014-2019.*

Year	2014	2015	2016	2017	2018	2019
Number of assets related reports	10,358	9,291	9,770	7,126	8,296	13,911

Source: Annual Report 2019, Commission for the Prevention of Corruption, March 2020.

In the period from January 1 to June 30, 2020, the Commission issued 22 opinions and explanations related to the property of public officials.

3.2.9. PROHIBITIONS AND RESTRICTIONS ON LOBBYING BY A PUBLIC OFFICIAL

Pursuant to Article 56, paragraph 3, *public officials cannot lobby* until two years have elapsed from the date of termination of public office.

3.2.10. MISDEMEANOR LIABILITY

In relation to the violation of the provisions of the law concerning: incompatibility of function, activity or membership; accepting gifts; prohibitions or restrictions on conducting business activities; conflicts of interest; property registration obligations; disproportionate increase in property, etc., individuals who have committed a minor offense are prescribed fines that can range from EUR 400 to EUR 2,000. Fines are also provided for other entities that are subject to obligations under the law.

Fines prescribed by this Law may also be imposed under an accelerated procedure in the amount exceeding the minimum amount of the prescribed fine, but may not exceed the maximum fine prescribed for offenses under this law.

For the same reason, violation of the provisions obliging to avoid conflicts of interest, the Commission initiated 37 misdemeanor proceedings for minor misdemeanors, issued 17 decisions and 19 written warnings. Fines were imposed in 8 cases, and in 9 cases only a reprimand was issued.

During 2019, the Commission initiated 7 proceedings for minor offenses, issued 2 Decisions and 2 Warnings. In the period from January 1 to June 30, 2020, the Commission issued 22 opinions and explanations regarding restrictions in the performance of work.

During 2019, the Commission initiated 6 proceedings for minor offenses on the basis of incompatibility, issued 3 Decisions and 2 written warnings.

3.2.11. INSTITUTIONAL FRAMEWORK

In order to strengthen and effectively function the rule of law and prevent its endangerment by corrupt practices in the Republic of Slovenia, **Commission for the Prevention of Corruption** independently and autonomously implements its competencies and supervises the implementation of **the Law on Integrity and Prevention of Corruption** ("Official Gazette of the Republic of Slovenia", No. 69/11 and 158/20). Funds for the work of the Commission are provided in the budget of the Republic of Slovenia (EUR 1,674,360 for 2019), and this body independently decides on their use.

The work of the Commission is supervised by the National Assembly. The Commission is obliged to submit the annual work report to the National Assembly no later than May 31 of the current year for the previous year.

The Commission has a *Chief Commissioner* and *two Deputy Commissioners*, who may not perform these functions along with functions or work in a body in areas where the Commission exercises its competencies in accordance with the Law on Integrity and Prevention of Corruption. The President of the Republic of Slovenia appoints the Chief Commissioner and two deputies.

The Chief Commissioner is appointed for a period of six years and the Deputy for a period of five years, and may be appointed to these positions twice in a row. Among other conditions prescribed by law that candidates for these positions must meet, it is stated that they must not be members of the bodies of a political party and that they have not held office in the executive, judicial or legislative branches of government at the state or local level in the past two years.

Article 12 of the Law on Integrity and Prevention of Corruption prescribes the *tasks and powers* of the Commission, inter alia, in the field of **prevention of conflicts of interest** (in connection with incompatibility of function, activity or membership; prohibitions on membership or restrictions on conducting business activities, restrictions and prohibitions on the acceptance of gifts; obligations to avoid any conflict of interest, etc.) and **Assets Reports**. The Commission may, in case of suspicion that the provisions of the Law on Integrity and Prevention of Corruption have been violated, ex officio or on the basis of a petition of a legal or natural person, initiate: *administrative proceedings, expedited misdemeanor proceedings for minor misdemeanors and other proceedings*.

The administrative procedure in which the Commission makes decisions, in accordance with the Law on General Administrative Procedure, is:

- ⇒ the procedure for issuing a license to a public office holder to perform professional or other activity on the basis of which he/she generates income (Article 26, paragraph 3 of the Law);
- ⇒ the procedure of issuing a decision by which the public official is prohibited from performing additional activity or imposes conditions or restrictions that must be respected when performing additional activity (Article 26, paragraph 4 of the Law);
- ⇒ the procedure for issuing a decision revoking the license of the public official from the two above cases (Article 26, paragraph 5 of the Law);
- ⇒ the procedure for deciding on the occurrence of a conflict of interest (Article 38, paragraph 5 of the Law);
- ⇒ the procedure for deciding on reducing the salary or compensation to a person who has not fulfilled the obligation to report data on their functions, activities, assets and income in accordance with the law (Article 44, paragraph 2 of the law);
- ⇒ the procedure for imposing sanctions in accordance with Articles 73 and 74 of the Law.

Accelerated misdemeanor proceedings are proceedings in which the Commission, on the basis of the law governing misdemeanors, imposes sanctions under Articles 77 and 78 of the law.

Other proceedings are proceedings conducted by the Commission for the purpose of exercising its powers under the law.

Notices of decisions made in the above proceedings may be made public by the Commission after the expiry of the time limit for bringing an action before the Administrative Court, if the lawsuit has not been filed, or after the court has rendered a decision in the administrative dispute. Documents that are published must protect the personal data of other persons.

In case of minor violations of the provisions of the law, the authorized person of the Commission will initiate proceedings and issue a Decision on minor violations of the law. Otherwise, the Commission will initiate a procedure in which will establish the facts, adopt measures and take actions provided by the Integrity and Prevention of Corruption Act. Based on the severity or nature of the recurrence of the offense, the Commission may submit a request to the competent authority to initiate proceedings for the dismissal of a public official.

State bodies, local government bodies, public authorities, legal entities and entrepreneurs or self-employed persons are obliged to submit to the Commission, at its request, all data, including personal data and documents necessary for the implementation of its competencies and tasks.

The Commission pays special attention to regular, comprehensive and objective informing of the general public and the expert community about its work, taking into account the public interest, as well as the protection of the integrity of bodies, interests of proceedings before the Commission and other competent bodies, etc. In order to achieve the goals defined by law and strengthen its integrity, the Commission cooperates with non-profit organizations of the private sector in the areas of work of the Commission, as well as with trade unions.

The Commission actively participates in international cooperation and represents the Republic of Slovenia in the following international organizations: Organization for Economic Co-operation and Development (OECD), United Nations (UN), Council of Europe and GRECO, EPAC/EACN (European Partners Against Corruption) and IACA against corruption).

3.3. REPUBLIC OF CROATIA

3.3.1. LEGISLATIVE FRAMEWORK

The area of prevention of conflicts of interest in performing public functions in the Republic of Croatia is regulated by the **Law on Prevention of Conflicts of Interest** (Official Gazette, No. 48/13, 57/15 and 98/19) (hereinafter: the Law), which entered into force on January 1, 2020.

In addition to this basic law, other laws apply to this area, such as: *Law on Obligations and Rights of State Officials* („Official Gazette“, No. 101/98, 135/98, 105/99, 25/00, 73/00, 30/01, 59/01, 114/01, 153/02, 163/03, 16/04, 30/04, 121/05, 151/05, 141/06, 17/07, 34/07, 107/07, 60/08, 38/09, 150/11, 22/13, 102/14, 103/14, 03/15, 93/16, 44/17 and 66/19), *the Law on Elections of Representatives to the Croatian Parliament* („Official Gazette“ No. 116/99, 109/00, 53/03, 69/03, 167/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93/11, 120/11, 19/15, 104/15 I 98/19), *the Law on Local Elections* („Official Gazette“ No. 144/12, 121/16, 98/19, 42/20), *Law on Agriculture* („Official Gazette“ No. 30/15), etc.

3.3.2. OBLIGATIONS OF OFFICIALS

Officials may not use the public office for personal purposes or for the benefit of a related party,² nor to be anyhow connected with persons that could affect their objectivity.

² Related persons are a family member of the official (spouse or common-law partner, blood relatives in the vertical line, siblings, adoptive parent or adoptee), as well as other persons who, according to other grounds and circumstances, may reasonably be considered to be of interest to the official.

Persons considered to be **holders of public office in terms of the law** are exhaustively listed in Article 3, paragraph 1, indents 1-41. In addition, the provisions of the law apply to other persons appointed or confirmed by the Croatian Parliament, appointed by the Government of the Republic of Croatia (hereinafter: the Government) or the President of the Republic of Croatia (except for persons appointed by the President of the Republic of Croatia in accordance with the Law on Service of the Armed Forces of the Republic of Croatia).

The basic principles prescribed by law, and which are binding guidelines in the performance of public office for officials, are the following:

- » *the principle of honest, conscientious, responsible and impartial treatment and protection of credibility;*
- » *the principle of personal responsibility;*
- » *the principle of protection of the public interest;*
- » *the principle of transparency.*

After election and appointment to public office, the official is obliged to regulate his private affairs in order to prevent a foreseeable conflict of interest, and if such a conflict arises, he/she is obliged to resolve it in such a way as to protect the public interest. If he/she suspects a possible conflict of interest, he is obliged to do everything necessary to separate the private from the public interest. In case of suspicion of a conflict of interest, the official **must** seek the opinion of the Commission, which gives him/her a reasoned opinion on how to act in a situation where his impartiality is at stake (*Article 6*).

The opinions given by the Commission for Deciding on Conflict of Interest (hereinafter: the Commission) to officials represent both the Code of Good Practice and the expected norm of behavior of officials in performing public office, in order to avoid conflicts of interest. Giving an opinion is one of the most important competencies of the Commission, because through the given opinions its preventive role in building the ethics of functions is realized. Several tools have been developed for officials to obtain an opinion, such as an account and a form on the Commission's website, sending an e-mail, regular mail or a telephone call. During 2019, the Commission issued **156 opinions**.

Article 7 of the Law explicitly prescribes in the Republic of Croatia prohibited types of conduct of officials in performing public office (*Box 1*). Prohibited conduct by officials is considered a *serious violation of the law*.

Box 1: Prohibited behavior of officials in the Republic of Croatia

The official is forbidden from acting as follows:

- a. to receive or demand a benefit or a promise of benefit for the performance of his duties,
- b. exercise or obtain a right in the event of a violation of the principle of equality before the law,
- c. abuse the special rights of officials arising from or necessary for the performance of their duties,
- d. receive additional remuneration for the performance of public duties,
- e. seek, accept or receive value or service for the purpose of voting on any matter, or influence the decision of any body or person for the personal gain or gain of a related person,
- f. promise employment or some other right in exchange for a gift or promise of a gift,
- g. influence the acquisition of jobs or public procurements,
- h. use privileged information on the activities of state bodies for personal gain or the gain of a related person,
- i. otherwise use the position of the official by influencing the decision of the legislature, the executive or the judiciary to gain personal gain or the gain of a related person, a privilege or right, enter into a legal transaction or otherwise benefit himself or another related person

Article 19 obliges an official to report to the competent authorities if he has been offered a gift or some other benefit related to the exercise of a public function, contrary to the law.

3.3.3. PROHIBITIONS AND RESTRICTIONS IN PERFORMING OTHER BUSINESS ACTIVITIES

During the performance of a public function, an **official may not perform another public function**, unless otherwise is prescribed by law. When considering whether it is another public function, the Commission shall take the following criteria into account when deciding: who appoints or elects a person to that position, the term of office for which he is appointed, the purpose of establishing the body, the competence and tasks of the body to which he/she is appointed (e.g., bodies with public authority), etc..

Officials who professionally perform a public function **may not, for a fee or for the purpose of generating income, perform other tasks in terms of regular and permanent occupation**, unless the Commission, at the prior request of the official, determines that the activities in question do not affect the lawful performance of a public function. In order to assess whether it is a permanent and regular occupation, it is not decisive whether an employment contract has been concluded for a certain period, a work contract or other, but the dynamics, frequency and duration of other tasks are already taken into account. The law prescribes, on the other hand, which activities can be performed regularly and permanently, as well as without the prior approval of the Commission, namely: scientific, research, educational, sports, cultural, artistic and independent agricultural activities, as well as the acquisition of income on the basis of copyright, patent and similar intellectual and industrial property rights, and the acquisition of income and fees on the basis of participation in international projects funded by the European Union, foreign countries, foreign and international organizations and associations.

Pursuant to Article 12, an official who, during the performance of a public function, receives a salary for the function he/she exercises, **cannot receive another salary or remuneration for performing another public function**, unless otherwise is provided by law.

3.3.4. PROHIBITIONS AND RESTRICTIONS ON MEMBERSHIP IN ADMINISTRATIVE BODIES AND SUPERVISORY BOARDS

The official is **prohibited from being a member of management bodies and supervisory boards of companies** (regardless of their ownership structure), **management boards of institutions, i.e., supervisory boards of extra-budgetary funds, as well as to perform management tasks in business entities**³. Exceptionally, he/she may be a member of two management boards of institutions, i.e. supervisory boards of extra-budgetary funds *which are of special state interest or are of special interest to a unit of local or regional self-government*, if a special law does not stipulate that an official is a member of the management board of the institution, i.e., the supervisory board of the extra-budgetary fund. For membership in the management boards of institutions, i.e. supervisory boards of extra-budgetary funds, **the official is not entitled to compensation**.

The Croatian Parliament determines the list of legal entities of special state interest, at the proposal of the Government, while the representative body of a local or regional self-government unit determines the list of legal entities of special interest for that unit.

Pursuant to Article 14, paragraph 5, an official may be a member of administrative and supervisory bodies, a maximum of two non-profit associations and a foundation, **but without the right to compensation or the receipt of gifts**.

3.3.5. PROHIBITIONS AND RESTRICTIONS RELATED TO COMPANIES

An **official is prohibited from owning 0.5% or more of shares, i.e., participation in the ownership/capital of a company**, therefore is obliged to transfer management rights on the basis of that participation to another person or body during the exercise of the public function (except to related parties), which thereby becomes a related person. If this company enters into a business relationship⁴ with state bodies or with units of local or regional self-government or companies in which the Republic of Croatia or a unit of local or regional self-government has a management part and is obliged to inform the Commission about this business event.

While his/her management rights in the company have been transferred to another person, the official has the right to be *informed only once a year about the condition of that company*, that is, it must not give information, instructions, orders or in any other way be related to that person and thus affect the exercise of rights and fulfillment of obligations arising from management rights. It is important to clarify that the transfer of management rights does not transfer ownership of the share or participation in ownership, which means that the official remains the owner of the company, and participation in ownership is required to report in the assets report.

In addition to the prohibitions imposed on officials regarding management rights in companies, **the law, Article 17, paragraph 1, prescribes a ban on a business entity in which a public official has 0.5% or more of ownership**, because it does not allow him to enter into a business relationship with the state administration body in which the official performs the function, nor to be a member of a consortium or a subcontractor in that business relationship. The restriction also applies to business entities in which a member of the official's family has a 0.5% or more ownership share, in the case that a member of the official's family has acquired the participation in question, i.e., actions from the official in the period of two years prior to the appointment or election to public office until the termination of the mandate. *All concluded transactions and concluded contracts contrary to the stated prohibitions will be considered null and void*. The list of the aforementioned business entities is published and regularly updated on the website of the Commission and state bodies.

³ Business entities in the sense of this law are: companies, institutions and other legal entities and other economic entities such as independent traders, craftsmen and holders of independent activity and holders and members of other economic entities established on the basis of law.

⁴ Business relationship in terms of law refers to public procurement contracts, state aid and other forms of obtaining funds from public authorities, concessions and public-private partnership agreements, except for state aid in case of natural disasters.

Although the above restrictions do not apply to business relationships concluded before the commencement of public office, the official is obliged to coordinate his/her activities according to previously concluded business relations within 60 days from the day of performing the public function, in order to eliminate possible and prevent foreseeable conflict of interest.

If the body in which the official performs a public function enters into a business relationship with a business entity in which a member of the official's family has 0.5% or more of the ownership share, the official is obliged to inform the Commission in a timely manner, which will prepare *opinion with instructions* on the manner of conduct of officials and bodies in which he/she exercises public office, in order to avoid conflicts of interest of officials and to ensure his lawful conduct in a particular case.

3.3.6. PROHIBITIONS AND RESTRICTIONS AFTER THE TERMINATION OF PUBLIC FUNCTION

An official **may not, within one year from the termination of office, accept an appointment or election or enter into a contract by which he enters into an employment relationship with a legal entity who was in a business relationship with the body in which the official was in office at the time of his term or when at the time of appointment, election or conclusion of the contract it is clear from all the circumstances of the case that he/she intends to enter into a business relationship with the body in which the official was in public office,** without the consent of the Commission, which assesses whether or not the circumstances of the particular case indicate that there is a conflict of interest.

Prohibited conduct of officials specified in *Box 1*, as well as prohibitions and restrictions concerning membership in management bodies and supervisory boards, as well as prohibitions on a business entity in which a public official has a 0.5% or more share in ownership from entering into a business relationship with a state administration body in which the official performs a public function, or to be a member of a consortium or a subcontractor in that business relationship, shall last for twelve months after the termination of the function.

3.3.7. ASSETS REPORT

Reporting is a basic obligation of every official and an effective remedy of preventing conflicts of interest and corruption.

The obligation of the official is that, **within 30 days from the day of taking office**, submits to the Commission a Report containing data on the public function, other functions, i.e. activities he/she performs, as well as on the activities he/she performed immediately before taking office. He/she is obliged to submit data on his/her and his/her spouse's assets or illegitimate partner and minor children, as of the day of taking office. In case of re-election and appointment to the same position, the official is obliged to, within 30 days of taking office, *at the beginning of a new mandate*, submit a Report.

The official is obliged to submit the Report **within 30 days after the termination of the function**, and if during the performance of the public function there was a significant change in the property status, The Report is submitted at the end of the year in which the change occurred. This person is obliged to submit the Report even after the expiration of 12 months from the day of termination of public office.

Article 8 specifies in detail all the data that the official should report in the Report, while Article 9 obliges him to report the data on the manner of acquiring the property and the sources of funds with which it was purchased.

The obligation to report on assets, sources and methods of acquiring assets also applies to *civil*

servants in managerial positions appointed by the Government on the basis of a previously conducted competition, and within 30 days from the date of appointment, and every fourth year during the mandate. If there has been a significant change in assets during the mandate, the Report is submitted at the end of the year in which the change occurred. These persons are obliged to submit the Report within 30 days from the day of dismissal. As in the case of officials, they are also subject to verification of asset data from the Report.

If the official does not fulfill the obligation to submit the Statement of Assets, he cannot receive a salary.

1875 officials and 36 civil servants in managerial positions are registered in the *Register of Public Officials* in the Republic of Croatia, who are required by law to submit reports.

During 2019, **1,272 reports on the assets of officials were submitted**, which is an increase of 26% compared to 2018, when 941 reports were submitted.

The Commission verifies the data from the submitted reports and in that procedure may request the official to submit appropriate evidence on the inherited and acquired property.

Data verification can be: *administrative* (performed for each submitted report, before entry in the Register and public announcement) and *regular* (is performed for each submitted report in terms of verification of data entered in the Report, including information on the manner of acquiring the property and the sources of funds with which it was purchased).

During 2019, the Commission conducted **46 regular report checks**. Out of the stated number, in 33 regular inspections, a discrepancy was found, i.e. a disproportion between the reported assets from the submitted report in relation to the data obtained from the competent authorities.

Officials must enter true and complete information. The data from the Report are public and since the provisions of the law governing the protection of personal data do not apply to them, they may be published without the consent of the official. Public announcement of officials' reports strengthens citizens' trust that officials do not use public office to increase personal property.

3.3.8. RECEIVING GIFTS

A gift in the sense of this law is considered to be money, things regardless of their value, rights and free services that bring or can bring an official into a relationship of dependence or create an obligation to the provider.

Regardless of the amount, the official **may not receive a gift in cash**. The law allows an official to keep only a gift of symbolic value, up to a maximum of HRK 500.00 from the same provider, in connection with the performance of a public function.

Protocol gifts exceeding the amount of HRK 500.00 and other gifts that the official does not keep when he/she is entitled to it, are the property of the Republic of Croatia.

An official who, contrary to the provisions of this Law, has been offered a gift or any other benefit in connection with the performance of a public function, is obliged to report it to the competent authorities.

3.3.9. PENALTIES BASED ON VIOLATIONS OF THE LAW

3.3.9.1. REQUEST TO INITIATE MISDEMEANOR PROCEEDINGS

In the event that the Commission finds that an official has committed a misdemeanor, they shall submit to the competent court for misdemeanors *request to initiate misdemeanor proceedings*.

A fine in the amount of HRK 5,000.00 to 50,000.00 shall be imposed on an official who, within one year after the termination of public office, accept the appointment or election or enter into a contract by which he enters into employment with a legal entity that during the mandate of the official was in a business relationship with the body in which he held office, or when, at the time of the appointment, election or conclusion of the contract, it is clear from all the circumstances of the particular case that he intends to enter into a business relationship with the body in which the official held office. For this misdemeanor, in addition to the imposed fine, the property gain obtained by the misdemeanor will be confiscated, as well as a protective measure of banning the performance of certain titles, activities, jobs or functions for a period of one year.

3.3.9.2. ADMINISTRATIVE PENALTIES

For violating the provisions of the law, the Commission may impose the following sanctions on public officials:

- *Warning* (for minor violations of the law): Out of 116 final decisions made during 2019 by the Commission, in **10 decisions a sanction of reprimand was imposed;**
- *Suspension of payment of part of the net monthly salary*, shall be imposed in the amount of HRK 2,000.00 to 40,000.00, taking into account the severity and consequences of the violation of the law (this sanction may not last longer than 12 months, and the amount covered by the suspension may not exceed $\frac{1}{2}$ the net monthly salary of the official): Out of 116 final decisions made during 2019, in **67 decisions** the sanction of suspension of payment of a part of the net monthly salary of officials **in the amount of HRK 330,000.00 was imposed;**
- *Public announcement of the decision of the Commission* in daily newspapers at the expense of officials, taking into account the severity and consequences of the violation of the law, except when the law prescribes that this sanction must be imposed.

If it corresponds to the nature of the violation of the law, the Commission may order the official to eliminate the causes of the conflict of interest within a certain period of time during the proceedings and if the official does so, he/she may suspend the procedure or complete it and take the execution of the order into account when imposing the sentence.

3.3.10. INSTITUTIONAL FRAMEWORK

The central body in charge of, among other things, the area of conflict of interest in the Republic of Croatia is the **Commission for Deciding on Conflict of Interest**, which is a permanent, independent and autonomous state body, established in accordance with the **Law on Prevention of Conflicts of Interest** ("Official Gazette" No. 48/13, 57/15 and 98/19).

The Commission consists of a president and four members, who for a period of five years (may be elected no more than twice) elects the Croatian Parliament on the basis of a list of candidates compiled by the Committee on Elections, Appointments and Administrative Affairs, on the basis of a published Public Invitation. Among other conditions prescribed by law that the candidate must meet, in order to absolutely depoliticize the above functions, according to international practice, it is stipulated that the director and/or member of the Commission must not be a member of a political party, nor should he have been in the last five years until the date of his candidacy for

president or member of the Commission. It is exclusively required that the President of the Commission must have completed the Faculty of Law and passed the bar exam.

The Commission reports to the Croatian Parliament on its work once a year, no later than June 1 of the current year.

Funds for the work of the Commission are provided in the state budget. The Law on Amendments to the Law on the State Budget for 2019 provided funds in the amount of HRK 5,693,939.00 for the work of the Commission. The Commission spent 90.6% of the funds.

Ordinances governing the manner of work and decision-making of the Commission, giving opinions, prescribing forms and establishing a register for the application of certain provisions of the law, as well as the ordinances regulating the procedure of verification of data from the Report on the Property Status of Officials, the Commission shall adopt with the consent of the Croatian Parliament.

The competencies of the Commission in the field of conflict of interest are as follows (Article 30):

- » initiating proceedings of conflict of interest and making decisions on whether a certain procedure or omission of an official is a violation of the provisions of this law;
- » verification of data from the Asset Report;
- » development of guidelines and instructions for officials in order to effectively prevent conflicts of interest;
- » Regular training of officials in matters of conflict of interest and reporting of assets;
- » cooperation with the competent body for drafting laws in the field of prevention of conflicts of interest and submitting initiatives to the competent bodies for proposing amendments to the law;
- » cooperation with non-governmental organizations and realization of international cooperation in the field of prevention of conflicts of interest; etc.

The Commission **may initiate proceedings** within its competence on the basis of its decision, regarding a credible, well-founded and non-anonymous application or in cases where he has knowledge of a possible conflict of interest of the official. The commission **must initiate the procedure** within its competence at the personal request of the official. At the request of the Commission, the competent authorities of the Republic of Croatia are obliged, without delay, to submit the requested data and evidence.

During 2019, the Commission adopted: **114 decisions to initiate proceedings, 106 decisions not to initiate proceedings and 116 final decisions** on established or undetermined violations of the law. An administrative dispute may be initiated against the decisions of the Commission which have established a violation of the provisions of the law, in which the court will decide within 60 days from the day of initiating the dispute. During 2019, *17 administrative lawsuits* were filed against the decisions of the Commission.

In the Republic of Croatia, the following have jurisdiction in this area: *Ministry of Administration, Tax Administration of the Ministry of Finance, Agency for Support of Information Systems and Information Technologies, Central Depository for Clearing, Croatian Civil Aviation Agency, High Commercial Court, Ministry of Maritime Affairs, Transport and Infrastructure, Financial Agency, Ministry of Economy, Entrepreneurship and Crafts, Ministry of Justice, Agency for Payments in Agriculture, Fisheries and Rural Development, State Geodetic Administration, etc.* especially in the procedure of checking the property status of officials by the Commission. In performing that task, the Commission may request information from an international association or a foreign organization.

3.4. REPUBLIC OF SERBIA

3.4.1. LEGISLATIVE FRAMEWORK

In the Republic of Serbia, the existence of conflicts of interest in the performance of public functions is regulated by the **Constitution**, as well as by the **Law on Prevention of Corruption** ("Official Gazette of RS", No. 35/19 and 88/19) (hereinafter: the Law), which is the umbrella regulation in this area and applies from September 1, 2020. In addition to the law, the following *bylaws* apply in this area:

- Rulebook on the Register of Public Officials and the Register of Assets and Income of Public Officials ("Official Gazette of RS" No. 118/20);
- Rulebook on Gifts of Public Officials ("Official Gazette of RS" No. 118/20);
- Rulebook on the manner of submitting notifications on participation in the public procurement, privatization or other procedure whose outcome is the conclusion of a contract with a public authority;
- Rulebook on handling petitions ("Official Gazette of RS" No. 126/20);
- Instructions on the procedure for concluding an agreement on the recognition of a misdemeanor (published on the Agency's website); etc.

Other laws that apply to the prevention of conflicts of interest in the Republic of Serbia are: *Law on General Administrative Procedure, Law on Personal Income Tax, Law on Companies, Law on Civil Servants, Law on Government, Law on Local Self-Government, Law on Employees in Autonomous Provinces and Local Self-Government Units, Law on Public Procurement, Law on Judges, Law on Public Prosecutor's Office, Law on Police, Law on Public Procurement, etc.*

3.4.2. OBLIGATIONS OF A PUBLIC OFFICIAL

A public official is any elected, appointed or authorized person in a public authority, except for persons who are representatives of private capital in the management body of a company that is a public authority.

A public official is obliged to exercise a public function conscientiously and responsibly and may not subordinate the public interest to a private one in such a way that he uses the public function for the purpose of gaining any benefit or convenience for himself/herself or a related person.

The obligation of a public official is to abide by the regulations governing his/her rights and obligations and to create and maintain the trust of citizens in the conscientious and responsible exercise of public office.

When taking office and exercising public office, a public official is obliged to inform the immediate superior and the Agency for prevention of Corruption (hereinafter: the Agency) **by written notice about the suspicion of a conflict of interest or a conflict of interest that he/she or a person related to him/her has**. If the Agency determines that there is a conflict of interest, it shall inform the official and the body in which it performs a public function and propose measures to eliminate the conflict of interest.

3.4.3. CUMULATION OF PUBLIC FUNCTIONS

A public official **may exercise only one public function**, unless he is obliged by the Constitution, law and other regulations to exercise several public functions. **Exceptionally, he may perform another public function, based on the consent of the Agency**. A precondition for obtaining the consent of the Agency is a positive opinion given to a public official on this issue

by the body that elected, appointed or authorized him/her to a public office.

If the Agency does not give consent to a public official to exercise two public functions at the same time, he/she is obliged to, within eight days from the day of delivery of the Agency's decision, **resigns from one of the public offices to which he/she has been elected, authorized or appointed**. Otherwise, *the subsequent public office ceases by force of law*.

In 2020, the largest number of decisions detecting violations of the law, **a total of 71**, were issued to public officials due to the cumulation of public functions. Out of that, the Agency issued 17 decisions determining the termination of another public function by force of law, of which in 3 cases a warning measure was imposed.

The limit on the number of public functions that can be exercised at the same time **does not apply to public officials who are directly elected by the citizens**, whereas, without the consent of the Agency, they may hold more than one public office elected directly by the citizens, except in cases of incompatibility established by the Constitution. (*Article 56*).

3.4.4. INCOMPATIBILITY OF WORK WITH EXERCISE OF PUBLIC FUNCTION

A public official is prohibited from **advising legal and natural persons on issues related to the public office he/she holds**, unless he/she is obliged to do so.

Pursuant to Article 48, a public official whose public function requires the establishment of an employment relationship in a public authority or full-time work, during the performance of public office, **he cannot establish a company, i.e., a public service, nor start performing an independent activity**, in the sense of the law governing entrepreneurship. The same prohibition applies to **the activities of representation or membership in the body of a legal entity in private ownership, as well as the exercise of management rights**.

A public official **may not be a member of the body of the association, nor its representative**, if there is a relationship between the public office and the membership in the body of the association or the representation of the association that endangers or could endanger his/her impartiality or the reputation of the public office.

A public official is **prohibited from continuing to perform another job or activity** that he/she performed at the time of taking office, if the Agency determines that this impartial performance of a public function is endangered. In that case, the Agency shall issue a decision setting a deadline, not longer than 60 days, within which the public official is obliged to cease performing that work, i.e. activity (*Article 45*).

Without the consent of the Agency, a public official **may not perform other work or activity** during the exercise of a public function that requires full-time or permanent work. The exception to this is the performance of: scientific research work, teaching, cultural and artistic, humanitarian and sports activities. However, if in the case of the above-mentioned activities, i.e., activities, the Agency determines that their performance endangers the impartial exercise and reputation of the public office, orders the public official to stop performing them.

Although a public official in the Republic of Serbia may exercise a function in a political party or political entity and participate in their activities, if it does not jeopardize exercising a public function, **it is forbidden to use public resources for the promotion of political parties, i.e., political entities** (*Article 50*).

Within 30 days from the day of election, authorization or appointment, i.e. acquisition of shares or stocks during the performance of public function over 3% in the company, on the basis of which he acquires management rights, a public official is obliged to transfer it to a legal or nat-

ural person, which will exercise them in its own name, and on behalf of the public official, until the termination of the public office. The person to whom the management rights are transferred becomes a related party (*Article 51*).

Pursuant to Article 53, a legal entity in which a public official or family member, during a public office and two years from its termination, has a share or shares of more than 20% and which participates in the public procurement or privatization procedure or other procedure the outcome of which is the conclusion of a contract with a public authority, another budget user or other legal entity in which more than 20% of the capital is owned by the Republic of Serbia, an autonomous province, a unit of local self-government or a city municipality, is obliged to submit a notification to the Agency in order to check the timeliness and completeness of the data. Based on the submitted notifications, the Agency keeps the *Register of Legal Entities*, which it publishes on its website.

During 2020, **8 legal entities** submitted to the Agency 81 notifications on participation in the mentioned procedures, as well as 63 notifications on the termination of the procedure.

During 2020, **70 public officials** ceased to simultaneously exercise incompatible public functions, i.e., to perform work, activities.

3.4.5. PROHIBITIONS AND RESTRICTIONS AFTER TERMINATION OF PUBLIC FUNCTION

A person whose public office has been terminated (with the exception of a public official elected directly by the citizens), two years after the termination of public office, may not establish an employment relationship, that is, business cooperation with a legal entity, entrepreneur or international organization that performs activities related to a public function performed by a public official, except with the obtained consent of the Agency (*Article 55*).

3.4.6. RECEIVING GIFTS RELATED TO THE EXERCISE OF PUBLIC FUNCTION

Public official and family member **may not receive a gift in connection with the exercise of a public function, except for a protocol one⁵ and a commemorative gift⁶.**

A public official is obliged to report on any gift received in connection with the exercise of a public function (and when the gift was received by a family member) inform the public authority in which he is in public office by written notice, within ten days from the day of receiving the gift, i.e., from returning to the country.

A public official is obliged to do so within eight days from the day of receiving the gift, i.e., from returning to the country, hand over the gift to the body of public authority in which he/she is in public office, which will further hand it over to the body responsible for dealing with items in public ownership *Occasional and protocol gifts received become public property*.

A public official and a family member have the right to keep a protocol or occasional gift whose value does not exceed 10% of the average net monthly salary in the Republic of Serbia, but so that the total value of the retained gifts does not exceed in the calendar year the amount of one average monthly net earnings.

The public authority keeps records of gifts received by its public officials and family members, a copy of which it is obliged to submit to the Agency by March 1 of the current year for the previous year. Based on this information, the Agency publishes the **Gift Catalog** on its website, by June 1 of the current year.

⁵ Gift received by a public official (or family member) from a representative of a foreign state, international organization or foreign natural or legal person during an official visit or on other similar occasions.

⁶ A gift that is received on occasions when gifts are traditionally exchanged.

The Agency checks whether a public official or a family member has received or retained a gift to which he/she is not entitled or retained a gift to which he/she is entitled, which could affect the impartiality of a public official in performing a public function. If it concludes that the received gift could have affected impartiality, it initiates a procedure in which it is decided on the existence of a violation of the law and the competent authority is notified.

In 2019, public officials reported **681 gifts** received in connection with the exercise of public office, which is more than in 2018 when 668 gifts were reported. The most common gifts are: paintings, drinks, books, souvenirs, plates, works of art, plaques.

3.4.7. INCOME AND ASSET REPORT

Responsible exercise of public office is reflected, among other things, in the regular Income and Asset Report to the Agency. In this regard, **within 30 days** from the day of election, appointment or authorization, the public official shall submit to the Agency **Income and Asset Report, assets and income of their spouse or common-law partner, as well as minor children if they live in the same family household** (hereinafter: Report), according to the situation on the day of election, authorization and appointment. In the event that immediately after the termination of public office, the public official is re-elected, authorized or appointed, does not resubmit Report if there is no change in the data from the previous Report, but is obliged to inform the Agency within 30 days.

Report shall also be submitted by the person whose public office was terminated, **within 30 days from the day of termination of public office**, according to the situation on the day of termination of public office.

In Article 69, the law also recognizes the extraordinary report on assets and income, which is an obligation in the event of a significant change in assets and income, which exists when assets and revenues that, according to the previous Report, are increased or decreased, exceed the average annual salary without taxes and contributions in the Republic of Serbia or when the structure of those assets has changed. In that case, **Report shall be submitted as of December 31 of the previous year, and no later than the deadline for submitting the annual tax return for determining the personal income tax** (according to the Law on Personal Income Tax, it is May 15), both by a public official and by a person whose public office has ceased to hold this obligation *two years after the termination of public office*.

Regular and extraordinary reporting of assets and income does not apply to: councilors, members of municipal and city councils, members of municipal and city election commissions and members of bodies of public companies, companies, institutions and other organizations whose founder or member is a municipality, city or city municipality. Also, it does not apply to members of public companies, companies, institutions and other organizations whose founder or member is the Republic of Serbia or the autonomous province, if the law, other regulation or act does not stipulate that a public official is entitled to compensation on the basis of membership. In any case, the Agency may, from the aforementioned persons, request the submission of Report, within the time limit set by it.

The public official is obliged to report property and assets in the country and abroad, on the form and in the manner prescribed by the Agency. Verification of Report and monitoring of assets during, and after the termination of public office, is a strong anti-corruption mechanism that contributes to strengthening the personal integrity of public officials.

Pursuant to Article 75, the Agency checks the accuracy and completeness of the data in Report, as well as the timeliness of submission of Report, according to the *Annual Verification Plan* issued by the Director. The annual verification plan is adopted on the basis of a preliminary analysis of the Agency, where special attention is paid to the category of public officials, the amount

of their income and the amount of financial resources from the budget available to public authorities in which public officials are in public office. In the process of checking the assets, the Agency assesses whether there is a discrepancy between the data from Report and the actual situation or a discrepancy between the increased value of assets and reported revenues. The Agency may also check extraordinarily the accuracy and completeness of the data from Report, if it is suspected that Report does not report accurate and complete data. By applying the competencies from this article, during 2020, **57 proceedings** were initiated due to violation of the provisions of the law (by verifying Disclosure based on the Annual Verification Plan, including the extraordinary audit), and 61 measures were imposed for violating the provisions of the law.

3.4.8. REGISTERS

The Agency compiles and **maintains the Register of Public Officials and the Report of Assets and Revenues of Public Officials.**

The Register of Public Officials shall be compiled on the basis of the notification submitted to the Agency by the public authority on the election, authorization or appointment of a public official, as well as on the termination of public office, in the manner prescribed by Article 67 of the Law. The Agency checks the timeliness and completeness of data from the Register of Public Officials. The total number of *registered public positions in the Register of Public Officials is 81,519, of which 35,454 are active.*

The Agency compiles and maintains the Report on Assets and Revenues of Public Officials on the basis of data from Report. In 2020, 7114 disclosures were received. During 2020, by checking the data from the register, **173 proceedings** were initiated. Proceedings were initiated due to: untimely submission of disclosures after election, authorization or appointment to public office (180), due to untimely submission of the Report upon termination of office (51) and due to cumulative violation of the provisions of the law (4). Within the initiated proceedings, a total of 163 measures were imposed for violation of the law, as follows: 151 warning measures, i.e. warning measures, 9 measures of public announcement of the decision on violation of the law and 3 measures of public announcement of the recommendation for dismissal.

3.4.9. PENALTIES BASED ON VIOLATIONS OF THE LAW

3.4.9.1. Criminal charges

Failure to report assets or provide false information about assets is subject to criminal liability. A public official who does not report assets to the Agency or provides false information about assets, **shall be punished by imprisonment in a duration between six months and five years.** On the day that the judgment becomes final, the public function, i.e. employment, ceases for the public official. An additional legal consequence is the ban on acquiring a public office for a period of ten years from the day the judgment becomes final.

Also, pursuant to Article 86, when during the proceedings is found that there are grounds for suspicion that another criminal offense has been committed for which he is prosecuted ex officio, the Agency submits a criminal report to the competent public prosecutor's office, which informs the Agency within 90 days of what it has done.

Following the implementation of the Annual Report Verification Plan for 2020, **4 criminal charges** were filed with the competent prosecutor's offices due to the existence of grounds for suspicion that public officials did not report assets to the Agency or provided false information about assets, with the intention of concealing data on assets, i.e. due to the suspicion that they have committed another criminal offense for which prosecution is undertaken ex officio. Also,

through the verification of data from registers and records, the Agency filed **9 criminal charges** due to the existence of grounds for suspicion that public officials, in order to conceal assets, did not report the assets to the Agency or provided false information about the assets.

3.4.9.2. Request to initiate misdemeanor proceedings

If the Agency, during the procedure in which it decides on the existence of a violation of the law, determines that a violation has been committed, then submits to the competent misdemeanor court a request to initiate misdemeanor proceedings, which within 90 days notifies the Agency of what it has undertaken.

In addition to failing to report property and providing false information about assets, for all other violations of material provisions of the law, a fine in the amount of 50,000-RSD 150,000 will be imposed on a public official for a misdemeanor.

A fine of 100,000 to RSD 150,000 will be imposed on a public official for a misdemeanor if he/she performs a function in a political party or political entity and participates in their political activities contrary to the law.

A member of the family of a public official shall be fined in the amount of 50,000 to RSD 150,000 for a misdemeanor, if he receives a gift in connection with the performance of a public function, without being protocol and appropriate, as well as if he/she keeps in his possession a protocol or appropriate gift contrary to the provisions of the law.

A person whose public function has been terminated will be fined in the amount of 50,000 to RSD 150,000 for a misdemeanor, if he/she does not report his/her assets and income within the prescribed period, as well as if he establishes an employment relationship, i.e. business co-operation contrary to law.

For misdemeanors prescribed by law, the Agency may conclude an agreement with the perpetrator of the misdemeanor on the recognition of the misdemeanor.

Misdemeanor proceedings for misdemeanors prescribed by law may not be initiated if 5 years have elapsed from the day when the misdemeanor was committed.

During 2020, the Agency filed **2 requests** *to initiate misdemeanor proceedings related to violations of the provisions of the law concerning the prevention of conflicts of interest*, **11 requests** *for initiating misdemeanor proceedings due to late submission of Report, which was determined within the Annual Report Verification Plan for 2020, as well as* **18 requests** *due to untimely submission of reports after election, authorization or appointment, i.e., after termination of public office.*

3.4.9.3. Initiative to inaugurate disciplinary proceedings

When the Agency, during the procedure in which it decides on the existence of a violation of the law ex officio or in the procedure on a petition, finds that there is a breach of duty from employment, it submits to the competent authority an initiative to inaugurate disciplinary proceedings, which notifies the Agency what he undertook.

3.4.9.4. Administrative penalties

In case of violation of the law, the Agency may issue a warning to a public official (for minor violations of the law that did not affect the objective performance of public office) or a *measure of public announcement of a recommendation for dismissal from public office* (for severe violations of the law that affected the objective performance of public office), on its website and in the "Of-

Official Gazette of RS". After the finality of the decision imposing the measure of public announcement of the recommendation for dismissal from public office, the public authority responsible for dismissal shall take measures on the basis of the same one.

A public official who has been elected directly by the citizens, as well as a person whose public office has been terminated, may be issued a warning measure or a measure of public announcement of the decision on violation of this Law.

3.4.10. INSTITUTIONAL FRAMEWORK

The key body responsible for preventing conflicts of interest of public officials in the Republic of Serbia is **Agency for the Prevention of Corruption**⁷ (hereinafter: the Agency), which is an independent state body, with the status of a legal entity. The Agency shall be accountable to the National Assembly for the performance of tasks within its competence, to which it shall submit an annual report on its work no later than March 31 of the current year for the previous year. Funds for the work of the Agency are provided from the budget of the Republic of Serbia and from other sources. The Law on Amendments to the Law on the Budget of the Republic of Serbia for 2020 ("Official Gazette of RS", No. 135/20) Funds in the amount of RSD 292,579,000.00 (equivalent to €2,483,995.71) were provided for the work of the Agency. The total budget execution at the end of 2020 was 94.5%.

Law on Prevention of Corruption ("Official Gazette of RS", No. 35/19 and 88/19), Article 6, paragraph 1, indents 1-17, exhaustively lists the competencies of the Agency. Some of them, relevant to the prevention of conflicts of interest, restrictions on the exercise of public functions and the reporting of income and assets, are listed in *Box 2*.

Box 2: Responsibilities of the Agency for the Prevention of Corruption

The Agency is, among other things, competent to:

1. initiate and conducts proceedings in which decisions are made on the existence of violations of the law and imposes measures;
2. resolve conflicts of interest;
3. submit criminal charges, requests to initiate misdemeanor proceedings and initiatives to set up disciplinary proceedings;
4. maintain and publish the Register of Public Officials and the Report on Assets and Revenues of Public Officials;
5. check the Report on Assets and Revenues submitted by public officials;
6. keep and verifies data from records;
7. act upon petitions of natural and legal persons;
8. give opinions on the application of this law on its own initiative or at the request of natural or legal persons and takes positions relevant to the application of this law;
9. cooperate with public authorities, other legal entities, scientific institutions and associations, as well as international institutions, organizations and initiatives, etc.

The bodies of the Agency are the **Director and the Council of the Agency** (hereinafter: the Council) which has five members. Both bodies are elected by the National Assembly after a public competition, which is announced by the ministry in charge of justice. The public competition is conducted by the Judicial Academy.

The term of office of the director and members of the Council is five years. The same person may

⁷ In the period from January 1, 2010 till August 31, 2020, activities were performed under the name of the Anti-Corruption Agency.

be elected director and member of the Council no more than twice. Among other conditions prescribed by law, the director and members of the Council may not be members of a political party or political entity, and all must have graduated exclusively from the Faculty of Law.

The council is a **second instance body** that decides on appeals against decisions made by the director. The decision of the Agency Council is final, and an administrative dispute may be initiated against it in which the court is obliged to resolve the administrative matter by a judgment.

Pursuant to the Law on Prevention of Corruption, the Agency has the exclusive competence to initiate proceedings ex officio, at the request of a public authority that has elected, or appointed a public official or in which the public official is in a public office or upon the application of a natural or legal person, as well as upon an anonymous application. The procedure in which it is decided on the existence of a violation of the law is conducted in case of suspicion of: **the existence of a conflict of interest** (Art. 40-44), **the occurrence of incompatibility** (Art. 45-55), **cumulation of public functions** (Article 56), **receiving gifts** (Art. 57-66) and **reporting assets and income** (Art. 67-76). The decision establishing a violation of the law and imposing a measure or suspending the procedure shall be made by the Director of the Agency. In the procedure conducted by the Agency, in accordance with the law, the law governing the general administrative procedure shall be applied accordingly.

When the Agency during the procedure in which it decides on the existence of a violation of the law ex officio or in the procedure upon a petition, finds that there are grounds for suspicion that a criminal offense has been committed for which he/she is prosecuted ex officio or a misdemeanor or breach of duty arising from employment, The Agency shall submit to the competent authority a criminal report, a request to initiate misdemeanor proceedings or an initiative to initiate disciplinary proceedings, which shall inform the Agency within 90 days of what it has undertaken. The procedure is initiated within two years from the day of finding out about the existence of (in) action of the public official that caused suspicion of conflict of interest, provided that it cannot be initiated or terminated if five years have elapsed since the (in)action of the public official.

During 2020, the Agency received a total of **1906 cases in the area of conflict of interest**, of which 1050 referred to requests from public officials for approval on various grounds.

Regarding the violation of the provisions of the law concerning the obligation to prevent *conflicts of interest, incompatibility of functions*, cumulation of functions, during 2020, **179 decisions were made establishing a violation of the provisions of the law**, as follows: 111 decisions imposing a warning measure, 18 decisions imposing the measure of public announcement of the recommendation for dismissal from public office, 33 decisions by which the measure of public announcement of the decision on violation of the law was pronounced and 17 decisions by which the termination of function by force of law was stated, of which in 3 cases a warning measure was imposed.

In addition to the Agency, **other public authorities and other persons exercising public authority have the authority to prevent conflicts of interest of public officials in the Republic of Serbia, and who have data relevant to the actions of the Agency. These are: Tax Administration, Republic Geodetic Authority, Ministry of Internal Affairs, Administration for Prevention of Money Laundering, Business Registers Agency, Ministry of Justice, Ministry of Finance, Customs Administration, Administration for Prevention of Money Laundering, competent inspections, Agency for Restitution, etc.** The Agency may, for the purpose of performing tasks within its competence, obtain data on the accounts of public officials from banks and other financial institutions.

Special cooperation is realized with: **competent courts, Republic Public Prosecutor's Office, Prosecutor's Office for Organized Crime, Office of the Council for National Security and Protection of Classified Information, The Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, the State Audit Institution, the Commissioner for the Protection of Equality, as well as the State Attorney's Office.**

3.5. MONTENEGRO

3.5.1. LEGISLATIVE FRAMEWORK

The umbrella regulation regulating the issue of preventing conflicts of interest of public officials in Montenegro is the **Law on Prevention of Corruption** ("Official Gazette of Montenegro", No. 53/2014 and 42/2017 - US decision) (hereinafter: the Law), which entered into force on December 27, 2014, and applies from 1 January 2016. This law prescribes measures to prevent conflicts of public and private interest, regulates restrictions on the performance of public functions, submission of statements on income and assets of public officials, protection of persons who report endangering the public interest that indicates the existence of corruption, as well as other issues of importance for the prevention and prevention of corruption.

The law is in line with the obligations and recommendations of international documents ratified by Montenegro: the UN Convention against Corruption, Resolution (97) 24 of the Committee of Ministers of the Council of Europe on twenty guiding principles for the fight against corruption, The Council of Europe Criminal Law Convention on Corruption, the Council of Europe Civil Law Convention on Corruption, the Standards of the Anti-Corruption Bodies of EPAC (European Partners Against Corruption - Montenegro is a member), Ministerial Declaration on 10 joint measures to combat corruption in Southeast Europe. The recommendations of the Council of Europe Group of States against Corruption (GRECO) were also followed, and the provisions of the Council of Europe Code of Conduct for Public Officials, were considered.⁸

The provisions of the **Law on Administrative Procedure** (LAP) shall apply to the procedure for determining violations of the provisions of the law relating to the prevention of conflicts of interest in exercising public functions, restrictions on exercising public functions, gifts, sponsorships and donations and reports on income and assets of public officials. ("Official Gazette of Montenegro", No. 56/2014, 20/2015, 40/2016 and 37/2017).

In doing so it is complemented by sections the following laws: **Law on Obligations** ("Official Gazette of Montenegro", No. 47/2008, 4/2011 - other law and 22/2017), **Law on Internal Affairs** ("Official Gazette of Montenegro", No. 44/12, 36/13, 1/15, and 87/18), **Law on Inspection Supervision** ("Official Gazette of Montenegro", No. 39/03, 76/09, 57/11, 18/14, 11/15 and 52/16), **Law on Tax Administration** ("Official Gazette of Montenegro", No. 65/01, 80/04, 29/05, 73/10, 20/11, 28/12 and 8/15), **Law on Customs Service** ("Official Gazette of Montenegro", No. 3/16), **Law on Notaries** ("Official Gazette of the Republic of Montenegro", No. 68/2005 and "Official Gazette of Montenegro", No. 49/2008 and 55/2016 and 84/2018), **Law on Public Executors** ("Official Gazette of Montenegro", No. 61/2011, 22/2017, 17/2019), etc.

3.5.2. OBLIGATIONS OF A PUBLIC OFFICIAL

A public official, in terms of law, is an elected, authorized or appointed person in a state body, state administration body, judicial body, local self-government body, local government body, independent body, regulatory body, public institution, public enterprise⁹ or another company, i.e., a legal entity that performs public authorities, i.e., activities of public interest or is in state ownership,¹⁰ as well as a person whose election, authorization or appointment by the authority gives consent, regardless of the permanence of the function and compensation. It is necessary to include notaries and public executors, as well as other taxpayers of the Law on Prevention of Corruption, recognized by other laws. This is due to the practical application, and that all taxpayers are recognized by this law, analogous to the Slovenian model.

⁸ Source: Report on the work of the Agency for the Prevention of Corruption in 2020, the Agency for the Prevention of Corruption, March 2021.

⁹ A public enterprise is a company in which the state or municipality has at least 33% of the capital.

¹⁰ State ownership in the sense of this law is any participation in a company in which the state or municipality, the Capital, or the Capital has at least 33% of the capital.

By December 3, 2020, 4,659 active public officials were registered in 2006, as well as 1,443 civil servants who have the obligation to submit Income and Assets Report prescribed by special regulations. It was noted that the law does not prescribe an obligation for the authority to regularly updates the list of public officials, which causes certain problems that the Agency is facing in its work, as well as that the authority submits to the Agency information on the appointment, appointment and dismissal of a public official within 15 days from the day of his appointment, appointment or dismissals, in order for the Agency to regularly update the list of public officials.

A public official **is obliged to exercise his/her function in such a way that the public interest is not subordinated to the private one**, as well as not to provoke a conflict of interest in the exercise of public office. Conflict of interests in exercising public function exists when the private interest of a public official affects or may affect the impartiality of a public official in exercising a public function (*Article 7*).

The obligation of a public official is to strictly **adhere to the Opinion issued by the Agency and the Decision on the violation of the provisions of this Law** relating to the prevention of conflicts of interest in the performance of public functions, restrictions on the exercise of public functions, gifts, and reports on income and assets, etcetera. In 2020, the Agency issued **135 opinions binding on public officials and issued 63 decisions**, in which violations of the law was established in 60.3% of the cases. In 2020, based on the given opinions and adopted decisions **41 public officials resigned from public office**.¹¹

Article 8 prescribes an obligation for the public official (except for deputies and councilors, as well as public officials to whom the rules on exemption prescribed by a special law apply) who participates in the discussion and decision-making in a public body in which he or with him connected person¹² performs a public function in a matter in which he has a private interest, to inform other participants in the discussion of his private interest, by **providing a statement on the existence of a private interest** before taking part in the discussion, and at the latest before the decision-making process starts.

According to *Article 28*, when an official suspects there is a conflict of interest or restriction in the exercise of public office, **a public official is obliged to take measures to resolve conflicts of interest or respect restrictions in accordance with the law**, as well as to report to the Agency the suspicion of the conflict of interest or restriction on exercising public function, which gives an opinion on that.

Also, pursuant to *Article 30*, at the request of the Agency, the public official is obliged to submit within 30 days, detailed data on the bases of acquiring assets and income, if the Agency in the verification procedure finds that the assets and income of a public official and related persons are higher than real income.

3.5.3. PROHIBITIONS AND RESTRICTIONS ON THE PERFORMANCE OF OTHER PUBLIC AFFAIRS AND FUNCTIONS IN COMPANY

When it comes to exercising other public affairs while exercising public office, *Article 9* states, **a public official is only allowed to engage in scientific, teaching, cultural, artistic and sports activities and to acquire income from copyright, patent and similar rights, intellectual and industrial property.**

Although a public official may be a member of several permanent or temporary working bodies formed by a public authority, **he/she is prohibited from earning income in more than one**

¹¹ In 2019, 59 public officials resigned, 77 in 2018, 37 in 2017, and 75 in 2016.

¹² A person related to a public official is a relative of a public official in a direct line and a collateral to the second degree of kinship, a relative by in-law up to first degree of kinship, marital and extramarital spouse, adoptive parent and adoptee, member of a joint household, other natural or legal person with whom the public official establishes or has established a business relationship.

working body in the same month. This raises the question of the meaning of the term “working body”, which causes difficulties not only in work Agency, but also very frequent dilemmas of public officials and addressing the Agency for an opinion on whether for example. an examination or other commission or a working group formed by a government body falls under the term “working body”.

A public official who is the owner, i.e., founder of a company, institution or other legal entity is obliged to, within 30 days from the day of election, authorization or appointment to public office, transfer his management rights in those entities to another legal or natural person. The transfer of management rights implies the obligation of a public official to resign from the membership in the management body in which he/she exercises his/her management rights, if he/she was educated in the aforementioned entities. The person to whom the public official has transferred management rights, to exercise them in his own name, and on behalf of the public official until the termination of his public function, becomes a person related to the public official (*Article 10*).

Article 11 strictly **prohibits a public official from being the president, authorized representative or member of the management** or supervisory body, executive director or member of the company’s management, and gives him a period of 30 days from the day of election, appointment, i.e., appointment to public office, to resign from the stated duties and functions in the company. During 2020, and after the initiation of administrative proceedings before the Agency, **public officials submitted 16 resignations from office in companies.**

If, in the course of performing a public function, a public official accepts to be **the president, authorized representative or member of the management** or supervisory body, executive director or member of the company’s management, is obliged to resign from public office within 30 days from the beginning of performing another function, i.e., duty.

3.5.4. PROHIBITIONS AND RESTRICTIONS ON EXERCISING PUBLIC FUNCTIONS IN PUBLIC ENTERPRISES AND PUBLIC INSTITUTIONS

Article 12 **prohibits a public official from being the executive director and member of the management of a public enterprise, public institution or other legal entity.** If during the performance of a public function, he/she accepts one of the stated functions, he/she is obliged to resign from the public function within 30 days from the beginning of exercising another function, i.e., duty.

Exceptionally, a public official (*except the President of Montenegro, Member of Parliament, Councilor, Member of the Government, Judge of the Constitutional Court, Judge, Head of the State Prosecutor’s Office, State Prosecutor, Special Prosecutor for Combating Organized Crime, Corruption, Terrorism and War Crimes and Deputy Special Prosecutor*), may be the president or a member of the management body and supervisory body of a public enterprise, public institution or other legal entity in a public enterprise, public institution or other legal entity in which the state or municipality is the owner, whereby on the basis of that membership he is **prohibited from earning income or other compensation.** Prohibition of income or other compensation also refers to the exercise of the function of president or member of the governing body and supervisory body of scientific, teaching, cultural, artistic, humanitarian, sports associations, regardless of the fact that there are no prohibitions and restrictions on exercising these functions in relation to exercising a public function.

A public official **who exercises tasks in the state administration and local administration bodies is prohibited from exercising the function of deputies and councilors.** If, while exercising a public function in the state administration and local administration bodies, a public official accepts to exercise the function of deputy and councilor, he is obliged to resign from the public function within 30 days from the beginning of performing another function, i.e., duty.

3.5.5. PROHIBITIONS AND RESTRICTIONS REGARDING SERVICE AGREEMENTS AND BUSINESS COOPERATION

Pursuant to Article 14, a public official **is prohibited from concluding a service contract with a:**

- public enterprise;
- Governmental Body or a company that is in a contractual relationship, i.e. performs activities for a Governmental Body in which a public official performs a function, unless the value of these contracts is less than €1,000 per year.

Also, the authority in which the public official exercises a public function may not conclude a contract with a company or other legal entity in which the public official and a related person have a private interest.

3.5.6. PROHIBITIONS AND RESTRICTIONS AFTER TERMINATION OF PUBLIC FUNCTION

Article 15, provides that for a period of two years after the termination of public office, a person may not-

- act before a public authority in which he/she has exercised a public function as a representative or proxy of a legal entity, entrepreneur or international or other organization that has or establishes a contractual or business relationship with that public authority;
- establish an employment relationship, i.e., establishes business cooperation with a legal entity, entrepreneur or international or other organization which, based on the decisions of the government body in which the public official performed the function, benefits;
- represent a legal or natural person before the authority in which he/she performed a public function in a case in which he/she participated as a public official in deciding;
- perform management or audit activities in a legal entity in which, at least one year before the termination of public office, his/her duties were related to supervisory or control activities;
- enter into a contractual relationship or other form of business cooperation with the authority in which he performed a public function;
- use, for the purpose of gaining benefit for himself or another or for the purpose of harming another, knowledge and information obtained in the exercise of public office, unless such knowledge and information is available to the public.

3.5.7. PROHIBITIONS AND RESTRICTIONS REGARDING THE ACCEPTANCE OF GIFTS

A gift includes a thing, right or service acquired, i.e. performed free of charge and any other benefit given to a public official or a person related to a public official, in connection with the performance of a public function.

Receiving gifts, while exercising public office, carries with it the risk of corruption, and the law provides for regulations in this area. The law stipulates that a public official, in connection with the exercise of a public function, **may not receive money, securities or precious metal, regardless of their value, as well as gifts (except for protocol and occasional gifts).**

A protocol gift is a gift given by a representative of another state or international organization given during a visit, visit or on other occasions, as well as another gift given on similar occasions. A protocol gift is always the property of the state, e.g., municipality, and not a public official. A gift of up to € 50 is considered an appropriate gift. If a higher value is determined, the gift is handed over to the authority in which the public official performs the function and becomes state property, e.g., municipal property.

If a public official receives more than one occasional gift from the same donor within one year, the total value of those gifts may not exceed €50, and if he receives *appropriate gifts* from more than

one donor during that time, the value of these gifts may not exceed €100.

These prohibitions, i.e., restrictions, also apply to the spouse and common-law spouse and children of a public official if they live in a joint household, if the receipt of money, securities, precious metals and gifts is related to the performance of the public function of a public official.

A public official who has been offered a gift that he is not allowed to receive, is obliged to reject the offer, as well as to make a written report on it within eight days of the offer and submit it to the authority in which he holds public office.

If a public official could not refuse the gift, nor return the gift to the donor, he/she is obliged to hand over the gift to the authority in which he/she performs the public function, which from the day of delivery becomes state property, e.g., municipal property.

Records of gifts are kept by the authority in which the public official performs his/her function, and he/she submits them to the Agency, which compiles the **Catalog of Gifts of Public Officials** received in the previous year and publishes it on its website. During 2020, the Agency was informed that public officials received **165 gifts** (mostly protocol gifts). The value of gifts received by public officials was €5 - €2,580.¹³ The following table shows the statistics of gifts received in the last 5 years, since the Agency was established.

Table 1.3: Gifts received in connection with the performance of public office, in accordance with the records submitted by taxpayers to the Agency for the period 2016-2020.

Year	2016	2017	2018	2019	2020
Number of received gifts	15	8	12	16	13

Source: Agency

During 2020, a small number of gifts were kept in personal ownership by public officials (10), while 155 gifts, mostly protocol gifts, became state (147) and municipal ownership (8).

3.5.8. RESTRICTIONS REGARDING SPONSORSHIP AND DONATIONS TO AUTHORITIES

Sponsorship is the transfer of certain tangible or intangible goods, movable or immovable property or other services to the authorities in exchange for orally or in writing mentioning or advertising the sponsor's logo or the sponsor's product logo or other service, in accordance with the law.

Donation is the transfer without compensation or free transfer of certain tangible and intangible goods, movable or immovable property to the authorities.

As receiving sponsorships and donations may jeopardize the independence and impartiality of the work of public officials and authorities, the law, Article 21, **prohibits a public official from concluding a sponsorship agreement on his or her own behalf**. Also, a public official may not conclude a sponsorship agreement and receive donations on behalf of the public authority in which he performs a public function, which affect or could affect the legality, objectivity and impartiality of the work of public authorities. The opinion on whether it is a matter of sponsorship and donation that affect or could affect the legality, objectivity and impartiality of the work of the authorities, is given by the Agency. The Agency updates and publishes on the website the Catalog of received sponsorships and donations.

¹³ In 2020, the most expensive protocol gift received is worth €2,580. It was a vase that the Parliament of Montenegro reported to the Agency, as one of the protocol gifts that the then President of the Parliament received from the President of the House of Representatives of Romania.

Table 1.4: Sponsorships and donations in the period 2016-2020.

Year	2016	2017	2018	2019	2020
Sponsorships	71	104	41	279	316
Donations	254	368	537	888	1014

Source: Agency

In 2020, **316 sponsorships** were reported to the Agency by 116 authorities, while **1,014 donations** received were reported by 200 authorities. The number of reported donations and sponsorships compared to the previous year is higher by 14.2% and 13.3%, respectively.

3.5.9. ASSETS AND INCOMEREPORT

Pursuant to the law, Article 23, a public official is obliged to submit an Income and Assets Report during the performance of public office (hereinafter: the Report), in which he/she is obliged to state, in addition to his own, accurate and complete data on the **assets and income of his/her married and unmarried spouse and children if they live in a joint household, as follows:**

- » **within 30 days from the day of taking office**, according to the situation on the day of election, appointment, i.e., authorization;
- » **once a year**, until the end of March of the current year for the previous year;
- » in case of changes from the Report related to the increase of assets over €5,000, within 30 days from the day of the change;
- » **at the request of the Agency**, in the case of initiating proceedings in which it is decided whether a public official has violated the provisions of the law relating to the prevention of conflicts of interest in the exercise of public functions, restrictions on the performance of public functions, gifts, sponsorships and donations and reports of public officials, within 30 days from the date of receipt of the request, i.e. in the initiation of ex officio proceedings.

Upon termination of public office, the public official is obliged to, within 30 days from the day of termination of office, inform the Agency and submit the Report. He/she is also obliged to submit Report **once a year** for the next two years after the termination the mandate.

This provision of the Law needs to be specified using the Croatian model according to which a public official whose public office has ceased has the obligation to submit a Report 30 days from the day of termination of office, and then 12 months after termination of office. In addition, the person has an obligation to submit a biennial report with a clear deadline for submission of reports.

When transferring to another public office, as well as in the case of election, authorization, or appointment to another public office, a public official is obliged to (president or member of the management body and supervisory body of a public enterprise, public institution or other legal entity with the participation of capital owned by the state or municipalities, as well as scientific, teaching, cultural, artistic, humanitarian, sports or similar associations), notify the Agency within 30 days from the occurrence of the change.

In Montenegro, the obligation to submit the Report also applies to a range of civil servants who have a prescribed obligation to submit the Report in accordance with:

- *Law on Internal Affairs ("Official Gazette of Montenegro", No. 44/12, 36/13, 1/15, and 87/18) - police officers with the title: Chief Police Inspector, senior police inspector I class, senior police inspector, independent police inspector, chief police advisor, senior police advisor class I, senior*

- police advisor and independent police advisor;*
- Law on Inspection Supervision ("Official Gazette of Montenegro", No. 39/03, 76/09, 57/11, 18/14, 11/15 and 52/16) - the head of the inspection body and the inspector;*
- Law on Tax Administration ("Official Gazette of Montenegro", No. 65/01, 80/04, 29/05, 73/10, 20/11, 28/12 and 8/15) - tax inspector and authorized official which undertakes investigative actions;*
- Law on Customs Service ("Official Gazette of Montenegro", No. 3/16) - Assistant Head of Branch, Customs Inspector, Customs Officer, Senior Associate and Customs Associate.*

Also, the obligation to submit the Report is subject to notaries in accordance with the obligation prescribed in the *Law on Notaries* ("Official Gazette of the Republic of Montenegro", No. 68/2005 and "Official Gazette of Montenegro", No. 49/2008 and 55/2016 and 84/2018) and public executors according to the *Law on Public Executors* ("Official Gazette of Montenegro", no. 61/2011, 22/2017, 17/2019).

Article 24 specifies which data a public official is obliged to report in the Report. The Agency verifies the data from the Report by comparing them with the collected data on the assets and income of public officials from government bodies and legal entities that have such data. In order to verify the data from the Report, the public official may give consent to the Agency for access to data on the accounts of banking and other financial institutions. The Agency controls the report in accordance with the Annual Verification Plan adopted in accordance with the recommendations of the Council of Europe. It starts from the so-called "*random report control*", except for the categories of officials whose control is mandatory (President of Montenegro, Prime Minister, Members of the Government, President of the Parliament, Secretaries General: Government, President and Parliament, Members of the Judicial and Prosecutorial Council).

Data from the Report are kept in the Register of Income and Assets of Public Officials, which is part of the unique information system of the Agency. Data from the Register are published on the Agency's website.

In 2020, **8,108 Statements** were submitted to the Agency, of which 79.7% of the Reports were submitted by state and local officials, 19% of the Reports were submitted by civil servants who have a legal obligation to submit them, 0.75% by Notaries, and 0.44% by public executors.

Table 1.5: *Number of submitted Reports in the period 2016-2020*

Year	2016	2017	2018	2019	2020
Number of submitted Reports	6,497	7,032	8,004	8,149	8,108

Source: Agency

In 2020, **95.5% of public officials** and **99.9% of civil servants** with the obligation to submit a regular annual report for 2019 submitted a report to the Agency **within the legal deadline**. Also, 511 Reports were submitted due to the increase of assets over €5,000.

In 2020, the Agency initiated **138 administrative proceedings** in this area, of which 70 on the basis of submitting inaccurate and incomplete data, 57 on the basis of failure to submit reports within the legal deadline, while 11 related to the verification of the basis of acquisition and sources of funds/assets over €5,000. 51% of proceedings were initiated by the Agency *ex officio*, while for the remaining half the requests were submitted by other legal/natural/unidentified persons.

In accordance with Article 28 of the Law, when a public official suspects that in a situation where there is a conflict of interest or restriction in the exercise of public office, that official is obliged to take measures to resolve the conflict of interest or comply with restrictions in accordance with law, as well as to report to the Agency the suspicion of the existence of a conflict of interest or

restrictions in the performance of a public function, for their opinion. A public official whose function has been terminated may submit a request to the Agency for an opinion on the existence of restrictions referred to in Article 15 of this Law. A public official, i.e., a public official whose function has been terminated, is obliged to state accurate data in the request for giving an opinion regarding a possible conflict of interest. He/she may request from the Agency that the opinion be delivered to him/her within a period which may not be longer than 15 days from the day of submitting the request, in order to exercise and protect his/her rights and interests or the performance of the obligations in relation to which he/she requested the opinion. The procedure under this request is of a confidential nature. Due to uncertainties on what the term “working body” means in the Law. It is necessary to provide an exact meaning of this term. It is often the case that obligors of the law consider this term to mean working groups or exam commissions, leading to an increase in requests to Agency for providing an opinion in this regard. The number of requests for opinions in the first quarter of 2021 is 62.5% higher than for the same period in 2020. Also, it is necessary to strengthen awareness and provide continuous education of legal entities in this area of work of the Agency.

3.5.10. LEGAL EFFECT OF DECISIONS

Pursuant to Article 42, violation of the provisions of the law relating to the prevention of conflicts of interest in the exercise of public office, restrictions on the exercise of public office, gifts, sponsorships and donations and reports of public officials, and which is determined by a **final or in effect decision** is considered to be **unscrupulous exercise of a public function**. The Agency is obliged to inform the authority in which the public official exercises a public function and the body responsible for his election, authorization, or appointment, *in order to initiate the procedure of dismissal, suspension or imposition of a disciplinary measure*.

With the exception of a public official who is directly elected, a public official *who has been dismissed for the above reasons is prohibited from performing a public function, i.e. the duties of a civil servant for a period of four years from the day of dismissal*.

During 2020, after the final decisions regarding the prevention of conflicts of interest of public officials, the authorities acted in 13 cases:

- **1 public official is dismissed from public office;**
- The authorities issued 2 reprimands with a warning measure as a type of disciplinary sanction;
- For **4 public officials, the body stated the termination of the mandate;**
- **In 2 councilor cases, the mandate ended with the election of a new convocation;**
- **In 3 cases, the authorities notified the intention to proceed** (two were forwarded to the competent ministry for further action);
- **In 1 case, a decision on postponement was made. .**

In two cases, the body - the Government of Montenegro - did not act within 60 days.

The other 23 proceedings before the authorities are ongoing. Following the initiation of administrative proceedings before the Agency, **public officials submitted 16 resignations from office in companies.**¹⁴

As we have situations where the authority, in specific situations, the Government of Montenegro, does not act on the decision of the Agency within the legally prescribed period, it would be appropriate in such situations to prescribe a misdemeanor sanction for the authority.

¹⁴ Report of the Agency for the Prevention of Corruption for 2020

3.5.11. MISDEMEANOR LIABILITY

The law provides for a fine in the range of **€500 - €2,000**, which fines public officials violating the provisions of this law. For violations of the law related to prohibitions and restrictions in connection with the receipt of gifts, in addition to a fine, a protective measure of confiscation of the object-gift is imposed. A civil servant who has a prescribed obligation to submit the Report in accordance with a special law, for violations of the articles of the law that are binding on him/her, shall be fined in the range of **€500 - €1,000**.

Both the spouse and the extramarital partner and children of a public official will be punished for the offense if they live in a joint household, if they receive money, securities or precious metals and gifts related to a public official, i.e. exercising a public function, with a fine that ranges from €300 to €500.

A fine in the range of €1,000 - €2,000 will be imposed on a person whose public office has been terminated for a misdemeanor, if within a period of two years after the termination of public office, he violates the articles of law prescribing his obligations, prohibitions and restrictions. In addition to a fine, he may be imposed a protective measure of prohibition to perform activities for a period of six months to one year, in cases where this is applicable.

In 2020, the Agency submitted **12 requests** for initiating misdemeanor proceedings to the competent courts for violating the provisions of the law related to **restrictions in the exercise of public functions**. Of these, in two cases **the court was asked to confiscate** the proceeds of the offense (in one case the courts **confiscated the proceeds of misdemeanor in the amount of €2,892**).

Due to violation of the provisions of the law related to the **obligation to submit the Report**. In 2020, the Agency initiated **442 misdemeanor proceedings** (421 requests for initiating misdemeanor proceedings and 21 misdemeanor orders). The largest number of proceedings (119 requests and 1 order) concern non-submission of the Report within 30 days after termination of office. Based on the initiated misdemeanor proceedings, **171 fines in the amount of €43,570 were collected** and 87 reprimands were issued. **8 misdemeanor** orders were executed, on the basis of which 6 fines in the amount of €1,472 were collected and 1 reprimand was issued.

3.5.12. INSTITUTIONAL FRAMEWORK

In Montenegro, the central anti-corruption body is the **Agency for the Prevention of Corruption** (hereinafter: the Agency), established by the Parliament of Montenegro, in accordance with the **Law on Prevention of Corruption** ("Official Gazette of Montenegro", No. 53/2014 and 42/2017 - CC decision). The Agency commenced work on January 1, 2016. On that day, *the Commission for the Prevention of Conflicts of Interest* and the *Directorate for Anti-Corruption Initiative* ceased to function, as its legal predecessor (*see Box 3*).

Box 3: Institutional framework before 2016

With the beginning of the application of the **Law on Prevention of Corruption** (“Official Gazette of Montenegro”, No. 53/2014), i.e. from January 1, 2016, the Agency for the Prevention of Corruption started operating, taking over the work of **the Commission for the Prevention of Conflicts of Interest and the Directorate for Anti-Corruption Initiative**, their employees, as well as rights, obligations, objects, equipment, means of work, documentation, registers and records. Until the establishment of the Agency, these two institutions were the two key anti-corruption bodies in Montenegro.

The Commission for the Prevention of Conflicts of Interest was established as an independent body, based on the **Law on Conflict of Interest**, which entered into force on 30 June 2004. On July 29, 2004, the Parliament of Montenegro adopted the *Decision on the Establishment of the Commission for Determining Conflicts of Interest and the Election of the President and Four Members of the Commission*. The President and four members are elected by the Parliament for a period of five years, with the possibility of re-election. The Commission started its work on August 30, 2004 and seven months after the entry into force of the Law on Conflict of Interest, it started processing reports on income and assets of public officials and resolving applications and initiatives. Until the enactment of the Law on Prevention of Conflicts of Interest (“Official Gazette of Montenegro”, No. 1/09), which entered into force on January 17, 2009, **existed as the Conflict of Interest Commission, and has since continued to operate as the Conflict of Interest Commission**. The Law on the Prevention of Conflicts of Interest stipulates that the Commission has a president and six members. The aim of the new law, which incorporates GRECO (The Group of States against Corruption) recommendations, is the establishment of an adequate and efficient mechanism for monitoring international legal instruments against conflicts of interest, maintaining confidence in the legitimacy of performing the functions of government officials, conscientious exercise of public functions, etcetera.

The Directorate for Anti-Corruption Initiative was the coordinating body for preventive activities, as well as for the analysis of activities arising from the implementation of strategic documents for the fight against corruption.

The bodies of the Agency are *Agency Council* (hereinafter: the Council) and *Director of the Agency* (hereinafter: Director). The Council has five members elected by the Parliament, based on a public competition announced by the working body of the Parliament in charge of anti-corruption affairs, for a period of four years (may be elected no more than twice). The Council shall submit to the Parliament an annual report on the work of the Agency, no later than March 31 of the current year for the previous year.

The Director is elected by the Council, based on a public competition, for a period of five years, with the possibility of election no more than twice.

The Agency has the status of a legal entity and the funds for its work and functioning are provided in the budget of Montenegro and cannot be less than 0.2% of the current state budget. If the Government makes changes from the draft budget of the Agency, it shall submit a written explanation to the Parliament.

Law on Prevention of Corruption (“Official Gazette of Montenegro”, No. 53/2014 and 42/2017 - US decision), (hereinafter: the Law) precisely defines that in the field of conflict of interest, the Agency, as an independent and autonomous body, is competent to:

- 1. Determine the occurrence of conflicts of interest in the exercise of public functions, take measures to prevent them and control restrictions on exercising public functions, through:**

- » *Keeping records of public officials;*
- » *Giving an opinion at the request of a public official in case of suspicion of a conflict of interest and in relation to restrictions on exercising public functions;*
- » *Conducting administrative proceedings ex officio or at the initiative of the parties, as well as making decisions after the administrative procedure;*
- » *Submission of requests for initiating misdemeanor proceedings and issuing misdemeanor warrants;*
- » *Referral of cases to the competent prosecutor's office/authority in case of suspicion that a criminal offense has been committed.*

In 2020, the Agency initiated and completed **63 administrative proceedings** due to conflicts of interest and violation of restrictions on the performance of public functions, of which **60.3% (38) of cases were found to violate the Law.**

2. Controls the receipt of gifts, sponsorships and donations through:

- » *Keeping records of gifts received by public officials and reports on received sponsorships and donations;*
- » *Compilation of the Gift Catalog and the Register of Sponsorships and Donations;*
- » *Initiation of administrative/misdemeanor proceedings;*
- » *Referral of cases to the competent prosecutor's office/authority in case of suspicion that a criminal offense has been committed/irregularities observed that are not within the competence of the Agency.*

During 2020, in the process of checking: **received gifts (165), received donations (1014) and sponsorships (316),** the Agency **did not identify any irregularities.**

3. Checks the income and assets of public officials and civil servants who have the prescribed obligation to submit Report on income and assets through:

- » *Adoption of the Annual Review Plan of the Income and Assets Report;*
- » *Keeping records of public officials;*
- » *Receiving Income and Asset Report;*
- » *Forwarding the case to the competent prosecutor's office in case of suspicion that a criminal offense has been committed;*
- » *Initiation of administrative proceedings/submission of requests for initiation of misdemeanor proceedings, issuance of misdemeanor orders;*
- » *Administrative and technical verification, verification of accuracy and completeness of data, as well as full verification of the Report, in accordance with the Annual Verification Plan.*

Checking the accuracy and completeness of data in the submitted report on assets and income of public officials The Agency implements in cooperation with institutions that have data on property and income of public officials and members of the joint household: **Tax Administration** (data on realized taxed revenues, as well as data from the Central Register of Business Entities), **Real Estate Administration** (data on holders of real estate ownership rights), **Ministry of the Interior** (data on ownership of movables that are registered: motor vehicles, weapons), **Securities Commission of Montenegro** (data on persons who own securities, i.e., shares in companies and other legal entities), **Central Bank of Montenegro**, as well as commercial banks (in the case of consent given to access to accounts by a public official). Based on the signed Agreement on Cooperation, in exercising its competencies, the Agency also cooperates with the **State Audit Institution**, and close cooperation also exists with the **Directorate for Inspection Affairs**, to whose competent inspection cases are assigned ex officio.

3.5.13. REVIEW OF THE WORK OF THE CORRUPTION PREVENTION AGENCY

The Agency started working in January 2016. Since the election of the new Council of the Agency, and the new Director in July 2020, the work of this body has been significantly improved, which was also stated by the European Commission in Non-paper on the state of play regarding chapters 23 and 24 for Montenegro, presented in Chapter II, where a comparative overview was given in relation to the Non-paper for Chapters 23 and 24 and the European Commission reports on Montenegro for 2019 and 2020.

Relevant research also show the fact that public confidence in performance of the Agency has increased. According to a survey conducted by the De facto Agency in cooperation with the Agency for the Prevention of Corruption in December 2020, 72.3% of respondents state that they have confidence in the work of the Agency, while 75.4% believe that the Agency contributes to the overall fight against corruption, which represents a high percentage. Also, according to this survey a large number of citizens would report corruption to the Agency first (64, 1%) from all the other institutions.

However, in the first four years of operation, we cannot say that the Agency for the Prevention of Corruption has positioned itself in the Montenegrin legal system as an efficient institution that has enjoyed the trust of citizens, or of a large part of the civil society and international partners. At the time, the Agency was perceived by EU member states, the European Commission and most non-governmental organizations as a state body that selectively applies the law, and which should definitely work on strengthening its integrity, independence, impartiality and credibility. The reason for such perception I see in weak administrative capacities of the Agency back then, i.e., the lack of professional capacities for the Agency to respond to all the challenges it was facing. The family ties of the former director of the Agency with the former Prime Minister, as well as several examples from the practice of the Agency, greatly contributed to this perception.

It is important to examine examples from the practice of the Agency that, regardless of the results, in the first four years of the work of the Agency have contributed to a negative perception of the overall work of the Agency by part of the public.

One example is the case of film director Nikola Vukcevic. After the Administrative Court in the case of director Nikola Vukcevic annulled the Agency's Decision by judgment U.no 11171/17¹⁵ and determined that Article 7 of the Law on Prevention of Corruption was not violated in this case, a sharp reaction from part of the public, as well as the European Commission, which has continuously problematized this case in its reports, calling into question the impartiality and credibility of the Agency. The Agency's decisions were the basis for the Parliament of Montenegro to dismiss Nikola Vukcevic from the position of members of the RTCG Council.

The Administrative Court, found that Agency unreasonably determined that Nikola Vukcevic, as a member of the RTCG Council, found himself in a conflict of interest having received royalties for a film that had nothing to do with RTCG.

A similar case that was also under public scrutiny is the case of Goran Djurovic, also a former member of the RTCG Council who, unlike Nikola Vukcevic, did not file a lawsuit to the Administrative Court against the Decision of the ACA, so in this case we do not have a court decision. This case was mentioned in the Study because it provoked numerous criticisms, especially from a part of the civil society.

Furthermore, in the case of former member of the Council of the Agency for the Prevention

¹⁵ See the judgment of the Administrative Court: <https://sudovi.me/uscg/odluka/266492>

of Corruption, Vanja Calovic-Markovic, the member found to have a conflict of interest by the Agency's Decision, was also under public scrutiny given the meritorious decision of the Administrative Court U.no. 6335/18¹⁶, establishing that in the specific case Vanja Calovic-Markovic did not violate Article 7 paragraph 1 and 2 and Article 8 of the Law on Prevention of Corruption. After that she was dismissed by the Parliament of Montenegro from the position of a member of that Council.

Also, a number of decisions from that period of the Agency's work were revoked by the Administrative Court either for procedural reasons or for reasons of retroactive application of the law, which was also under the attention of both the domestic and international public. The reasons why the decisions were revoked unequivocally indicate the then insufficient capacity of Agency, when it comes to drafting of the Decisions.

In the first quarter of 2021, the Administrative Court issued eight judgments (seven referring to cases from 2019, and one to a case from 2018), which: annulled six decisions of the Agency for Prevention of Corruption and returned them for retrial; two Decisions upheld and dismissed the claims as unfounded. Also, in one case, the Supreme Court rejected a request to examine a court decision as unfounded.

While the Agency's performance statistics for 2020 and in the first quarter of 2021 are set out in section 3.5.1, a number of key observations are apposite at this point. In 2020, 95.5% of public officials while in 2019 99.9% of civil servants with the obligation to submit a regular annual report on income and assets submitted a report within the legal deadline.

As a result of proactive work, in 2020, the Agency initiated 27.4% more misdemeanor proceedings compared to 2019 due to violations of the provisions of the Law related to the area of registration of property and income of public officials. This was especially influenced by the increase in the number of misdemeanour proceedings in the part of submitting reports after taking office and upon termination of office, as well as a year and two after its termination.

At the end of 2020, the monitoring of the so-called lifestyle of public officials, in order to verify the increase in the assets of public officials, using publicly available data, as well as information from the media, and comparing them with databases to which the Agency has access. Three verification procedures were initiated.

During the work, the need for strengthening human resources in the area of conducting administrative procedures in the field of verification of assets and revenues¹⁷ was stated. Due to the improvement of the situation in this area, i.e., improving the quality of decisions made in February 2021, the Council of the Agency adopted a new Rulebook on the organization and systematization of jobs which increased the number of advisors in the Sector for Prevention of Conflicts of Interest and Revenue and Property Assets, as well as introduced as a mandatory bar exam for the position of head of that sector.

In the first quarter of 2021, the Agency, acting on all received requests, gave 52 opinions on the existence of conflicts of interest and restrictions in the performance of public functions, an increase of 62.5% on the same period last year. The large number of submitted requests and opinions given by the Agency is a consequence of the increase in the number of newly appointed public officials. The opinions primarily referred to situations in which a public official may be found while performing a public office: conflict of interest and exclusion in discussion and decision-making, restrictions in performing functions, performing incompatible functions and tasks, membership in management and supervisory bodies, membership in working bodies, receiving benefits, as well as restrictions on termination of office, conclusion of contracts, receipt of donations, status of public officials.

¹⁶ See the judgment of the Administrative Court: <https://sudovi.me/uscg/odluka/332693>

¹⁷ Source: Report of the Agency for the Prevention of Corruption for 2020

Following the opinions of the Agency, in the first quarter of 2021, four resignations were submitted to public office. Additionally, one resignation was submitted for membership in the governing body of the legal entity in which the municipality is the owner. In the first quarter of 2021, a total of 30 gifts were reported to the Agency by eight authorities, 5 authorities reported a total of 23 sponsorships, while a total of 1,291 donations were reported by 83 authorities. Due to the Covid-19 pandemic, and the financial crisis it caused, there was a significantly lower number of reported gifts and sponsorships, while, on the other hand, for the same reasons, there was an increase in the number of reported donations (27.3% more than the previous year), as well as the constant growth trend of reported donations since the beginning of the Agency's work (five times more than in 2016).

Until 31 March 2021, a total of 7,232 income and property reports had been submitted to competent departments, of which 77.5% were submitted by public officials, 21.3% by civil servants, 0.76% by notaries, and 0.43% by public enforcement officers. 95.6% of the received reports were administratively and technically processed. Regarding the verification of the accuracy and completeness of the report, which, according to the Annual Verification Plan for 2021, envisages the verification of 884 reports on income and assets submitted on various bases, a total of 173 reports were verified in the reporting period. An additional check, which refers to 20 officials selected in accordance with the vulnerability of the subject/function to corruption, will be initiated in the second quarter; while in connection with the additional check that started in 2020, in the first quarter of 2021, proceedings were initiated against 19 public officials, and they are all ongoing.¹⁸

¹⁸ Source: Report of the Agency for the Prevention of Corruption for I quarter of 2021

IV Conclusions and recommendations

Montenegro has a good legislative framework in this area, which is largely in line with ratified international treaties and relevant recommendations of international bodies. However, due to the need for practical application by both taxpayers and practitioners, there was a need to improve certain legal solutions, in a way that certain provisions would be revised and thus facilitate practical application. Using the comparative experiences of the three analyzed countries (Slovenia, Croatia and Serbia), and highlighted problems in the practical application by both legal binders and officials of the Agency for the Prevention of Corruption, I give the following recommendations:

When it comes to legal interventions, in connection with all the above, I give the following recommendations:

1. **Prescribing an obligation for the authority to update the list of public officials to publish on its website.** The list must be updated within three days of the change;
2. **Prescribing the obligation for the authority to submit information to the Agency on the appointment, authorization and dismissal of a public official** within 15 days from the day of his appointment, authorization or dismissal, in order for the Agency to regularly update the list of public officials;
3. Prescribing the meaning of the term “working body”, due to the needs of practice, in order to avoid different interpretations of the term;
4. Specifying the obligation to submit income and assets statements in relation to the obligation to submit reports for public officials whose function has been terminated. In this situation, we consider appropriate the **Croatian model** according to which a public official whose public office has ceased, has the obligation to submit a Report after 30 days from the day of termination of office, and then 12 months after termination of office. Additionally, to prescribe the obligation to submit a biennial report with a clear reporting period. This is because the existing wording is imprecise and opens the possibility of different interpretations for legal binders;
5. Prescribing the obligation to submit income and property reports for **notaries and public bailiffs**, and other legal binders, because the obligation to submit reports by these persons is prescribed by special laws, by analogy with the Slovenian model;
6. Prescribing the obligation **to submit a Statement by a public official electronically and in written notice**, but not by a special article as prescribed by Law, but, considering that each misdemeanor provision is directly related to the material one, in each material provision concerning the submission of the report, prescribe the obligation of the manner of submitting the Statement and link it with the misdemeanor provision, which the needs of practice dictate;
7. Prescribing the obligation to submit reports in electronic and written form for persons to whom this obligation is prescribed by a special law, because despite the above recommendation to list exhaustively public officials and other legal binders of the Law on Prevention of Corruption, there is always the possibility of other persons who may be taxpayers of the Law, and this provision should be specified;
8. In relation to the content of the Report, it is necessary to specify that the data related to the data on assets and income of the public official and members of his joint household refer to the data **in the country and abroad** (use the model of the **Republic of Slovenia and the Republic of Serbia**);
9. Prescribing a **misdemeanor sanction for a public authority** if it does not act in accordance with the Agency’s Decision, i.e., does not impose a measure due to an established violation of the Law on Prevention of Corruption. This is stated because in the practice of the work of the Agency, there are situations in which the authority “keeps silent” about the decisions of the Agency.

When it comes to the work of the Agency for the Prevention of Corruption, it is recommended to consistently implement the recommendations given in the reports of the European Commission on Montenegro, especially:

10. Continue with the proactive approach in relation to the challenges of independence, integrity, impartiality, transparency, non-selective approach improving overall performance;
11. To strengthen the human resources capacity of Agency for Prevention of Corruption in the area of conducting administrative procedures in the field of verification of income and assets;
12. When it comes to restrictions on exercising public functions, it is expedient to intensify activities related to raising awareness and education of legal entities.
13. Continue to communicate with the European Commission regarding overcoming the potential challenges that the Agency faces in its work.

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