

**THE MANUAL FOR RECOGNITION AND MANAGEMENT
OF CONFLICT OF INTEREST
AND INCOMPATIBILITY SITUATIONS**

Published by:

USAID Government Accountability Initiative
Agency for Prevention of Corruption

Author:

Jure Skrbec

Lecturer:

Danijela Raletic

Design and printing:

ATC Beograd

This document is made possible by the support of the American people through the United States Agency for International Development (USAID). The contents of this document are the responsibility of the author and do not necessarily reflect the views of USAID or the United States Government.

TABLE OF CONTENTS

1. THE AIM OF THE MANUAL.....	3
2. BRIEF OVERVIEW.....	5
3. LEGAL FRAMEWORK.....	6
4. DEFINITIONS OF MAIN CONCEPTS AND TERMS.....	7
5. CONFLICT OF INTEREST.....	9
5.1 About conflict of interest.....	9
5.2 Recognizing conflict of interest.....	13
5.3 Action of public official in the situations of conflict of interest.....	16
6. INCOMPATIBILITY OF FUNCTION.....	17
6.1 Cumulation of public offices.....	18
6.1.1 Prohibition of discharging another public office.....	18
6.2 Cumulation of other work and activities.....	20
6.2.1 Performing other work or activity.....	21
6.2.2 Prohibition of providing advice.....	21
6.2.3 Establishment of companies, public services or self-employment.....	22
6.3 Cumulation of membership in civic association bodies.....	22
6.3.1 Prohibition of membership in civic association bodies.....	23
6.3.2 Public official's duties regarding the discharge of public office and membership in political entities.....	24
6.4 Transfer of management rights in a business company.....	24
6.4.1 Exception to transfer of management rights.....	25
6.5 Notification of participation in a public procurement, privatization or other procedure.....	26
6.6 Restriction of employment or business cooperation upon termination of public office - pantouflage.....	26
7. MONITORING AND SANCTIONS.....	27
7.1 Procedure of deciding on violations.....	27
7.2 Public official's statement.....	28
7.3 Types of measures and sanctions for public officials in cases of violation.....	29
7.3.1 Administrative measures.....	29
7.3.2 Misdemeanor sanctions.....	30
7.4 Statistics of measures and sanctions for conflict of interest and incompatibility.....	31

1. THE AIM OF THE MANUAL

The Manual for recognition and management of conflict of interest and incompatibility situations is primarily intended to all public officials in the Republic of Serbia, and additionally, to all those who wish to learn more about the notion of conflict of interest and incompatibility of functions of public officials and the possibilities and restrictions in relation to actions of elected, appointed and nominated officials in public authority bodies.

In order to be as informative, unambiguous and practical, the Manual will address the legal framework (Law on prevention of corruption) as well as practical cases in the Republic of Serbia, which should facilitate better understanding of legal definitions, requirements, obligations, restrictions and possibilities for public officials.

An example:

The Law stipulates that »A public official shall observe the regulations concerning his/her rights and duties«. This may not seem so informative, however, if formulated differently, e.g. »Discharging the office as the member of the School board is incompatible with the office of deputy school principal and their concurrent discharge is contrary to the public official's obligation to observe the regulations concerning his/her rights and duties«, then the situation is much clearer.

The Manual will not only serve as a road map for the readers, by presenting: a) the rules for prevention of conflict of interest and b) different restrictions in terms of discharging other activities or functions (memberships) of public officials, but will also provide them with the c) guidance and advice on how to identify the risks of occurrence of conflict of interest, the indicators - red flags¹ of conflict of interest, d) the situations, functions and activities to avoid, and e) what to do when in such situations (or upon learning that someone else is in this situation).

The purpose of this Manual is to limit the possibilities for the private interest of public officials or their associated persons to benefit from discharging a public office, that is, to strengthen the integrity of public officials and consequently, the integrity of public authority bodies.

We note that this Manual is to be used for informative purposes and cannot be seen as the main and only instrument for holding the public officials accountable during their discharge of office. For all clarifications, additional guidance and information, feel free to contact the Agency for Prevention of Corruption.

Agency for Prevention of Corruption

Carice Milice 1, 11000 Belgrade

Phone: 011/4149 100

Web site: www.acas.rs

e-mail: office@acas.rs

¹ The notion of red flag means: early warning, potential fraud, corruption, unlawful or inappropriate behavior, including conflict of interest. This is a signal that something is uncommon and requires further examination.

2. BRIEF OVERVIEW

Proactive approach to prevention of conflict of interest and a reactive approach, in situations of incompatibility of functions of elected and appointed persons (officials) in their discharge of public office, do constitute one of the most important segments in combating corruption in any society, as conflict of interest and incompatibility of functions are perceived as a pathway to corruption. Acting contrary to legal provisions and public expectations is not only adverse to society, but leads to devaluation and downfall of the legal order and undermines trust in the elected government.

ENTITIES COVERED BY THIS MANUAL

The main premise is that there is an exact scope of persons subject to obligations, restrictions and limitations referred to in the Law on prevention of corruption, in relation to conflict of interest and incompatibility issues. These include all elected, appointed and nominated persons in authorities of the Republic of Serbia, autonomous provinces, local self-government units and city municipalities, institutions, public enterprises and other legal entities whose founders/members are the Republic of Serbia, an autonomous province, a local self-government unit or a city municipality.

However, this notion of “public official” should be interpreted in relation to the Authentic interpretation by the National Assembly, no. 6 of 11 February 2021, according to which, the term “public official” is to be associated with and applied to persons who are directly elected by the citizens and persons elected, appointed or nominated by the National Assembly, President of the Republic, Supreme Court of Cassation, High Judicial Council, State Prosecutorial Council, Government of the Republic of Serbia, autonomous province assembly, autonomous province government and local self-government bodies.

IMPORTANT NOTE: Avoid Your own interpretation of whether You or somebody else is a public official or not. Make sure You always refer to the Agency for Prevention of Corruption, as it will provide You with a response in accordance with Law.

WHAT IS CONFLICT OF INTEREST?

Conflict of interest is a potential situation for a public official while discharging his/her public office where his/her private interest affects, may affect or may be perceived to affect the public official's objectivity and impartiality. Private interest implies material or non-material benefit for a public official and associated persons.

HOW TO RECOGNIZE CONFLICT OF INTEREST?

Conflict of interest is nothing but the situation in which a public official is taking part in decision-making or weighing on the benefits for oneself or his/her relatives, or all other persons he/she is related to (relatives, best friends, nephews, etc.). Conflict of interest can be identified by means of indicators - the red flags - and these are described in more detail below.

HOW TO MANAGE CONFLICT OF INTEREST - HOW TO AVOID IT?

Once the public official learns, and/or becomes aware of the possibility that in the procedure he/she is taking part in, the public official will appear (in the capacity of the entity to be decided upon) or a person with whom this public official is related to in any possible way, he/she must immediately notify in writing his/her immediate superior thereof and the Agency for Prevention of Corruption and wait for its decision - the Agency decision is the only one that is binding! In the meantime, the public official must exclude himself/herself from the procedure.

WHAT IS INCOMPATIBILITY OF FUNCTIONS AND WHAT ARE THE RESTRICTIONS REGARDING PERFORMANCE OF WORK OR ACTIVITIES?

Incompatibility of functions implies cumulation of functions, activities or memberships that the public official is not allowed to perform/accept in addition to his/her primary public office. A brief overview of restrictions/limitations:

- Prohibition of discharging another public office,
- Prohibition of performing other work or activity,
- Prohibition of providing advice,
- Prohibition of establishment of companies, public services or self-employment,
- Prohibition of membership in civic association bodies,
- Public official's duties regarding the discharge of public office and membership in political entities,
- Prohibition of acquiring management rights in companies and the need for their transfer,
- Notification of participation in a public procurement, privatization or other procedure,
- Restriction of employment or business cooperation upon termination of public office.

For each restriction, rule, obligation and definition referred to above, the Manual has also included the cases from practice, as a result of the implementation of the Law on Anti-Corruption Agency, which are relevant in terms of the Law on Prevention of Corruption.

3. LEGAL FRAMEWORK

The existence of conflict of interest in discharge of public office in the Republic of Serbia is regulated by the **Constitution** and the **Law on prevention of corruption**. Therefore, conflict of interest is a constitutional category and the Agency is the only authorized body to decide on the conflict of interest and incompatibility of functions in discharge of public office.

Law on Prevention of Corruption (Official Gazette of RS", no. 35/19, 88/19, 11/21-authentic interpretation and 94/21), adopted in May 2019, is the umbrella law in the Republic of Serbia, regulating the legal status, competence, organization and operation of the Agency, the rules on prevention of conflict of interest in discharge of public office, the cumulation of public offices, asset and income declarations of public officials, the procedure of deciding on the potential violation of this law, and other issues of importance for preventing corruption.

It should be understood that the rules on conflict of interest and incompatibility of functions in the Law on prevention of corruption are broadly defined and that there are also other laws regulating the same notions in their own manner and for their own respective areas. Therefore, the proceedings conducted before the Agency do refer to all the laws relevant for the public offices discharged by the public officials. Some of the most significant laws and regulations are: Law on civil servants, Law on the Government, Law on local self-government, Law on employees in autonomous provinces and local self-government units, Public procurement law, Law on general administrative procedure, Law on judges, Law on public prosecution, Law on police, etc.

ATTENTION!

A public official discharging an office in a local self-government (municipality) and is currently engaged in a public procurement procedure, must comply not only with the provisions of the Law on prevention of corruption, but also with the Law on local self-government, Law on employees in autonomous provinces and local self-government units, Public procurement law, as all these laws set forth their own rules regarding conflict of interest and incompatibility of functions.

4. DEFINITIONS OF MAIN CONCEPTS AND TERMS

PUBLIC OFFICE	AN OFFICE DISCHARGED BY A PUBLIC OFFICIAL
PUBLIC OFFICIAL *	<p>Every person elected, appointed or nominated to a public authority body, other than persons who are representatives of private capital in a management body of a business company which is a public authority body.</p> <p>After the adoption of Authentic interpretation by the National Assembly, no. 6 of 11 February 2021, according to which, the term "public official" is to be associated with and applied to persons who are directly elected by the citizens and persons elected, appointed or nominated by the National Assembly, President of the Republic, Supreme Court of Cassation, High Judicial Council, State Prosecutorial Council, Government of the Republic of Serbia, autonomous province assembly, autonomous province government and local self-government bodies.</p>
PUBLIC RESOURCE	<p>A real estate, movable property, and any other good being in public ownership, that is, in other form of ownership used by the authorities of the Republic of Serbia, autonomous provinces, local self-government units, public enterprises, companies, institutions and other organizations the founder of which or member is the Republic of Serbia, an autonomous province or a local self-government unit.</p>
CORRUPTION	<p>A relationship that arises from the use of an official or social status or influence in order to obtain unlawful benefits for oneself or for others.</p>
INCOMPATIBILITY OF FUNCTIONS AND WORK OR ACTIVITIES	<p>Prohibition of discharging other functions, performing other work and activities, establishing a company and prohibition of membership in different authorities and entities.</p>
NOTIFYING ON THE CONFLICT OF INTEREST	<p>Written notification to the superior and the Agency for prevention of corruption.</p>
PUBLIC AUTHORITY	<p>Authorities of the Republic of Serbia, autonomous provinces, local self-government units and city municipalities, institutions, public enterprises and other legal entities whose founders/members are the Republic of Serbia, an autonomous province, a local self-government unit or a city municipality.</p>
FAMILY MEMBER	<p>A spouse or a common-law partner, parent or adoptive parent, child or foster child of a public official.</p>
ASSOCIATED PERSONS	<p>A family member of a public official, lineal blood relative of the public official, lateral blood relative to the second degree of kinship, as well as any other legal entity or natural person who may be reasonably assumed to be associated in interest with the public official</p>
TRANSFER OF MANAGEMENT RIGHTS	<p>Transfer of the public official's management rights in the business company to a legal entity or natural person, for this entity or person to exercise the rights on behalf and for the account of the public official until the termination of the public office..</p>
PRIVATE INTEREST	<p>Any kind of benefit or advantage to the public official or associated persons.</p>
CONFLICT OF INTEREST	<p>A situation where a public official has a private interest which affects, may affect or may be perceived to affect the discharge of public office.</p>

PUBLIC OFFICE	AN OFFICE DISCHARGED BY A PUBLIC OFFICIAL
MANAGEMENT RIGHTS	In accordance with the Law on companies, management rights include the authorization to conduct actions in the company's ordinary activities (management) and representation rights that the official is granted as a partner in a general partnership and/or a general partner in a limited partnership, right to vote and decide in the company bodies, that the official is granted as the member of a limited liability company, or a shareholder in a joint stock company.
LEGALITY	In broader terms: acting by everyone in accordance with and within the law; In more narrow terms: all by-laws (different regulations, decisions, rulebooks, orders, decisions and the like) need to be in accordance with law.

5. CONFLICT OF INTEREST

5.1 ABOUT CONFLICT OF INTEREST

The first and most fundamental rule is that the public official shall not subordinate the public interest to private interest, shall observe the regulations concerning his rights and duties and shall secure and foster and maintain the trust of citizens concerning his conscientious and responsible discharge of public office. A public official must not be dependent on a person who might affect his/her impartiality, and must not use public office to acquire any benefit or advantage for himself or any associated person. A public official shall be forbidden to use information they have access to in a public office, if such information is unavailable to the public, in order to obtain benefits or advantages to himself/herself or to others or to cause damage to another person.

Otherwise, the public official shall be considered to be acting contrary to the Law on prevention of corruption and will be in the situations that we refer to as conflict of interest. Law on prevention of corruption defines conflict of **interest as a situation where a public official has a private interest which affects, may affect or may be perceived to affect the discharge of public office.**

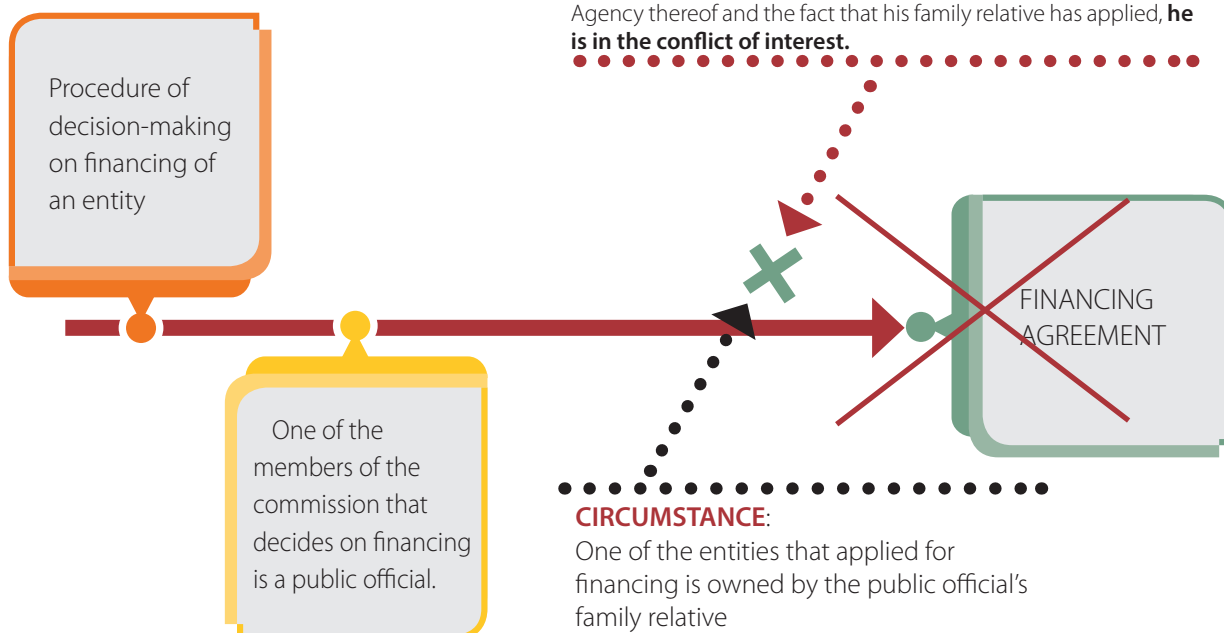
This definition has a number of elements that need to be clarified and explained, to get a better understanding of this notion/obligation:

SITUATION

Conflict of interest is a specific moment = situation (see the graph below). For instance, voting for yourself, signing a contract with your son, evaluating a legal entity whose director is my daughter/ sister, etc. Conflict of interest implies there is a private interest, and in case of inappropriate cumulation of offices, two or more public interests tend to conflict.

SITUATION OF CONFLICT OF INTEREST

If a public official does not exclude himself from the procedure of evaluating the entity of his family relative once he becomes aware of the fact, and fails to notify in writing his superior and the Agency thereof and the fact that his family relative has applied, **he is in the conflict of interest.**



PUBLIC OFFICIAL

Rules covering the conflict of interest, in terms of the Law on prevention of corruption, apply only to public officials, not on other persons.

PUBLIC OFFICIALS

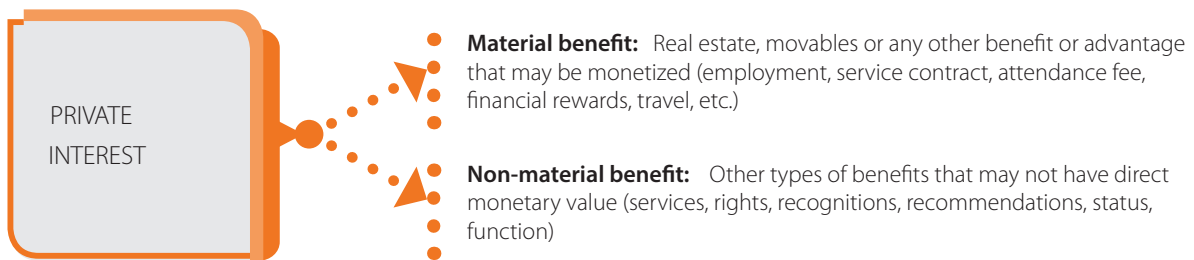
All elected, appointed and nominated persons in public authorities (authorities of the Republic of Serbia, autonomous provinces, local self-government units and city municipalities, institutions, public enterprises and other legal entities whose founders/members are the Republic of Serbia, an autonomous province, a local self-government unit or a city municipality), other than persons who are representatives of private capital in a management body of a business company which is a public authority body.

The notion of “public official” should be interpreted in relation to the Authentic interpretation by the National Assembly, no. 6 of 11 February 2021, according to which, the term “public official” is to be associated with and applied to persons who are directly elected by the citizens and persons elected, appointed or nominated by the National Assembly, President of the Republic, Supreme Court of Cassation, High Judicial Council, State Prosecutorial Council, Government of the Republic of Serbia, autonomous province assembly, autonomous province government and local self-government bodies.

NOTE: Only the Agency for Prevention of Corruption may decide on whether someone is a public official or not, in terms of the Law on Prevention of Corruption. If you are unsure, refer to the Agency for opinion.

PRIVATE INTEREST

Private interest is any kind of benefit or advantage to the public official or associated persons. Benefit or advantage may be material or non-material:



It is important to highlight that the benefits do not relate only to the public official, but to his/her associated persons. Associated person is a family member of a public official, lineal blood relative of the public official, lateral blood relative to the second degree of kinship, as well as any other legal entity or natural person who may be reasonably assumed to be associated in interest with the public official.

While it is known who is considered to be a family member or a blood relative, the law failed to clearly specify »any other legal entity or natural person who may be reasonably assumed to be associated in interest with the public official«. This is why each case is processed separately and with due care.

Below are the examples of cases of different natural persons who are considered to be associated persons:

Note: All examples used in this Manual arise from the Agency's practice thus far, in accordance with the Law on Anti-Corruption Agency, whose provisions were further clarified in the new Law on prevention of corruption.

Case - nephew as associated person

A public official, the director of a Health care center, acted contrary to Articles 27 and 32, paragraph 1 of the Law on Anti-Corruption Agency, by issuing the Decision no. 5 on the selection of candidate, her nephew, for a job post and concluded with the candidate the Employment Contract no. 6, based on which her nephew commenced his employment at the Emergency Medical Service Center and, as an associated person, acquired benefit. By doing so, the public official undermined the citizen's trust in conscientious and responsible discharge of public office and failed to notify the municipal assembly and the Agency of the conflict of interest that existed in the given situation.

INFLUENCE

Every private interest affects the objectivity and impartiality of a public official.

Actual influence implies direct abuse of a public office for private interest or unauthorized use of a public office in order to enable the public official to acquire benefit or provide him/her with such benefits or his/her associated persons.

On the other hand, potential or perceived influence, which does not necessarily imply material irregularity or non-compliance, constitutes a significant threat to the public trust in proper, lawful, transparent and objective discharge of a public office; this all undermines the integrity and credibility of authorities and their staff. This is an integral and inherent element of democratic operation of institutions and the rule of law.

PUBLIC OFFICE

Public office is an office discharged by a public official.

SOME PRACTICAL EXAMPLES OF CONFLICT OF INTEREST

Case 1

A public official, the director of a Public enterprise, acted contrary to Articles 27 and 32, paragraph 1 of the Law on Anti-Corruption Agency, by concluding the contracts with the business entity Firm, Ltd. where her son was working, without notifying the Agency for Prevention of Corruption of the conflict of interest that existed in the given situation.

Case 2

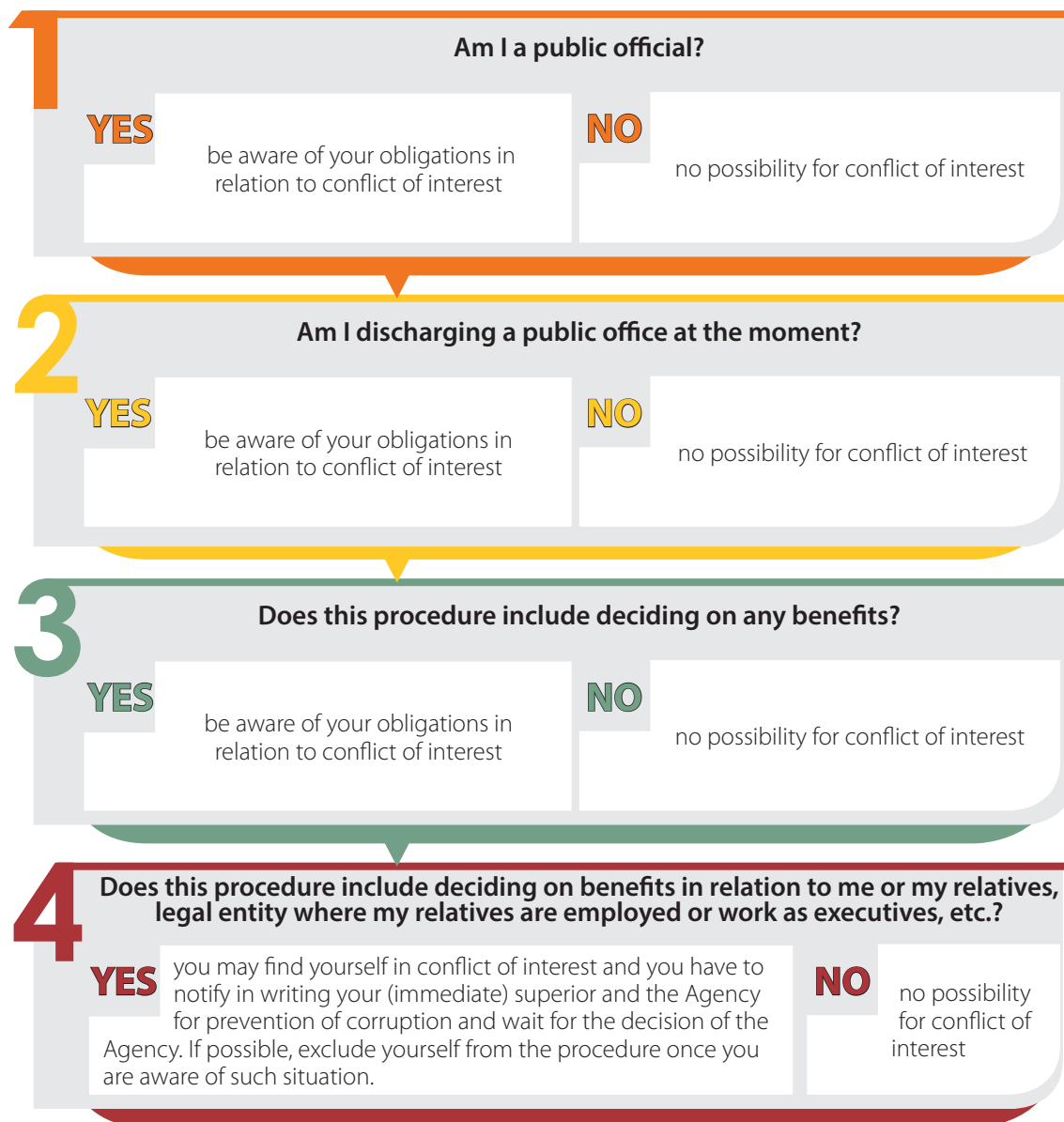
A public official, the president of a municipality, acted contrary to Articles 27 and 32, paragraph 1 of the Law on Anti-Corruption Agency, because during his term of office, certain funds were allocated from the municipal budget for improving the agricultural production and a portion of these funds were approved and allocated to the agricultural cooperative whose member and director was his son. The public official failed to notify in writing the Agency for Prevention of Corruption of the conflict of interest that existed in the given situation.

Case 3

A public official, a member of the municipal council in a municipality, acted contrary to Articles 27 and 32, paragraph 1 of the Law on Anti-Corruption Agency, because during his term of office, he took part in voting on the request of a local sports club to be given the right to maintain and use the local sports pitch, while at the same time, he served as the chairman of the board in this sports club. He signed the Contract no.1 with the president of the municipality, based on which the Municipality authorized this sports club to maintain and use the sports pitch, including the machines and equipment, free of charge. The contract also envisaged that the budget funds allocated for the maintenance of the sports pitch are to be transferred to this sports club. The public official failed to notify in writing the Agency for Prevention of Corruption of the conflict of interest that existed in the given situation.

5.2 RECOGNIZING CONFLICT OF INTEREST


































Recognizing the situations of conflict of interest, unfortunately, depends on subjective and relative assessment by the officials themselves. The recommendation is, therefore, that all persons, when engaged in a certain procedure/situation, ask themselves a number of control questions that will give them an answer on whether they are already in the situation of conflict of interest, or they could find themselves in such a situation.



































Another way to recognize conflict of interest is by means of red flags - indicators. According to the Association of certified fraud examiners², red flag is an indicator = early warning, potential fraud, corruption, unlawful or inappropriate behavior, including conflict of interest. This is a signal that something is uncommon and requires further examination. Different red flags could be used. Seeing a red flag should make employees and the executives more alert: they should undertake necessary measures to confirm or deny the existence of risk of conflict of interest. However, the red flag does not necessarily imply that fraud has been committed or that it may take place. Rather, this is a sign that the situation must be investigated and monitored.

² Association of Certified Fraud Examiners (www.acfe.com).

The table below provides some of the most common indicators for conflict of interest in the area of health care, education, local self-government, public enterprises and public procurement:

RED FLAGS / INDICATORS	Health care	Education	Local Self-Government	Public enterprises	Public procurement
Doctors / researchers / managers / officials in public health structures with close relatives working in pharmaceutical companies					
Doctors / researchers / managers / officials in public health structures with close relatives working in companies manufacturing medical instruments					
Execution of public finances which might affect the financial interest of the company where the official has personal financial interest					
Being involved in decision to hire the company where a close relative is working					
A family member applied for a job in an educational institution					
An educational institution intends to purchase goods or a service from the company owned by a family member or a close associate of the public official					
Prior cooperation (research, work, lecture, etc.) between the official / teacher / professor / manager (or close relatives), who are members of the evaluation committee, and other official / teacher / professor being evaluated					
Economic relations between the official / teacher / professor / chairman of the evaluation committee and other official / teacher / professor being evaluated					
The person who was consultant / service provider / vendor of the organization appointed at the executive position in the organization					
Cross appointments of same managers in boards of state-owned companies or public enterprises working in the same area/sector					
Extra-institutional work engagements of officials / personnel with the private companies working in the same area of interest					
An official in the contracting authority has close relatives in a bidding company					
An official in the contracting authority used to work in the company which may have made a bid immediately before being awarded the contract					

RED FLAGS / INDICATORS	Health care	Education	Local Self-Government	Public enterprises	Public procurement
A lot of complaints and cancelled procedures in the procurement					
Officials or personnel with outside business interests					
Officials or personnel with long-standing relationship with contractors					
An official in close relationship with suppliers/ service providers					
An official in a contracting authority has relatives working in the company that may bid					
Close socialization with and acceptance of inappropriate gifts, travel or entertainment from a vendor or service provider					
The official seems to run additional businesses					

5.3 ACTION OF PUBLIC OFFICIAL IN THE SITUATIONS OF CONFLICT OF INTEREST

Law on prevention of corruption stipulates that when taking office and during the discharge of public office, the public official shall immediately and not later than within five days notify in writing his/her direct superior and the Agency about any suspicion of conflict of interest, or about conflict of interest s/he or his/her associated person has. Also, a public official shall be obliged to suspend proceedings in a case in which there is a suspicion of a conflict of interest, unless there is a risk of delay.

The direct superiors need to be notified in writing only, whereas the Agency needs to issue an opinion on whether there is a conflict of interest in the given situation.

Agency is, therefore, the only authority that may rule about the conflict of interest, and has the possibility to summon the public official and request that he/she submits the necessary data for the purpose of obtaining information on the conflict of interest.

If the Agency identifies a conflict of interest, it shall accordingly notify the official and the body wherein such official holds public office and propose measures for eliminating the conflict of interest.

It is stipulated that public officials have two obligations in relation to their actions in situations of conflict of interest:

- a) To exclude themselves from the procedure on their own
- b) To request an opinion from the Agency and act accordingly.

This all implies that the public official is obliged to notify his/her immediate superior and the Agency in writing about each individual case. **Only the ruling of the Agency is considered relevant.**

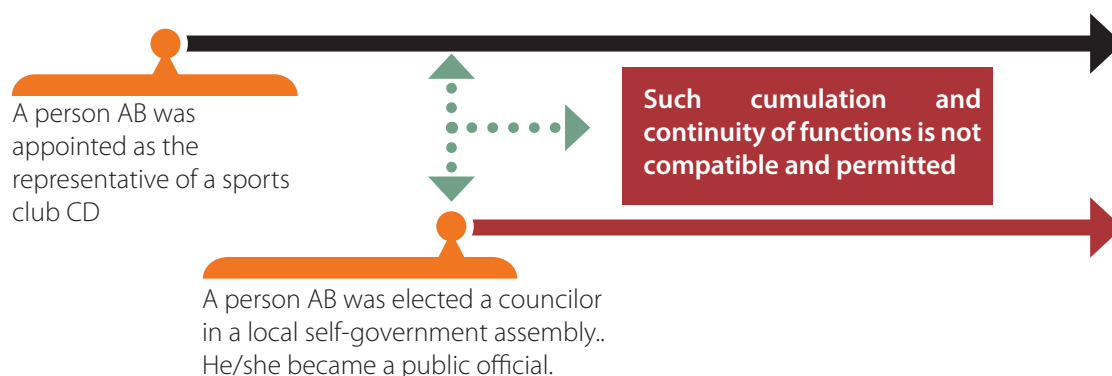
6. INCOMPATIBILITY OF FUNCTIONS

There are three exceptions regarding the rule that the official may discharge only one public office. The first exception is for the situations when the official is obliged by the Constitution or law to concurrently discharge two or more public offices (e.g. President of the Supreme Court of Cassation is also the chairman of the High Judicial Council). The second exception is the officials who hold two or more public offices, elected to these functions directly by the citizens, except in cases of incompatibility specified by the Constitution. Third exception is the Agency's consent that the official is allowed to discharge another public office. Additionally, the law has prohibited the public official from providing advice to legal entities and natural persons on matters concerning the public office s/he holds, unless s/he is obligated to do so.

In relation to above, all prohibitions, rules and obligations pertaining to incompatibility of functions, including the incompatibility of functions and work may be listed as follows:

- **Cumulation of public offices**
 - Prohibition of discharging another public office
- **Cumulation of other work and activities**
 - Discharging other work or activities
 - Upon taking an office
 - During the term of office
 - Prohibition of providing advice
 - Establishing a business company, public service or performing independent business activity or holding an office in the bodies of a private legal entity
- **Cumulation of membership in associations and political entities**
 - Prohibition of membership in civic association bodies
 - Public official's duties regarding the discharge of public office and membership in political entities
- **Transfer of management rights in a business company**
- **Notification of participation in a public procurement, privatization or other procedure**
- **Restriction of employment or business cooperation upon termination of public office**

incompatibility of functions



6.1 CUMULATION OF PUBLIC OFFICES

6.1.1 PROHIBITION OF DISCHARGING ANOTHER PUBLIC OFFICE



The main rule for all the officials is that they are allowed to discharge **one office only**.

However, there are three exceptions regarding the rule that the official may discharge only one public office:

- a) **The first exception** is the situations when the official is obliged under the Constitution or law to concurrently discharge two or more public functions
 - For example:
 - i. *President of the Supreme Court of Cassation and the minister of justice are at the same time members of the High Judicial Council.*
 - ii. *President of the municipality / city is also the head of the municipal / city council.*
- b) **The second exception** is the officials who hold two or more public offices, elected to these functions directly by the citizens, except in cases of incompatibility specified by the Constitution.
 - For example:
 - i. *Member of parliament and councilor in the city or municipal assembly,*
 - ii. *Councilors in two different local self-government units,*
- c) **The third exception** is the Agency's consent that the official is allowed to discharge another public office.
 - For example:
 - i. *President of a municipality / city and the member of the board in a public enterprise founded by RS,*
 - ii. *Two public functions of a member of the boards in business companies or public enterprises at different level, founded by RS or a local self-government,*
 - iii. *Member of an electoral committee and the head of a public enterprise.*

A public official who intends to discharge multiple public offices concurrently, is required to request consent from the Agency, within eight (8!) days from the day of election, nomination or appointment. The public official shall attach with the request a positive opinion obtained from the authority electing, appointing or nominating him/her to public office, whilst a public official elected to public office directly by citizens shall submit a positive opinion of the relevant body of the authority wherein he/she holds public office.



ATTENTION!

The consent of the Agency is not sufficient, and prior to this, the official needs (as a prerequisite) to obtain a positive opinion from the authority electing / appointing him/her to the office.

The Agency shall be required to issue a decision on the official's request to discharge multiple public offices within 15 days of receiving such request.

 **ATTENTION!**

The Agency shall not issue consent for discharge of another public office if discharge of such public office is incompatible with the discharge of public office already held by the public official, i.e. if it determines conflict of interest.

Case

A public official, acting director of a public enterprise, submitted the request to the Agency for consent for discharging another public office as assistant president in a city municipality in charge of economy. The Agency decided that concurrent public offices of the acting director and the assistant president in a city municipality in charge of economy is incompatible, as this would compromise the citizen's trust in conscientious and responsible discharge of public offices.

A public official who acts in contravention to the rules on cumulation of offices, shall within eight (8!) days from the date of submission of the Agency decision, resign to one of the public offices and inform the Agency thereof. If a public official fails to resign within the statutory deadline, the **latter** public office shall be terminated by operation of law.

Case

A public official who concurrently discharged the public offices as the director of Firm, ltd, founded by RS, AP or LSU and as the councilor in the Municipal Assembly, acts contrary to the Article 28, paragraph 4 of the Law on Anti-Corruption Agency.

6.2 CUMULATION OF OTHER WORK AND ACTIVITIES

6.2.1 PERFORMING OTHER WORK OR ACTIVITY

Law on prevention of corruption considers the prohibition of performing other work or activity for public officials. In this respect, the law lists different situations - when the public official is taking a public office (prior to and at the time of elections, he/she already holds an office/performs an activity) and during his/her term of office (when the official is already discharging his/her office and only then starts performing other work or activity).

6.2.1.1 UPON TAKING AN OFFICE

A public official engaged in other work or activity at the moment of assuming public office is required to notify the Agency of the other work or activity within 15 days of assuming public office, which shall determine whether performing the work or activity compromises an unbiased discharge of public office. If the Agency determines that performing the work and/or activity compromises an impartial discharge of public office, it shall issue a decision defining the deadline wherein the public official shall be obliged to cease to perform this work or activity.

In practice, the public official may fail to comply with the decision of the Agency, therefore, the law offers the solution and offers the possibility to the Agency to conduct proceedings to determine violation of law.

Case

A public official, member of the general assembly of the business company Firm, Ltd, acted contrary to Article 31, paragraph 1 of the Law on Anti-Corruption Agency, as he failed to notify the Agency that he was discharging the work as the director of the business company Firm, Ltd, within 15 days of assuming such public office.

6.2.1.2 DURING THE TERM OF OFFICE

The main rule is that a public official, whose public office requires full-time working hours or full-time employment, may not perform other work or activity. However, the following exceptions exist in this respect:

- a) a public official may engage in research, educational, cultural, humanitarian and sports activities without Agency consent if by doing so s/he does not compromise the impartial discharge and dignity of public office.
- b) a public official may perform other work or activity if the Agency gives its consent.

 **ATTENTION!**

If the Agency determines that the work or activity compromises impartial discharge or dignity of public office, or represents a conflict of interest, the Agency shall not give its consent.

If the Agency receives the request of the public official for performing other work or activities, it shall be required to decide on such request within 15 days.

 **ATTENTION!**

Other law or regulation may also prescribe other work or activities which a public official may not perform during tenure of office.

Case

Considering the competences of the City Assembly in which the official is holding a public office as a councilor, on the one hand, and the competences of the school principal, on the other side, it was identified that the public office of the councilor is incompatible with the school principal job. Concurrent discharge of this public office and job would lead to the situation in which the public official, in the capacity of the councilor, would pass decisions in relation to the school in which he is discharging the school principal job, vote on the budget, out of which the funds are allocated for financing the school, and also other issues from the city's scope of competence which apply to this school, decide on dismissal of the member of the school managing authority, to which he is accountable as the school principal and which decides on his rights, obligations and responsibilities, as the school principal. Therefore, the discharge of public office of councilor is incompatible with the school principal job.

6.2.2 PROHIBITION OF PROVIDING ADVICE

A public official shall not advise legal entities and natural persons on matters concerning the public office s/he holds, unless s/he is obligated to do so. This prohibition is for the first time introduced through the Law on prevention of corruption, so no practical cases have been recorded so far.

6.2.3 ESTABLISHMENT OF COMPANIES, PUBLIC SERVICES OR SELF-EMPLOYMENT

During tenure of public office, a public official whose function requires full-time working hours with the public authority body shall not establish a business company or public service, nor commence engagement in private occupation.

Case

The Agency has rejected the request by the deputy president of a municipality who is discharging a full-time office, for establishing entrepreneurship activity, as this would constitute violation of the Article 33, paragraph 1 of the Law on Anti-Corruption Agency.

Also, the law has foreseen that a public official whose public office demands establishing an employment relationship, full time work, or permanent engagement at a public administration body during the discharge of public office, shall not hold a proxy position or be a member of a body of a legal entity which is privately owned, nor exercise management rights.

Case

A public official acted contrary to Article 33, paragraph 2 of the Law on Anti-Corruption Agency by concurrently discharging the public office as the acting director and the director of a public enterprise, with full-time employment, and at the same time served as a representative of private capital in a business company Firm, Ltd.

6.3 CUMULATION OF MEMBERSHIP IN CIVIC ASSOCIATION BODIES

In addition to cumulation of additional work or activities, the law also stipulates certain restrictions, rules and obligations in relation to membership in different entities.

6.3.1 PROHIBITION OF MEMBERSHIP IN CIVIC ASSOCIATION BODIES

*The first such rule is that a public official shall not be a member of an association's body or its representative **if there is a relationship of dependence** between a public office and membership in an association body or representation of an association **or another relationship** that endangers or may endanger the impartiality or dignity of a public office, **or if by law or otherwise it is forbidden** for a public official to be a member of a certain association's body.*

Case

A public official, by discharging his duty as the legal representative and the chairman of the board in an association, compromises his impartial discharge of a public office as the deputy president of the city assembly.

The Agency has identified that between the office of the deputy president of the city assembly and the office of the legal representative and the chairman of the board in an association, financed from the municipal budget, there is a relationship of dependence which might affect the impartiality of this public official in discharge of his public office.

6.3.2 PUBLIC OFFICIAL'S DUTIES REGARDING THE DISCHARGE OF PUBLIC OFFICE AND MEMBERSHIP IN POLITICAL ENTITIES

The second rule is about political entities. In this case, a public official may perform a role in a political party, i.e. political entity and participate in its activities if this is not to impede an efficient discharge of public office, and provided that such engagement is not prohibited by law. Indirectly, a public official shall not use public resources and public meetings which s/he attends in the capacity of public official for promotion of any political parties, i.e. political entities.

*The law has offered an exception in this case: a public official may use public resources for personal security **if the use of such resources is governed by relevant regulations or decision of the services tasked with security of public officials.***

ATTENTION!

A public official shall be required at all times to unequivocally present to his/her interlocutors and the general public whether s/he is presenting the viewpoints of the body in which s/he holds an office or viewpoints of a political party, i.e. political entity.

Case 1

A minister, while discharging his public office, acted contrary to Article 29, paragraph 2 and 4 of the Law on Anti-Corruption Agency, as in the course of his visit and conversation with the residents of a city, and his visit to workers in mines and at meetings where he participated as the minister, he used this opportunity to promote his political party and failed to unequivocally present to his/her interlocutors and the general public whether he was presenting the viewpoints of the body in which he holds an office or viewpoints of a political party.

Case 2

Deputy mayor acted contrary to Article 29, paragraph 2 and 4 of the Law on Anti-Corruption Agency, as in the course of his visit to the construction site and the works on reconstruction of a building in the capacity of the deputy mayor, he issued the following press statement: "Today we're here and the list "A random political list" clearly demonstrates how important culture is both for this city and Serbia... Because of its status, we have to invest every day in culture and when you look at the people on the list "A random political list"... you can be sure that we see culture as a necessity for all the people living here today. Investment in culture is going to increase and this year's budget for culture is higher than in the previous year - we've opened up this building and this year we'll have another building finished... which is something we will insist on in the future." The deputy mayor used his public office to promote the political list "A random political list", in which he took part as the member and candidate in the election campaign for local elections. The deputy mayor failed to unequivocally present to his/her interlocutors and the general public whether he was presenting the viewpoints of the body in which he holds an office or viewpoints of a political coalition.

6.4 TRANSFER OF MANAGEMENT RIGHTS IN A BUSINESS COMPANY

The main rule is that a **public official shall not have management rights in business companies**. If he does (regardless whether he held them at the time of election, appointment or nomination to a public office, or acquired them in the course of holding a public office), he/she shall be obliged, within 30 days from the day of election, appointment or nomination, that is, the acquisition of shares or stocks, to transfer the management rights in the business company to a legal entity or natural person, for this entity or person to exercise the rights on behalf and for the account of the public official until the termination of the public office.

ATTENTION!

The person to whom the management rights were transferred to becomes an associated person.

ATTENTION!

A public official, regardless whether he is discharging a full-time public office or not, shall not have management rights in business companies. If he does, he must transfer them to another party.

This is not a final requirement for a public official in this respect. A public official shall be obligated to provide the business company and the Agency with information about the entity or person to whom the management rights are transferred and the evidence on the transfer of management rights, which s/he has registered at the Business Registers Agency, within 15 days from the date of transfer.

Case 1

A public official, a member of the general assembly in a public enterprise, acted contrary to Article 35, paragraph 1 of the Law on Anti-Corruption Agency, as he failed to transfer his management rights in the business company Firm, Ltd which he owns, to an entity or a person that does not constitute an associated person, so that such entity or the person may exercise the rights on its own behalf and for the account of the public official until the termination of his public office, within 30 days from the date when he was elected as the member of the general assembly in a public enterprise.

The same public official, a member of the general assembly in a public enterprise, acted contrary to Article 31, paragraph 1 of the Law on Anti-Corruption Agency, as he failed to notify the Agency that he was discharging the work as the director of the business company Firm, Ltd, within 15 days of assuming such public office.

Case 2

A public official, a member of parliament, acted contrary to Article 35, paragraph 1 of the Law on Anti-Corruption Agency, as she failed to transfer her management rights in the business company Another Firm, Ltd - undergoing bankruptcy proceedings, which she owns, to an entity or a person that does not constitute an associated person, so that such entity or the person may exercise the rights on its own behalf and for the account of the public official until the termination of her public office, within 30 days from the date when he was elected as the member of parliament.

This public official, a member of parliament, is obliged to terminate her function as a representative - bankruptcy administrator of private equity in the business company Another Firm, Ltd - undergoing bankruptcy proceedings, within 15 days from receiving the Agency decision, and within the same period of time, transfer her management rights in this business company to an entity or a person that does not constitute an associated person, and submit the relevant evidence to the Anti-Corruption Agency and also submit the request to the Business Registers Agency to officially register the transfer of management rights in this business company.

6.4.1 EXCEPTION TO TRANSFER OF MANAGEMENT RIGHTS

*The law offers one exception to this rule: A public official who has or acquires a share or stocks in a company of **up to 3%** shall not be obligated to transfer management rights therein.*

6.5 NOTIFICATION OF PARTICIPATION IN A PUBLIC PROCUREMENT, PRIVATIZATION OR OTHER PROCEDURE

A legal entity in which a public official or a family member, during his/her term of office and for two years after its termination, has shares or stocks and which participate in a public procurement or privatization procedure or another procedure where the outcome is the conclusion of a contract with a public authority body, other beneficiary of the budget or other legal entity in which the Republic of Serbia, an autonomous province, a local self-government unit or a city municipality has shares or stocks, shall be obligated to submit to the Agency, within 15 days from the date of the completion of the procedure, a notification with information on:

1. the notifier (name of the legal entity, registration number, seat and name and surname of the responsible person);
2. the name and surname of the public official and family member;
3. the name of the public authority body that is the contracting authority;
4. the type and subject of the procedure;
5. the date of commencement and completion of the procedure;
6. the decision in the procedure of public procurement, privatization or other procedure and the number and value of the public procurement contract, privatization procedure or other procedure;
7. signature of the responsible person.

The notification shall be submitted on the form and in the manner prescribed by the Agency.

The Agency shall check the timeliness and completeness of the information from the notification.

6.6 RESTRICTION OF EMPLOYMENT OR BUSINESS COOPERATION UPON TERMINATION OF PUBLIC OFFICE - PANTOUFLAGE

During the period of two years after termination of public office, the public official whose public office has terminated may not take employment or establish business relations without the approval of the Agency, with a legal entity, entrepreneur or international organization engaged in business relations with the public authority body in which the public official held the public office.

A person whose public office terminated shall, prior to employment or establishing business relations, seek approval of the Agency which shall issue a decision upon this request within 30 days.

When issuing the approval, the Agency shall particularly consider the authorities assigned to the applicant in discharging the public office.

This prohibition shall not apply to a public official elected directly by citizens.

Case

A public official, the director of a public enterprise, acted contrary to Article 38 of the Law on Anti-Corruption Agency, as he established business relations with a legal entity engaged in activity related to the public office the public official held, two months following the termination of his public office, without seeking approval by the Agency.

7. MONITORING AND SANCTIONS

Agency for prevention of corruption shall be the only authority to decide on the violation of the Law on prevention of corruption and other laws regulating the rules on the conflict of interest and incompatibility of functions. The Director shall issue a decision establishing if there is a violation of this Law and ordering measure to be taken, or a decision to suspend the procedure. An appeal against the decision of the Agency Director may be submitted to the Agency Council, within 15 days from the day of the receipt of the decision. The decision of the Council shall be final and administrative dispute may be initiated against it.

Case of rejecting the appeal

The Board of the Anti-Corruption Agency at a session recently held, issued the following
DECISION

TO REJECT the appeal filed by a public official against the decision of the Anti-Corruption Agency, no. 123-456, as ungrounded.

7.1 PROCEDURE OF DECIDING ON VIOLATIONS

Procedure of deciding on the violation of this Law shall also be conducted in case of suspicion of the existence of a conflict of interest, the existence of incompatibility and cumulation of public offices.

The procedure shall be initiated by the Agency:

- a) ex officio,
- b) at the request of a public authority body that has elected, appointed or nominated a public official, or in which a public official holds public office,
- c) upon report submitted by a natural person or legal entity.

The application or report must be in writing and contain the following:

- Name and seat, or name and surname and address of the applicant filing the report;
 - Name and surname of the public official, public office they hold, and public authority body at which the public official holds this office;
 - Facts giving cause to the suspicion that there is a violation of this Law;
 - Signature of the applicant filing the report, or signature of the authorized person.
- As an exception: **the report (complaint) may also be made anonymously.**

 **ATTENTION!**

The Agency shall protect the identity of the applicant filing the report by not providing information about them to anyone except the court, in order to decide whether the identity of the applicant can be disclosed in order to preserve the public interest or to protect the rights of third parties.

7.2 PUBLIC OFFICIAL'S STATEMENT

In accordance with principles of protection of personal rights, the Agency shall notify the public official that a procedure has been initiated against them and invite them to submit a written statement (public official's failure to make a statement shall not stay the procedure) within 15 days from the date of receipt of the notification. The notification shall contain an alleged violation of this Law causing the initiating of the procedure, and facts from which it follows that the violation has been committed.

The public official's statement in its entirety is included in the final decision. Cases:

»As a statement to the notification on initiated procedure, the public official has informed that the budget funds...«

»As a statement to the notification on initiated procedure, the public official has informed, inter alia, that the decision...«

7.3 TYPES OF MEASURES AND SANCTIONS FOR PUBLIC OFFICIALS IN CASES OF VIOLATION

The Law has specified two types of measures: a) administrative and b) misdemeanor.

7.3.1 ADMINISTRATIVE MEASURES

A public official may be sanctioned with different measures:

- a minor violation, that is, a violation that has not affected the objective discharge of public office
 - **warning,**
- a serious violation, that is, a violation that affects the objective discharge of public office
 - **public disclosure of a recommendation for dismissal from public office, and**
 - **public disclosure of a decision on violation of this Law** (in case of an official who was elected directly from citizens, and a person whose public office has terminated).

Case of public disclosure of a decision on violation of law:

IT IS HEREBY IDENTIFIED that the public official, the councilor of a city assembly X, acted contrary to Articles 27 and 32, paragraph 1 of the Law on Anti-Corruption Agency, by entering into employment with the PUC, Ltd founded by city X, in the capacity of executive director, assistant director and advisor to the director, during his term of office as the councilor of a city assembly X, without notifying the Anti-Corruption Agency about the conflict of interest that existed in the given situation.

Pursuant to Article 51, paragraph 2 of the Law on Anti-Corruption Agency, the following measure is hereby imposed:

**PUBLIC DISCLOSURE OF A DECISION ON VIOLATION OF THE
LAW ON ANTI-CORRUPTION AGENCY.**

Case of public disclosure of a recommendation for dismissal from public office:

IT IS HEREBY IDENTIFIED that the public official, the councilor of a city assembly, acted contrary to Article 27, paragraph 2 of the Law on Anti-Corruption Agency, by taking part in the adoption of the Decision approving the pre-packaged bankruptcy plan for the business company Firm, Ltd in which he concurrently discharged the office of director, during his term of office of the councilor of the city assembly.

Pursuant to Article 51, paragraph 1 of the Law on Anti-Corruption Agency, the following measure is hereby imposed:

**PUBLIC DISCLOSURE OF A RECOMMENDATION FOR DISMISSAL
FROM PUBLIC OFFICE OF THE DIRECTOR OF BUSINESS COMPANY FIRM, Ltd**

Once the decision on the measure of disclosing a recommendation for dismissal from public office becomes final and enforceable, the Agency shall submit such decision to the public authority body responsible for dismissal, which shall inform the Agency about the measures taken within 60 days from the day of the receipt of the decision.

7.3.2 MISDEMEANOR SANCTIONS

When the Agency identifies the violation of the law in relation to incompatibility of functions or conflict of interest, the request for initiating the misdemeanor proceedings is submitted to the competent misdemeanor court. The following misdemeanor sanctions may be imposed against the public officials:

- An official shall be fined from 100,000 to 150,000 RSD for the following misdemeanors:
 - Failure to respond to the Agency's summons for identifying the facts in the proceedings before the Agency,
 - Failure to notify the Agency within 5 days on the suspected existence of a conflict of interest that s/he or an associated person has,
 - Failure to notify the Agency about the performance of other work or activity within 15 days from the date he/she assumed the public office,
 - Performance of other work or activity during his/her tenure in public office which requires full-time working hours or full-time employment,
 - Advising legal entities and natural persons on matters concerning the public office s/he holds, unless s/he is obligated to do so,
 - During tenure of public office, establishing a business company or public service, or commencing engagement in private occupation,
 - During tenure of public office, becoming a representative or a member of a body of a legal entity which is privately owned, or exercising management rights,
 - Becoming a member of an association's body or its representative if there is a relationship of dependence between a public office and membership in an association body or representation of an association or another relationship that endangers impartiality or dignity of a public office, or if by law or otherwise it is forbidden for a public official to be a member of a certain association's body,
 - Performing a role in a political party, i.e. political entity and participating in its activities if this compromises an efficient discharge of public office (for this misdemeanor, the official shall be fined from 100,000 to 150,000 RSD),
 - Failure to transfer the management rights in the business company, within 30 days from the day of election, appointment or nomination, that is, the acquisition of shares or stocks,
 - Failure to inform the Agency about the entity or person to whom the management rights are transferred and the evidence on the transfer of management rights, which s/he has registered, within 15 days from the date of transfer,
 - Discharging another public office.

There are also sanctions for other persons who fail to comply with the provisions of the law relating to conflict of interest and incompatibility of functions:

- A person responsible in a public authority body shall be fined from 100,000 to 150,000 RSD in case the public authority body fails to pass a decision on termination of office within 8 days since the receipt of the Agency decision on termination of office,
- A legal entity shall be fined from 1,000,000 to 2,000,000 RSD (and the person responsible shall be punished by a fine in the amount from 100,000 to 150,000 RSD) if it fails to notify the agency about participation in public procurement procedure, privatization or another procedure whose outcome is the conclusion of a contract with a public authority body,
- A person whose public office has ceased and who has started employment or business cooperation with a legal entity, entrepreneur or international organization engaged in activity related to the public office the public official held, two years after the public office has terminated, shall be punished by a fine in the amount from 100,000 RSD to 150,000 RSD.

 **ATTENTION!**

Misdemeanor proceedings for offenses prescribed by the Law on prevention of corruption cannot be initiated if a period of five years has elapsed since the day the offense was committed.

7.4 STATISTICS OF MEASURES AND SANCTIONS FOR CONFLICT OF INTEREST AND INCOMPATIBILITY

Most measures and decisions by the Agency in 2018 were imposed against the public officials on the grounds of cumulation of functions, followed by the measures against the public officials in situations of conflict of interest and nepotism. Most proceedings were initiated due to conflict of interest, as public officials tended to use the public office and acquire benefits for themselves or associated persons. The second most frequent proceedings are the ones initiated against the public officials that discharged another office, or several other offices, without the consent of the Agency.

It is still visible that public official lack appropriate awareness of the conflict of interest and incompatibility of functions, as in 2018 a total of 335 measures were imposed (218 measures of warning, 45 measures of public disclosure of a recommendation for dismissal and 72 measures of public disclosure of a decision on violation of the law). A total of 312 opinions on implementation of law was issued, as well as 77 opinions at the request of public officials, for issuing an opinion on suspected existence of conflict of interest. In the same period, 38 decisions were issued which identified the violation of the law and noted that discharging of another public office was terminated.