RATIONALE

CONSTITUTIONAL BASIS FOR ADOPTING THE ACT

The constitutional basis for the enacting of the Law on the Anti-Corruption Agency derives from the Article 97 (16) of the Constitution of the Republic of Serbia, which stipulates that the Republic of Serbia shall regulate and provide the organization, competencies and operation of the bodies of the Republic.

REASONS FOR ADOPTING THE ACT

The Law on the Anti-Corruption Agency was adopted in 2008, and applies from January 1st 2010, with all the amendments made in 2010.

During the enforcement of the existing Law a need arose for clarification and specification of certain number of provisions as well as for the different regulation of certain important issues, especially ones related to the conflict of interests, cumulation of public offices, asset and income declaration of officials and competencies of the Agency. Given the scope of the required amendments, the new model of the Law was drafted.

The first reason for the adoption of new, qualitatively different Law is the imposition of more clear and strict rules on the responsibility of officials, improvement of the efficiency of the Agency and strengthening its independence.

The second reason is harmonization with the National Anti-Corruption Strategy in the Republic of Serbia for the period 2013-2018 (hereinafter: *the Strategy*) and the Action Plan for the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the period 2013-2018 (hereinafter: *the Action Plan*).

Objective to be achieved by enacting the new Law is the protection of the public interest, reducing risks for corruption and promotion of integrity and responsibility of public authority bodies and officials, as well as the implementation of universally accepted international standards in the field of anti-corruption.

On the other hand, the recommended legal solutions are taking into acount the present state of affairs, i.e. that the new law is indeed applicable in the present circumstances.

EXPLANATION OF INDIVIDUAL SOLUTIONS

The content of the new law is systematized into fourteen chapters, as follows:

I Basic Provisions; II Agency; III Conflict of Interests; IV. Cumulation of Public Offices; V Gifts; VI Property and Incomes Disclosure Report; VII Proceedings in Case of Violation of the Law; VIII Acceptance of Complaints; IX Corruption Prevention; X International

Cooperation; XI Records and Data Protection; XII Penal Provisions; XIII. Transitional Provisions and XIV Final provisions.

I BASIC PROVISIONS

Basic provisions contain the subject and the purpose of law, and the meaning of certain terms.
Important novelties are set out in the Article 3, which determines the meaning of certain terms.

First and foremost, the new Law introduces the concept of "public authority body" which, for the purpose of enhanced protection of the public interest, covers a wider range of bodies and other legal entities in relation to existing legal solution, while the meaning of the terms "public official" and "public office" is fully linked to the meaning of the "public authority body". The applicable Law in this regard is inconsistent, leading to the problems in its enforcement.

In addition, the new Law excludes the private interest from the definition of conflict of interests, which "seems to affect" the conduct of the officials discharging public office, which eliminates the possibility of broad interpretation.

The novelty with respect to the existing Law is also the definition of the terms "undue influence", "complaint", "anti-corruption provision" and "political entity".

II AGENCY

The provisions of this chapter govern the legal status, competencies, organization and operation of the Agency.

As one of the guarantees of the independence of the Agency, the new Law introduces the rule that the annual funding for the operation and functioning of the Agency, which are provided in the budget of the Republic Serbia, should be sufficient to enable effective and efficient performance of activities from its purview.

The novelties with respect to the existing law are also stipulated by the provision which prescribes the competencies of the Agency, and which includes all the activities that fall within the scope of its work.

The competencies of the Agency with the new Law are expanded and include issuing of general stands. Since extension of the competencies of the Board when issuing general stands was proposed as well, this means that the law implementation will not depend only on instructions issued and opinions given by the Director of the Agency, but on the general stands of the Board.

The competencies of the Agency are extending to filing of criminal charges, submission of requests for misdemeanor proceedings and launching initiatives for disciplinary proceedings. In addition, with the new Law, the Agency has the right to act not only

according to the complaints of natural and legal persons, but also on its own initiative in order to disclose corruptive behavior. Also, the Agency is entitled not only to monitor but to act within international cooperation, not only in cooperation with other state agencies but also independently, and to participate in the drafting of regulations in the field of anti-corruption.

In addition, according to the provisions under Article 107 of the Constitution, the right to propose laws and other regulations has each member of the Parliament, government, Assembly of the Autonomous Province or at least 30,000 voters, and only the Ombudsman and the National Bank of Serbia have the right to propose laws from their jurisdiction. Therefore, the new law strengthens the role of the Agency by entitling it not only to launch initiatives for amendments and adoption of regulations, but to issue opinions on drafts and provision proposals in the field of anti-corruption.

An important novelty with respect to the existing Law is the extension of the competencies of the Agency on conducting the corruption risk assessments in the work of public authority bodies, which provides a new mechanism for the establishment and improvement of the institutional integrity.

With regard to the competencies of the Board, the novelty in relation to the existing legal solution represents the competence of the Board to decide not only over appeals against the decisions of the Directors by which they pronounce measures, but also over appeals against the other decisions of the Directors in accordance with the Law, as well as the extension of its competence in adopting general stands for implementation of the Law.

In order to strengthen the independence of the Agency and to achieve to the full extent its control function, the new Law regulates the composition of the Board in different way in relation to the existing Law. Instead of the Government and the President of the Republic, new authorized proposer is Republic Commission for the Protection of Rights in Public Procurement Procedures, whereas the Ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection are designated as independent proposers. Therefore, the risk of politically motivated proposals for the election of members of the Board is being excluded or reduced.

The new Law regulates in a more precise way the procedure for dismissal of the Board member and Director and introduces the possibility of removal of the Director from the office when the procedure for dismissal is instituted against him, which the existing law does not provide for.

In addition, the new Law clearly stipulates the procedure for the election of Deputy Director. The existing Law does not prescribe conditions for selection or reasons for dismissal of Deputy Director.

The absence of these rules may lead to a situation in which the Deputy Director may be a person who does not meet the conditions required for the election of Director or in which the Deputy Director may be dismissed although he/she performs tasks conscientiously and in a professional manner, and there are no other reasons for his/her dismissal. In addition, it should be noted especially that the term of office of Deputy Director shall be terminated by the new Director, so the Deputy Director may be in a situation to perform tasks of a Director.

The new Law determines the salary of Director and Deputy Director in accordance with particular complexity of tasks and responsibilities of the position.

The new Law governs also in a different way the status of Secretariat civil servants. The Law on Civil Servants stipulates that certain rights and obligations of civil servants in some public authority bodies may be regulated differently by means of a special law if it stems from the nature of the work they perform (Article 1, paragraph 2). That is exactly the case with the nature of the work that the civil servants perform in the Secretariat of the Agency, as specific public authority body. Therefore, the new Law provides an increase of their basic salary by 30% of the basic salary of the civil servants whose jobs are classified within the same title (institutional allowance). The nature of the work they perform is such that it requires an increased responsibility - within the scope of their duties, they have an access to the data of high degree of confidentiality (the data from property and income reports of the officials, the data that can also be used to initiate the proceedings before public prosecution service, misdemeanor courts and other competent public authorities, the data from the charges against officials, etc.). In terms of its importance, working with these data represents specificity with respect to the work other civil servants perform. That is the reason why special restrictions and duties are prescribed for civil servants of the Secretariat of the Agency. Except the ones referred to above, provisions on other matters related to the civil servants apply to civil servants of the Secretariat of the Agency. Proper identification of civil servants in the Secretariat of the Agency is necessary for reasons of safety and operability of their work, especially with regard to the new powers set out in Article 29 of the new law.

The obligation of submitting the documents and information to the Agency that are necessary to carry out its competencies extends, under the same article of the new Law, to legal persons other than public authority bodies, and Agency receives a new important authorization: the right to immediate and unimpeded access to the official records and the documents of public authority bodies and other legal entities, which are of importance for the proceedings it conducts. In this way, the unnecessary paperwork is eliminated, in order to facilitate and expedite the conduct of proceedings before the Agency.

Submitting reports on its operations to the National Assembly represents, on one hand, responsibility of the Agency for carrying out operations from its area of competencies and, on the other hand, transparency of the work of the Agency. The new Law gives the Agency the right to submit on its own initiative special reports on corruption to the National Assembly, in order to achieve its preventive function.

III CONFLICT OF INTERESTS

The new law distinguishes the terms conflict of interests and cumulation of public offices, by regulating the cumulation of public offices under a separate chapter, which is otherwise provided for by the Action Plan for the Implementation of the Strategy.

The most important novelty with regard to the existing Law is related to the conflict of interests and cumulation of public offices.

Article 31 of the new Law defines the basic rules on discharge of public office, which differ, in relation to the existing legal solution, in a way that they introduce new prohibition to officials.

It is prescribed that an official may not use knowledge and information acquired during discharge of the public office to acquire any benefit or advantage for himself or any other person or to cause damages to other person, if there is no public access to such knowledge and information.

Important novelties are laid down under provision which governs the obligation to notify on the existence of private interests. The existing Law, under the Article 32, provides for a period of eight days for notifying the Agency "of any doubts over a conflict of interests concerning an official or an associated person", where it is not clearly stipulated when the prescribed time limit begins. That's why in practice it often occurs that, at the time of receipt of the notice by the Agency, the consequences of a conflict of interests have already occurred for an official, so prescribed measures for eliminating the conflict of interests become irrelevant. In order to prevent conflict of interests, this obligation is regulated in a clear and precise manner by the proposed legislation, whereas special provisions govern the acting and decision making upon notification of the Director and/or Member of the Board about the existence of private interests.

In addition, the existing Law, under the provision of Article 32, paragraph 5, which provides for the voidness of an individual legal act, the adopting of which included an involvement of the official disqualified due to a conflict of interest, is not applicable because it does not prescribe who issues a decision which sets out voidness and who takes measures regarding the determined voidness of the individual legal act. Also, the existing Law exempted contracts from these specific sanctions. Provisions of the new Law related to the voidness of the individual legal act and/or contract eliminate the above deficiencies (Article 35 of the new law).

When it comes to discharging other jobs or activities, the existing Law regulates this issue in an inadequate way. First of all, it does not define the meaning of the term "other job" and does not distinguish between the activities of entrepreneur and activities of the freelance professions, regulated by special provision, which is not considered entrepreneurship. In addition, provisions of the existing Law which prescribe that the prohibition of performing other job or activities applies only to public offices which require full-time working hours or full-time employment are ambiguous, and provide for the possibility of performing other job or activity with the approval of the Agency, while particular provisions stipulate when an official performs other job or activity at the moment of assuming public office, while prescribing different criteria for determining the incompatibility of performing those jobs and activities with discharge of public office. The abovementioned deficiencies are eliminated, under the new Law, by clear prescription of situations in which an official may not perform other job without the possibility to request consent from the Agency. The proposed legal solution transfers responsibility for compliance with the Law to the official. Also, the meaning of the term "other job" is determined, whereas the activities of entrepreneur during discharge of the office is regulated by special provision.

The new Law provides for the prohibition of consultation activities, which eliminates the existing legal gap, and clearly prescribes prohibition of performance of functions in legal persons with the participation of private capital.

In addition, the existing Law, as referred to in Article 33, paragraph 1, prohibits a public official whose function requires full-time working hours or full-time employment to establish a business company or to commence entrepreneurial engagement during discharge of the office. In this way, officials who are already founders or members of the company at the moment of assuming public office are in a more favorable position. It is unclear though why the prescribed prohibition applies only to public officials whose discharge of the public office requires full-time working hours or full-time employment. In addition, the existing Law brings further confusion by prescribing, under the same provision, the prohibition of the management, supervisory or representation of private capital in a business company, private institution or other private legal entity, without making a clear distinction between management rights and management and other functions in a legal person.

There is no legal justification for limiting freedom of investment to officials, which does not affect the duty of transferring managing rights, and the duty of outsourcing. The new Law eliminates all the above mentioned deficiencies.

Particularly unclear are the provisions of the existing law on membership in associations and bodies of associations. Specifically, Article 34 of the existing Law stipulates that official may hold an office in bodies of professional associations and may be a member of bodies of other associations if the Agency determines that there is no conflict of interests, and that official who is member of the association may not receive reimbursement or gifts deriving from his/her membership in the association, except travel and other costs. The Law on Associations, as referred to in Article 22, paragraph 1 and 2, provides that the Assembly is the highest body of the Association and that the Assembly consists of all the members of the association. From the abovementioned legal provisions it clearly derives that a member of association is also a member of the Assembly as the highest body of association. Therefore, it is unclear why the existing Law prescribes prohibition of receiving reimbursement and gifts only for members of association. In addition, the Law on Associations does not provide that members of the association are entitled to receive any kind of reimbursement or gifts deriving from his/her membership in the association, thus this legal prohibition is irrelevant. The new Law eliminates the abovementioned vagueness by clearly prescribing situations in which an official may not be a member of the bodies of association.

Issues related to membership and performing functions in political party, i.e. political entity, the new Law regulates in the same manner as the existing one, except that the President of the Republic is not covered by the provision which prescribes for certain categories of officials an exception from the requirement to unequivocally present at all times to his/her interlocutors and the general public whether he/she is presenting the viewpoints of the body in which he/she discharges an office or viewpoints of a political party, i.e. political entity.

When it comes to the transfer of the managing rights during the discharge of public office, the new Law eliminates the existing legal gap in relation to persons who, during

the discharge of public office, acquire shares or interests in the company, by specifying that the time limit of 30 days for transferring of managing rights begins from the date of election, appointment or nomination, i.e. acquisition of shares or interests. In all other aspects, issue related to transfer of managing rights has been regulated in the same manner as in the existing Law.

With regard to the duty to notify the Agency about taking part in public procurement procedure, the new Law extends the time limit for fulfillment of this legal obligation from 3 to 15 days, because the practice shows that the time limit of 3 days is too short. Given the fact that the Agency has the obligation to keep records based on the reports submitted by the legal entities of which official owns a share or interests over 20% and public procurement procedures, in order to fulfill the obligations of the Agency, particularly given the importance of these records for prevention of corruption and thus the necessity of the information contained therein to be complete, according to the new legal solution, the notice which is not made in accordance with the general rules that the Director of the Agency has issued shall be deemed not to have been submitted.

The new Law regulates in a more precise way the procedure of the Agency upon receiving the notification of undue influence on official. In addition, the new Law contains special provisions regarding the undue influence on an official of the Agency.

Under the new Law, prohibition of other employment or establishment of business relations following termination of public office is regulated under the same title “Restrictions upon Termination of Public Office”. An important novelty with respect to the existing legal solution is the introduction of prohibition of establishing business relations with public authority body in which the public official had discharged public office and prohibition of taking employment or establishing business relations is now regulated in a more adequate and extensive way, without the possibility of seeking approval from the Agency, and by which the responsibility for compliance with the law is fully transferred to officials.

IV CUMULATION OF PUBLIC OFFICES

The new Law regulates the issue of cumulation of public offices in a substantially different way. There are only two exemptions from the rule that an official may discharge only one public office. The first exception is when an official is required by Law to discharge two or more public offices at the same time. Another exception is official who discharges two or more public offices to which he/she is elected directly by citizens, except in cases of incompatibility determined by the Constitution.

The existing Law regulates the issue on prohibition of discharge of another public office under the chapter "Conflict of Interests" which is conceptually wrong. Conflict of interests implies the existence of private interests, and in the situation of undue cumulation of public offices, there are two or more public interests in conflict. In addition, the existing Law gives the possibility of discharge of two or more public offices at the same time with the approval of the Agency, thereby prescribing that the Agency may not issue consent for discharge of another public office if discharge of such office compromises discharge

of public office having already been held by the official (which is broadly defined criterion), i.e. if it determines conflict of interest (which is practically inapplicable criterion). Thus, the rule that an official may discharge only one public office has turned in practice into an exception. The proposed legal solution aims to address this important issue by not allowing it to be solved based on discretionary evaluation of the decision maker, but the subject of a clear and precise legal regulation.

V GIFTS

Proposed provisions eliminate the existing ambiguity in regulating prohibitions and duties of officials with regard to gifts. Prohibition of receiving gifts is prescribed by special provisions, and then duties of officials related to protocol and appropriate gifts and gifts in connection to the discharge of public office which he/she may not accept are prescribed.

Given the fact that the Agency is required to make, based on the submitted evidence, a catalogue of gifts for the previous calendar year and to publish it on its official website by June 1st of the current year at the latest, in order to timely fulfill this duty, according to the new legal solution, the record of gifts not submitted in accordance with the general act adopted by the Director of the Agency shall be deemed not delivered.

VI PROPERTY AND INCOME DISCLOSURE REPORT

When it comes to the Property and Income Disclosure Report, one of the most important novelties lies in expanding the circle of associated persons whose property and incomes an officer is required to report to the Agency, which is otherwise provided for by the Action Plan for the Implementation of the Strategy. Duty of Property and Income Disclosure Report (hereinafter: *Report*) expands on parents, adoptive parents, children or adoptee of the official, regardless of whether they live in the same household or not. Practice shows that the existing legal solution leaves a lot of room for malpractice and concealing the real value of property and income of officials.

The new Law particularly prescribes situations that are common in practice, and apply to officials who are re-elected, appointed or nominated to the same public office, when no change occurred when compared to the data from the previously submitted Report. During the enforcement of the existing Law, a need arose for clear and precise regulation of situations like this, because in practice this legal obligation led to different interpretations, which initiated a large number of proceedings before the Agency. The proposed legal solution prescribes that such an official is not required to re-submit the Report to the Agency, but is obliged to inform Agency in writing.

The Agency has the new power in Report verification procedure: the right to request the associated person to submit directly the information on his/hers property and income, if there is a doubt that the official is concealing the real value of his/hers property or income.

Unlike the Law currently in force, the new Law does not provide for the Agency an obligation to inform the authority where the official discharges his office on the non-submission of the Report, that being unnecessary administration, in addition to Agency conducting the proceedings to determine the violation of the law.

Regarding the extraordinary property and income disclosure, as well as submitting the Report after the termination of the office, the new Law provides for a different time limit during which the official is required to submit the Report to the Agency. In order for the Report to be accurate and complete, the official must disclose the information on all of his/hers income. Considering that such Reports, as a rule, are not submitted until the end of January, as the provider of the income has the time limit for submission of yearly tax application for determination of income tax in mind, there exists a valid reason to level the Report submission time limit with that time limit.

In addition, during the application of the Law in force, there arose a need to, in connection with the definition of “significant changes”, clearly and precisely determine what does “change of data from the Report” mean. To be more precise, the experience of the Agency shows that the officials understood this term to mean only the increase of property and income, which is a faulty interpretation, as the official is required to report every change of data from the Report – not only the increase, but also the decrease of property and income, as well as the change in structure of property whose value exceeds prescribed amount. Normative definition of this term avoids different interpretation which occurs in practice, as well as the conducting of procedures before the Agency.

In order to monitor significant changes in property of officials during one calendar year (above the amount of ten average monthly net salaries in Republic of Serbia), the new Law provides for the obligation to report them within 30 days of the occurrence of such change.

When it comes to the officials who are not required to submit the Report (Article 45 of the current Law) or, as to use the proper term from the new Law, officials who submit the Report at the request of the Agency, by the use of a different, clear and precise provision that under “not being entitled for remuneration” arising from membership shall mean that the law, another regulation or another act does not stipulate the right for remuneration arising from the membership (Article 55, paragraph 2 of the new Law), any possibility that the official evades the obligation to report property and income by the way of renunciation of the remuneration, which may be insignificant, is therefore eliminated.

The new provisions on the contents of the Report make the data that regulate property and income at home and abroad more precise. Despite that, for the purposes of increased protection of public interest, the obligation for the official to report the data on ownership and shares of a legal entity in which the official has ownership and owns shares in another legal entity is introduced as well. The transparency of data on all persons who are joined by interest with the official makes the verification of official’s work possible, together with securing and maintaining trust of citizens concerning his/hers conscientious and responsible discharge of public office. In addition, considering that a large number of Reports is formally and technically incomplete in

practice, which considerably aggravates and slows down their processing and verification, and with that the control of accuracy and completeness of data from the Report, according to the new legal provision, the Report that was not submitted in accordance with the general act issued by the Director of the Agency will be considered not to have been submitted. Analogous legal solution is suggested for the notification on assuming public office, i.e. termination of public office, which is submitted to the Agency by public authority body where the official discharges office, and based on which the Agency keeps the Register of Officials. In that way the responsibility for due filing and due submission of proper Reports and notifications, which is of extreme importance for effective implementation of the control function of the Agency, is being increased.

Regarding the disclosure of data on assets and income of officials, the new Law provides for an exemption for data from Report on officials in public authorities by the Law on Organization and Jurisdiction of Government Authorities in Combating Organized Crime, Corruption and other Serious Criminal Offences that are not disclosed until the expiry of the two year time limit since the termination of public office. In that way, harmonization is performed with the Article 16 of Law on Organization and Jurisdiction of Government Authorities in Combating Organized Crime, Corruption and other Serious Criminal Offences.

In accordance with the Action Plan for Implementation of the Strategy, the new Law stipulates the Agency with the express authority to perform extraordinary checks of accuracy and completeness of data from the Report in the case of doubt that the official has not disclosed actual and complete information.

In addition to that, the new Law, for the purposes of enabling the checks of the Report, provides for the obligation of the bank to submit data on all the accounts of the official to the Agency, as well as on other business relations of the official and persons associated with him/her and banks. It also explicitly proscribes that, regarding the submission of this data, prohibitions and limitations provided for in other provisions are not applied. This obligation, according to the new legal approach, is applied as well on other financial institutions, as well as the National Bank of Serbia. In practice, certain banks refuse to submit the data which are required to verify the Report to the Agency, justifying it with obligation of banking secrecy. However, as Law on Banks itself provides for exemptions from this obligation, there are no reasonable grounds that it should include the Agency as well, as it is the state authority whose authority is to check the accuracy and completeness of data from the Report of officials and monitor their property status.

The innovation in the provisions on monitoring the property status of officials is manifest, mainly, in express proscription of Agency monitoring not only the property status of the officials but also associated persons whose property and income the official is obliged to disclose to the Agency, as well as in more precise system of procedure for establishment of reasons of discrepancy. Besides that, the obligation for the official to, at the request of the Agency, submit data on property and income of other associated persons in the case of doubt that the official is concealing the real value of his/hers property and income is prescribed as well. Considering that the reasonable doubt represents a higher degree of doubt based on obtained evidence, as opposed to the current legal solution, the word “reasonable” is left out because, if it remained, there would be no need for the Agency to request the official to submit the data. The

innovations, when it comes to the current Law, also include provisions that state that the right of access to case briefs and notifications during the course of the proceedings cannot be exercised until the process of checking the Report is finished, as experience of the Agency to the date has shown that it impedes the evidence procedure. The novelty is also the provision which stipulates the special form of power of attorney, if these rights are exercised through an attorney, with the goal of protecting the interests of the official, i.e. protecting the data from the Report that are not made public.

VII PROCEEDINGS IN CASE OF A VIOLATION OF THE LAW

Provisions of this chapter establish in precise manner the procedure where the decision is made on whether there is a violation of the law.

Regarding the institution of the proceedings, the novelty is the legal provisions which stipulate the manner of submission and contents of the Report. In addition, the power of the Agency to act on anonymous reports is provided for, which is also provided by the Action Plan for the Implementation of the Strategy.

In addition, the new Law stipulates that, if the procedure has been intitiated because of violation of the Law that can be eliminated, the Agency can, during the procedure and by means of a special decision, order the official to obey the Law within a given time limit and, if the official fulfills the order, taking into consideration all the circumstances of the case, and especially the gravity and consequences of the violation, suspend the procedure or continue it and pronounce adequate sanction.

In that manner, the new Law enables the full application of the principle of individualization of sanction, considering very different life situations that are possible in practice.

Suggested legal solutions provide for the rights of the officials, their rights and obligations, as well as the protection of report applicant in a more clear and precise manner.

In order to ensure the publicity of the work of the Agency, it is stipulated that the fact that the procedure has been initiated against the official for whether there is a violation of the Law, as well as the results of the procedure, are made public. The Agency is also obliged to publish the decision establishing whether there is a violation of the Law and pronouncing sanction in accordance with the Law on its website. On the other hand, the interests of the official regarding whom, after the conducted procedure, the Agency has established not to have violated the Law are protected as well by proscribing that the data contained in case briefs, except the data on the results of the procedure and information that is public in accordance with other provisions, cannot be made public without the consent of the official concerned.

Special novelty in the suggested legal solutions is provisions on public hearing. Holding of public hearing before the final decision is made in the procedure allows a more detailed consideration of the subject matter and a greater openness of the Agency in the

cases where there is a justifiable interest of the public to know about them and to monitor them.

When it comes to sanctions, the legal provisions, instead of measure of caution provided for the Law currently in force, provide for the admonition, and precisely determine the conditions under which the sanctions are pronounced. In that manner the vagueness of the current legal solutions in relation to the gradation of the measures and their repercussions is eliminated.

A new requirement for election, nomination or appointment to a public office is introduced: the requirement that the measure of public announcement of the recommendation for dismissal from the public office or measure of public announcement of the decision on the violation of this Law has not been pronounced against the candidate in the last four years.

Provisions on initiative for dismissal of officials introduce the requirement to act on the Agency's recommendations, which is a considerable innovation as regards to the Law currently in force.

Provisions on the obligation of returning material gain acquired by illegal discharge of other public office define the term of material gain and the means of determining the amount and the procedure of issuing the order on returning of material gain are precisely determined, as well as the procedure in the case of failing to fulfill of this obligation, considering that the provision of the Law currently in force, due to extreme vagueness, is practically inapplicable.

Considering that, in practice, it is still possible for the official to, after the finality of the Agency's decision by which a measure of public announcement of recommendation for dismissal or decision on violation of the Law is pronounced against him/her, still continue to discharge other public office illegally and acquire material gain based on it, the new Law stipulates that the Agency, in such a case, issues a decision on suspension of salaries, remunerations and other incomes that the official acquires by discharge of public office.

As regards to the public announcement of decisions, the new Law stipulates that the disposition and rationale of the decision by which the official is pronounced the measure of public announcement of recommendation for dismissal from public office, as well as the decision on the violation of the Law, shall be published only in "The Official Gazette of the Republic of Serbia," and not in other media. It also doesn't stipulate that the costs of the publishing are borne by the official against whom the measure has been pronounced. The reason for this new legal solution is that the provision of the Law currently in force, in practice and due to extreme vagueness, causes issues. First of all, the meaning of the word "borne" is unclear, that is, it is unclear whether that word implies that the official pays for or refunds the costs of publishing the decision, while at the same time not providing for a time limit during which he is required to do so. Such approach makes the publishing of the decisions impossible, as, on one hand, the Agency cannot acquire the assets from the budget of the Republic of Serbia on that basis, and, on the other, it cannot sanction the official who does not pay for the costs of publishing the decision.

The issue mentioned above is especially noticeable when one has in mind that, according to the current Law, the requirement of the competent authority to notify the Agency on the measures undertaken in relation to the pronounced measure of public announcement of recommendation for dismissal is tied to the time limit for announcing the measure. The recommended legal solution is better because, according to the Law on Proclaiming the Laws and Other Acts, the announcement of all the acts specified by law in "The Official Gazette of Republic of Serbia" is mandatory, without remuneration.

Current practice in the Agency manifested problems in relation to forwarding the decisions and other briefs of the Agency to the officials, which slows down the work of the Agency. In order to speed up the procedure, it is necessary to stipulate a different approach than the one contained in the Law on General Administrative Procedure.

When it comes to the appropriate application of the provision of Law on General Administrative Procedure, there are no changes as regards to the current legal solution.

Furthermore, the new Law stipulates that the Agency reports the violations of the Law to the competent authorities. In that manner, the conduct of the Agency when it determines a violation of the Law while acting within its competence is provided for more precisely.

Finally, this chapter contains the special provisions on the procedure against the associated person, which eliminates the existing legal gap.

In addition, the recommended legal provisions contain the general rule that every decision of the Agency can be under judicial control, by submitting the claim by which the administrative procedure is initiated.

VIII ACCEPTANCE OF COMPLAINTS

The Law currently in force stipulates that the Agency "accepts" the complaints and that it doesn't act upon anonymous complaints. Acceptance of complaints was implied, and the obligation of the Agency to act according to the complaints must be stipulated. In addition, the power of the Agency to act upon anonymous complaints, which is intended in the Action Plan for Implementation of the Strategy, must be provided for.

The new Law stipulates the acceptance of complaints and provides for the authority of the Agency to act upon anonymous complaints, if the complaint and evidence submitted with it, alone or together with other data available to the Agency, cause sufficient doubt in the existence of corruption in work of a public authority body or public official. The recommended legal solution is in accordance with Article 13, paragraph 2 of the UN Convention against Corruption.

In order to handle the complaints more efficiently, the legal solution, according to which the contents of the complaint, the form and the manner in which it is submitted are more precisely determined by the Director of the Agency, and that, if the complaint has not been submitted in accordance with those instructions, the Agency informs the applicant of the complaint to, within 15 days, complete the complaint, is recommended. If the applicant does not complete the complaint in proscribed time limit, it shall be assumed that he has withdrawn the complaint.

The provisions of this chapter stipulate the protection of the employees in public authority bodies who raise doubts on the existence of corruption in the public authority body wherein they work (protection of whistleblowers in public sector) as well.

IX CORRUPTION PREVENTION

The provisions of this chapter stipulate the matters related to the preventive competencies of the Agency, which are: issuing opinions, Integrity Plans, monitoring the implementation of the Strategy and Action Plan, methodology for evaluation of risk corruption in provisions, performance of risk analysis of corruption in work of public authority bodies, cooperation in the prevention of corruption, training in the field of combating corruption and research on the state of corruption.

When it comes to issuing opinions, the new Law introduces an important novelty: the right of the Agency to, together with issuing opinions at the request of natural persons or legal entities, issue opinions on its own initiative on matters from its own competence for reasons of prevention and in order to improve combating corruption.

Regarding the Integrity Plans, the novelty when compared to the current legal solutions is contained in the provisions which directly stipulate the obligation of introduction and implementation of the Integrity Plan and that the obligation of not only of introduction, but also the implementation of Integrity Plan is the responsibility of the manager. Current regulation relating to the person responsible for the introduction and implementation of the Integrity Plans causes confusion in practice, because the responsibility falls upon the person determined by the manager, and which cannot, in any way, be responsible for issuing the decision on introduction and implementation of Integrity Plan.

Provisions pertaining to monitoring of the implementation of the Strategy and Action Plan are aimed at complying with the Strategy and Action Plan. The new Law introduces the obligation of the responsible subjects to semiannually submit reports on the implementation of the Strategy and Action Plan to the Agency, as well as the evidence for actions undertaken in accordance with the Action plan, as well as the obligation to respond to the summons by the Agency in order to clarify the ambiguity when it comes to fulfilling the obligations. Also, the new Law provides for submitting the Report on the Implementation of Strategy and Action Plan to the National Assembly, apart from the operation report.

In addition, the recommended legal solution determine more precisely the matters connected with issuing opinions relating to the implementation of the Strategy and Action Plan, as well as the obligations of the concerned responsible persons.

The novelty as opposed to the current Law is also the introduction of the obligation for the authorized proposers of provisions in the field of anti-corruption to allow the Agency to participate in the procedure of drafting such provisions.

The new Law, in accordance with the Strategy and Action Plan, stipulates a new considerable power of the Agency – the right to promote methodology for the evaluation of corruption risk in the provisions, while, on the other hand, it introduces the obligation

of the provision proposers to, while drafting provisions, apply such methodology and submit the provision draft to the Agency. The Agency issues opinions on the evaluation of corruption risk in the provision draft, which the provision proposer is mandated to submit to the National Assembly together with the provision draft.

In addition, the Agency has the authority to conduct an analysis of corruption risks in the work of the public authority bodies and prepare reports with recommendations for eliminating these risks, while, on the other hand, the public authority bodies to which the recommendations refer, are obliged to inform the Agency within the period of six months following the submission of recommendations about the measures taken for eliminating the corruption risk. The aim of the proposed legal solution is detection of potential risk of corruption and giving recommendations for its elimination by examination of working method, procedures and acts of public authority bodies.

The new Law, as the existing Law, prescribes that the Agency, in performing work from its jurisdiction, also co-operates with scientific organizations and civil society organizations.

When it comes to training in the field of anti-corruption, the new Law, in accordance with the Strategy and Action Plan, stipulates the obligation of the Agency to prepare and publish training programs and guidelines for the implementation of trainings in the field of anti-corruption, ethics and integrity, while, on the other hand, explicitly prescribes that public authority bodies are required to conduct trainings for all employees and managers according to programs and guidelines prepared and published by the Agency. In addition, the Agency is given the authority to monitor the implementation of trainings, whereas public authority bodies are required to submit report on their implementation upon request of the Agency.

When it comes to research on current situation in the field of corruption, there are no changes in relation to the existing legal solution.

X INTERNATIONAL COOPERATION

As mentioned above, the Agency is entitled, under the new Law, not only to monitor but to act within international cooperation, not only in cooperation with other state bodies but also independently. It also specifies the authorization of the Agency that, if necessary, organizes the coordination of international activities of state bodies, in order to enhance cooperation with international institutions, organizations and initiatives in the field of anti-corruption.

XI RECORDS AND DATA PROTECTION

Provisions on records accurately regulate the records that the Agency keeps. In this regard the existing Law is inconsistent regarding the content and the terminology, therefore the new Law eliminates these deficiencies.

In addition, the new Law in certain provisions prescribes the obligation of keeping the of confidentiality data. The provision on data protection prescribes in a general manner obligation of the Agency to provide in its work and when informing the general public, protection of data on officials, associated persons and other persons in accordance with the Law, and when informing the general public to restrict such information which may affect the conducting of a proceeding provided under the Law, privacy of persons or any other interest protected under the Law.

XII. PENAL PROVISIONS

Criminal Offence

In relation to an offence referred to in Article 72 of the existing law, two significant changes have been introduced in relation to the elements of criminal offense regarding failure to declare property and income as referred to in Article 100 of the new law: the object of the action has been expanded to include income as well as property, and the subjective component leaves out the intention to conceal the data that the public official is obliged to report.

The criminal offence, as defined here, can only be performed with premeditation. Negligence can be possible only if the Law expressly stipulates it (Article 22, paragraph 2 of the Criminal Code).

Because is in this case the Law does not provide for negligence, the provision of the Article 22, paragraph 1 of the Criminal Code remains, according to which the perpetrator was guilty if he was mentally capable and acting with premeditation, and was aware or should and could have been aware that his action was prohibited.
Proscribing the negligence for performing this criminal offence would not be in accordance to the standards of danger to the society and usual composition of material notion of related criminal offences.
The new legal solution, however, leaves out the intent which always assumed direct willful and intellectual stance towards the prohibited consequence and which is more difficult to prove. In that manner the specific differentiation between this criminal offence and some other comparable criminal offences from Chapter XXII of the Criminal Code is introduced, where intent is the element of the criminal offence (for example, tax evasion).
The novelty in the provision of the legal consequences is proscribing the dismissal from public office the public official who is convicted to term of imprisonment for the criminal offence of failure to report property and income.

Misdemeanors

Unlike the existing Law, on the grounds of nomotechnical nature, provisions prescribing offences bear the title “Misdemeanors," considering that provisions prescribing criminal offence are entitled "Criminal Offence".

The new Law eliminates the existing legal gap in terms of sanctions of breach of important legal provisions.

For all the misdemeanors prescribed, the same misdemeanor sanction has been provided for – fine, while for the misdemeanors referred to in Article 102, paragraph 1 of the new Law, the possibility of imposition of protective measure of prohibiting the responsible person from performing specific activities has been proscribed.

The proposed fine range (minimum and maximum) is proportionate to misdemeanor seriousness.

Based on the analogous application of Article 29 of the UN Convention against Corruption, the longer period of statute of limitations is provided for prescribed misdemeanors.

XIII TRANSITIONAL PROVISIONS

Transitional provisions, in accordance with the Uniform Methodological Rules for the Drafting of Regulations, establish relation between regulations which cease to be valid and new regulation, regarding their effect on the cases, situations and relations which arose during the period of validity of earlier regulations.

Transitional provisions are particularly important bearing in mind that the Law on the Anti-Corruption Agency represents the set of substantive and procedural rules, which makes the transition from the former to the new legal regime more complex. Therefore, the transitional provisions are extensive and complex in the extent necessary to cover all the issues influencing the smooth transition from legal regime that was established by earlier regulation on the legal regime that is being established by new regulation.

Transitional provisions primarily govern which regulation will regulate termination of procedures initiated under the provisions of the earlier regulation and which have not been concluded before the entry into force of the new regulation.

Also, transitional provisions leave to officials who have acquired certain rights based on the previous regulation, reasonable amount of time during which they are required to harmonize their situation to the new approach. This requires, on the one hand, the principle of legal certainty and, on the other hand, the principle of legal equality, for all officials must posses equal legal position, as well as general interest and social importance of the goals which are to be achieved by new regulation.

Transitional provisions also prescribe time frames for the adoption of general by-laws.

XIV FINAL PROVISIONS

Final provisions lay down the date of the entry into force of new regulation and the date when the earlier regulation will be repealed, and determines that the new Law enters into force on the eight day following its publication in the Official Gazette of the Republic

of Serbia (which is according to Article 196, paragraph 4 of the Constitution), where the application of provisions of the new law which set out the composition of the Board of the Agency, is delayed until termination of office of Board Members who are elected under the provisions of earlier Law.

FINANCIAL RESOURCES NEEDED FOR LAW ENFORCEMENT

It is necessary to provide additional funding in the budget of the Republic of Serbia for the enforcement of the new Law in respect of duties specified in provisions governing the salaries of Director and Deputy Director of the Agency, and of Secretariat civil servants of the Agency.