

UNOFFICIAL TRANSLATION

GUIDE FOR PUBLIC OFFICIALS

INTRODUCTION

The use of power and public resources in accordance with the general interest and ethical principles significantly affects citizens' trust in the responsible and transparent work of public office holders and the institutions they represent.

As the mechanisms for preventing corruption include providing advice and assistance to public officials, in order to raise awareness of the importance of their consistent implementation, the Agency for Prevention of Corruption has prepared an amended edition of the Guide for Public Officials, in line with the Law on Amendments and Supplements to the Law on Prevention of Corruption, which entered into force on 5 October 2021.

The purpose of this Guide is to enable public officials to better understand the concept of the new Law on Prevention of Corruption and to facilitate their fulfilment of legal obligations, both in the essential and technical sense of the word.

Although extremely important, compliance with obligations prescribed by the Law should not be an end in itself; instead, it should serve to show that public officials – by setting a personal example and acting in accordance with regulations – are contributing to establishing and nurturing a culture of integrity, which is based on much more than the mere absence of corruption.

Consistent application of anti-corruption mechanisms, which are presented in the Guide, is the best indicator of the responsibility of public officials towards those to whom they are obliged to account for their work, i.e. the citizens of the Republic of Serbia. Acting in line with the public interest is an inseparable part of accountability.

We hope that the Guide, which is primarily of an informative nature, will be useful to holders of public office, and that it will contribute to their working openly, responsibly and in line with the principle of the rule of law.

The Agency for the Prevention of Corruption is always available for any additional guidelines and information, both to those for whom the Guide is intended, and to the general and professional public.

DIRECTOR

Dragan Sikimić

BRIEF HISTORY OF THE AGENCY FOR THE PREVENTION OF CORRUPTION

The Anti-Corruption Agency was originally established by the Law on Anti-Corruption Agency (“Official Gazette of the Republic of Serbia” nos. 97/08, 53/10, 66/11 – decision of the Constitutional Court, 67/13 - decision of the Constitutional Court, 112/13 - authentic interpretation, and 8/15 – decision of the Constitutional Court), which was in force from 1 January 2010 to 31 August 2020. Pursuant to the Law on the Prevention of Corruption (“Official Gazette of the Republic of Serbia” nos. 35/19, 88/19, 11/21 - authentic interpretation, and 94/21), which came into force on 1 September 2020, the agency that was charged with fighting corruption continued to operate as the Agency for the Prevention of Corruption (hereinafter: the Agency).

The Agency is an independent state authority that is accountable to the National Assembly of the Republic of Serbia for its work. The bodies of the Agency are the Director and the Council of the Agency.

(Article 3, paragraph 1 and Article 8 of the Law on Prevention of Corruption)

The Agency: supervises the implementation of strategic documents, submits to the National Assembly a report on their implementation along with recommendations to be acted upon, provides responsible entities with recommendations on how to eliminate shortcomings in the implementation of strategic documents and initiates amendments and supplements to strategic documents; adopts general enactments; institutes and conducts proceedings to determine the existence of violations of this Law and pronounces measures in accordance therewith; decides on the existence of conflict of interest; performs tasks in accordance with the law governing the financing of political activities and/or the law governing lobbying; files criminal charges, requests for initiating misdemeanour proceedings and initiatives for initiating disciplinary proceedings; maintains and publishes the Register of the Public Officials and the Register of Assets and Income of Public Officials in accordance with this Law; verifies assets and income reports submitted by public officials; maintains and verifies data from records specified in this Law; acts upon complaints submitted by natural and legal persons; provides opinions about the application of this Law, on its own initiative or at the request of natural or legal persons, and takes positions of importance for the application of this Law; initiates adoption or amendment of regulations, provides opinions on the assessment of the risk of corruption in draft laws in the fields that are particularly susceptible to the risk of corruption and opinions on draft laws governing issues covered by ratified international agreements in the field of preventing and combating corruption; investigates the state of corruption, analyses risks of corruption and prepares reports with recommendations to eliminate risks; supervises the adoption and implementation of integrity plans; adopts the Training Programme and instructions in the field of prevention of corruption and monitors the implementation of training in public

authorities; performs tasks related to international cooperation in the field of prevention of corruption; and performs other tasks set forth by law.

(Article 6 of the Law on Prevention of Corruption)

OBLIGATIONS OF A PUBLIC OFFICIAL AFTER S/HE ASSUMES PUBLIC OFFICE

1. Once s/he assumes public office and while discharging public office, a public official has obligations regarding the declaration of his/her assets and income, and gifts received in connection with the discharge of public office. These obligations will be discussed in greater detail in this Guide.

2. Obligations and prohibitions related to a public official in connection with the performance of other work or business activities are the following:

- A public official who performs other work or business activity at the time of assuming public office shall notify the Agency thereof within 15 days from the day of assuming public office.

- A public official may not perform other work or business activity which requires full-time or permanent engagement while discharging a public office, except with the consent of the Agency;

- A public official may not advise legal and natural persons on issues related to the public office s/he holds, unless obliged to do so;

- A public official whose public office requires the establishment of an employment relationship in a public authority, full-time work or permanent work, may not, while discharging public office, establish a company and/or public service or start performing an independent business activity in the sense of the law governing entrepreneurship, may not be a representative or a member of the body of a privately owned legal entity, and may not exercise management rights;

- A public official may not be a member of the body of an association, or its representative, if a relationship of dependence or other relationship that jeopardises or could jeopardise his/her impartiality or the reputation of public office exists between the public office and membership in the body of the association, or representation of the association, or if another law or regulation prohibits a public official from being a member of the body of a specific association;

- A public official may not use public resources for the promotion of political parties, i.e. political entities, nor may s/he use public gatherings at which s/he participates and meetings s/he holds in the capacity of a public official for the promotion of political parties, i.e. political entities;

- A public official who possesses or acquires a stake or shares in a company exceeding 3% is obliged to transfer, within 30 days from the day of election, appointment or nomination, i.e. from the day of acquisition of a stake or shares, his/her management rights in the company to a legal or natural person, so that said person can perform them in his/her own name, yet for the account of the public official, until the termination of the public official's office.
(Articles 45-54 of the Law on Prevention of Corruption)

3. A public official who has been elected, appointed or nominated for another public office is obliged to seek the consent of the Agency regarding said office within 8 days of the day s/he was elected, appointed or nominated.
(Article 56 of the Law on Prevention of Corruption)

More about the obligations listed under items 2 and 3 can be found in the Handbook for Recognising and Managing Conflict of Interest Situations and Incompatibility of Offices.

PUBLIC OFFICIAL'S OBLIGATIONS FOLLOWING THE TERMINATION OF PUBLIC OFFICE

1. A public official is obliged to submit a report [declaration] on property and income after the termination of public office, as well as two years after the termination of public office, provided that his/her property and income have changed significantly compared to the previous year.
(Article 68, paragraph 3 and Article 69, paragraph 3 of the Law on Prevention of Corruption)

2. Without the consent of the Agency, a person whose public office has ceased may not establish, for two years after the termination of public office, an employment relationship, i.e. business cooperation with a legal entity, entrepreneur or international organisation that has a business relationship with a public authority in which the public official was discharging public office.
(Article 55 of the Law on Prevention of Corruption)

More about this obligation can be found in the Handbook for Recognising and Managing Conflict of Interest Situations and Incompatibility of Offices.

REGISTER OF PUBLIC OFFICIALS

The Agency maintains the Register of Public Officials, which it publishes on its website in accordance with the Law on Prevention of Corruption.

The Agency maintains the above Register based on the notification of the assumption of public office, i.e. the termination of public office submitted by the public authority which has elected, appointed or nominated the public official.

In the event that a public official is elected directly by the citizens, the Agency shall be notified thereof by the authority to which the public official was elected.

(Article 67 of the Law on Prevention of Corruption)

TIME LIMIT FOR SUBMISSION OF NOTIFICATION: 15 DAYS from the day of assumption of public office, i.e. termination of public office.

REGISTER OF ASSETS AND INCOME OF PUBLIC OFFICIALS

The Agency maintains the Register of Assets and Income of Public Officials based on assets and income declarations [reports] submitted by public officials. It publishes the Register on its website in accordance with the Law on Prevention of Corruption.

(Article 72, paragraph 1 and Article 73, paragraph 1 of the Law on Prevention of Corruption)

Regular Declaration of Assets

A public official is obliged to submit to the Agency a declaration of his/her assets and income (hereinafter: the Report), the assets and income of his/her spouse or extramarital partner, as well as those of minor children if they live in the same family household, as at the day of the election, appointment or nomination.

A person whose public office was terminated has an obligation to do the same, as at the day of the termination of the public office.

Exceptionally, a public official who is re-elected, re-appointed or re-nominated immediately upon the termination of his/her public office, shall not re-submit the Report if there have been no changes in the data in relation to the previous Report, but is obliged to inform the Agency thereof, in writing, within 30 days from the day of re-election, re-appointment or re-nomination.

The Report may contain an electronic signature, in accordance with the law governing electronic documents, electronic identification and confidential services in electronic business activity.

(Article 68 of the Law on Prevention of Corruption and Article 5, paragraph 3 of the Rulebook on the Register of Public Officials and the Register of Assets and Income of Public Officials)

TIME LIMIT FOR REGULAR DECLARATION OF ASSETS AND INCOME: 30 DAYS from the day of election, appointment or nomination for public office, or re-election, re-appointment or re-nomination for public office, i.e. termination of public office.

Extraordinary Declaration of Assets

If the assets or income of a public official have changed significantly in the course of the previous year, the public official shall submit a Report to the Agency as at 31 December of the preceding year.

A significant change exists when there has been an increase or decrease in the assets or income which, in relation to the preceding Report, exceed the average annual salary in the Republic of Serbia without taxes and contributions, or when there is a change to the structure of said assets.

A person whose public office has been terminated shall submit, two years after the termination of the public office, a Report as at 31 December of the preceding year, provided that the assets and income have significantly changed in comparison with the preceding year.

(Article 69 of the Law on Prevention of Corruption)

Pursuant to the provisions of Article 92 of the Law on Personal Income Tax (“Official Gazette of the Republic of Serbia” nos. 24/01, 80/02, 80/02 - other law, 135/04, 62/06, 65/06 - corrigenda, 31/09, 44/09, 18/10, 50/11, 91/11 - decision of the Constitutional Court, 93/12, 114/12 - decision of the Constitutional Court, 47/13, 48/13 - corrigenda, 108/13, 57/14, 68/14 - other law, 112/15, 113/17, 95/18, 86/19, 153/20 and 44/21), said tax return is to be submitted containing accurate data after the end of the current year, no later than by May 15 the following year.

TIME LIMIT FOR EXTRAORDINARY REPORTING OF ASSETS AND INCOME: No later than by the expiry of the time limit for submitting the annual tax return for determining personal income tax, i.e. by 15 May of the current year, as at 31 December of the previous year.

Who Is Relieved of the Obligation Relating to the Regular and Extraordinary Declaration of Assets

Regular and extraordinary reporting of assets and income does not apply to councillors, members of municipal and city councils, members of municipal and city election commissions and members of bodies of public enterprises, companies, institutions and other organisations whose founder or member is a municipality, city, or a city municipality, or to members of bodies of public enterprises, companies, institutions and other organisations whose founder or member is the Republic of Serbia or the autonomous province, unless the law, other regulation or enactment provides that the public official has the right to compensation based on membership.

The Agency is allowed to request a Report also from public officials listed above, with the time limit set by the Agency.

(Article 70 of the Law on Prevention of Corruption)

Verification of Asset and Income Declarations

The Agency shall verify the accuracy and completeness of the data provided in the Report, as well as the timeliness of submission of the Report, according to the annual verification plan adopted by the Director.

The annual verification plan shall be adopted on the basis of a preceding analysis conducted by the Agency, taking into account in particular the category of public officials, the amount of their income, and the amount of Budget funds at the disposal of the public authorities in which public officials discharge a public office.

The Agency shall conduct extraordinary verification of the accuracy and completeness of the data from the Report if it suspects that a Report does not present accurate and complete data.

In the process of verifying the financial status, the Agency shall assess whether there is a discrepancy between the data contained in the Report and the actual situation, or a discrepancy between the increased value of the assets and the reported income.

(Article 75 of the Law on Prevention of Corruption)

CATALOGUE OF GIFTS

The Agency publishes on its website a Catalogue of Gifts consisting of protocol and occasional gifts received by public officials, as well as members of their families, in accordance with the Law on Prevention of Corruption.

A protocol gift is a gift that is received by a public official or his/her family member from a representative of a foreign state, international organisation or foreign natural or legal person during an official visit or on another similar occasion.

An occasional gift is a gift that is received on occasions when gifts are traditionally exchanged.

With the exception of protocol and occasional gifts, the Law on Prevention of Corruption prohibits a public official and his/her family members from receiving gifts in connection with the discharge of public office.

Received occasional and protocol gifts shall become public property, in accordance with the law governing public property.

Exceptionally, a public official and his/her family member shall be entitled to retain a protocol or occasional gift whose value does not exceed 10% of the average monthly salary in the Republic of Serbia without taxes and contributions; the total value of gifts retained in the course of one calendar year may not exceed the amount of one average monthly salary in the Republic of Serbia without taxes and contributions.

Gifts retained by family members shall be included in the total value of the gifts the public official has retained in the course of one calendar year.

(Articles 58, 59 and 60 of the Law on Prevention of Corruption)

Obligations of Public Officials in Connection with Received Gifts

A public official shall notify the public authority in which s/he discharges public office, in writing and using the prescribed form, of any gifts s/he has received in connection with the discharge of public office and any gifts that were received by members of his/her family.

The notification of the received gift the public official is obliged to submit to the public authority in which s/he is discharging public office can be found on the website of the Agency for the Prevention of Corruption, at: <http://www.acas.rs/obrasci-registar/uputstva-i-obrasci/>, and is to be submitted to printed form.

(Article 62 of the Law on Prevention of Corruption and Article 3 of the Rulebook on Gifts to Public Officials)

TIME LIMIT FOR SUBMISSION OF THE NOTICE OF RECEIVED GIFT: 10 DAYS from the day of receipt of the gift, i.e. from the day of return to the country.

If the gift is to become public property, the public official is obliged to hand it over to the public authority in which s/he discharges public office.

The public authority shall hand over the gift to the authority charged with dealing with items that constitute public property.

(Article 59, paragraph 4 of the Law on Prevention of Corruption)

TIME LIMIT FOR SUBMISSION OF GIFTS TO THE PUBLIC AUTHORITY: 8 DAYS from the day of receipt of the occasional or protocol gift, i.e. from the day of the return to the country.

Obligations of Public Authorities in Connection with Notifications of Received Gifts

Based on the submitted notifications on received gifts, the public authority shall maintain a record of gifts received by public officials and members of their families, a copy of which it shall submit to the Agency.

(Article 63 of the Law on Prevention of Corruption and Article 4 of the Rulebook on Gifts of Public Officials)

TIME LIMIT FOR SUBMISSION OF THE COPY OF THE RECORD OF GIFTS: 1 MARCH of the current year, for the previous calendar year.

Based on the submitted copies of the record, the Agency shall publish the Gift Catalogue by June 1 of the current year, for the previous calendar year.

(Article 66 of the Law on Prevention of Corruption)

INFORMING THE AGENCY ABOUT PARTICIPATION IN A PUBLIC PROCUREMENT, PRIVATISATION OR OTHER PROCEDURE RESULTING IN THE CONCLUSION OF A CONTRACT WITH A PUBLIC AUTHORITY

The legal person in which a public official or his/her family member possesses a stake or shares during the public official's discharge of public office and two years after its termination, and such a legal person participates in a public procurement, privatisation or other procedure resulting in concluding a contract with a public authority, another Budget user or another legal person in which the Republic of Serbia, the autonomous province, a local self-government unit or a city municipality has a stake or shares, is obliged to inform the Agency thereof.

TIME LIMIT FOR THE SUBMISSION OF NOTIFICATION: 15 DAYS from the day of completion of the procedure.

Based on the submitted notifications on the public procurement, privatisation or other procedure, the Agency shall maintain the Register of Legal Persons and publish it on its website in accordance with the Law on Prevention of Corruption.

(Article 53 of the Law on Prevention of Corruption)

SANCTIONS FOR VIOLATING THE LAW ON PREVENTION OF CORRUPTION

1. Administrative Sanctions

For an established violation of the provisions of the Law on Prevention of Corruption, the Agency may issue to a public official the measure of reprimand or the measure of public announcement of recommendation for dismissal.

A public official who was elected directly by citizens, as well as a person whose public office has been terminated, may be issued the measure of reprimand or the measure of public announcement of the decision establishing that the public official has violated the above Law.

(Article 82, paragraphs 1 and 2 of the Law on Prevention of Corruption)

2. Criminal Report

The Agency shall file a criminal report against a public official for whom there are grounds for suspicion that s/he has committed the criminal act of ‘failure to report assets and income or provision of false information about assets and income’, which is punishable by a prison term of six months to five years.

A public official who has been sentenced to imprisonment for this criminal offence shall cease to hold public office, i.e. his/her employment shall be terminated and s/he shall be prohibited from acquiring a public office for a period of ten years from the day the judgment has become final.

(Articles 101 and 102 of the Law on Prevention of Corruption)

When in the course of the procedure the Agency finds that there are grounds for suspicion that another criminal offence prosecuted *ex officio* has also been committed, it shall notify the competent public prosecutor’s office of the violation of the Law.

(Article 86, paragraphs 1 and 2 of the Law on Prevention of Corruption)

3. Request for the Initiation of Misdemeanour Proceedings

The Agency shall submit a request for initiating misdemeanour proceedings against a public official and a responsible person in a public authority who has been found to have violated the provisions of the Law on Prevention of Corruption. In the misdemeanour procedure, a public official and a responsible person in a public authority may be fined in the amount of 100,000 to 150,000 dinars for a committed misdemeanour.

As regards misdemeanours prescribed by the above Law, the Agency and the perpetrator of the misdemeanour may conclude a plea-bargaining agreement.

(Articles 103-108 of the Law on Prevention of Corruption)

4. Initiative to Institute Disciplinary Proceedings

When in the course of the procedure the Agency finds that there has been a breach of duty stemming from employment, it shall report a violation of the Law and submit to the competent authority an initiative for instituting disciplinary proceedings. The competent authority is obliged to inform the Agency about the action it undertook, within 90 days of receiving the initiative for instituting disciplinary proceedings. The competent authority has the same obligation when the Agency submits a criminal report and a request to initiate misdemeanour proceedings.

(Article 86, paragraphs 1 and 2 of the Law on Prevention of Corruption)

HOW TO SUBMIT FORMS TO THE AGENCY

The forms for asset and income declarations [Reports], notices on the assumption and termination of public office, records of gifts, and notices on public procurement, privatisation or other procedures shall be submitted by accessing the system *via* a web link leading to the access page used for logging into the system. It is located on the website of the Agency for the Prevention of Corruption, in the field marked as: ELECTRONIC FORMS ASK <http://www.acas.rs/awf/>.

These forms are to be submitted within the legally prescribed period of time and using the prescribed form, electronically, in order to obtain a programme-generated code which confirms the electronic registration of said forms.

Upon receipt of the programme-generated code, the form is to be submitted in printed form, immediately, and no later than within eight days from the day of receipt of the programme-generated code.

The forms for asset and income declarations, notices on the assumption and termination of public office, records of gifts, and notices on public procurement, privatisation or other procedures that were not submitted using the prescribed form and in the prescribed manner shall be deemed not to have been submitted at all.

The details of the way the forms are to be submitted are described in the ELECTRONIC FORMS ASK Manual, which represents an integral part of this Guide.

FREQUENTLY ASKED QUESTIONS (AND ANSWERS)

1. Can the public authority in which a public official discharges a public office fill out and submit a notice of assumption or termination of public office instead of the body that has elected, appointed or nominated the public official?

- Informing the Agency within the legally prescribed time limit on the assumption of public office, i.e. termination of public office is the obligation of the public authority that has elected, appointed or nominated said public official. Exceptionally, if a public official was elected to a public office directly by the citizens, the obligation to inform the Agency lies with the public authority in which said public official discharges the public office.

2. In the event of re-election, re-appointment or re-nomination of a public official to the same public office, is the public authority obliged to submit to the Agency two notifications, one on re-election, re-appointment or re-nomination of a public official to a public office, and the other on the termination of public office?

- In this situation, when filling out the notification form on the assumption or termination of public office, it is necessary to check the field "Re-election". In this way, the procedure of notifying the Agency is simplified and the public authority submits only one notification to the Agency.

3. Is the public authority that maintains the record of gifts of public officials performing public office in said authority obliged to submit a copy of the record of gifts by March 1 of the current year even if public officials in said authority have not received any in the course of the previous year?

- If public officials in the authority have not received any gifts in the course of the previous year, the public authority that maintains a record of gifts of public officials performing public office in said authority are not obliged to submit to the Agency the gift record form, or any other sort of notification, within the legally prescribed time limit.

4. How does a public official who was immediately re-elected, re-appointed or re-nominated fulfil his/her statutory obligation related to the regular declaration of assets?

- A public official who was immediately re-elected, re-appointed or re-nominated to a public office upon termination of said public office, is not obliged to re-submit the Report if there has been no change in relation to the data that were submitted in the previous Report, but s/he is obliged to inform the Agency thereof, in writing, within 30 days of the date of re-election, re-appointment or re-nomination.

If there have been changes in relation to the previous Report, s/he must submit a Report.

5. Is it deemed that a public official correctly completed the procedure of submitting the Report if, once s/he completed the electronic filling out of the Report, s/he selected the field "Submit" and received a program-generated code, i.e. bar code?

- In order for a public official to properly submit the Report, after receiving the programme-generated code s/he must print the Report, sign it and submit it in person or by registered mail. The Report may contain the electronic signature of a public official, in which case it is not necessary to submit it in printed form.

6. When a public official is submitting an extraordinary report on assets and income due to significant changes therein, is s/he obliged to provide all the data in the Report?

- When submitting an extraordinary declaration of assets and income, the public official is obliged to fill out the entire Report.

If the public official previously, within the account, had electronically filled out and submitted the Report and received a programme-generated code, s/he does not have to fill out a new Report, because it is possible to copy data from the previously submitted Report and create a new Report containing the same data, by selecting the field "Copy". The submission procedure is identical to the original one.

The same procedure applies to the notification on the assumption and termination of public office, the record of gifts (submitted by the public authority) and the notification on public procurement, privatisation or other procedure (submitted by the legal person).

7. Should a public official report significant changes in assets and income regardless of whether there has been an increase or decrease in the reported assets or income?

- A public official is obliged to submit an extraordinary declaration of assets and income when there have been significant changes, regardless of whether they involved an increase or decrease in assets and income, as well as if there has been a change in the structure of assets.

8. Is a public official obliged to submit the Report if there have been no significant changes in relation to the data contained in the previous Report?

- A public official is not obliged to inform the Agency that there have been no significant changes in relation to the data contained in the previously submitted Report.

9. A public official has no 'other bank accounts'. In such a situation, how should s/he fill out the Report?

- When filling out the Report electronically, a public official who does not have other bank accounts must check the field: "I declare that I do not have any other bank accounts", in the section: "Deposits, debts and receivables".