

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY
POLAND**

ARTICLE 7, PARAGRAPH 4 UNCAC

CONFLICT OF INTEREST

POLAND (NINTH MEETING)

MEMORANDUM

**On prevention of conflict of interest
and procedures applied in the event of their disclosure**

Conflict of interest can be described as a situation of corrupt nature that entails reciprocal permeation of private and official interests. To prevent this situation from happening, all official actions undertaken by public servants in their work should be carried out by adhering to specific rules, which are laid out in the “Guidebook for Government Administration Employees,” fragments of which are quoted extensively herein. The Guidebook was published on the Central Anti-Corruption Bureau’s educational portal: <http://antykorupcja.gov.pl> on 17.12.2015 to implement the 2014-2019 Government Anti-Corruption Programme.

“...”Employment in government administration is associated with a number of constraints in respect of activity carried out after work. Some of these constraints are common to all employees, others apply to certain categories only. The rules and restrictions can vary depending on the professional group to which the employee belongs.

We can distinguish two basic categories that exist in government administration:

- members of the civil service, i.e. civil servants and civil service employees,
- employees who are not part of the civil service such as: persons who hold managerial positions in public administration, political cabinet employees, support staff employees.

Additional constraints apply to persons who hold positions to which the provisions of the *Act on the Limitation of Conducting Economic Activity by Persons Performing Public Functions* apply. This group of persons can include both civil servants and non-civil service employees. In addition, representatives of other professional groups (e.g. members of the Foreign Service, customs officers, army servicemen and women, uniform service officers

seconded to the civil service, seconded judges, etc.) hold positions in some ministries. Additional or separate regulations arising from legislative provisions that specify the way in which a professional group functions can apply to such persons. These are not discussed in this memorandum.

REGULATIONS APPLICABLE TO ALL EMPLOYEES

Provisions of the Labour Code and workplace regulations apply to all employees of any government office. The Labour Code defines the duties of employees which include:

- to perform his/her work conscientiously (Art. 100(1) of the Labour Code)
- to observe the working hours established in the employing establishment (Art. 100(2)(1) of the Labour Code),
- to observe the workplace regulations (Art. 100(2)(2) of the Labour Code),
- to care for the interests of the employing establishment (Art. 100(2)(4) of the Labour Code).

The workplace regulations vary depending on the government office. They usually contain provisions on work discipline which specify the following duties of employees:

- to observe and effectively use the established working hours,
- not to perform activities which would conflict with official duties or duties arising from the Civil Service Act,
- not to perform activities that would undermine trust in a government office or which could give rise to a suspicion of bias or desire to gain personal or material profit.

This specifically means:

- prohibition to carry out non-official tasks during working hours,
- prohibition to undertake additional gainful and non-gainful activities, which could lead to a real or presumed conflict of interest,
- prohibition to undertake additional gainful and non-gainful activities, which could negatively affect the performance of official duties or undermine the interests of the employing establishment.

Non-compliance with workplace regulations may give rise to official or disciplinary liability. Moreover, additional constraints on undertaking non-official activities may be set out in other in-house regulations. Let us note that the time of paid or unpaid leave is time free of work. Nonetheless it should be remembered that during both paid and unpaid leave, an employee is connected to his/her government office by an employment contract and that some constraints arising from workplace regulations continue to apply to the employee. This also

applies to the status of a civil servant – this status and the constraints it brings also apply during paid or unpaid leave.

REGULATIONS APPLICABLE TO CIVIL SERVANTS.

a) gainful activities

The regulations vary depending on which two subcategories an employee belongs to, namely whether the employee is:

– a civil servant or a civil service employee who holds a senior position in the civil service, that is the position of:

- director general of Office,
- director or deputy director of an organisational unit in Office¹
- voivodeship veterinary officer and his/her deputy,
- director of tax administration chamber, director of the National Tax Information Office and their deputies,
- head of tax office;

– or a civil service employee who does not hold a senior position.

Civil servants and civil service employees who hold senior positions in the civil service may not undertake additional employment or gainful activity without the Office's director general's written permission (Art. 80(1), (2), (3) of the Civil Service Act).

This requires obtaining written permission of the director general, specifically to:

- be employed by another employer based on an employment contract, as well as on the basis of appointment, election, nomination or a cooperative employment contract,
- to enter into a mandate contract, a contract for a specific work, a contract to perform services or a contract of a similar nature,
- to carry out commercial activity,²

¹ This applies to:

- directors of departments or equivalent units in the Chancellery of the Chairman of the Council of Ministers (the Prime Minister), Minister Offices, offices serving the chairpersons of Committees which form part of the Council of Ministers, offices of central agencies of Government administration, and their deputies;
 - heads of sections or equivalent units in the Voivodeship Offices, and their deputies;
 - heads of organisational units in the Bureau of Forest Seed Production, and their deputies;
- (Art. 52 of the Civil Service Act).

² Provided it is not prohibited by the Act on the Limitation of Conducting Economic Activity by Persons Performing Public Functions.

– to sit on management boards, boards, committees, commissions and other bodies if this entails receiving remuneration, per diems, etc.³

Gainful activities do not include receiving income from property rights (bank interest, stock exchange income, royalties from copyright, rent for renting apartments), awarded damages, employee and welfare benefits, etc. Other civil service employees (who do not hold senior positions in the civil service) may not undertake additional employment without written permission of the director general of Office⁴. This means that they have to obtain the director general's written permission to be employed by another employer pursuant to an employment contract, and to be employed based on appointment, election, nomination or a cooperative employment contract. Note should also be taken of the Prime Minister's Guidelines on Observance of Civil Service Rules and Rules of Civil Service Ethics applicable to gainful activities⁵. It should be underscored that these rules also apply when the director general of Office's permission is not needed to engage in gainful activities. Here more freedom means more responsibility. And so, in adhering to the rule of disinterestedness, civil servants specifically:

- will not accept any form of payment for public addresses, if such addresses are related to the position they hold,
- will give up additional employment or gainful activity, if by continuing such additional employment or gainful activity civil servants could negatively affect cases handled as part of their official duties,
- will not conduct training sessions, if by so doing they could negatively affect the impartiality of handled cases⁶.

The rule of impartiality is manifested specifically in: avoiding suspicions about a conflict existing between public and private interests; not undertaking any work or activities that conflict with official duties⁷.

The rule of impartiality is manifested specifically in:

- avoiding any suspicions about a conflict of interest existing between public and private interests, not undertaking any work or activities that conflict with official duties⁸.

³ Cf. footnote 2.

⁴ Art. 80(1) of the Civil Service Act.

⁵ Order No. 70 of the Chairman of the Council of Ministers (Prime Minister) of 6 October 2011 providing Guidelines on the Observance of Civil Service Rules and Rules of Civil Service Ethics (Monitor Polski of 21 October 2011).

⁶ Section 4(2), (3) and (4) of Order No. 70 of the Chairman of the Council of Ministers referred to in footnote 5.

⁷ Section 18 (1) and (2) of Order No. 70 of the Chairman of the Council of Ministers referred to in footnote 5.

⁸ Art. 2(18)(1) and (2) of Order No. 70 of the Chairman of the Council of Ministers referred to in footnote 10.

b) non-gainful activities and conduct outside service.

All civil servants are bound by the rules set out in the Civil Service Act and in the Order of the Chairman of the Council of Ministers on Guidelines on the Observance of Civil Service Rules and Rules of Civil Service Ethics⁹.

The Civil Service Act introduces:

- the obligation to behave in a dignified manner in and outside the Service¹⁰,
- the prohibition to manifest one's political views¹¹,
- the ban on combining employment in the civil service with a councillor's mandate¹².

Moreover, civil servants and employees holding senior positions in the civil service are not allowed to join political parties or participate in their activities¹³.

In addition, persons holding senior positions in the civil service are not allowed to perform functions in trade unions.¹⁴

Additional rules of conduct are introduced by the **Guidelines on the Observance of Civil Service Rules and Rules of Civil Service Ethics**.

And so, in adhering to the rule of disinterestedness, a civil servant shall not accept any gain from persons involved in the cases such civil servant handles; shall not conduct any training sessions, if it could negatively affect the impartiality of the cases he handles¹⁵.

The rule to behave in a dignified manner specifically refers to a civil servant's duty to conduct himself properly also outside work and that he should avoid undesirable behaviour that could negatively affect the image of the State, the Civil Service and the Office¹⁶.

The rule of public service specifically refers to a civil servant co-creating the image of the civil service and impacting the perception of the Republic of Poland at home and abroad¹⁷.

The rule of loyalty with respect to conduct outside the Service specifically refers to: loyalty to the Republic of Poland, loyalty to the Office, to one's superiors, colleagues and subordinates, refraining from publicly voicing one's views about the work of the Office and

⁹ Order No. 70 of the Chairman of the Council of Ministers referred to in footnote 5.

¹⁰ Art. 76(1)(7) of the Civil Service Act.

¹¹ Art. 78(2) of the Civil Service Act.

¹² Art. 78(4) of the Civil Service Act.

¹³ Art. 78(5) and (7) of the Civil Service Act.

¹⁴ Art. 78(6) of the Civil Service Act.

¹⁵ Section 4(1) and (4) of Order No. 70 of the Chairman of the Council of Ministers referred to in footnote 5.

¹⁶ Section 14(3) of Order No. 70 of Chairman of the Council of Ministers referred to in **footnote 10**.

¹⁷ Section 15(3) of Order No. 70 of the Chairman of the Council of Ministers referred to in footnote 5.

other offices, especially when such views could undermine the citizens' trust in such institutions¹⁸.

The rule of political neutrality, accounting for the fact that political parties in a democratic state are provided for in the Constitution of the Republic of Poland and accepted by the citizens as their representatives and the fact that civil servants may exercise guaranteed human and civil freedoms and rights, including the right to participate in public life, specifically refers to:

- not manifesting their political views and sympathies in public, specifically refraining from engaging in any political campaigning in and outside the Service;
- distancing themselves from any political influence and pressure that could lead to biased activities;
- not engaging in any public activities that directly support political activities;
- not creating suspicions about favouring political parties and observing the applicable constraints;
- caring for clarity and transparency of relations with persons who exercise political functions, taking into account the fact that these relations should not undermine trust in the political neutrality of a civil servant¹⁹.

The rule of impartiality in relation to behaviour outside the Service is manifested specifically in:

- not allowing any suspicions to arise about a conflict existing between public and private interests,
- not undertaking any work or activities that conflict with official duties,
- not demonstrating any intimacy with public figures known for their activity, specifically political, economic, social or religious activity, and not promoting any interest groups²⁰.

REGULATIONS APPLICABLE TO EMPLOYEES WHO ARE NOT IN THE CIVIL SERVICE.

a) gainful activity,

¹⁸ Section 16(1), (3) and (5) of Order No. 70 of the Chairman of the Council of Ministers referred to in footnote 5.

¹⁹ Section 17 of Order No. 70 of the Chairman of the Council of Ministers referred to in footnote 5.

²⁰ Section 18(1), (2) and (4) of Order No. 70 of the Chairman of the Council of Ministers referred to in footnote 5.

Persons who hold managerial positions in government administration and want to undertake additional employment have to act in compliance with the provisions of the Act on Remuneration of Persons Holding Managerial Positions in Government Administration, which limits the possibilities of additional employment by imposing the following rules:

- persons holding managerial positions in government administration may be awarded a lump-sum remuneration for permanent additional work as an academic teacher in a higher education institution or as a research worker in a research or a research and development institute, provided they hold the academic title of professor, the title of professor of art, the academic degree of habilitated doctor or the degree of habilitated doctor of art;
- persons holding managerial positions in government administration who also exercise another function are entitled to one, chosen by them, remuneration provided for in this Act or in separate regulations²¹.

Moreover, constraints set out in the Act on the Limitation of Conducting Economic Activity by Persons Performing Public Functions, which are discussed in the next chapter, apply to all persons who hold managerial positions in government administration.

Other employees who are not in the Civil Service (e.g. employees working in political cabinets or support staff employees) are not formally constrained or required to obtain permission to undertake additional employment or additional gainful activity, but there may exist constraints that are discussed below.

It is recommended to consult these matters with one's superior in order to limit the risk of a conflict of interest caused by additional gainful activity or that official duties will be performed less effectively. Greater freedom means here greater responsibility.

b) Non-gainful activities and conduct outside work.

There are no laws setting out formal requirements in this regard. In the interest of the Office, the following additional rules are recommended to be adhered to: disinterestedness, behaving in a dignified manner, public service, loyalty and impartiality that arise from the Guidelines on the Observance of Civil Service Rules and Rules of Civil Service Ethics, as described above.

ADDITIONAL REGULATIONS THAT APPLY TO EMPLOYEES WHO HOLD POSITIONS TO WHICH THE ACT ON THE LIMITATION OF CONDUCTING

²¹ Art. 4 of the Act on Remuneration of Persons Holding Managerial Positions in Government Administration of 31 July 1981.

ECONOMIC ACTIVITY BY PERSONS PERFORMING PUBLIC FUNCTIONS
APPLIES

These regulations apply to persons who hold the following positions:

- 1) managerial positions in government administration (e.g. minister, secretary of state and undersecretary of state, head of a central office, voivode and deputy voivode)²²;
- 2) director general of Office, director of department (an equivalent entity) and his deputy and head of section (an equivalent entity) – in supreme and central offices of government administration,
- 3) director general of voivodeship office, director of section (an equivalent entity), his deputy and the chief accountant – in territorial offices of general government administration,
- 4) head of office and his deputy – in territorial offices of special government administration;
- 5) employees of government offices, including civil servants who hold equivalent positions in terms of pay with the positions listed above,
- 6) all civil servants employed in an office that supports the minister competent for public finances²³.

These persons are not allowed, even with permission from the director general or the head of Office, to:

- 1) be members of management boards, supervisory boards or auditing committees of companies;
- 2) be employed or to engage in other activities in companies which would give rise to suspicion that they might be biased or self-seeking;
- 3) be members of management boards, supervisory boards or auditing committees of cooperatives, except for supervisory boards of housing cooperatives;
- 4) be members of management boards of foundations which carry out commercial activities;
- 5) hold more than 10% of shares in companies or shares that represent more than 10% of the share capital – in each of these companies;
- 6) carry out commercial activities as a self-employed person or together with other persons, and to run such operations or to be a representative or attorney-in-fact who runs such

²² Art. 1 of the Act on the Limitation of Conducting Economic Activity by Persons Performing Public Functions.

²³ Art. 2(1), (2) and (2a) of the Act on the Limitation of Conducting Economic Activity by Persons Performing Public Functions.

operations; the above does not apply to agricultural production of growing plants and animals on family farms²⁴.

Exception:

Such persons may hold a position in the governing bodies of companies (subsection 1), provided they were designated to take up such position by: the State Treasury, other state-owned legal persons, companies in which the State Treasury holds over 50% of the share capital or 50% of shares, territorial government entities, their associations or other legal persons of territorial government entities. One entity may not designate one person to more than two companies²⁵.

A person designated to a company governing body may receive separate remuneration on account of the function such person exercises in a company to which he/she was designated to represent the State Treasury. In the above-mentioned cases, it may be necessary to obtain permission from the director general of Office²⁶.

It should also be added that the bans referred to above also apply in the event a position specified in regulations is exercised without remuneration.

To inform and educate, the Central Anti-Corruption Bureau runs a special service on its website www.antykorupcja.gov.pl. Moreover, since 2010 Central Anti-Corruption Bureau officers, based on their own experiences in fighting and preventing corruption, have been conducting training sessions for government employees and employees of organisations that associate entrepreneurs²⁷. Training sessions were also organised during many workshops and conferences on preventing corruption. The Central Anti-Corruption Bureau supplemented their training sessions with guidebooks that they published for government employees and entrepreneurs. Discussions about the most frequent irregularities and mistakes committed during the implementation of public procurement are also an important element of training.

By contrast, the Central Anti-Corruption Bureau's **e-learning platform** is intended for training purposes only. The platform is accessible to all, free-of-charge, and contains anti-corruption training modules for all those who are interested in the subject matter of corruption in Poland, specifically government employees, entrepreneurs, university and secondary school students. It follows up on an e-learning platform project implemented in 2013-2015. Its current

²⁴ Art. 4 of the Act on the Limitation of Conducting Economic Activity by Persons Performing Public Functions.

²⁵ Art. 6(1) of the Act on the Limitation of Conducting Economic Activity by Persons Performing Public Functions.

²⁶ Art. 6(2) of the Act on the Limitation of Conducting Economic Activity by Persons Performing Public Functions.

²⁷ <http://antykorupcja.gov.pl/ak/instytucje-antykorupcy/wyspecjalizowane/w-polsce/1682,POLSKA-Centralne-Biuro-Antykorupcyjne.html>.

version includes the most up-to-date legislative and organisation measures implemented to fight corruption. Three separate training modules, including corruption in public administration and corruption in business, are available. The last module is dedicated to preventing corruption. It presents the government corruption prevention policy and issues relating to **whistleblowing**, the role of NGOs in fighting corruption and social research on the subject matter; it provides information on the impact of corruption on the economy, the society and politics. At the end of each module there is a knowledge test. People who successfully pass the test can generate a certificate of course completion for themselves.

Procedures applied to disclosure of conflict of interest when the law has not been broken may vary depending on the specific regulations applicable to institutions that employ civil servants, including employees who hold positions to which the Act on the Limitation of Conducting Economic Activity by Persons Performing Public Functions applies, employees who are not part of the Civil Service, and other employees who fall under the generally applicable Labour Code regulations, other laws for specific professional groups and other lower-ranking legislative acts, including ordinances issued by the relevant Ministers and in-house regulations, including workplace regulations. Oftentimes such acts represent disciplinary tort.

THE DRAFT LAW

The Government Legislation Centre published a draft law dated 23.10.2017 called the Act on Transparency in Public Life together with the grounds for legislating it²⁸. With respect to measures that would help persons holding public office avoid conflict of interest, the draft law on transparency in public life introduces a general provision requiring persons holding public office at the time they hold it and in situations set out in the draft law to avoid conflict of interest if they carry out tasks that could give rise to a suspicion that they are biased or that they act in the interest of an entity in which such persons do not perform a public function. The draft law also introduces constraints when undertaking and carrying out commercial activities by persons holding public office. The draft bill proposes to keep the existing applicable prohibitions set out in Art. 4 of the Act on the Limitation of Conducting Economic Activity by Persons Performing Public Functions of 21 August 1997, while also setting out in more detail what these are. The draft bill proposes that persons holding public office specified in Art. 40 of the draft law could not be members of a managing or supervisory body of a company, of a managing or supervisory body of a cooperative, of a managing body of an association or foundation which is able to carry out commercial activity. Such persons may not be employed in, or perform any paid activities for, a company. They also may not hold more than 10% of shares, or shares representing more than 10% of the share capital in each of such companies. A person holding public office may not be a self-employed person or a person who carries out commercial activity together with other persons in a partnership, nor can such person manage such activity or be its representative or attorney-in-fact. This prohibition does not apply to agricultural production of growing plants and animals on family farms. The term “commercial activity” is to be understood as the very possibility of carrying it out, jointly carrying it out, managing it, acting as its representative or attorney-in-fact or otherwise representing it. If persons to whom the above prohibition applies carried out or participated in the carrying out of commercial activity prior to being elected/appointed to their function/position, they will be required to cease or suspend such activities. In addition, persons who, in a state-owned bank, hold the position of: president, vice-president, member of the management board or treasurer and persons who, in a state-owned enterprise, hold the position of: director of enterprise, his/her deputy and the chief accountant, as part of their functions, they will be able to engage in commercial activity in the scope of managing such company. The same exception applies to persons who, in a related company exercises the functions of: president, vice-president or

²⁸ <https://legislacja.rcl.gov.pl/docs//2/12304351/12465401/12465402/dokument313365.pdf>.

member of the management board. The above persons will also be able to hold functions, for free, in a governing body of another company in relation to which this company is the controlling company. It will be up to the Commission for Resolving Conflicts of Interest appointed by the Prime Minister to clarify any possible doubts concerning combining different functions and whether a conflict of interest exists. The Commission will be vested with the power to consent to the exercise of functions which, if combined, may raise doubts whether a conflict of interest exists. On account of the fact that material profits for persons who hold public office may be deferred in time, the lawmaker has decided to introduce another important amendment whose aim is to step up corruption prevention protection in Poland. Ban for persons who hold public office to undertake work for an entrepreneur was extended to three years. Pursuant to this ban, persons who hold public office may not be employed, prior to the lapse of three years from the time they ceased to hold a position or exercise a function, if they took part in issuing decisions concerning such entrepreneur directly. This ban also applies to persons who hold public office and who took part in issuing decisions concerning such entrepreneur directly; took part in proceedings to award a public tender contract, issuing sentences, administrative decisions, entering into contracts for works, deliveries, services or other civil law contracts, or if such persons headed an entity or organisational unit in which such decision was made. The draft bill also introduces sanctions for violating the above-mentioned bans. The current penalty for violating the ban provided for under Article 7 of the Anti-Corruption Act is a penalty of detention or a penalty of a fine for the employer. The said draft law on transparency of public life introduces a cash fine for the entrepreneur who employs, in violation of the bans, persons who hold public office who took part in issuing decisions concerning that entrepreneur directly, amounting to from PLN 10,000 to PLN 500,000. In cases involving the administration of a penalty, it will be up to the head of the Central Anti-Corruption Bureau to decide. The lawmaker also proposed a penal sanction for a person who undertakes such employment or does some other paid tasks for the entrepreneur in violation of the bans and without the consent of the Commission for Resolving Conflicts of Interest, a penalty of a fine, a penalty of restriction of liberty or a penalty of deprivation of liberty of up to two years. Another novelty is also the proposal that in the event a person is sentenced for violating the ban to employ or to perform other paid tasks for the entrepreneur, the court will obligatorily rule the surplus to go to the State Treasury in the amount equal to the remuneration paid out to the sentenced person. Thanks to these provisions, the ban on combining functions referred to in this draft law on transparency of public life will become a reality.

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY POLAND

ARTICLE 7, PARAGRAPH 4 UNCAC

CONFLICT OF INTEREST

POLAND (THIRD MEETING)

The Ministry of Interior compiled the draft "Government Anti-Corruption Programme for 20122016". The document contains numerous tasks and activities aimed at preventing and combating corruption pertaining to the issues of public-private partnerships, public sector, conflicts of interest and asset declarations as well.

In the context of preventing conflicts of interest and submitting asset declarations, the preparation of the draft government bill on the preventing anti-corruption and conflicts of interest was the fundamental issue in the a/c document. That deed will stipulate the following issues:

- to submit and analyze asset declarations of public officials — provisions in the area of the preventive measures,
- to take the additional classes during and after the civil service — provisions steered on disclosing conflicts of interest.

One of the important acts of law referring to the prevention of potential conflicts of interests is the Act of law of 21 August 1997 on the limitation of doing business by persons holding public office — so called the Anti-Corruption Act (Journal of Laws 2006 No. 216, item. 1584 with later abandonments).

In order to identify potential conflicts of interest in consideration of their prevention, the Anti-Corruption Act includes in the article 4 some interdicts for persons elected to public office. They concern:

1. persons holding the highest public leadership positions, e.g. President, Marshal of the Sejm, Marshal of the Senat, Prime Minister, President of National Bank of Poland, provincial governor;
2. persons holding other leadership positions, e.g. directors of government as well as local public offices, members of self-government of communes, counties and

voivodeships.

Detailed list of persons within the scope of this Act of law can be found in the following articles: 1, 2 and 8.