

# THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY MONTENEGRO

## ARTICLE 7, PARAGRAPH 4 UNCAC

### CONFLICT OF INTEREST

#### MONTENEGRO (NINTH MEETING)

##### INFORMATION

##### on the implementation of Chapter II of the UN Convention against Corruption

(updates)

##### Introduction

The legislation concerning the prevention of conflict of interests and declarations of assets, income and interests of public officials in Montenegro was last amended in December 2014, when the **Law on Prevention of Corruption** (Official Gazette of Montenegro 52/14, hereinafter referred to as: the **LPC**, and bylaws for its enforcement) was adopted. **LPC entered into force on 1 January 2016**, putting out of force the earlier Law on Prevention of Conflict of Interest (Official Gazette of Montenegro, 1/09 and 41/11), and improving the legal framework in this area. The LPC contains provisions that prescribe the behaviour of a public official and his/her obligations, aimed at preventing conflicts of interest in the exercise of public functions, and compliance with the restrictions in the exercise of public functions. The LPC provides for collection and verification of reports on income and assets of public officials. Furthermore, it provides for prohibitions on receiving gifts, and supervision of received gifts, donations and sponsorships. In addition to enhanced legal solutions, the LPC has also brought institutional changes, i.e. it has established the **Agency for Prevention of Corruption** (hereinafter referred to as: the **APC**), as an autonomous and independent institution, established by the Parliament of Montenegro with approved budget for its operation and functioning which may not amount to less than 0.2% of the current state budget (Article 95 of the LPC), which ultimately provides for the institutional and financial/functional independence. One of the Agency's key competencies are the prevention of conflicts of interests, and collection and verification of reports on incomes and assets of public officials in Montenegro.

##### a) Preventing and managing the conflict of interest

##### Definition of public official and conflict of interest

The provisions of the LPC related to the prevention of conflict of interest and restrictions in the exercise of public functions apply on **public officials**, that, according to the article 3 of the Law, refer to the *persons elected, appointed or assigned to a post in a state authority, state administration body, judicial authority, local self-government body, local government body, independent body, regulatory body, public institution, public company or other business or legal person exercising public authority, i.e. activities of a public interest or state-owned, as well as the person whose election, appointment or assignment to a post is subject to consent by*

*an authority, regardless of the duration of the office and remuneration.* This provides for the **expanded definition of public officials** in comparison to previous legal solutions in this matter. The **LPC, Articles 7-15** regulates prevention of conflict of interest in the exercise of public functions as well as restrictions in the exercise of public function (e.g. restrictions in exercising managerial and other functions in companies, restrictions in exercising public functions in public companies and public institutions, transfer of management rights in companies, restrictions upon termination of public function, etc.)

As prescribed in the Article 7 of the Law:

*The conflict of interest in the exercise of public function shall be deemed to exist when a private interest of a public official affects or may affect the impartiality of the public official in the exercise of public function.*

*The Agency shall establish the existence of a conflict of interest and implement measures for the prevention of conflict of interest.*

*Opinions about the existence of a conflict of interest in the exercise of public function and restrictions in the exercise of public functions and the decisions on the violation of the provisions of the present Law relating to the prevention of conflicts of interest in the exercise of public functions, restrictions in the exercise of public functions, gifts, sponsorships and donations and reports on income and assets by public officials, which are given or adopted by the Agency in accordance with the present Law, shall be binding for a public official.*

#### Novelties in the Law

As regards **the novelties in the Law**, Article 8 specifies in more detail the obligation for public official to make a **statement of the existence of conflict of interest (ad hoc conflict of interest)**, as well as the obligation of the authorities to request the Opinion of the APC on the existence of conflict of interest, and prevent the execution of decisions rendered in conflict of interests, i.e. to nullify such decisions. For the purpose of securing legal certainty, the authority is obliged to put the decisions brought in conflict of interest out of force in accordance with the law and inform the Agency thereof. As regards **the performance of other public affairs (Article 9)**, the Law retained the provision whereby public official may be appointed or elected to a permanent or occasional working bodies established by an authority, and in that case not be considered to be performing two public functions. The new restriction prescribed in this case is that in one month a public official can obtain remuneration for membership in only one body or commission. The aim of such restriction is to end earlier practice wherein the membership of a public official in working bodies and commissions established by a government authority can be the basis for obtaining income in addition to the income of public official, which in the comparative practice is considered a part of regular duties and tasks of a public official. Another new provision (**Article 12**) stipulates that **public official cannot make any income or other remuneration** for supervisory bodies of a public enterprise, public institution or other legal person, as well as scientific, humanitarian, sporting and similar associations. As regards **the restriction on conclusion of service contracts (Article 14)**, it has been added that the authority in which public official performs the public function cannot conclude a contract with a business or other legal entity in which public official or person

related to public official has a private interest. As regards the **restriction after the termination of public function**, Article 15 prescribes an additional prohibition concerning establishing employment or business relationship with a legal person, an entrepreneur, or an international or other organization that acquires gain based on the decisions of the authority in which the public official has exercised function. As regards gifts, **the prohibition to receive gifts related to performing public functions** now also applies to married or common-law spouse and children of public official, if they live in the same household.

Article 15 of the LPC regulates **the restriction for public official upon the termination of public function** prescribing that:

*For a period of two years following the termination of public function, a public official may not:*

- 1) Act, before the authority in which he exercised a public function, as a representative or attorney of a legal person, entrepreneur or international or other organization having or establishing a contractual or business relationship with this authority;*
- 2) Establish a working relationship or business cooperation with the legal person, entrepreneur or international or other organization that, based on the decisions of the authority in which a public official has exercised function, acquires gain;*
- 3) Represent a natural or legal person before the authority in which he exercised a public function in a case in which he participated, as a public official, in the decision-making;*
- 4) Perform management or audit activities in the legal person in which, at least one year prior to the termination of public function, his duties were related to supervisory or control activities;*
- 5) Enter into a contract or other form of business cooperation with the authority in which he exercised a public function;*
- 6) Use, for the purpose of obtaining a benefit for himself or another, or to harm another, the knowledge and information acquired in the performance of public function, unless the knowledge and information are available to the public.*

#### Overseeing the compliance

**Overseeing<sup>1</sup> the compliance with the provisions** on the prevention of conflict of interest and restrictions in the exercise of public functions is performed by the Agency for Prevention of Corruption. As regards the incompatibility of functions and restriction in the exercise of public function there is **an obligation for a public official to resign from the public function**, if he/she, while performing a public function, accepts to perform other

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<sup>1</sup> Overseeing compliance with the restrictions also applies to the persons related to a public official, referred to in Article 6, Para 1, item 4 LPC, in connection with Articles 8 and 10 LPC: „4) Persons related to a public official are relatives of a public official in straight line and to the second degree in lateral line, a relative by marriage to the first degree, married and common-law spouse, adoptive parent or adopted child, member of a household, other natural or legal person with which the public official establishes or has established a business relationship: (...)”

duties or functions defined by the respective Law, within 30 days of the beginning of the exercise of other functions or duties (Article 13). By "other duties or functions" it is considered to be the function of the president, authorized representative or member of a management body or supervisory board, or the executive director or member of management in a company, public companies, public institutions or other legal persons. Furthermore, a public official who performs work in state administration and local government bodies may not perform the function of MPs and councillors.

The procedure for **determining the violation of the Law** related to the prevention of conflict of interest, restrictions in the exercise of public functions, gifts, sponsorships and donations may be initiated ex officio or upon the request of any legal and natural person, based on a newspaper article, comparison of data obtained public officials reported in the reports of income and assets and those obtained by other authorities and legal entities, sponsorships and donations. These procedures include:

- administrative procedure, which is completed by adoption of a **Decision**,
- procedure for giving an **Opinion**,
- initiation of **misdemeanour proceedings**,
- initiation of proceedings before the authorities to impose administrative sanctions.

**Violation of the respective provisions of LPC** is considered to be a negligent performance of public functions, according to this Law, about which the Agency informs the authority in which the public official exercises a public function as well as the authority responsible for the election, appointment, or assignment of the public official, for the purpose of **initiating the procedure of dismissal, suspension or imposition of disciplinary measures** (by the authority). In the case of a **dismissal** of a public official as a result of the abovementioned procedure, he/she is prohibited to exercise a public function or duties of a civil servant for **a period of four years** from the date of dismissal.

#### Transparency

In order to reach the highest level of transparency and to possibly prevent any other violation of the Law, **all Decisions of the Agency**, establishing the violation of the violation of the Law concerning the existence of conflict of interest, incompatibility of functions and other restrictions in the exercise of public functions, **are published on the Agency's website, [www.antikorupcija.me](http://www.antikorupcija.me)**.

#### Track record since APC's establishment/ two-year period of its operational activities (2016-2017)

In the area of **prevention of conflict of interest and restrictions in the exercise of public functions**, based on the Opinions (over 300) and Decisions of the Agency, which are

binding for the public officials, **144 public officials resigned** from public functions or were dismissed from the public office. This represents a significant result of the Agency in its first two years of its work, which ultimately prevents occurrence of the conflict of interest by eliminating the potential conflict of interest.

In 2017 the Agency submitted **37 requests for initiation of misdemeanour proceedings**, for violation of the LPC related to the prevention of conflict of interest and restriction in the exercise of public functions, out of which 25 were terminated. The amount of the imposed fines was 5140 €.

The list of the public officials (with names, surnames, public function, date of the resignation/dismissal) who have resigned or have been dismissed from the public office, whose Decision on the appointment/election has been nullified, and against which disciplinary measures have been imposed is published on the Agency's website, at the following link:  
[http://www.antikorupcija.me/media/documents/Tabela\\_2\\_Ostavke\\_i\\_razrije%C5%A1jenja\\_javnih\\_funkcionera\\_na\\_osnovu\\_Mi%C5%A1ljenja\\_i\\_Odluka.pdf](http://www.antikorupcija.me/media/documents/Tabela_2_Ostavke_i_razrije%C5%A1jenja_javnih_funkcionera_na_osnovu_Mi%C5%A1ljenja_i_Odluka.pdf).

### Trainings

In the period of two years most of the activities, including prevention of conflict of interest, were covered by dedicated projects with the aim to increase internal capacities of APC. As regards, "external" capacity building, in 2017, the APC delivered **two training sessions** to the public officials and civil servants at the national and local level on the prevention of conflict of interest topic for 73 attendees. Given the number of the employees in the dedicated Section as well as the role of the Agency to monitor the compliance with the respective provisions of the Law for over 4000 public officials, the delivering of the tailor made trainings remains to represent a challenge for the Agency.

### Challenges

- 1) The high number of requests of public officials for Opinions, especially in 2016 which is the year of the set-up of the Agency, on the potential conflict of interest and restrictions in the exercise of public function represents an indicator that more should be done in the area of **raising awareness on the additional requirements that the new Law imposes**, their purpose, and, ultimately the increased level of integrity and accountability which is required from public office holders;
- 2) The challenge remains in **detecting conflict of interest *ex officio***, as in this regard the Agency is mostly relying on the reports and initiatives of other parties (citizens, CSOs, etc.).
- 3) The challenge still remains regarding the possibility of the Agency to have evidence of the number of the overall public officials at the national and local level who are appointed, elected or assigned to the public function **in real time**. The Agency keeps and updates its own Register of public officials, within its own information system, however, in order to

5

receive information on the newly appointed or elected public officials in real time, other institutions need to be at the similar level of IT developments and interconnected with APC's IT system (e.g. The Official Gazette of Montenegro);