

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

Overseeing¹ 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

¹ 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** .

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.

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

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);

b) Asset and interest disclosure system

The goal of the provisions of the LPC regulating the area of declaration and verification of assets and incomes of public officials in Montenegro is to provide for **transparency**, by publishing all the Reports on assets and income on Agency's website, to **prevent and sanction conflict of interests** in the exercise of public functions, as well as to **monitor wealth variations of public officials**.

Public officials in Montenegro declare their assets, incomes, and other interests, as well as assets, incomes, and interests of members of their households, **via a single form - the Report on assets and income of public official (Articles 23 -24 LPC)**. Article 23 paragraph 1 of LPC prescribes that "public official shall, within 30 days from assuming the function, submit to the Agency the Report on Income and Assets, as well as on assets and income of married and common-law spouse and children, if they live in the same household, according to the state of play on the day of election, appointment, or assignment".

The interests declared through this report form, among other, include: memberships and income in working bodies, other public functions in managing and supervisory bodies in exceptional cases, memberships in associations, foundations, sports, science and education and humanitarian organizations. Interests also include income derived from copyright, patent and similar intellectual and industrial property rights (Articles 8-15 LPC).

The personal scope of APC's disclosure system

The obligation to report assets and income apply to all categories of public officials, including: elected officials, appointed officials, senior public officials, specific categories of public officials/civil servants, and persons related to the above. Article 3 (cited above) of the LPC provides for the definition of public official to which the obligation to submit reports on assets and income applies. According to the definition, the disclosure system in Montenegro is **consolidated for all branches of government, legislative, executive and judicial**. Furthermore, since the LPC entered into force (1st January 2016), the obligation to submit Report on income and assets, as well as the verification of the reported data, also refers to the specific group of civil servants, the ones from the Inspection Directorate, Customs Administration, Ministry of Interior, Police Administration, and Tax Administration.

In 2017, the number of public officials in Montenegro, who were obliged to declare their assets, income and interests **was 4.450**. In the same year, **1.208 civil servants** also had this obligation. However, the number of public officials may vary from year to year. Namely,

during a year, public officials can be newly elected, or appointed, and also may resign or be removed from public functions they hold.

Periodicity

The LPC provides for the periodicity of such declarations in the provision cited below:

Article 23

The public official shall, within 30 days from assuming the function, submit to the Agency a Report on Income and Assets, as well as on assets and income of married and common-law spouse and children, if they live in the same household (hereinafter: the Report), according to the state of play on the day of election, appointment, or assignment.

The public official shall provide accurate and complete information in the Report.

During the exercise of public function, the public official shall submit the Report:

- Once a year, by the end of March of the current year for the previous year;
- In the case of changes in the Report that relate to an increase in assets of more than € 5,000, within 30 days from the date of change;
- At the request of the Agency in the case of initiation of proceedings referred to in Article 31, paragraph 1 and 2 of this Law, within 30 days from the receipt of the request, or initiation of proceedings ex officio.

In the case of termination of public function, a public official shall, notify the Agency thereon and submit the Report within 30 days from termination of the function.

Public official whose office has terminated shall submit annual Report to the Agency, according to the state of play on the day of submitting the Report, for the period of two years following the termination of office.

When moving to another public function, as well as in the case of election, appointment, or assignment to another public function, the public official shall, pursuant to Article 12, paragraph 2 and 4 of this Law, notify the Agency thereon within 30 days from the date of change.

The obligation to submit Report and the procedure of verification of the data from the Report shall also apply to civil servants who are obliged to submit the Report in accordance with the special law.

Transparency

According to the Law (Articles 24, 25, 27) all the Reports on income and assets are being sent **both electronically and in paper** (cumulative condition) and are being **published on the Agency's website**, excluding the data referring to the: personal information referred to in Article 24, paragraph 1, item 1 of the LPC, except names and surnames, address of immovable assets, children of public officials under the age of 16 and alimony and other income or payments on the basis of social and child welfare.

Oversight

The APC carries out verification of data from the reports on income and assets of public officials by comparing the reported data with the data on income and assets of public official collected from other authorities and legal entities keeping such data (Article 30 LPC). In its data verification procedure, the APC has direct access (in real time) to the databases of the **Tax Administration** (taxable income), **Commission for Securities** (shares, vouchers, bonds and other securities), **Ministry of Interior** (registered movable assets, vehicles and weapons), **Real Estate Administration** (immovable assets), and **Central Register of Business Entities** (ownership shares in business entities). The APC also sends requests to the business banks in Montenegro, for obtaining data on cash inflows and outflows, as well as credit and foreign currency debts for a specific period of time, **based on the previously provided permission by the public official to the APC to access the data on bank accounts and accounts of other financial institutions (In 2017, 75% of public officials gave consent for the access to their bank accounts)**. The APC's contemporary information system enables direct access to the above databases and data verification in real time. Access to databases is carried out in accordance with the signed agreements on cooperation between the APC and the above listed authorities. The consent is referring to the period in which the obligations of the public official are valid in accordance with the Law.

Types of verification

Administrative control is a sort of a technical check in which the identity of a public official has been verified. It consists of comparing the electronic and signed version of the Report on assets and property, and, if the versions are identical, the data from the reports is published on the APC's website. This kind of checks applies to all Reports submitted to the Agency (>5000).

Verification of completeness and accuracy of data (Plausibility check) in the submitted reports is undertaken according to the order established in the Annual plan for control of the Reports by comparing the data stated in the Report of the public officials with the data of the authorities whose databases the Agency has access to through the Information System of the Agency. If irregularities were found, the authorized officer of the Agency notifies the supervisor of the irregularities and submits the request for initiation of misdemeanour proceedings, in accordance with the provisions of the Law on Misdemeanour.

Full verification includes processing, analysis, control and verification of all data on assets and income of public officials and members of shared households, as well as data **on the manner in which such property was acquired and the sources of funds** used for acquisition of movable and immovable property.

A precondition for the initiation of the procedure shall be the existence of indications based on facts that the person to whom the data relate has submitted inaccurate, incomplete data or that there **has been a disproportionate increase in property**.

If, in the verification process, the APC determines that assets and income of a public official and persons related to the public official exceed the actual income, at the request of the Agency, the public official will be requested to provide, within 30 days, detailed information **on the grounds of acquiring such assets and income**. If the public official fails to comply with the APC's request, according to the LPC, the public official may be imposed a fine in the range of EUR 500,00 to EUR 2,000.00.

Furthermore, according to the Article 37 of the LPC, the Agency may **assign the proceeding to the competent public prosecutor's office**, in case of reasonable suspicion that a criminal offence has been committed that is prosecuted ex officio.

Annual Verification Plan

The annual plan of checks and verifications is carried out in accordance with the **Methodology for risk assessment**, and adopted by the APC once a year, by the end of the current year for the following year, and published on the APC's website. The annual plan contains the following methodology, based on which the verification is carried out:

1. All public officials who belong to a particular category (judges, prosecutors, members of the Government and MPs);
2. A particular number of random samples of public officials by groups, as follows:
 - A particular percentage of public officials at the local level, every tenth public official following the alphabetical order of surnames in the list of local public officials;
 - A particular percentage of public officials at the state level, every tenth public official following the alphabetical order of surnames in the list of state public officials.

Currently, **the revised Methodology for risk assessment has been developed**, with the assistance of the expert of Council of Europe, provided through the *Action against Economic Crime in Montenegro* within EU's and CoE's Horizontal facility for Western Balkans and Turkey, which further **elaborates criteria with risk assessment** for selection of officials to be checked and verified under each type of verification, as well as, provides for the extended methods of verification.

Track record

The **compliance rate** for the submission of Reports on income and assets is quite high, bearing in mind that in 2017 **96% of all registered public officials submitted their asset and income declarations in due time**. This indicates that public officials are more responsible towards their obligations stipulated by law, which is a result of imposed sanctions that contributed to the greater compliance with the legal obligations in this field, as well as educational activities and proactive role of the Agency in the previous (2016) year.

In 2017 the Agency submitted **312 request for initiation of the misdemeanour proceedings** for the violation of the LPC related to the non-submission of asset and income declarations (272 in 2016), for which fines were imposed in amount of 42,000€ (In 2016: 38,270€).

Note: The LPC doesn't allow the possibility of checks and verifications of assets and income declarations of public officials before its entering into force - 1st January 2016, which means it cannot be applied retroactively, in accordance with the Constitution of Montenegro.

Challenges

1) The challenge remains the same as for the previous topic, which is 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 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 receive information on the newly appointed, elected public officials as well as the ones that resign 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);

2) There is an initiative of the Regional Anticorruption Initiative to endorse among its member countries (Montenegro, Serbia, Macedonia, Bosnia and Herzegovina, Moldova, Romania, Croatia, Albania and Bulgaria) the adoption of the **International Treaty on Asset Disclosure and Conflict of Interest**, which would allow for the administrative exchange of information on asset declarations and conflict of interest of public officials among these countries. The process is still in the initial phase.

a) b) Technical assistance

In order to increase the efficiency in the implementation of the respective provisions and compliance rate of the subjects to the law, further capacity building is needed in terms of trainings and team-building activities for the staff of the Agency, as well as trainings for the subjects to the Law.

Additional expert assistance is required for improving the research and analytical capabilities of the Agency as it possesses a wide range of information which after being processed and analysed could produce qualitative results which could ultimately direct the APC's and country's strategic planning in this field.