COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Economic Crime Division
Directorate General I –Legal Affairs
20 December 2004
(Provisional)

Programme against Corruption and Organised Crime in South-eastern Europe (PACO)
Implementation of National Anti-corruption Plans in South-eastern Europe (Impact)

# Expert Opinion on the Law on Prevention of Conflict of Interests in Discharge of Public Office

*By:*
*Mr Drago Kos, Ljubjana, Slovenia*

Council of Europe PACO Programme against corruption and organised crime in South-eastern Europe

PC-TC-(2005)4

# Table of Content



**For any additional information please contact**:

Council of Europe, Crime Problems Department
Directorate General I – Legal Affairs
67075 Strasbourg CEDEX, France
Tel +33-3-8841-2354
Fax +33-3-8841-3955
e-mail ardita.abdiu@coe.int

## 1. GENERAL PART

Legislation on prevention of conflict of interests for the most exposed professions is becoming quite common in various countries, especially new ones, thus enhancing their credibility and people's trust in their work. It is interesting that the majority of so-called "corrupt-free" countries do not have such legislation as its basic principles are given through other rules, which tend to achieve the same goal – to prevent misbehaviour of their public officials. These are the rules on the greatest possible transparency of the functioning of the public administration, its visibility and sets of different codes of conduct. Implicitly these rules achieve the same purpose as the legislation on the prevention of the conflict of interests – they develop the ethics of the public administration to the extent that the risk of its improper behaviour is reduced to a minimum and there is no more danger for its worst possible behaviour – corruption.

International standards have been developed lately in order to give an additional boost to the enhancement of the public officials' ethics and among them there are also standards on the prevention of conflicts of interest. Basic international requirements for these standards are known: they have to encompass all exposed professions, they have to deal with the existing, possible and even seeming conflict of interests, they establish the incompatibility of public functions with other functions or activities, they regulate business links between public authorities and private companies where public officials are actively[1] involved, they develop an obligation for public officials to report their financial assets and private interests, they establish some limits on accepting gifts in the public sector, … These international requirements are very seldom mandatory for the governments since they are usually given in the form of different recommendations (i.e. the Council of Europe Model Code of Conduct for Public Officials) but their substance is becoming more and more used in the legislative area and also in the practice of different countries.

The Council of Europe Model Code of Conduct for Public Officials[2] deals with the conflict of interest *stricto sensu* in Article 13 and describes it as "a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties". It also gives a definition of a "private interest" – this is "any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations".

There are also some prohibitions related to a public official's duties in relation to the prevention against the conflict of interest:

- s/he has to avoid such conflict of interest, whether real, potential or apparent,
- s/he should never take undue advantage of his or her position for his or her private interest,
- s/he has to be alert to any actual or potential conflict of interest,
- s/he has to disclose to his or her superior any such conflict of interest as soon as s/he becomes aware of it,
- s/he has to comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict,
- whenever required to do so, s/he has to declare whether or not s/he has a conflict of interest.

[1] As owners or as managers

[2] See, Recommendation No. R(2000)10

Serbian Law on Prevention of Conflict of Interest in Discharge of Public Office (hereinafter: the Law) was adopted by the Serbian Assembly in April 2004. As it is a new piece of legislation it was expected that the law will follow all the most important international trends in this area. As it is, there are still plenty of solutions that were not put in the law at all and some solutions which could be much better. Nevertheless, it is the first ever piece of legislation in Serbia dealing with the prevention of conflict of interests and as such it is extremely important. It has to be considered as a start of a new development in the Serbian public life and therefore it deserves all credits. Since there is always room for improvement the comments, remarks and proposals made by the expert are intended to fill in just the biggest gaps or flaws of the law so that the country can make the best possible use of it.

The following analytical part is written in such a way that the articles where the expert does not have any remarks or proposals are not mentioned at all.

## 2. COMMENTS ON GENERAL PROVISIONS

### ARTICLE 1

There is no real definition of private interest, mentioned in par. 1.

In par. 2 only the private interest is mentioned which "affects" or "could affect" the discharge of public office. Not only but also because of the description of the conflict of interest in the Model Code of Conduct it would be recommendable to Serbia to also add the words "or appears to affect" before the words "discharge of his/her public office". Namely, almost the most important element of politicians' and public officials' credibility is trust, people's belief that they perform their functions impartially. To achieve this belief not only real conflicts but also their appearance has to be avoided, which is not always very easy but it can help a lot in establishing trust in the functioning of political appointees or public officials.

### ARTICLE 2

In par. 1 the list of public functionaries is given to which the law applies. There is no real reason why a separate law is foreseen for the prevention of conflict of interest for the Supreme Court judges, judges, magistrates, public prosecutors and their deputies (par. 2) and for the officials appointed to organs of institutions and other organisations whose founder is the Republic of Serbia, the autonomous province, a municipality, a town and the City of Belgrade (par. 3). Basically, this means that there will be three separate laws dealing with the same topic – conflict of interest – in one country. Despite the fact that the three categories of professions deal with what clearly are different tasks, it would be much better if their basic rights and duties in this area would be a subject of one single law. The scope, the aim and the power of their public functions are different but they all share one common characteristic: it is a public function, which deserves to enjoy credibility among the citizens and therefore it would be much better to use one single law for it. In addition, the separate laws were not adopted yet meaning that the categories of professions mentioned in par. 2 and par. 3 do not have any rules to follow in this field yet. For the sake of consistency, for the sake of an equal position of all public functions in Serbia and for the sake of a unified control mechanism (professional, equipped, well-educated, impartial, objective!) one single piece of legislation would be a much better solution than the one proposed.

### ARTICLE 3

The Republic Board mentioned in this Article (provided it is given an appropriate position, staffing and powers!!) would be a suitable institution for the implementation of regulations on conflict of interest for all categories of functionaries mentioned in par. 1, 2 and 3 of the previous Article. In this way all functionaries would be treated in the same way and therefore their equality before the law would be established, the specialisation of the Board would be much easier and the technical implementation of the law would be very simple.

## 3. COMMENTS ON THE STATUS OF THE OFFICIAL

### ARTICLE 4

In par. 2 it would be advisable to replace words "could affect" with words "affects, could affect or appears to affect" in order to stay in line with the Model Code of Conduct.

### ARTICLE 5

If, following par. 1, the execution of other public functions is allowed, it is necessary to describe basic substantial conditions for the approval of the responsible organ, however an absolute ban on performing any other public function than the one giving reason for the implementation of this law seems to be a much better idea.

It is absolutely not acceptable that advisory engagement in par. 2 is allowed for Members of Parliament, Deputies and Councillors! Their functions are the most important functions in the country, their influence is the biggest possible and possibilities for improper decisions under the influence of people to whom they give advice are numerous – these facts make them a category which should be specially banned from having any kind of business or business-like relation to anybody in the country or abroad.

Maybe it would be a good idea to mention "sport" in par. 3, too.

### ARTICLE 6

The activity described in par. 1 is a behaviour which in other countries is normally criminalised in the criminal code as "Trading in influence". If the Serbian Criminal Code provides the same criminalisation, then this paragraph could serve just as a reminder. If not, the meaning of this paragraph is much more important – under the condition that proper sanctions are provided.

The list of prohibitions in par. 2 is a problematic one. Recognising the wish of the drafter for the list to be as detailed as possible, it has to be mentioned that such a casuistic approach always entails certain risks:

it is impossible to mention all possible forms of prohibited behaviour with detailed descriptions as given in this Article,
the behaviour mentioned in bullet points number 2, 3, 4, 5, 7 and 8 is normally defined as criminal offences in other countries and the expert is of the opinion that at least some of the descriptions can be found in the Serbian criminal legislation, too. If this is the case the question arises: what is the reason for mentioning such behaviour again in this law?

Bullet point no. 6 raises a very important question: why are foreign and international organisations explicitly banned from giving compensation to public functionaries? If a

functionary carries out activities which are generally allowed (i.e. those mentioned in Article 5, par. 3) and foreign or international organisations are ready to compensate him or her for such kind of activity, why can s/he not accept it? Why does there have to be a special regime concerning foreign and international organisations? There seems to be no logical reasons for such solution.

The expert's proposal for this Article is very simple: to redraft it in such a way that a general prohibition on the conflict of interest would be given with a basic definition of such conflict, to delete the casuistic descriptions of prohibited behaviour (if certain behaviour is prohibited twice or even more it is a question which provisions should be used when the prohibition is breached) and, especially, to delete bullet point no. 6 or arrange it in the way that it is admissible upon the approval of the Board.

### ARTICLE 7

Why is there no possibility provided for the organ or body mentioned in par. 2 to also exclude the functionary from taking the decision on an issue where s/he holds a personal interest? The possibilities for exclusion under the general administrative procedure mentioned in par. 3 are usually not enough to preserve the impartial decision-making at the highest instances and usually do not include the decision-making of the functionaries – i.e. adoption of legislation in the Assembly can never be considered as an administrative procedure!

### ARTICLE 8

The idea of this Article is clear: to prohibit business activities of the functionaries in a commercial entity. In this law there is no definition of a "commercial entity" since it is probably provided in other laws. The question that remains to be solved by the Serbian authorities is: does the term "commercial entity" cover all forms of legal persons which can be used for the profit-making activity?

The second and more serious remark concerns the position of the functionary as an owner of the commercial entity: s/he just has to transfer the managing rights but s/he can remain the owner of the entity. In the law there are no limitations and/or conditions for such entities to get involved in the business relations with the institution where the functionary is holding his/her public office. Despite the fact that the functionary does not manage the entity anymore s/he can help a lot in its business relations, simply by virtue of his/her decisions. Different countries are using different solutions. The most common one is the prohibition of any business relations among the public institution where the functionary holds his/her office and the entity where s/he is an owner above a certain percentage (usually 20-30%). There are also some countries where establishment of these relations is possible but only upon prior approval of a certain public institution.

### ARTICLE 9

There are not many countries where the functionary would have the possibility to be part of the management structure of the legal person with state capital share but almost all of them allow the functionary to be part of the supervisory structure of those legal persons (somebody has to protect the interests of the owner – the state). In the first paragraph the position of the functionary in relation to his/her participation in the management or in the supervisory structures is the same: s/he can do it only if this is provided by a special regulation. On one hand this is too wide – there has to be an absolute ban for the participation of the public functionaries in the management structures (equal to prohibition in Article 8), and on the other too narrow – there have to be more possibilities for them to participate in the management structures. Executing public office is a

demanding job which can not be accompanied by performing similar (managerial) functions in legal persons, even if they are state-owned but supervisory functions are something which can and has to be performed by public functionaries in order to protect the state interests.

### ARTICLE 10

This Article is the most questionable one: why do MPs, deputies and councillors have more rights than other public functionaries? On one hand, their work is so important and demanding that they are really not in a position to perform any other function, and on the other hand, their function is so important that a potential conflict of interest can arise in every single case where they perform any other function including the one mentioned in this Article. The possibility of misuse of their public function is simply too big and their reputation could become problematic (at least because of the appearance of the conflict of interest) as soon as they are involved in any kind of business operations. There is only one solution to the problem: this Article has to be deleted.

## 4. COMMENTS ON ASSETS' DISCLOSURE

### ARTICLE 12

There can be a problem in this Article: it demands the reporting of financial assets not only of the functionary but also his/her relatives. Since they do not perform a public function in some countries this duty is considered to be against the privacy rights of these persons and therefore anti-constitutional. Nevertheless, this is a solution that exists elsewhere, too. But the law asks the functionary to report on the property and income and the relatives only to report on the property and not on the income, too. Why this difference?

The other possibility (reporting duty for relatives only in cases of suspicion of the functionary's misbehaviour in the form of hiding the income and property) is also quite common in some countries.

### ARTICLE 13

Different forms of property and property rights in this Article might not cover all forms of property and income of the functionary. There are new forms of property and property-like rights arising every day and maybe it would be useful not to close the list of the data which have to be submitted to the Board. The Board would then be in the position to add all necessary requests when it considered such information important. Otherwise the law will have to be changed every time the need appears to add to the list.

If Article 10 gets deleted, then paragraph no. 2 will have to be deleted, too.

### ARTICLE 14

Not specifically related to this Article but it has to be mentioned: except the general obligation for other institutions in Article 18, par. 2, there are no procedural provisions in the law according to which the Board would be in the position to make even the simplest checks on the accuracy of the submitted data. In this way the Board seems to be just a body for archiving the reports. It is not clear how the violation of the law, mentioned in par. 2, could be established if the Board has no clear powers to collect, analyse and compare submitted information and ask for additional information and clarifications on the submitted reports.

## 5. COMMENTS ON GIFTS RELATED TO DISCHARGE OF PUBLIC OFFICIAL

### ARTICLE 15

The concept of giving and promising (gifts) is usually accompanied by offering too – but this is the concept for the criminal offence of a bribery. On the active side it is composed from offering, promising and giving and on the passive side from receiving or accepting the bribe or its offer and/or promise. This concept is a little bit too broad for the problem of gifts – if somebody promises a gift to a functionary, s/he (the functionary) has not done anything wrong yet. S/he can reject the offer or even accept it but later reject the gift itself. In the area of gifts it is not the gift-giver that is doing something wrong and therefore it would be much better to define the gift with the activities on the passive side, on the side of the gift-taker. In other words, it would be advisable to make the definition of a gift in the first paragraph simpler to avoid any problems in the practical implementation of the legal text. Quite a suitable solution is given in the first paragraph of Article 16.

### ARTICLE 16

There is a significant difference between the original text and the translation – in the original it is stated that the value of the gift may not exceed half of the average monthly salary and in the translation the limit is the average monthly salary. However, that does not affect the value of the text.

There is no valid reason to adopt a separate law for handling the gifts given by foreign or international organisations as mentioned in par. 4. Since the reason for limitations concerning the acceptance of gifts is the protection of the integrity of public function the origin of the gift or of the gift-giver is not important at all. All gifts would have to share the same procedure.

### ARTICLE 17

Gifts that cannot be accepted have to become the property of the Republic of Serbia at the moment of acceptance by the functionary and not at the moment of handing over as stated in par. 2.

A very important element in this area is missing: functionaries have to report only the gifts that cannot be accepted. There is no obligation for them to register admissible gifts. In this way there is no control over those gifts and major misuses may occur. Therefore it would be absolutely necessary to establish the duty and the procedures for registering admissible gifts.

## 6. COMMENTS ON THE REPUBLIC BOARD

### ARTICLE 19

In par. 2 it is stated that five members of the Board are chosen by the National Assembly on the recommendation of the Serbian Academy of Science and Arts and no further requirements are given for the candidates. Despite the major political significance of the law and of the body authorised to secure its implementation all questions dealt with in the law are highly complicated legal questions and the members of the Board would simply have to have some kind of legal background or something similar to it. Therefore it would be advisable to add additional conditions for the election of the mentioned five members of the Board.

### ARTICLE 20

In the second paragraph the "membership in a political party" might be additionally underlined by the prohibition of any kind of political (party) activity of the Board members even without formally being a member of a political party.

It is also not clear to whom the members of the Board have to report their financial assets – to the Board itself? Para 2 can be understood in this way.

### ARTICLE 27

If the proposed changes on further restrictions will be made in the law (i.e. in Articles 5,7,8,..), this Article will have to be changed accordingly.

### ARTICLE 30

There is another problem with the translation in par. 2: the original text states that the Board has to inform public of "facts" determined during the course of its work but in the translation this duty relates to "irregularities". The original text might cause some problems since the Board will have completely free hands to decide what to publicise.

### ARTICLE 32

This article is not very clear: for the sake of the protection of privacy of the functionaries that have not breached the law, their data has to be particularly protected. Why? It seems much more logical that the Board would release complete data on the functionaries not found responsible for the breach of the law in order to protect and confirm their integrity.

## 7. COMMENTS ON TRANSITIONAL AND FINAL PROVISIONS

Since the law clearly entered into force in the first half of 2004 it would be interesting to know if and how the provisions for the start of the Republic Board's functioning were implemented.

## 8. CONCLUSION

Without any doubts the law represents a solid base for the establishment of a higher level of integrity of Serbian functionaries. Furthermore, strict implementation of the law would represent a major achievement in the country where public functionaries were never perceived as the most ethical profession. It is also clear that some major flaws can be found in the law and that they can cause the law to become meaningless through its implementation. Despite the absence of concrete remarks, the rules on the establishment and functioning of the Republic Board seem to be somehow rigid and the Board has too many discretionary powers, especially in the procedural field.

The functioning of the Republic Board or any other institution with similar powers will be the most significant element in the development of the law – in practice all problems mentioned in this expert's opinion and many, many more will appear and will provide opportunities for the best possible solutions for further improvement of the law. Nevertheless, some loopholes have already been identified that can be improved now but, as stated already, the law has to be brought to life as soon as possible.

## 9. ANNEX: THE LAW ON PREVENTION OF CONFLICT OF INTERESTS

**The Law on Prevention of Conflict of Interests in Discharge of Public Office**
**(Published in the "Official Gazette of the Republic of Serbia" no. 43/2004, 20 April 2004)**

### I. GENERAL PROVISIONS

**Concept of conflict of interest**
**Article 1**

An official shall discharge the functions of his/her office without subordinating public interest to private interest, nor shall he/she cause conflict between the two.

A conflict of public and private interest exists when an official has a private interest that affects or could affect discharge of his/her public office.

**Public functions and officials under this Law**
**Article 2**

A public function in terms of this Law shall be a function discharged by a person – public official pursuant to election, appointment and nomination to organs of the Republic of Serbia, autonomous province, municipality, town and the City of Belgrade, and organs of public enterprises founded by the Republic of Serbia, autonomous province, municipality, town and the City of Belgrade.

Conflict of interest in discharge of office of Supreme Court judges, judges, magistrates and public prosecutors and deputy public prosecutors shall be governed by separate law.

Separate laws shall regulate conflict of interest of officials appointed to organs of institutions and other organisations whose founder is the Republic of Serbia, autonoums province, municipality, town and the City of Belgrade.

**Conflict of interest resolution board**
**Article 3**

A Republic Board for resolving conflict of interest (hereinafter "the Republic Board") is hereby established to implement this Law.

The Republic Board is an autonomous and independent body and funds for its work shall be provided in the Republic of Serbia budget.

### II. STATUS OF OFFICIAL

**Basic rules for discharge of public office**
**Article 4**

An official is obliged to observe regulations governing his/her rights and duties and to promote and maintain confidence of citizens in conscientious and responsible discharge of public office.

He/she may not be in any relationship of dependence with persons that could affect his/her impartiality, nor may he/she use public office to acquire any benefit or privileges for himself or related person.

A related person in terms of this Law is a lawful or common-law spouse of a public official, his/her lineal blood relative, lateral relative by sanguinity up to second degree, adoptive parent or adoptee, in-law conclusive with first degree of relation, and any other legal entity or natural person who on other grounds and circumstances may be justifiably considered related by interest to the official.

**Holding other public office and other engagements**
**Article 5**

An official may accept other public office only with approval of the organ appointing or nominating him/her to public office, if not in contravention of bans specified in this or other law.

An official may not hold advisory engagement with legal entities or natural persons. An exception are Members of Parliament, Deputies and Councillors.

An official may engage in scientific, educational and cultural activities and acquire income from copyright, patent and similar intellectual property rights.

**Activities prohibited to an official**
**Article 6**

An official may not use public office to acquire personal benefit or benefit for a related person, to acquire a right or privilege, conclude a legal transaction or otherwise benefit himself or related person by way of influencing decisions of the legislative, executive or judicial branch.
An official is also prohibited to:

1) acquire a new or realise an existing right for himself or related person if by doing so he/she violates the principle of equality of citizens before law,

2) abuse special powers granted to him/her by virtue of the functions of his/her public office,

3) receive, solicit or accept any value or service to vote on any item or to influence the decision of an organ, body or individual,

4) promise employment or other right in exchange for a gift, promise of a gift or other benefit or privilege,

5) influence assignment of tenders or public procurement,

6) accept compensation from a foreign state or international organisation, except travel costs and other costs relating to participation in international conferences in accordance with the decision of competent bodies,

7) use knowledge and information on the work or government bodies that is not publicly available for personal benefit or the benefit of related persons.

**Notification of conflict of interest**
**Article 7**

If an organ or body is debating and taking decision on an issue where a public official or related person holds a personal interest, he/she is obliged to declare the existence of conflict of interest prior to taking part in the debate, and at latest before taking of decision.

The organ or body at whose session the notification of conflict of interest was made is obliged to enter such notification in the minutes.

This shall not prejudice the rules on disqualification of the official set out in the law governing general administrative procedure.

**Managing rights in commercial entities**
**Article 8**

An official is obliged to, within thirty days of election, appointment or nomination, transfer managing rights in a commercial entity to a legal entity or natural person, who shall not be a related person, to operate in their own name and on behalf of the official until the end of the term in office.

An official is obliged to within five days of the transfer of managing rights deliver to the relevant Board the data of the legal entity or natural person to whom the rights have been transferred with proof of the transfer. The legal entity or natural person to whom the official has transferred managing rights shall become a related person.

An official shall not issue any information, directive or order to the natural person or legal entity to whom managing rights in the commercial entity have been transferred, nor in any way influence through such entity exercising of his/her rights and duties in the business entity, whereby the former shall not prejudice the right of the official to receive information on the state of the commercial entity.

**Functions in commercial entities, public enterprises and public institutions**
**Article 9**

An official may not be director, deputy or assistant director, member of the management or supervisory board of a public enterprise, institution or company or any other legal entity with state capital share, unless so provided by law or other separate act.

In all other business entities an official may not be a member of the management or supervisory board or a director, deputy or assistant director.

An official may be a member of a management or supervisory board of scientific, humanitarian, cultural or similar association, but shall not be entitled to compensation or gifts except compensation of travel and other expenses.

**Special provisions on Members of Parliament, Deputies and Councillors**
**Article 10**

A Member of Parliament, Deputy and Councillor may be a director or deputy and assistant director or member of the management or supervisory board of at most one public enterprise, institution and company or other legal entity with majority state capital share.

In all other business entities a Member of Parliament, Deputy and Councillor may continue to exercise his/her management rights or remain as member of the management or supervisory board, director, deputy and assistant director, if this does not interfere with his/her discharge of public

office and the nature of the activity of the business entity does not influence impartial and independent discharge of public duty.

**Notification of attempts to influence the impartiality**
**Article 11**

An official is required to notify without delay the appointing or nominating organ and the Republic Board of any pressure or improper influence he/she is subjected to in discharge of public office. If the official is elected to public office he/she shall accordingly inform only the Republic Board.

If in doubt that any action or failure to act may lead to conflict of interest, the official is obliged to request the opinion of the Republic Board, but doing so shall not preclude the possibility to institute proceedings for determining whether violation of this Law exists.

**III. PROPERTY DISCLOSURE**

**Filing of disclosure report**
**Article 12**

An official is obliged to submit to the Republic Board, within fifteen days of the day of election, appointment or nomination to public office, a report on his/her income and property and property of spouse and lineal relatives by consanguinity (hereinafter "disclosure report"), according to status as of the day of election, appointment or nomination.

Throughout the term in office the official is obliged to submit a disclosure report to the Republic Board annually, by 31 January of the current year for the previous year, and within 15 days following the end of the term in office, according to the status as of the day of submitting the disclosure report.

The disclosure report shall be submitted over the following two years, on the day of expiry of one year after submitting of the previous report, according to state on the day of submittance of the disclosure report.

An official shall report the property of related persons in accordance with information and knowledge in his/her possession, and the Republic Board may request from a related person to directly submit information on his/her property, within the deadlines set out for the public official.

**Content of the Disclosure Report**
**Article 13**

The disclosure report shall contain information on:

1) ownership rights on real property and lease rights on real property exceeding one year, at home and abroad,

2) movables under mandatory registration with government authorities (motor vehicles, vessels, aircraft, weapons et al),

3) deposits in banks and other financial organisations, at home and abroad,

4) stocks and shares in legal entities,

5) cash and securities,

6) rights deriving from copyright, patent and similar intellectual property rights,

7) debts (principle, interest and repayment period) and claims,

8) source and amount of income from discharge of public office and engagements in scientific, educational and cultural institutions,

9) public official's membership in management and supervisory boards in public enterprises, institutions and companies or other legal entities with state capital share, and scientific and humanitarian associations,

10) all other information deemed relevant by the public official for application of this Law.

The disclosure report submitted by Members of Parliament, Deputies and Councillors shall also contain information on business entities where they have retained managing rights or where they are directors, deputy or assistant directors and members of management or supervisory boards.

The Republic Board shall set out the specific content of the disclosure report and the relevant form.

**Register of Property**
**Article 14**

All data from the disclosure report is recorded in the Property Register maintained by the Republic Board.

Information on property registered by a public official may be used only in proceedings for determination of whether a violation of this Law exists.

Information on the salary and other income received by a public official from the budget is public.

An official is required to inform the Republic Board on any change in respect of the information recorded in the Property Register, resulting in increase of property exceeding 20 average salaries in the Republic of Serbia in the month when the change has occurred pursuant to latest published data of the Office of Statistics, within 15 days of occurring of such change.

The manner of keeping of the Property Register shall be established by the Republic Board.

## IV. GIFTS RELATED TO DISCHARGE OF PUBLIC OFFICE

**Definition of Gift**
**Article 15**

For the purpose of this Law any money, things, rights, services without charge and any other benefit given or promised to an official or related person, either personally or through another, shall be considered a gift.

The value of a gift shall be computed pursuant to its market value as of the day of receiving or promise thereof. If several gifts are given during one year by the same giver the aggregate of all gifts shall be taken as value of gift.

If in doubt regarding the value of a gift, the official shall request a bill from the giver or decline the gift.

**Accepting gifts**
**Article 16**

An official may not accept gifts related to discharge of his/her public office, except protocol or appropriate gift whose value does not exceed the average monthly salary in the Republic of Serbia, and not even then if the gift is in money or securities. A related person may not accept a gift relating to discharge of public office by an official with whom it has a related person status.

An official shall may prove that he/she could not influence the actions of a related person accepting the gift, or that the gift was not related to his/her discharge of public office.
The criterion for determination of what gifts are considered protocol or appropriate shall be set by the Republic Board.

The procedure with gifts received by a public official from foreign states, their bodies or organisations, international organisations and foreign natural persons or legal entities shall be governed by separate law.

**Actions of an official on offer or promise of gift that cannot be accepted**
**Article 17**

An official who is offered or promised a gift that he/she is not allowed to accept is obliged to refuse the offer or promise of the gift, inform the giver that the gift, if he/she accepts the gift, shall become the property of the Republic of Serbia and without delay report the event in writing to the appointing or nominating body. An elected public official shall report to the Republic Board.

If the official was unable to decline or return the gift to giver, he/she is obliged to hand over the gift to the appointing or nominating body, and if elected to public office – to the Republic Board. Gifts handed over shall become the property of the Republic of Serbia as of the moment of handing over.

**V. THE REPUBLIC BOARD**

**Competencies of the Republic Board**
**Article 18**

The Republic Board shall issue instructions, forms and shall render opinions necessary for implementing this Law, maintain the Register of Property of the officials, decide whether and action or failure to act by an official constitutes a violation of this Law and, if so, shall pronounce measures and perform other tasks set out by law.

All competent bodies are required to immediately deliver to the Republic Board, at its request, required facts and evidence.

**Composition of the Republic Board**
**Article 19**

The Republic Board shall have nine members. Three are chosen by judges of the Supreme Court of Serbia from the ranks of persons with law degree with notable expertise in criminal, civil, commercial and administrative law, and one member shall be chosen by the Bar Association of

Serbia from among its members. Presidents of courts, judges, public prosecutors and deputy public prosecutors may not be members of the Republic Board.

The remaining five members are chosen by the National Assembly at the recommendation of the Serbian Academy of Science and Arts, from a list containing ten candidates.

The members of the Republic Board shall elect a chairman from their own ranks, for a period of one year.

**Status of a member of the Republic Board**
**Article 20**

A member of the Republic Board is elected for a term of five years and may not be re-elected.

A member of the Republic Board may not hold membership in a political party and shall be subject to all bans and obligations set out by this Law for public officials.

A member of the Republic Board is entitled to monthly compensation amounting to monthly remuneration of a Member of Parliament permanently engaged in the National Assembly of the Republic of Serbia.

**End of term of office in the Republic Board**
**Article 21**

A member's term of office in the Republic Board shall end by expiry of the period of time for which he/she was elected, by resignation and by dismissal from the Republic Board. A member of the Republic Board shall be dismissed if discharging the duties of a member of the Republic Board with negligence or bias, if joining a political party or is sentenced to a prison term or for a punishable offence making him/her unworthy of duty in the Republic Board or if the Republic Board determines that he/she has violated this Law.

The proceedings to determine whether grounds exist for dismissal of a member of the Republic Board are initiated by the Republic Board or body electing him/her to the Republic Board. The Republic Board conducts proceedings and takes the decision.

The Republic Board may suspend its member against whom proceedings to determine grounds for dismissal have been instituted.

**The Republic Board Secretariat**
**Article 22**

The Republic Board shall have a Secretariat for professional, administrative and technical services necessary for work of the Republic Board. The Secretariat shall be managed by a Secretary appointed and dismissed by the Republic Board.

Regulations governing employment in government bodies shall accordingly apply to the Secretary and members of the Secretariat. The Secretary and members of the Secretariat shall be subject to same bans and duties as public officials under this law.

The salary of the Secretary and staff in the Secretariat shall be set by the relevant committee of the National Assembly, at the recommendation of the Republic Board.

The organisation of the Secretariat shall be specified by Rules issued by the Republic Board, at the proposal of the Secretary of the Secretariat.

**Taking of decisions by the Republic Board**
**Article 23**

The Republic Board shall take decisions in session by majority vote of all members.

In proceedings whether a member of the Republic Board has violated this Law, such member and another member chosen by lot by the other members shall be exempted from the proceedings, deciding and voting and the decision shall be taken by majority vote of the members with voting right.

It shall be regarded that initiating proceedings for determination of violation of this law by a member of the Republic Board concurrently initiates proceedings for his/her dismissal.

**Procedure to determine violation of this Law**
**Article 24**

The procedure to determine possible violation of this Law is initiated by the Republic Board *ex officio* or at the request of the official or his/her direct superior. The Republic Board may also initiate proceedings on charges made by a legal entity or natural person.

The Republic Board notifies the official of commencing proceedings and is obliged to enable the official to give a statement regarding allegations against him/her.

The Republic Board independently determines facts and takes a decision, in proceedings where statutory provisions governing general administrative procedure are accordingly applied.

The decision of the Republic Board shall be explained and delivered to the official and the body appointing or nominating the official to public office.

**Types of Measures**
**Article 25**

A confidential caution not disclosed to the public or a measure of public announcement of recommendation for dismissal may be pronounced to an official appointed or nominated to public office.

A confidential caution not disclosed to the public or a measure of public announcement of the decision that this Law has been violated may be pronounced to an official elected to public office directly by public ballot, and to an official appointed to public office by an organ directly elected by citizen, instead of public announcement of decision that this Law has been violated, a measure of public announcement of recommendation to resign may be pronounced.

The decision pronouncing the measure of public announcement of the decision is effected by publishing the decision and a summary of the explanation in the "Official Gazette of the Republic of Serbia" and other public media.

Only the measure of public announcement of the decision that this Law has been violated may be pronounced to a public official who violates this Law after the end of the term in office may.

**The measure of confidential caution not disclosed to the public**
**Article 26**

The measure of confidential caution not disclosed to the public is pronounced to an official for violation of this Law that did not affect his/her discharge of public office.

The measure of confidential caution not disclosed to the public is pronounced also if an official fails to meet the requirements provided in this Law within set deadlines, and the decision shall set the manner and deadline for complying with this Law.

**The measure of public announcement of recommendation for dismissal**
**Article 27**

If the official to whom a measure of confidential caution not disclosed to public is pronounced fails to comply with this Law within the time limit set in the decision, the measure of public announcement of recommendation for dismissal shall be pronounced to him/her.

The measure of public announcement of recommendation for dismissal is also pronounced if the official contrary to this Law exercises, legally or in practice, managing rights in commercial entities or discharges functions in public enterprises, institutions or companies or other legal entities with state capital share or other business entities in manner not provided under this Law, if again violates this law after pronouncing of a confidential measure not disclosed to the public or by other violations of this Law influences the discharge of public office.

**Measures pronounced only to officials elected to public office**
**Article 28**

When grounds exist for pronouncing of measure of public announcement of recommendation for dismissal, the measure of public announcement of recommendation to resign shall be pronounced to an official appointed to public office by an organ directly elected by citizens, and to an official directly elected to office by citizens – the measure of public announcement of the decision that there has been a violation of this Law.

**Measures pronounced to member of the Republic Board, Secretary and staff of the Secretariat**
**Article 29**

Only the measure dismissal from office may be pronounced to a member of the Republic Board and Secretary of the Secretariat. Dismissal of the Secretary entails termination of employment in the Secretariat.

Only the disciplinary measure of termination of employment may be pronounced to a staff member of the Secretariat.

The Republic Board is obliged to publish every decision, even those stating that there has been no infringement of this Law, relating to a member of the Republic Board, Secretary or staff member of the Secretariat, in its entirety in the "Official Gazette of the Republic of Serbia" and other public media.

**Mandatory Public Announcement**
**Article 30**

The Republic Board is obliged to enable public inspection of information and documents on any pressure or improper influence an official is subjected to in discharge of public office and on his/her functions in public enterprises, institutions, companies and other legal entities with state capital share and other business entities.

The Republic Board shall monthly inform the public of irregularities it determines in the course of its work.

**Report to the National Assembly**
**Article 31**

The Republic Board shall submit an annual report of its work to the National Assembly by March 1 of the current year for the preceding year.

**Ensuring data protection**
**Article 32**

When informing the public the Republic Board is obliged to ensure protection of data regarding the person from potential abuse, and particularly information on the public official and his/her related persons in situations and conditions that do not represent a conflict of interest in terms of this Law, or when the decision of the Republic Board determines that these do not represent a violation of this Law.

Information not representing a violation of this Law may not be published in public media without consent of the relevant public official.

**Use of data recorded in the Register**
**Article 33**

The decisions of the Republic Board may not prejudice criminal and material liability of a public official.

Records on a public official maintained in accordance with this Law may be placed at the disposal and submitted to courts and other inspection authorities, with the proviso prohibiting use thereof for harassment of the public official or for publication as if the information has been determined by the court or an inspection authority.

## VI. TRANSITIONAL AND FINAL PROVISIONS

### Transitional Provisions

**Election of the Republic Boards**
**Article 34**

Nominations for members of the Republic Board shall be determined within 30 days of coming into force of this Law, and their election shall be conducted within the following 30 days, and the Republic Board chairperson shall be elected within 15 days of election of the members.

The Republic Board is obliged to, within 60 days following election of its chairperson, pass Rules on internal organisation of the Secretariat and other regulations provided under this Law.

**Duties of Officials and the Government**
**Article 35**

Public officials shall, within 30 days of passing of implementing legislation for this Law, file with the Republic Board a first disclosure report, and/or within 90 days of coming into force of this Law harmonise advisory engagements with legal entities and natural persons with this Law and harmonise exercising of managing rights in business entities and discharge of functions in public enterprises, institutions and companies or other legal entities with state capital share, as well as other business entities with this Law.

The Government is obliged to provide premises, technical and other material resources for commencement of the work of the Republic Board within 30 days of coming into force of this Law.

**Final Provision**
**Article 36**

This Law shall come into force on the eighth day of publishing in the "Official Gazette of the Republic of Serbia".

* * *