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Implementation of National Anti-corruption Plans in South-eastern Europe (PACO IMPACT)

**Review of the Montenegrin draft law
“On Prevention of Conflict of Interests in Performing of
Public Functions”**

Council of Europe and OECD
Expert Opinions



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The views expressed in this review paper are solely those of the experts and do not necessarily reflect the official position of the Council of Europe.

1 COUNCIL OF EUROPE' EXPERT OPINION

By: Vera Devine

GENERAL REMARKS

Lack of context

The following comments are based on the existing Law on Conflict of Interest, and the local language and English versions of the Draft Law on Conflict of Interest of the Republic of Montenegro. For the task at hand the provision of a policy paper explaining the rationale for changing the law currently in place and for the need to design what appears to be an almost entirely new law would have been useful. It is hoped that this information can be provided during a discussion with drafters.

Drafting issues

The draft law contains heavy language, imprecise definitions and a structure which is not easy to follow. As a result of such drafting flaws, many of the provisions of the proposed text are ambiguous (see specific comments), when the purpose of the law is to provide for guidance through clarity and consistency. In this respect, it is difficult to see how the proposed law is an improvement of the law currently in place.

Corruption and the conflict of interest

There appears to be confusion over the notions of corruption and conflict of interest. But there is an important distinction: only when a potential conflict of interest becomes an actual conflict of interest can we speak about corruption. This, in turn, has then to be treated by the relevant civil and criminal legislation. The draft law includes numerous clauses that concern corruption, not, however, conflict of interest.

Legal compatibility

The relation of the draft law to other legal instruments, notably the Law on Public Enterprises, the Criminal Code, the Civil Service law, the Constitution, the Law on Immunities etc. is not clear, and drafters might wish to revisit this issue to ensure legal certainty, compatibility and consistency.

A substantial amount of provisions in the draft law would seem to be better placed in the respective legislation mentioned above. This concerns in particular a number of articles that put the burden of proof on companies. While there certainly is a role for companies to play in the prevention and resolution of conflict of interest cases, the subject of this draft law are high-level public officials (see also specific comments for detail), and responsibilities should not be confused.

Uncertainty over the scope of the law

The following comments are based on the understanding and assumption that this law does *not* cover civil servants. However, the author has no final certainty that this is the case and that some of the mentioned categories of 'public officials' are not civil servants who would logically fall under the competencies of the Civil Service Law. Should this however, be the case, drafters would need to make the compatibility between the proposed law and the Civil Service Law clear.

Work and competencies of the Commission, implementation aspects

In general, the powers of the Commission seem to be excessive, and seem to ignore the role that the courts have to play for the topics in question.

Drafters might have to reconsider how realistic it is for the Commission to be established by this law to actually implement its provisions. With the composition and resources suggested, it appears to be unrealistic to expect the work of the Commission to be very effective. The processing of what must be many hundreds of asset declarations and guidance on potential conflict of interest issues alone would already seem to overstretch the capacity of the Commission in its proposed form. The way in which the establishment of the Commission is foreseen appears to be too vague and should be reconsidered.

Lack of fair appeal procedure

A serious reason for concern is that the law remains silent on any possibilities for public officials who are being penalized to seek recourse or fair proceedings; this, however, must form a crucial part of such a law.

SPECIFIC COMMENTS (BY ARTICLE)

Basic Provisions

Article 1

Paragraph 2 of this article refers to the 'ethics of the profession' – are specific codes of ethics meant for each of the categories of public officials, or is this a general notion? How is this to be applied in practice?

The Notion of Public Officials

Article 3

See general comment above – the provisions under this article look as if civil servants are not covered by this law. If however, some of them are, then the relation between this law and the Civil Service Law for that category of officials should be elaborated.

The members of the Commission to be formed under this law should explicitly be included into the list of public officials.

Article 4

As worded in the draft law, 'related persons' would cover anybody the official has a relationship with; hence, it appears to be too broad and should therefore be narrowed down.

Definitions

Article 5

The threshold of 500 Euro in the definition of what constitutes 'financial interest' is excessively high and should be substantially lowered; as should the threshold of 5000 Euro set in the definition of 'property interest'.

Equally unacceptably high is the threshold of 50 Euro for a gift, and should be lowered to an amount around 10 Euro maximum. There appears to be a clash with Articles 13 and 14, which would allow to seek and to accept anything below 50 Euro, as such items/services etc. are not considered to be 'gifts'. Equally, the problem of accepting many gifts just below that threshold must be addressed, as otherwise

there appears to be wide scope for abuse. Drafters might have had this in mind in Article 14, although the wording here remains too ambiguous.

The paragraph 'The value of the gift shall be its market value' should be extended to 'The cost of the gift or the real market value of the gift, whichever of both is the higher'.

When it comes to defining what constitutes a 'public company', a cross-check and a cross-reference should be made to the Law on Public Enterprises, to ensure legal consistency and compatibility.

For the purposes of consistency and clarity, it might make more sense to move the definition of 'Conflict of Interest' currently in Article 1 to this article.

Acting of a Public Official in case of Dilemma on the Existence of a Conflict of Interest

Article 6

The first paragraph states that the Commission issues an opinion – is this opinion binding?

Incompatibility

Article 7

There should be a cross-reference and compatibility check of the entire article with the Law on Public Enterprises, which, it has to be assumed, regulates many of the provisions of this article. Drafters should check whether the provisions in this article do not actually contradict the very spirit of this law. For example, if a public official has to transfer all his managing rights within 30 days of assuming his public function, yet he/she can still obtain data and any other information of his/her affairs, then it is difficult to understand the point of him/her doing the transfer at all.

Forbidden Actions of Public Officials in Decision Making

Article 10

It is not entirely clear who precisely this article covers – parliamentarians who have the right of vote? The mechanism by which an 'open session' would be called in and organized are not clear and there is no reference on what the procedures would be to organize these.

Notice on Influence on Impartiality of Officials

Article 11

What precisely would constitute 'pressure' for the purposes of this article?
What are the sanctions for non-compliance with the provisions of this article and where can they be found?

Article 12

It would appear that officials should not be allowed to conclude any contracts with a private company for the provision of services of whatever nature. It is unclear what the sanctions for the violations of this article are and where they are codified.

Forbidden Actions of Public Officials

Article 13

As mentioned in the general remarks, this article contains a number of confusions of conflict of interest and corruption. Clause a) mentions that public officials shall not 'request a gift or any other benefit etc.', which, one could argue, effectively amounts to demanding a bribe; this, in turn, is criminalized and part of the sanctions as stipulated in the Criminal Code. The purpose of this clause in the Conflict of Interest law is thus not clear. This article is also problematic in relation to Article 5, which sets the threshold for gifts at an excessively high 50 Euro; in conjunction with this article, he/she would then appear to be allowed to request any amount of gifts just under 50 Euro, as they are not covered by the definition of what a 'gift' is, which is unacceptable. Clause b) is not entirely clear – is it trying to deal with instances of favouritism? The relevance to conflict of interest is not clear. Clauses c) and d) also seem to fall under the wider notion of corruption, not necessarily conflict of interest. Clause i) is misleading and needs to be clearer elaborated – an elected official has the rights and possibly obligation (to the constituency that elected him/her) to influence decision-making processes. It is not at first sight clear what clause j) refers to. Clause m) – how is this supposed to work in practice, and does it not violate constitutional rights?

Accepting Gifts

Article 14

See previous comment. Drafters have to make clear that they (presumably) mean several gifts for an amount below the threshold set in Article 5. It is not clear what 'in the sense of item 1 of this Article' refers to.

Membership of Non-Government Organisations

Article 16

The provisions in this article appear to be so restrictive as to make a public official having senior-level functions in an NGO almost impossible. Is this backed by the Constitution?

Transparency in Contracting

Article 18

The provisions in this article need to be cross-checked and cross-referenced with the existing public procurement legislation or public procurement standards. The article seems to put the burden of proof on private companies – yet the law at hand is dealing with public officials (there might still be arguments for having such provisions, but they should not necessarily be in this law). It would seem that in reality, violations of contracting rules should be dealt with in the legislation dealing with corruption proper.

Transparency of Information on the Company

Article 19

See previous article – these provisions are better placed in other legislation. It seems also to be questionable whether it is fair to require from companies that they provide information on former employees dating back what seems a long period of time (two years).

Transparency of Government Investments

Article 20

The relation to conflict of interest is not immediately clear – this article and the following article 20 would also be better placed in different legislation (such as Law on Enterprises or relevant regulations).

Manner in Which the Commission is Formed

Article 22

In practical terms – what would happen if there were only three parties represented in Parliament? Which is the ‘competent’ Parliament body?

Competency of the Commission

Article 24

The notion of the Commission being authorized to ‘pronounce sentences’ seems to give it too far-reaching powers.

Procedure before a Commission

Article 25

As in the previous article, the provisions in this article give wide-ranging powers to the Commission, while provisions for appeal or redress the public official could seek in the courts are entirely missing.

Decision Making in the Commission

Article 26

It would appear to be sensible that in a case as foreseen by the provisions of this article, the decision should be referred to an entirely different entity or body, as otherwise it could be argued that the other members of the Commission are in a potential conflict of interest having to pass judgment on one of their close colleagues.

Penal Measures Pronounced by the Commission

Article 30

As commented previously, the Commission seems to have too far-reaching powers, while there is no role at all foreseen for the courts. The penal measures that the Commission has the power to decide on appear to be in stark contrast to the lack of any possibility of the public official in question to appeal to the courts.

Reasons for Pronouncing Penal Measures

Article 31

See previous comments on excessive authorities of the Commission.

There should be no option whatsoever of the Commission to decide on sanctions against family members – sanctions should concern the public official for whom family members might act as proxies, but that is for the courts to decide.

CONCLUSION

Therefore it is recommended that the drafters may wish to reconvene and consider substantial changes to the draft Law before it goes for adoption in Parliament.

There is an impression that the law has been drafted in a considerable haste. As a result, many of the provisions suffer from ambiguity and a number of provisions would be better placed in other legislation. The mandate of the Commission that would be established as part of this law opens questions about constitutionality and implementability.

All these points need to be resolved in order to lay the ground for its successful implementation and enforcement.



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2 OECD' EXPERT OPINION

By: Anke Freibert and Howard Whitton

GENERAL REMARKS

Preliminary remark

The law currently in force was not available in English when commenting on this new draft. A comparison between the two versions was therefore not possible, which unfortunately results in an impossibility to point out possible improvement or deterioration with regard to the law in force.

The translation we have available for providing these comments is at several points unclear or ambiguous. We have endeavoured to comment where the policy intention of the draft seems to be clear (e.g. Art 9); however, in other cases it was not possible to detect the intentions (e.g. Art 24).

Scope of the law

The draft envisages a very broad scope; its target group is "public officials". Following the definition given in article 3 of the draft, public officials include civil servants as well as members of parliament, members of government, constitutional judges, managers of local authorities and members of county councils, etc. The draft, with very few exceptions, regulates conflict of interest situations identically for all target groups.

In addition it allocates the implementation of the law for all target groups to the same institution, namely the Commission for the Prevention of Conflict of Interest.

In our view the regulation on conflict of interest has to differ for the various groups of addressees of this draft. Conflict of interest situations for members of Parliament and for members of city councils are different from Conflict of interest situations for civil servants, judges and members of government.

It should be recognised that a parliamentarian is generally elected because he/she represents a certain interest or interests; these interests should be transparent and when using his/her voting rights so that it can be avoided that he/she could improperly pursue his/her private interest.

By contrast, a high level civil servant must definitely be neutral in implementing the policy of the government of the day and pursue the public good. A minister in his position as the head of a ministry is in a similar situation to that of a civil servant with regard to conflict of interest situation, though being a political appointee not subject to the civil service law but to specific regulations.

Finally, judges as representatives of the third power, for mainly constitutional reasons, seem not to fit within the scope of this law.

The draft basically neglects these differences between the various “public officials”.

It may be acceptable as policy that all public officials governed by this law have to disclose their personal assets in the same way, but at the same time the scope of responsibility of the Commission should be reconsidered. The draft as it stands creates some obvious overlaps, contradictions and legal inconsistencies.

In substance the draft covers not only conflict of interest issues but also related topics, such as incompatibilities and corruption; in many cases there appear to be conflicting or unclear definitions, or overlapping provisions. Most of these issues are also regulated by other specific laws/regulations, e.g. Law on Civil Servants and Public Employees, and most likely also the Law on Government and the Standing Orders of the Parliament, etc. Duplications and the lack of clear links and hierarchies between the laws and regulations may lead to damaging confusion.

Conflict of Interest Legislation vs. disciplinary

The draft overlaps with and seems partly to contradict the law on civil servants and public employees, e.g. Art 2/2 of the CSL or Art 31 CSL, Art.49 CSL, or also Art 56 CSL; the latter states that the Disciplinary Commission is in charge of pursuing violation of duties (including conflicts of interest and non-disclosure); however the present draft gives this authority to the Conflict of Interest Commission.

The same overlap/contradiction may well hold where the draft provides that judges as representative of the third power are to be subject to an investigation by a parliamentary Commission, which is at least unusual and may well contradict the legislation on judges or even the constitution. Following the tradition in former Yugoslavia, Montenegro should have a judicial council which is in charge of disciplinary matters, including conflict of interest as prescribed in this draft; in addition a specific code of ethics for the judiciary should also exist.

This situation means that, different institutions (Conflict of interest Commission, Disciplinary Commission, Judicial Council) are in charge of the same tasks, namely supervision, control, investigation and sanctions; a situation which has the potential to create serious confusion regarding applicable standards and their enforcement..

Implementability and legal certainty

There seems to be a number of issues which may make the implementation of the law difficult and/or seriously hamper legal certainty.

The implementation of the law is to be the task of the Conflict of Interest Commission. This Commission has the task of receiving, retaining and evaluating the declarations of assets (ca. 1600 declarations), investigating conflict of interest situations, giving binding opinions and imposing sanctions on offenders. It seems self-evident that the Commission (7 members with presumably limited support staff) will not have the expertise and capacity to perform the assigned functions in the civil service, in the government, in parliament, in local authorities and in the judiciary.

The conflict of competencies with the disciplinary commissions may also lead to a lack of legal certainty.

In addition there remains some question about the separation of powers; if one parliamentary Commission is in charge/controlling all three powers.

There are several articles where the addressees are not clear, i.e. are the elected official the sole intended addressees, it is only the appointed officials who are the addressees; or maybe all officials generally as defined.

The draft law includes definitions and regulations which, logically, should be in other laws, e.g. rules concerning public procurement, rules regarding family relationships, but also definitions of a public or private company.

The law puts obligations on third parties which seem unnecessary or difficult to fulfil: for example, the draft requires a private enterprise to maintain contact with former employees who have become public officials, for a period of several years, to fulfil notification requirements (see further examples under special comments).

The principles of proportionality of sanction, and due process/procedural fairness in administrative procedures, seem not to be respected: for example, dismissal or forfeiture of assets is provided, by administrative decision apparently not subject to review or appeal, for relatively minor offences. If physical property is suspected of being unlawfully obtained, it would be consistent with the principle of rule of law that this be subject to criminal prosecution, for example as is required by the United Nations Convention Against Corruption. The same comment applies for the relationship between the importance of the violation and the severity of the sanction, e.g. illegal property (art.32), the only sanction envisaged is confiscation. As three different situations are envisaged by the draft, confiscation may be completely out of proportion for the actual offence involved in a particular case.

It should be considered to define the assets to be declared more clearly by law to avoid too much discretion of the Commission.

Legal compatibility

Some of the articles and legal constructs should be reviewed with regard to their compatibility with the general legal framework and tradition in Montenegro. One issue is, as already mentioned, the overlapping institutional responsibilities. Another is the treatment the law provides for NGOs, if public officials are sitting on their boards; NGOs seem to be treated as companies whereas they are usually associations; therefore the regulations appear not to be in line with continental European regulations, added to this they practically forbid a public official to be in a leading position in an NGO.

Enforcement

Enforcement of the decisions of the new Commission remains unclear. It should be put beyond doubt that enforcement is to be done via the judiciary or the prosecution services according to general administrative procedures law. In any case, the Commission should not be provided with its own enforcement services, as this is in our view inefficient and institutionally inappropriate.

Similarly, the draft provides for the Commission to collect the fines it levies, and retain the amounts so obtained in the Commission's own revenues: this approach is open to serious criticism on the grounds that it duplicates existing functions (fines should be paid to State revenue), and constitutes the basis for a serious potential conflict of interests at the institutional level.

As concerns sanctions, in particular dismissal, the regulation shows clearly that regulating elected and appointed officials in the same way leads to unacceptable results. Elected officials are not 'employees' in any meaningful legal sense. It is thus more than difficult (in fact it is illegal) for the Commission to seek to dismiss a member of parliament or a member of the city council in the manner appropriate for state employees.

Additionally, there are a number of articles (see below) where the meaning and intention of the article is unclear or ambiguous, for example, Article 31 seems to include incorrect citations.

Transitional provisions

The transitional provisions are insufficient and also appear to be rather arbitrary: e.g., it is unclear why the current Commission which has just started its work, is to be discontinued and replaced by an essentially similar body.

No regulation addresses pending cases before the existing commission.

It is unclear how the law can be implemented if the by-laws are not in place.

SPECIFIC REMARKS (BY ARTICLES)

Please note that we advise to regulate the different target groups in different pieces of legislation. The following comments are done on the current text and do not imply that we endorse the scope of the current law in dealing with appointed and elected officials together

Art 1. It is not clear how the article could require and enforce in practice that officials should *“pay...in particular attention to the ethics of the profession”*, especially if these ethics are un-codified, this formulation makes of the law a hostage to fortune, and should be removed, the more as the article is anyway a repetition of articles in the substantive legislation regulating the profession

Art 2. The article should include reference to the notion of “impropriety “in obtaining a benefit or influencing the objectivity” of an official.

Art. 3. This definitional clause should expressly include officials of the Commission itself.

Art.4 The article is too broadly drafted, as it has the effect of including any person with whom an official has any form of relationship; moreover there should be reference to the civil code.

Art 5. The prescription of “gift” is inadequate: in our view, the definition should be based on *“the actual cost of the gift, or its current real market value, whichever is the higher”*. The definitional limit of €50 is undesirably high, and should be reduced to something of the order of €10. Nota bene, real values should not be put in a law but defined by formula or in real values in a decree or guideline. As a ‘gift’ is defined as being of a value of more than €50, the prohibition on seeking and accepting gifts (Art 13, 14) does not apply to items of lesser value. Additionally, there is no limit on the number of gifts under the value of €50 which may be received and retained by an official. This provision as drafted invites abuse.

Art. 6. It is not clear if the opinion of the Commission obtained pursuant to this requirement is intended to be binding on the official concerned.

Art. 7. Much of the Article is unclear and the entire Article should be reviewed (see for example, sub-clauses 6, 7, and 8). Sub-clauses 4-5 appear to intend that an official’s economic interests should be managed at arm’s length, but a fully ‘blind trust’ arrangement is not provided: it is hard to see what the value of the arrangement provided might be, as the official concerned can still know of his assets and presumably give directions to the manager as to how to deal with them, to his continuing advantage. Sub-clause 8 appears to be unworkable in practice and should be clarified; termination has to be tied to the incompatibility and not a conflict of interest.

Art. 10. It is unclear if this article applies to all officials or only to elected officials who ‘vote’ on measures in the Parliament or Council. Article 10 requires recusal from voting on matter affected by a personal interest: recusal may not always be feasible in practice. Such a provision would be necessary for all officials, wherever it is regulated.

Art. 11. The provision as drafted is excessively broad: for example, what is intended by “pressure”? Legal provisions requiring mandatory disclosure of illegal or corrupt (etc) conduct by officials, such as in this provision, are usually ignored in practice, thereby undermining the rule of law: the provision does not contain or refer to the protections available to those who comply with the requirement, or sanctions for failure or refusal to comply. As such, it is an open question as to whether the provision will be effective.

Art. 12. It is not clear why officials should be permitted to undertake contracts with private companies, for the provision of services which the official performs, in any circumstances.

Art.13. Sub-clause i) appears not to recognise the legitimate functions of elected officials in soliciting votes or seeking to influence policy. At minimum, the notion of ‘impropriety’ should be introduced into this clause, to distinguish improper conduct from conduct which is appropriate to the official’s role. Sub-clause m) appears to be unconstitutional, and in any case unworkable.

Art.15, 16. The articles should be made subject to an overall conflict-of-interest test: such activities should be permissible only if they do not give rise to an unacceptable conflict.

Art.17. The article requires some modification to ensure that it is workable: for example, the prohibition on receiving salary should only apply to sub-clauses 1 and 2, otherwise all salary payments to officials would have to cease each year pending their renewal of asset declarations. The provision which enables an official to exercise an absolute right of refusal to have his/her declaration made public should be removed for elected officials and political appointees, and reduced for public servants.

Art. 18. Most of this provision would be better contained in the law regulating Public Procurement. The requirement for companies to identify former employees for two years after creation is unduly burdensome, and in any case unwarranted: it would be better policy to have corrupt dealings on government contracts directly regulated by specific provisions in a law on corruption.

Art 19-21. It is not clear what purpose is to be achieved by these clauses: it is suggested that the provisions would be better contained in the law regulating Corporations and investment.

Art 22. It is not clear why a new Commission is required. The regime governing members of the Commission does not envisage the possibility of a coalition government, in which ‘the party in power’ could be uncertain. It is not defined as to which is ‘the competent body’ in Parliament for the purpose of appointing Commission members. It appears to be assumed that Members who are not elected officials (to either Parliament or a Council) will not be ‘public officials’.

Art 24. It is not clear that the Commission has an unrestricted power to ‘pronounce sentence’, as apparently envisaged, on elected officials.

Art 25, 26, 28, 30. It is not clear that the Commission has an unrestricted power to demand documents information and assistance from the Courts. It would be desirable to have a clear requirement for the Commission to observe procedural fairness in its investigations and procedures, and decision-making. The Commission decisions and actions should be subject to appeal in the Courts in the usual way.

ANNEX I: DRAFT LAW (AUGUST 2005)

Draft Law on "On prevention of Conflict of Interests in Performing Public Functions"¹ I BASIC PROVISIONS

Article 1

This Law regulates prevention of conflict between the public and the private interest in performing of public functions.

Public officials are under an obligation to perform their functions conscientiously and responsibly, in accordance with the legal and other regulations whereby the rights, duties and responsibilities in performance of public functions are determined, paying in particular attention to the ethics of the profession and duties they perform.

In performing their duties public officials must not place their private interest above the public interest. Conflict of interest arises when a public official has a private interest that influences or could influence the legality, openness, objectivity and impartiality in performance of a public function.

II PRINCIPLES OF ACTION

Article II

In performance of their functions public officials must act legally, honestly and impartially, adhering to the principle of responsibility, conscientiousness and transparency.

Public officials are personally responsible for their action in performance of public functions they have been appointed or elected to and they are politically accountable to the entity or to the citizens that appointed them.

Public officials shall not use their function for acquiring personal gain, or gain for a person related to them. Public officials shall not be in any relation of dependence towards the persons who could influence their objectivity. Public officials must perform their function to the interest of citizens.

III THE NOTION OF PUBLIC OFFICIALS

Article 3

In the sense of this Law the following are considered public officials:

- President and Vice-presidents of the Parliament of the Republic of Montenegro
- Members of Parliament of the Republic of Montenegro
- President and members of the Government of the Republic of Montenegro
- President and Judges of the Constitutional Court
- Director and Deputies and Assistants to the Director of the Central Bank of Montenegro
- The State Prosecutor and his deputies
- The Secretary General and the Deputy of the Secretary General of the Parliament of the Republic of Montenegro
- The Secretary General and the Deputy of the Secretary General of the Government of the Republic of Montenegro
- Assistants to Ministers and Deputy Ministers
- Secretaries of the Ministries
- Directors and Assistants to the Director of the Pension Fund of the Republic of Montenegro
- Directors and Assistants of the Director of the Employment Fund of the Republic of Montenegro
- Director and Assistants of the Director of the Health Fund of the Republic of Montenegro
- President and Vice-Presidents of the Council for Privatization
- Rector and Vice-Rectors of the University

¹ The English version of this draft law does not represent an official translation of the Council of Europe.

- Directors and Mangers of the Offices, Agencies and Directions of the Government of the Republic of Montenegro and their deputies and assistants
- Officials in the cabinets of the President of the Republic of Montenegro, President of the Parliament of the Republic of Montenegro and the President of the Government of the Republic of Montenegro
- Mayors and Presidents of Municipalities, then Secretaries and Directors of Municipal Companies and other municipal bodies.

Other performers of duties appointed by the Parliament of the Republic of Montenegro and the Government of the Republic of Montenegro, or who are elected by direct or secret vote, shall also be considered public officials in the sense of this Law.

Other performers of duties appointed by the local government shall also be considered public officials in the sense of this Law.

RELATED PERSONS

Article 4

In the sense of this Law, related persons shall be the spouse or an extramarital partner of a public official, his/her blood relations in the first line, adopter or adoptee, relatives in a side line up to the second degree and relatives on the side of the father in law up to the first degree, as well as other persons the public official has a personal or a business relation to.

DEFINITIONS

Article 5

Financial interest is:

every interest that enables a public official to accept money amounting to a value higher than five hundred (500) Euro

every property interest that a public official has, and which corresponds to an amount of at least five thousand (5000) Euro in a company, unlimited liability company, limited partnership, joint stock company or a limited liability company.

In the sense of this law, money, goods, rights, services or some other benefit given or promised to a public official whose value is higher than 50 Euro shall be considered a gift.

The value of the gift shall be its market value.

Gifts accepted from members of the family, as well as gifts whose value is not higher than fifty (50) Euro are not included in this Law.

A public company is a company in which the Government or the municipality i.e. the town have at least 25% of capital, or a company in which at least 25% of annual business activity is financed from the Budget of the Republic of Montenegro i.e. of any municipality or town.

A private company shall be every company determined by law which is not a public company as defined by this Law.

An authorized person shall be the person who is by means of articles of incorporation or the Statute of the company authorized to represent the Company. An entrepreneur shall also be considered an authorized person.

ACTING OF A PUBLIC OFFICIAL IN CASE OF A DILEMMA ON THE EXISTANCE OF A CONFLICT OF INTEREST

Article 6

In case of doubt whether a particular behaviour is in accordance with the principles of public duties, a public official shall require the opinion of the Commission for Determining Conflict of Interest (hereinafter referred to as the Commission).

After election to a public function, an official is under an obligation to regulate his/her private business in order to prevent predictable conflict of interest, and if such a conflict should arise, the official is under an obligation to resolve it so as to protect public interest.

INCOMPATIBILITY

Article 7

Membership in management, supervisory or executive boards, as well as any other membership in a public company is incompatible with the public function performance.

A public official may not perform two public functions in the sense of Article 3 of this Law.

Engagement in a private company on conditions in which conflict of interest is created is incompatible with the performance of a public function.

A public official who is a member of an economic entity shall transfer within 30 days from the day of election to a public function his/her managing rights to another physical or legal person, except to persons as of Article 4 of this Law.

A public official is under an obligation to submit to the Commission data on the person to whom s/he transferred these rights within 15 days from the day of transfer of the managing rights, as well as proofs on their transfer. The person to whom the managing rights are transferred becomes a related person in the sense of Article 4 of this Law.

For the duration of his/her mandate, a public official shall not influence in any manner whatsoever the fulfilment of the right and execution of obligations stemming from membership in an economic entity, except for the right of obtaining information on business operation and financial state of economic entities in which s/he has ownership.

On conditions defined in items 1 and 3 of this Article, engagement of related persons elected officials shall also lead to conflict of interest.

If, contrary to provisions of this Article, a public official accepts some other job, and does not resign from the position of an official within 15 days, his/her function shall cease on the day when conflict of interest arises.

As an exception from item 1 of this Article, councillors and Members of Parliament of the Republic of Montenegro who are not professionally engaged may be members of at most one managing, supervisory or executive board of a public company.

As an exception from item 2 of this Article, councillors may perform one more public function in the sense of Article 3 of this Law; on condition they are not appointed to the position by the local government in which they are performing their function of a councillor.

As an exception from paragraph 2 of this Article, Members of Parliament of the Republic of Montenegro who are not professionally engaged may perform one more public function in the sense of Article 3 of this Law, on condition this is not a function at the Republican i.e. state level.

PUBLIC COMPANIES

Article 8

Public officials cannot be members of a managing, supervisory and executive board nor have the capacity of an authorized person in a public company, unless otherwise established by this Law. This provision shall apply for one year after the public officials cease to perform the function.

Public officials must hand in resignation from each of incompatible positions before taking over the function.

GOVERNMENT INVESTMENTS INTO PRIVATE COMPANIES

Article 9

Public officials shall not be members of a managing, supervisory and executive board, nor have the capacity of an authorized official in a private company into which authorities whose member the public official is invested capital in the period of four years before taking over the public function.

Public officials shall not be members of a managing, supervisory and executive board, nor have the capacity of an authorized person in a private company that concludes contracts or in any other manner does business with the authorities at any level whatsoever. This provision shall apply only to companies that concluded contracts or do business with the authorities and this only in case when the value of the contract or business done with the Government or local government exceeds five thousand (5000) Euros per year.

FORBIDDEN ACTIONS OF PUBLIC OFFICIALS IN DECISION MAKING

Article 10

Public officials shall not vote on any issue whatsoever pertaining directly to a private company in which the official or a person related to him/her has a financial interest. Public officials who find themselves in such situations shall abstain from voting, and in an open session explain reasons for their abstention i.e. refer the decision making to another competent body and state in writing reasons for such reference.

NOTICE ON INFLUENCE ON IMPARTIALITY OF OFFICIALS

Article 11

If pressure is put on a public official or some not allowed action done during performance of a public function, the official is under an obligation to report without delay the case to the Commission which will, based on its own judgment, acquaint the State Prosecutor thereon.

CONTRACTS ON PERSONAL SERVICES

Article 12

Public officials shall not conclude contracts on provision of services with any public entity.

Public officials shall not conclude contracts for provision of services with private companies which concluded a contract or do business with the Government or local government at the time when the public official performs the function if the contract value is not smaller than five thousand Euro per year.

In case a public official violates provisions of this Article and concludes a contract with companies as of items 1 and 2, the contract shall be deemed null and void.

FORBIDDEN ACTIONS OF PUBLIC OFFICIALS

Article 13

Except in the manner established by this Law, public officials shall not:

- a) accept or request a gift or any other benefit or promise of a gift or other benefit for performing jobs of a state official or other regular jobs related to that;
- b) exercise or gain a right, for him/herself or someone else, in case equality of citizens before the law is violated in that way;
- c) abuse special and discretionary rights recognized for performance of public official affairs;

- d) employ, promise employment or some other right in return for a gift or promise of a gift;
- e) privilege citizens on the grounds of their party or some other orientation, their origin, personal or relations with relatives;
- f) accept payment in cash, handed directly, for him/herself or someone else;
- g) use for his/her own benefit or benefit of a person related to him/her non-public knowledge or information on the work of government entities;
- h) use property, means for work and financial means entrusted to them for personal purposes except if they have the right to this based on the law or based on regulations adopted based on the law;
- i) ask, accept or promise a present or a service for the purpose of voting on any issue whatsoever or influence on the decision of an entity or an official person, promise or exert influence upon decision making;
- j) influence the obtaining of works or procurement of the state;
- k) accept any kind of compensation including royalties for works that make a part of the work they do;
- l) use their position in the manner which may influence the decisions of the legislative, executive or judiciary authorities by which s/he obtains a benefit or a right, concludes a legal affair or in some other manner makes possible realization of a private interest for him/herself or a person close to him/her.
- m) acquire property in the country and abroad for the time of performing the function and one year after ceasing to perform the function for which s/he has no coverage in revenues presented in the report submitted to the Commission and the corresponding tax documentation.
- n) accept additional compensation for performing a public function.

ACCEPTING GIFTS

Article 14

In the sense of item 1 of this Article, several gifts obtained from the same person for a period of one year shall also be considered a gift.

A public official shall not accept money, a cheque or any other securities notwithstanding the amount, and if they obtain the above quoted, they are under an obligation to report this to the COMMISSION and this becomes property of the Republic of Montenegro.

Public officials shall not keep a gift with a value higher than 50 Euro, but shall report them to the Commission within seven days and they become the property of the Republic of Montenegro.

Accepting of gifts according to items of this Article refers also to persons who would accept gifts to the benefit of officials.

The usual gifts within family or relatives, then state and international recognitions and awards are not considered a gift as of item 1 of this Article and the official is not under an obligation to report them.

PERFORMANCE OF OTHER AFFAIRS OF AN OFFICIAL

Article 15

Public officials may perform affairs in educational or scientific, then in cultural and sport institutions, professional associations and the like, but only on condition that compensation for performance of such affairs does not exceed one third of the amount of the regular salary in such institutions or associations.

Public officials may gain revenues based on copy rights, royalties or patent and similar rights of intellectual or industrial property.

Public officials shall not perform the work of advisors nor shall they be in a contractual relationship based on their work with public companies and legal and physical persons that do business with government entities at any level whatsoever.

Public officials shall report their possible work and compensation they receive for that i.e. revenues as of paragraph 2 of this Article to the Commission within 15 days from the day when the revenues are accepted.

Public officials shall not accept any kind of compensation by the state, an international organization or an international association, except in cases defined by this Law.

MEMBERSHIP IN NON-GOVERNMENT ORGANIZATIONS

Article 16

Public officials may be members of non-government organizations that perform humanitarian, cultural, sport or similar activities without the right to compensation, except for travel and other similar expenses.

Non-government organizations whose member of the governing board or a managing body or an authorized person is a public official shall not have the right to participate in obtaining any donations financed from the budget of the Republic of Montenegro or the budget of municipalities.

Non-government organizations whose member of the governing board or of the managing board, or the authorized person is a public official shall not have the right to participate in obtaining of any grants by domestic and international donors in which as one of the users appears the Government or local government, or any other direct or indirect user of the budget of the Republic of Montenegro or the local government budget.

Non-government organizations whose member of the governing board or of the managing body or the authorized person is a public official shall not have the right to conclude any commercial and other contractual arrangements with direct or indirect users of the budget of the Republic of Montenegro or budget of municipalities at the time when the public function is performed and one year after termination of public function performance.

INFORMING ON THE PROPERTY STATE OF THE OFFICIALS

Article 17

Public officials are under an obligation to submit a report including data on their property, permanent revenues and the property of their spouse and their children within 30 days from the day of taking up their duties, giving the state as of that day.

Public officials are under an obligation to submit a report including data on their property, permanent revenues and the property of their spouse and children within 30 days from the day when they cease performing the public function, giving the state as of that day.

A public official shall submit once a year, until the end of January for the previous year his/her regular annual report on property to the Commission.

In the report as of items 1, 2 and 3, the public officials are under an obligation to submit also data on their savings, if they exceed the annual amount of the official's net revenues.

A public official is under an obligation to report every change in property which exceeds an amount of 3000 Euro, and to do so within 15 days from the day when the change occurs.

The form of the report shall be prescribed by the Commission in such a manner that it includes all the necessary data needed for a valid making of the decision on the existence of a conflict of interest in the sense of this Law.

The public official shall be responsible for the accuracy of data contained in the report.

The obligation to submit a report refers to the time when the public function is performed, as well as to the period of one year after performance of a public function ceases.

A public official shall not receive salary until s/he fulfills all the obligations as of items 1, 2 and 3 of this Article.

Reports as of items 1, 2 or 3 that a public official submits to the Commission shall be available to the public, if the public official consents to this.

The Commission shall announce publicly the data which represent a violation of this Law.

TRANSPARENCY IN CONTRACTING

Article 18

Every public or private company that submits an offer for provision of goods or services to the Government or local government shall also submit a written statement together with the offer along with a list of any contributions given to political parties within the previous two years by the company. The statement shall also include all public officials who were employed or who were members of the board, advisors or who worked in the capacity of an authorized person of the company during the previous two years.

This Article shall apply only to public and private companies when the contract value exceeds five thousand Euro per year.

All statements as of this Article are public documents and shall be available to the public and the media both by the company and by the government entity receiving the offer.

TRANSPARENCY OF INFORMATION ON THE COMPANY

Article 19

Every company into which the authorities make one or more investments in the overall amount exceeding five thousand Euro per year shall submit a report in which full names, addresses and contact telephones of board members are quoted, as well as those of all authorized persons in the company.

Reports as of paragraph 1 of this Article shall be submitted to the competent Ministry or some other competent government body, the court with which the company has been registered and the Commission for Determining Conflict of Interest within 15 days from the day when the decision on execution of investment is voted.

Updated reports shall be submitted within 15 days from the day when any change occurs in the membership in boards or change of competent persons in the period of two years after the last investment of a government entity.

All the reports as of this Article are public documents and they are available for inspection and copying to the competent Ministry or any other competent entity of the Government, the court and the Commission.

TRANSPARENCY OF GOVERNMENT INVESTMENTS

Article 20

An authority that makes one or more investments into a company in the overall amount higher than five thousand Euro per year shall submit a statement on that investment to the Commission.

The authority shall also publish a copy of the statement on investment in the daily newspapers within 15 days from the day when the investment was made.

All the statements as of this Article are public documents and are available for inspection and copying by the authorities and the Commission.

TRANSPARENCY OF ANNUAL STATEMENTS OF THE COMPANY

Article 21

Annual financial statements of the company which are submitted to the competent tax administration shall also be submitted to the competent authorities which made the investment into the company during the previous twelve months.

All the statements as of this Article are public documents and they are available for inspection and copying by the adequate Ministry or some other competent Government entity.

MANNER IN WHICH THE COMMISSION IS FORMED

Article 22

For the purposes of enforcement of this Law, the Commission as of Article 5 of this Law shall be formed.

The Commission shall include seven members which shall elect the President among themselves.

Members of the Commission are appointed by the Parliament upon a proposal of the competent Parliament body.

Four members of the Commission shall come from the Members of the Parliament of the Republic of Montenegro, and the remaining three members shall be distinguished public workers, who have proved their impartiality and conscientiousness through their professional, work and moral qualities.

Two members of the Commission cannot come from the same political party, and the President of the Commission shall not be a member of the party in power.

Members of the Commission shall be elected for a period of five years, except for the members who are elected among Members of Parliament and whose mandate shall last until their mandate in the Parliament of the Republic of Montenegro expires.

RIGHTS AND RESPONSIBILITIES OF COMMISSION MEMBERS

Article 23

A member of the Commission is subject to the same bans and obligations as the public officials pursuant to this Law.

Members of the Commission who do not come among Members of Parliament shall have the right to a monthly compensation equal to the monthly salary of a Member of Parliament of the Republic of Montenegro, and the remaining members of the Commission may receive a compensation for work amounting at most to one third of the monthly salary of a Member of Parliament of the Republic of Montenegro.

COMPETENCY OF THE COMMISSION

Article 24

The Commission shall work in accordance with this Law, good practice as well as principles of political responsibility.

The Commission shall adopt regulations, prescribe forms, give opinions needed for enforcement of this Law, keep a Register, determine whether a public official has violated provisions of this Law, determine the amount of a gift, pronounce sentences and perform other tasks determined by the Law.

The Commission shall determine whether a public official has violated provisions of this Law by adopting a substantiated decision, which is available to the public.

The Commission shall adopt rules of procedure on its work, whereby rules on keeping of the Register, forms and development of reports are prescribed.

The Commission shall submit to the competent prosecutor's office a report on every case of violation of this Law which may constitute violation of the Criminal Code.

Once a year the Commission shall submit a report on its work to the Parliament of the Republic of Montenegro at latest until 1 March for the previous year.

PROCEDURE BEFORE A COMMISSION

Article 25

Procedure before the Commission is initiated upon an initiative of a public official, a state entity, a local government body, legal or physical persons and members of the Commission.

The Commission shall determine facts through its own investigation or procuring of facts and proofs from the executive authorities bodies. All authorities, institutions and courts at all levels are under an obligation to submit to the Commission data it requests, as well as to provide adequate legal assistance.

In case there is doubt regarding violation of this Law by a public official, the Commission shall inform the official thereon and ask from him/her a written statement on claims given in the report. The public official shall submit the requested statement to the Commission within seven days from the day when s/he receives the request. In opposite case, the Commission shall make a decision without his/her statement.

If there are doubts regarding a possible violation of this Law, the Commission shall give its opinion upon the request of any person asking for it.

Procedure before the Commission is closed for the public, and the Commission shall publish the final decision with an explanation by means of the media.

DECISION MAKING IN THE COMMISSION

Article 26

The Commission shall adopt decision at a session, by majority of votes of all members.

When conducting a procedure on whether a member of the Commission has violated this Law, that member and one more member as determined by the lot shall be exempt from the procedure, decision making and voting, and the decision shall be made by majority of votes of members with the right to vote.

MEANS FOR THE WORK OF THE COMMISSION

Article 27

Means for the work of the Commission shall be secured in the Budget of the Republic of Montenegro, upon a proposal of the Commission and the competent Parliament body for finance.

TERMINATION OF DUTIES IN THE COMMISSION

Article 28

Membership in the Commission shall cease after expiry of the time for which a member was elected, by resignation or by dismissal.

A member of the Commission is dismissed if s/he unconscientiously or with a partial mind performs his/her duty or if s/he sabotages the duty s/he has as a member of the Commission, if s/he is convicted to an imprisonment sentence that makes him unworthy for performing the duty of the Commission member or if the Commission determines that s/he has violated provisions of this Law.

SERVICES OF THE COMMISSION

Article 29

The Commission shall have a professional service that performs professional, administrative and technical jobs necessary for the work of the Commission. A Secretary shall manage the Commission, who is appointed and acquitted by the Commission. Provisions regulating labor relations in state entities shall apply to the Secretary and employment in the Service. The Secretary and employees of the Service shall be subject to the same bans and obligations to which officials are subject according to this Law.

The salary of the Secretary and of the employees of the Service shall be determined by the Parliament Committee for Finance, upon a proposal of the Commission.
Organization of the Service is prescribed more closely by a rule book adopted by the Commission, upon a proposal of the Secretary.

PENAL MEASURES PRONOUNCED BY THE COMMISSION

Article 30

Sanctions which the Commission may pronounce to a public official are the following: warning, pecuniary sentence, proposal for acquittal, ban on non nomination for a public function s/he performs for a period of four years.

REASONS FOR PRONOUNCING PENAL MEASURES

Article 31

The Commission shall pronounce the measure of warning if a public official failed to submit a report on the state of his/her property in the manner and within time notices established in Article 17 of this Law. If even after a warning is pronounced a public official fails to act according to Article 17 of this Law within 30 days from the day when the warning is pronounced, the Commission shall pronounce a pecuniary sentence amounting between 500 and 5000 Euro.

If it is determined that a public official violates provisions of Articles 1, 7, 8, 9 or 12 as well as item 3 of Article 15 or if it is determined that s/he has given false data in the report as of Article 17 of this Law, s/he shall be deemed unworthy of being nominated for any function in the sense of Article 3 of this Law for a period of four years from the day when the violation is determined. This decision on ban of nomination shall be submitted by the Commission to the Republican Election Commission for enforcement.

Apart from that, a public official may be punished by a pecuniary penalty amounting between 500 and 5000 Euro.

If it is determined that a public official violates provisions of Articles 13, 14 or 16 or items 4 and 5 of Article 15, such a public official shall be punished by a pecuniary penalty amounting between 500 and 5000 Euro. A public official shall also have an obligation to return a gift or money equivalent to the value of the gift.

If it is determined that a public official violates provisions of Articles 1, 7, 8, 9, 10, 12, 13, 14 or item 3 of Article 15 of this Law, s/he shall be deemed unworthy for the work position in state administration or for a place of an advisor in the period of four years from the day when the violation is determined.

If it is determined that close relatives of a public official are violating provision of Article 14, that member of the family shall be punished by a pecuniary penalty amounting between 500 and 5000 Euro.

Every company for which it is determined that it violates Articles 17, 18 or 20 of this Law shall be punished by a pecuniary penalty amounting between 1000 and 10 000 Euro and it shall not have the right to make a contract with any government entity for a period of four years from the day when the violation was committed.

Pecuniary penalties shall be paid to the Commission.

ILLEGALLY ACQUIRED PROPERTY

Article 32

If a during his/her term of office a public official or his/her spouse or an extramarital partner or children, have acquired property they failed to report to the Commission or for which they do not have a legal base, such property shall be deemed illegally acquired property which shall be confiscated.

The Commission shall inform the State Prosecutor on such a case.

TRANSPARENCY OF DATA

Article 33

The Commission is under an obligation to make possible to the public insight into data and documents on every pressure or inappropriate influence a public official may be exposed to in performing his/her public function. The Commission shall publish in the media a list of public officials with the information whether they have submitted a statement on property in accordance with this Law within 15 days from the day of legal notice expiry.

The Commission shall make possible insight into statements on property of public officials as of Article 17 of this Law to courts and other inspection bodies according to a procedure it determines itself.

TRANSITORY AND FINAL PROVISIONS

Article 34

The Parliament shall form the Commission within 90 days from the day of coming into force of this Law.

Article 35

The mandate of members of the previous Commission shall cease by forming of the new Commission.

Article 36

Rights, obligations and duties constituted by this Law refer also to public officials who perform a public function at the time when this Law comes into force. Public officials as of item 1 of this Article are left a time notice of 30 days from the day of coming into force of this Law to adapt to provisions of this Law. As an exception, Members of Parliament who apart from this one perform another public function at the time when this Law is adopted are left a time notice of one year to adapt to the provisions of this Law.

Article 37

This Law comes into force on the eighth day from the day when it is published in the Official Gazette of the Republic of Montenegro.

ANNEX II: CURRENT LAW ON THE CONFLICT OF INTERESTS (2004)

LAW ON THE CONFLICT OF INTERESTS

(“Official Gazette of the Republic of Montenegro”, No. 42/04, 17/05)

I GENERAL PROVISIONS

Article 1

In order to increase the level of confidence in legitimate and impartial performance of public functions, the present Law shall regulate the existence and manner of avoiding the conflict between public and private interests (hereinafter referred to as: conflict of interests), as well as other issues of importance for the implementation of the present Law.

Scope of the Law

Article 2

The present law refers to public officials and persons connected with them.

For the purpose of the present Law, a public official shall be understood as the person elected by direct and secret vote, person elected or appointed by the Assembly of the Republic of Montenegro (hereinafter referred to as: Assembly), person appointed by the Government of the Republic of Montenegro and the local self-government bodies.

Article 3

A public official shall perform his or her duties impartially, in accordance with the Constitution, law and other regulations, taking into account the ethics of profession and the office he or she holds.

A public official shall not be allowed to give priority to his private interest over a public interest in a way that affects or may affect performance of the public function.

II DEFINITIONS

Article 4

Certain terms, as used in the present Law, shall have the following meaning:

Conflict of interests – there is a conflict of interests when a public official gives priority to a private interest over a public interest so as to gain material benefit or privilege (hereinafter referred to as: benefit) for himself or persons connected to him.

Persons connected with a public official – direct relatives of a public official, collateral relative up to the second degree, relatives through wife’s family up to the first level, a marital or extra-marital partner, adoptive parent or adoptive child, as well as other persons that a public official is personally or professionally connected with.

Gift of considerable value - money, securities or other item that is either received or given, the value of which exceeds the amount of EUR 50.

Service – doing by which conditions for obtaining a benefit are met.

III PROHIBITED CONDUCT

Article 5

A public official shall not be allowed to:

accept a gift of large value, benefit or a service, except in cases envisaged by the present Law;
favor citizens on the basis of their political or other affiliation, origin, personal links or links through
immediate or broader family;
abuse information he has acquired during his position in a public office, and
exert influence over public procurement procedure.

Action to be taken by a public official

Article 6

Should a public official have doubts that the situation of the conflict of interests may arise, he or she shall have the right to report thereon to the Conflict of Interest Commission (hereinafter referred to as: Commission), which shall have to decide whether or not there is a conflict of interest.

Influencing impartiality of a public official

Article 7

A public official shall have the duty to immediately inform the Commission about influence or prohibited action exerted on him or her during the performance of a public office.

Should the Commission find that the action referred to in Paragraph 1 of this Article can contain elements of a criminal offense, it shall immediately report thereon to the competent State Prosecutor.

IV DISCLOSURE FORMS

Submission of disclosure forms

Article 8

It is the duty of a public official to submit disclosure forms on income and property concerning him or herself, his or her spouse, his or her extramarital partner, and his or her children, if they live in the same household (hereinafter referred to as: disclosure forms), within 15 days of the date he or she takes the public office.

During the term of office, it is the duty of a public official to submit such a disclosure form to the Commission annually, by the end of February of each year.

It is the duty of a public official to inform the Commission of every change in his or her property exceeding the amount of 2.000 EUR within 15 days of the day when such a change took place.

After the expiry of the term of office, it is the duty of a public official to submit the disclosure forms to the Commission related to the period of time during which, according to regulations, he or she is entitled to rights and duties arising from such a public office.

Filling in disclosure forms
Article 9

A public official shall fill in the disclosure form the content of which is set out by the Commission.

A public official shall be responsible for the accuracy of data in the disclosure forms.

An incomplete or wrongfully completed disclosure form shall be returned by the Commission to the relevant public official who must remove, within eight days of receipt, all errors and irregularities that have been noticed.

Register of disclosure forms
Article 10

The Commission shall keep the Register of disclosure forms on income and property (hereinafter referred to as: Register of disclosure forms) of a public official, his or her spouse or extramarital partner and his or her children, if they live in the same household.

The Commission shall issue a notice of receipt upon entry in the Register of disclosure forms.

The Register of disclosure forms shall be published by the Commission in the media.

At the request of a state authority and local self-government authority, the Commission shall have the duty to immediately forward the data from the Register of disclosure forms.

V INCOME, PROPERTY AND GIFTS

Illegally earned income and property
Article 11

The income and property that a public official, his or her spouse or extramarital partner and children living in the same household have acquired during his or her term of office, but which have not been reported to the Commission or which have been earned without legal title, shall be considered illegally acquired income or property, for the purpose of the present law. The Commission shall inform the State Prosecutor of the Republic of Montenegro thereon.

Receiving and disclosure of gifts of considerable value
Article 12

A public official may receive a gift of considerable value in connection with performing of the public office, which shall have to be reported to the Commission within 15 days of the date of receipt of such a gift.

The gift of considerable value shall become state property.

Value of gifts
Article 13

The Commission shall establish the value of the gift according to its market value on the day of receipt of such a gift.

VI PERFORMING OTHER ACTIVITIES

Article 14

A public official may perform other activities, if the Commission has evaluated such performance as not causing the conflict of interests, and if the body that has elected or appointed him or her has given its consent to it.

A public official shall have the duty to disclose to the Commission the income that he or she acquired in performing other activities, pursuant to Article 8 of the present Law.

A public official, when performing public function, may not receive remuneration from other state or international organization or institution, except for travel and other similar costs.

Membership in commercial company boards

Article 15

A public official may not be the member of commercial company boards, except for the assembly of shareholders.

Exceptionally, a public official, other than member of the Government, judge of the Constitutional Court, State Prosecutor and deputy State Prosecutor, may be the member of not more than one commercial company board owned by the state or local self-government bodies.

A public official who owns property titles in a commercial company shall have duty to transfer his or her management rights to other person or a special body, within 15 days of the day he or she takes the office, except to persons referred to in Article 4, paragraph 1, item 2 of the present Law.

Membership in non-governmental organizations and other legal entities

Article 16

A public official may be the member of non-governmental organizations and other legal entities engaged in research, humanitarian, cultural, sports, or other similar activity, but shall not be entitled to any remuneration, except for travel and other similar costs.

VII COMMISSION

Article 17

In order to determine the existence of a conflict of interest, the special Commission referred to in Article 6 of the present Law shall be established.
The Assembly shall establish the Commission.

Membership

Article 18

The Commission shall have its President and four members.

At the proposal of the competent board, the Assembly shall elect the President and other members of the Commission to a five-year term of office, with the possibility of reelection.

The President and other Commission members shall be persons who have proved their impartiality and conscience through their professional, working and moral values. At least one Commission member must have law degree and bar examination certificate.

The President and other Commission members shall be entitled to a remuneration, which shall be determined by the competent board of the Assembly.

Scope of authority of the Commission
Article 19

The Commission shall:

establish facts and circumstances relevant for the decision-making;
take a decision, accompanied by an explanatory note, on whether there is a conflict of interests or not;
establish the value of a gift;
keep Register of disclosure forms;
adopt Rules of Procedure;
carry out other business, as envisaged by the present Law.

The Commission Rules of Procedure shall prescribe in detail the manner of work and other issues of importance for the work of the Commission.

Procedure before the Commission
Article 20

The procedure before the Commission shall be initiated by a public official, state authority, local self-government authority, legal and natural persons and Commission members.

The Commission shall examine every report mentioning the existence of the conflict of interests.

Before the decision is taken, the Commission shall inform in writing the public official of the report and require his or her declaration thereon.

Article 21

A public official shall have to provide a written declaration within 15 days of the day of receipt of the request.

If a public official fails to provide such declaration within the time period referred to in Paragraph 1 of this Article, the Commission shall pass the decision without his or her declaration.

Article 22

The Commission shall propose to the competent authority to remove a public official from office if it finds that there is a conflict of interests or if the public official fails to submit the report referred to in Article 8 of the present Law, or if he or she fails to rectify errors and irregularities referred to in Article 9 of the present Law.

If the Commission finds that a public official has committed a criminal offence, it shall immediately submit a criminal report to the competent state prosecutor.

Funding
Article 23

Funding of the Commission shall be provided by the Budget of the Republic of Montenegro at the proposal of the Commission.

Publicity
Article 24

The decisions on the existence of the conflict of interests taken by the Commission shall be delivered to the media.

The Commission shall submit the report on its work to the Parliament when necessary, at least once a year.

VIII TRANSITIONAL AND FINAL PROVISIONS

Article 25

The Assembly shall establish the Commission within 90 days of the day the present Law comes into force.

Article 26

The Commission shall adopt rules, forms, and its Rules of Procedure within 90 days of the day it is established.

Article 27

Rights, obligations and responsibilities set forth in the present Law shall also refer to the public official who, at the time the present Law comes into force, holds a public office.

The public official referred to in Paragraph 1 of this Article shall submit a disclosure form to the Commission within 15 days of the day rules, forms and Rules of Procedure of the Commission are adopted.

Coming into force
Article 28

The present Law shall come into force on the eighth day of its publication in the "Official Gazette of the Republic of Montenegro".