

Proposal to amend the Law on Conflict of Interest

I

The Extent of Changes to the Law

Article 1 is amended as follows:

„General provisions

1. This Law shall govern special obligations of holders of public office/functions in order to prevent conflicts of interest in public office, as well as the obligation of reporting on the financial status and assets of holders of public office/function.
2. A conflict of interest is created in the event that holders of public office/functions have a private interest that affects, may affect or seems like it may affect the legality, transparency, objectivity and impartiality as to the exercise of the public office.
3. The holder of public office under this Law means an elected, appointed or designated person in a state authority, public administration authority and civil service, an independent body, agency, regulatory body, public institution, public company or other legal entity with public powers or the property of the state share of more than 20% (hereinafter: the authority), as well as the person upon whose election, appointment or designation is approved by the authority.“

In Article 2, paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 are amended in the way that the word "Elected officials, executive officeholders and advisors" are deleted and replaced with "holders of public function"

Explanation: The existing legislation defines conflict of interest rules only for elected, appointed officials and advisers, and does not include the large number of persons exercising public functions, decision-making and who potentially can be found in conflict of interest and can undermine the integrity of the institution and the functions they perform. Therefore, the proposed solution, and modeled on similar legal solutions in the region, the legal provisions are related to holders of public office/functions, that means to all elected, appointed and designated officials in the authorities, bodies and enterprises established by the state.

II

Definitions

Article 3, paragraph 1, point e), f) and g) are deleted.

Article 3, paragraph 1, point d) is replaced by the following:

„'Related person' means close relatives, relatives in direct line, relatives in the collateral line to the third degree, relatives by marriage to the second degree and child of the spouse, or any legal or natural person who is in a personal, political, an economic or other relation with the holder of public office/function, that could affect the objectivity of the work of the holder of public office/function. "

Article 3, paragraph 1, item h) shall become point e)

Article 3, paragraph 1, point i) shall become point f) and is replaced by the following:

„'Private interest' means any realized or potential benefit, convenience or putting in appearance benefits and advantages for the holder of public office/function or related person "

Article 3, paragraph 1, point j), k), l) become points g), h), j), and in point j) the words "200 KM" shall be replaced with "100 KM".

Article 3, paragraph 1, item m) becomes k) and is replaced by the following:

„'Public function' within the meaning of this Law means jobs/acts of the elected, appointed or designated person in a state authority, public administration authority and the civil service, an independent body, agency, regulatory body, public institution, public company or other legal entity with public powers, or activities of public interest or the state-owned share of more than 20% (hereinafter: authority), as well as positions of upon whose election, appointment or designation is approved by the authority, and deriving from the functions they perform "

Article 3, paragraph 1, point n) becomes point l)

Article 3, paragraph 1, point o) becomes point m) and is replaced by the following:

„'Personal favor/service' means any action which one party undertakes to carry out a particular job, and the other person to provide her for this job tangible or intangible property or compensation, which is not deriving from employment and professional activities."

Article 3, paragraph 1, point p) is deleted.

Explanation: The planned amendments are to adapt the definitions in relation to the previously defined scope of persons to which the Law is applied and at the same time expand the definitions of related persons and private interest so that private interest includes not only a financial interest, but to anticipate every possible benefit or profit that the holder of public function can have, while also related persons extend over the existing solution that has provided only "interest" related persons. Some points of Article 3 shall be deleted, in order to adjust the terms and definitions of the definition of the holder of public office/function. The definition of personal favor/service was also expanded to include intangible compensation or benefit that a person can get for providing services.

III

Performance of other functions and incompatibilities

Article 4 is amended as follows:

„Performance of other functions and incompatibilities

1. The holder of public office/function can hold only one public office/function, unless otherwise regulated by the law and other regulations.
2. Holders of public office/functions who professionally hold public office/function, during its performance cannot perform other tasks in the form of regular and permanent interest with compensation or for the purpose of income generation, unless the Agency for prevention of corruption and coordination of the fight against corruption, upon previous request of the holder of public function, determines that the present operations do not affect the lawful exercise of public functions.
3. Pre-approval under paragraph 2 is not necessary in case of performance of scientific, educational, cultural, artistic and sports activities and income generation from copyright, patent and similar rights, intellectual and industrial property rights, if the practice of these activities does not lead to a situation of conflict of interest defined under this Law.
4. Membership of holders of public office/function who is appointed or elected to permanent or temporary working bodies established by an authority, and that does not decide on individual rights and obligations of individuals and legal entities shall not be considered an exercise of two or more public functions under this Law.
5. Involvement in a private enterprise under circumstances that create a conflict of interest is incompatible with the exercise of a public function.
6. Holders of public office shall resign from any incompatible and prohibited function or office at the latest within three days after assuming public office.
7. If the Agency determines that a holder of public office/function performs other functions and activities contrary to the provisions of this Article, it shall order the holder of public office to stop performing the activities within 15 days. "

Article 5 is deleted

Explanation: Considering that the amendments of Article 1 expand the scope of persons to whom the Law applies, it is necessary to adapt the provisions relating to the performance of other functions and the incompatibility of functions for all holders of public office/functions. For this reason, and because of stricter provisions relating to restrictions on the exercise of other functions, solutions are proposed that are more in line with international standards, which are also already taken over by the countries of the region - prohibition of exercising multiple public functions, additional restrictions for holders of professional public functions relating to the performance of other services, incompatibility with the involvement in private companies and the like. TI BiH considers that it is necessary to introduce clear and uniform rules limiting the exercise of multiple functions, regardless of the level of government, especially due to the current practice of some officials to perform multiple functions at different levels, thus using the fragmentation of the legal framework and inconsistent regulations. Given that the amendment to Article 4 defines all of incompatibility and restrictions, proposed the deletion of Article 5, which refers to the directorates and agencies for privatization.

IV

Functions and interest in private enterprises and political entities

Article 6 becomes Article 5 and is amended as follows:

"Government investments in private companies

1. Holders of public office/functions cannot be members of the assembly, the supervisory board, administration or management, cannot act in the capacity of an authorized person, or have any financial interest, including the provision of personal services, in any private company in which the body, where a holder of public office/function holds the position, invested capital or gave any encouragement and incentives, including loan commitments, for a period of four years prior to taking office, during their terms in office and two years after the termination of holding a public office.

2. Public officials cannot be members of the assembly, the supervisory board, administration or management, act in the capacity of an authorized person or have a financial interest, including the provision of personal services, in any private enterprise that contracts, or otherwise does business, with the institutions and bodies financed from the budget at any level. This provision applies to private enterprises that are under contract or doing business with institutions financed from the budget, while a public official held office and one year after the termination of the mandate. "

Articles 7 and 8 are deleted.

Article 8a becomes Article 5a and is read:

"The provisions of Article 5 also apply to the involvement of close relatives of holders of public office/functions."

Explanation: In addition to the adaptation of this article in the terminology sense, so it applies to all holders of public office/functions, the provisions are extended in the way that they prohibit also financial interest in private companies in which the authority, in which the holder of office/function exercises his function, is investing, and the restrictions extend to two years after the termination of office. In the same way limits for private companies that do business with any institutions and bodies financed from the budget are defined, but in the way that these limits are related only to the duration of their mandate or function, and one year after its termination. Also, restrictions apply to close relatives of holders of public office/functions. In addition, due to the fact that the new wording of Article 6 covers restrictions pertaining to involvement in private companies, as well as providing personal service, deletion of Article 7 and 8 was proposed.

After Article 5a, a new Article 6 is inserted, which reads:

"The exercise of functions in a political entity

1. The holder of public office/function can perform a function in a political party or political entity and participate in its activities only if it does not compromise the performance of public function and if other laws do not provide otherwise.
2. The holder of public office/function cannot use public resources and activities in which he participates and meetings that he has in the capacity of exercising the function, for promotion of political parties, or political entities.

3. The holder of public office/function shall always unequivocally present to his interlocutors and the public whether he is presenting the attitude of the authority in which he performs the public function or attitude of a political party or political entity.
4. The provisions of paragraph 3 of this Article shall not apply to elected officials. "

Explanation: TI BiH proposes the introduction of provisions which would establish a distinction between the performance of public and party functions, bearing in mind that this issue is not adequately regulated by other laws and provisions have been defined along the lines of the Law on the Anti-Corruption Agency of Serbia.

V

Restrictions after termination of office/function

After Article 6 Article 7 is added which reads:

"Restrictions after termination of public office

The holder of public office cannot, for a period of two years after termination of public office:

- 1) act before the authority where he exercised his public office/function as a representative or attorney of a legal person, entrepreneur or international or other organization that establishes a contractual or business relationship with this public authority;
- 2) enter into employment or establish a business relationship with the legal entity, entrepreneur or international or other organization which, on the basis of decisions of organs in which a holder of public office/function performed the function, obtains benefit;
- 3) represent a legal entity or physical person before the authority where he exercised his public function in the case in which he, as a public official was involved in the decision-making process;
- 4) perform acts of management or auditing in the legal entity where, at least one year prior to the termination of public office, his duties were connected to supervisory or control activities;
- 5) enter into any agreement or other form of business cooperation with the authorities in which he held the position;
- 6) use, for personal gain for himself or an other or to harm an other, the knowledge and information obtained during performance of public office, unless this knowledge and information is available to the public. "

Article 9 becomes Article 8 and is changed in the way that the words "elected official, executive

officeholder and advisor" are deleted and replaced with "public office holder", and the words "associated person of interest" changed to "related person".

Explanation: TI BiH proposes the introduction of a new article that defines in detail the restrictions in performing functions, engagements and business of holders of public office/function for a period of two years after termination of the mandate or function, in order to prevent the practice of using the influence that the holder of office/function can still have in government authorities for the purpose of obtaining benefits. The provisions are also defined along the lines of legislative solutions in the region and include limitations/restrictions on the representation of legal entities that do business with public authorities, contracting, employment, carrying out audits and the like.

VI

Gifts

Article 10 becomes Article 9 and paragraph 2 of this Article shall be amended as follows:

"Holders of public office may keep gifts not exceeding the value of 100 KM."

Paragraph 3 of this Article shall also be amended to read:

"If a public official in the course of the year receives more gifts from the same person, their total value must not exceed 100 KM within a year."

Paragraph 4 is amended as follows:

"Gifts exceeding the value referred to in paragraph 2 of this Article, holders of public office must not retain, they shall be bound to report and hand them over to the institution of government that elected them, appointed or designated them and on whose behalf they perform the entrusted public office. The institutions are required to keep records of all gifts and establish a system for keeping received gifts and to submit a report about every gift to the Agency for prevention of corruption and coordination of the fight against corruption. The Agency shall establish a central registry of gifts that holders of public office/functions received in public office, and make this registry publicly available. "

Paragraphs 5, 6 and 8 in Article 10, shall be amended in the way that "the elected official, executive officeholder and advisor" is replaced with "holder of public office/function"

Explanation: The proposed amendments to the provisions relating to the acceptance of gifts, the total value of permitted gifts is reduced from 200 KM to 100 KM, the procedures for reporting gifts is defined in more detail and an obligation to establish a registry of gifts and its publication is introduced.

VII

Foundations and associations

Article 11 becomes Article 10 and is amended as follows:

"Holders of public office must not, during the exercise of public functions, perform duties in foundations and associations established in accordance with the laws on associations and foundations, which are financed from the budget in the amount that exceeds KM 5,000 a year."

Explanation:

Unification of the provisions was proposed relating to the limitation of performing duties in foundations and associations that are funded from the budget and also reducing of the limit to 5.000 KM, which refers to all kinds of associations and foundations, regardless of the area in which they operate.

VIII

Reporting on property and income and checking the accuracy of the reports

Article 12 becomes Article 11 and is amended as follows:

"Reporting on the financial situation and assets of holders of public office:

1. The holder of public office/function shall, within 30 days of taking office, submit to the Agency for prevention of corruption and coordination of the fight against corruption a report on his property and income, as well as the property and income of married and common-law spouses and children (hereinafter: Report), according to the state of play on the day of elections, appointments or designations.
2. The holder of office/function is required to state in the Report accurate and complete information, and bears the responsibility and sanctions in case of false or inaccurate information.
3. The holder of public office while performing the function submits the Report:
 - Once a year, by 31 March of current year for the previous year;
 - In the case of a change from the report relating to the increase in property worth more than 10,000 KM, within 30 days from the date of change;
 - At the request of the Agency in the case of proceedings for the finding of a violation of provisions of this Law, within 30 days of receipt of the request, or startup.
4. In the event of termination of public office, the holder of public office/function shall, within 30 days after termination of the function, inform the Agency about that and submit a report.

5. The holder of public office is obliged, even after termination of the function, to submit a Report to the Agency once a year in the next two years after the termination of office, with state of play as at the date of submission of the Report.
6. Forms through which holders of public office/function shall submit the Report and type of information that it shall contain will be determined by the Agency within 60 days of the adoption of this Law.
7. The Agency is responsible for recording Reports in the Unified Registry of assets of holders of public office/functions.
8. Unified property registry of holders of public office/functions is available on the official website of the Agency, except for personal data that are to be protected in order to prevent abuse." "

After Article 11, a new Article 12 is added which reads:

"Checking the data from the Report

1. The Agency shall verify the data from the report by comparing these data with the data collected on the assets and income of a public official from authorities and legal persons who hold such data.
2. The authorities and legal persons referred to in paragraph 1 of this Article shall, within a period and in a manner determined by the Agency, submit the requested data and information, or make available the requested documentation in accordance with the law.
3. If the Agency in the verification procedure determines that the assets and income of the holder of public office/function and related persons with the public official are higher than the actual incomes, the holder of public office/function shall, upon the request of the Agency, within 30 days, submit detailed data on the grounds of acquisition of assets and income.
4. If a public official fails to justify the source of assets and income, the Agency is responsible to submit the collected information to the competent prosecutor's office for further action.
5. Check of the data from the Report is carried out by the Agency according to the annual plan of checks for a certain number of officials and category of officials. The annual plan of checks shall be made once a year, by the end of the current year for the following year.
6. The method of verifying data from the Report is not available to the public up to the moment the Agency makes the final decision on possible imposing of sanctions. "

Explanation: TI BiH proposes the introduction of new provisions relating to the reports submitted by holders of functions on financial conditions and assets, which in detail determine the reporting deadlines, the way of their collection, publishing and control, in view of the fact that these provisions have so far been scattered in various legislation, and there was no obligation of control and release and reports themselves did not serve to prevent and identify illegal practices. The Agency for prevention of corruption and coordination of the fight against corruption shall be determined as the authority responsible for the collection and verification of such reports. When defining the provisions, TI BiH followed the practice in other countries of the region.

IX

Implementation of the Law, jurisdiction of the Agency and conduct of proceedings

Article 17 becomes Article 13 and is replaced by the following:

"Implementation of the Law

1. the Agency for prevention of corruption and coordination of the fight against corruption is in charge for the application of this law. Within the meaning of this law the Agency:
 - a) acts on the basis of this Law in order to ensure political accountability and credibility of holders of public office/functions, taking care to protect the integrity of the office, rather than the person holding such office.
 - b) carries out the procedures for establishing the conflict of interest and makes decisions impartially, responsibly and objectively.
 - c) drafts and updates the registry of holders of public office/functions, property of holders of public office/functions, and drafts rules, regulations and forms for submission of the Report on the financial situation and assets of holders of public office/functions
 - d) decides whether a certain action or situation constitutes a violation of the provisions of this Law and imposes sanctions, in accordance with the provisions of this Law which define the procedure and sanctions.
2. Decisions of the Agency in accordance with this Law shall be adopted in accordance with the Law on Administrative Procedure, which subsidiary applies on the provisions of this law.
3. For the purpose of implementing this law and prosecuting, the Agency shall establish the Department for conflict of interests.
4. Any decision of the Agency in the implementation of this law must be explained and publicly available on the official web site of the Agency.
5. Funds required for the work of the Agency on the implementation of this Law shall be provided from the budget of BaH.
6. Registries of holders of public office/functions, property and gifts, whose creation is provided for by this law, are publicly available and its disclosure cannot be denied or prohibited by other legal or regulatory acts."

Article 18 becomes Article 14 and is amended as follows:

"Conduct of the proceedings

1. The procedure for deciding whether there is a violation of this law and imposing measures in accordance with this law is initiated by the Agency, ex officio on the basis of their own knowledge and based on anonymous reports of conflicts of interest.
2. The procedure of paragraph 1 of this Article shall be initiated also upon the request of the holder of public office/function and his immediate superior or authority in which he performs the function, as well as upon complaint of a legal or natural person.
3. Details of the complainant referred to in paragraph 2 shall be confidential, unless the complainant specifically requests that such information be made available to the public, or to the holder of office/functions to which the complaint relates, as well as the authority in which he performs the function.
4. The complainant has the status of a party in administrative proceedings.
5. If there is any doubt as to the possible violation of this law, the Agency shall give its opinion upon the request of any person or institution that requested so.
6. The time limit for initiating procedures after the receipt of information by the Agency about the potential violation of the provisions of this law is 30 days. The Agency shall conduct the proceedings within six months, while the deadline for the initiation of proceedings in relation to the commission of the violation of the provisions of this law is four years.
7. The Agency shall notify the holder of public office/function about the initiation of proceedings under paragraph 1.
8. The Agency may invite the holder of public office/function, the related person, as well as the person upon whose complaint the proceedings were initiated, in order to obtain information, as well as to require them to provide the necessary information in order to decide on the violation of this law.
9. The Agency will ask the holder of public office/function, against whom the proceedings referred to in paragraph 1 of this Article were initiated, to deliver a written statement, within 15 days of receipt of the request for submission of written submissions.
10. If the holder of public office/function does not respond in the manner and within the period specified in paragraph 1 of this Article, the Agency shall proceed in accordance with this law.
11. The Agency has the right to determine the facts by its own investigation or to obtain facts and evidence through other authorities. All public authorities, institutions and courts at all levels of government in BaH are required to submit to the Agency the requested information, to provide the requested legal assistance and all other forms of assistance.

12. If public institutions/authorities, legal or natural persons fail to comply with the requirements of the Agency under paragraph 2 of Article 12, and paragraphs 8 and 11 of Article 14, the Agency shall inform the authority that supervises their work, and may submit a special report to the BaH Parliamentary Assembly and its relevant Committees, and inform the public.
13. Except for cases when otherwise required by Law, the proceedings before the Agency is open to the public.
14. Department of conflict of interests is in charge of gathering facts and evidence and the conduct of proceedings before the Agency.
15. After the conducted proceedings, the Agency is responsible to file a final decision no later than 15 days after completion of the procedure of collecting facts and presentation of evidence by the Department of conflict of interests.
16. In case of suspicion that a criminal offense was committed, the Agency will deliver the report with evidence collected in the exercise of its jurisdiction without delay to the competent prosecutor's office.
17. Decisions of the Agency must be reasoned and shall be published on its website.

Article 19 becomes Article 15 and is amended as follows:

"Agency's decision can be appealed within 15 days of receipt of the decision, and on completion of the appellate proceedings an administrative dispute before the Court of Bosnia and Herzegovina can be filed."

Explanation: The new provisions in Articles 13, 14 and 15, relating to the application of the law and the conduct of the proceedings, lays down the responsibilities of the Agency for prevention of corruption and coordination of the fight against corruption in the implementation of this law, as an independent authority established to prevent corruption, and therefore it means the abolition of the existing Commission for deciding about conflict of interests, whose status is certainly not adequately defined and that does not work in practice. The Agency is also prescribed the obligation of making registries of officials, property and gifts, according to this law, as well their publishing on the website. The proposed provisions prescribe also the manner of the conduct of proceedings, conduct of inspections and public work of the Agency in the implementation of this law. Deadlines for conduct were also determined, as well as obligations with respect to persons who report potential situations in which the provisions of this law are violated.

X

Sanctions

Article 20 becomes Article 16 and is amended as follows:

"1. The sanctions that the Agency may impose to a holder of public office/function for violations of this law are:

a) Suspension of net monthly salary

b) Dismissal from office.

2. The Agency imposes the sanction of suspension of net monthly salary for violation of provisions of Articles 4, 5, 6 and 11, in the amount of 1,000 to 20,000 KM, taking into account the severity and consequences of the violation of the Law and the harm that the violation inflicted to the integrity of the function performed by a holder of public office/function.
3. The sanction of suspension of net salary cannot last longer than 24 months and the covered amount must not exceed 50% of total net salary of the holder of public office/function.
4. The sanction of dismissal from office shall be imposed in situations where a breach of legal provisions was found in a way that the holder of public office/function made direct benefit for himself and for related persons in a situation of conflict of interests, which he did not try to remove, and for violation of provisions of Article 8 of this Law relating to prohibited activities.
5. The Agency submits the request for dismissal from office of a holder of public office/function to the authority responsible for his election or appointment, that after receipt of the request shall have 30 days to initiate proceedings for dismissal.
6. An additional measure imposed by the Agency is the request for the annulment of an act originated in a situation of conflict of interests, in cases where it determined that a public official has obtained benefit, entered into an agreement, made a decision or gave consent to decisions that put him in a conflict of interest. The request shall be submitted to the authority in which or in whose name the act originated, which has a period of 60 days to comply with the Agency's request.
7. Special fines ranging from 2,000 to 15,000 KM shall be imposed to holders of public office/functions for violation of the provisions of Article 7, "Restrictions upon termination of office/function", as well as in cases when sanctions to holders of public office/functions enter into force after the termination of the office/function.
8. If a violation of this law caused damage to a legal or natural person, that person is entitled to compensation for damages through a claim in civil proceedings before the competent court, by application of general rules on compensation for damages.

Explanation: The proposed provisions are relating to defining and increasing the amount of the sanctions imposed in the form of retainment of a part of the net salary, which includes sanctions for violation of provisions relating to the submission of reports on the financial situation and assets and

the accuracy of the information specified in the reports. As an other form of sanctions dismissal from office is proposed, instead of the current "proposal for dismissal", which was non-binding. Financial penalties are also planned in cases where the legal provisions are violated or sanctions are imposed after the termination of office/function, in order to solve the problem with the inability of retaining of payment of part of the salary when officials after the termination of office/function do not have a steady income. At the same time, a new measure of annulment of act that resulted by violation of this law, as well as the possibility of individuals who have been harmed by the violation of this law to institute proceedings for damages.

Article 21 is deleted

After Article 16 Article 17 is added, which reads:

"Transitional and Final Provisions

1. Upon entry into force of the Law, the Agency shall establish a registry of holders of public office/functions to which this Law applies and make it available on its website.

2. The Council of Ministers shall adopt the amendment to the Rulebook on internal organization and systematization of the Agency in order to integrate the Department for conflict of interests and provide adequate resources for implementation of the Law. The Council of Ministers, in cooperation with the Agency, undertakes to draft amendments to the Law on the Agency for prevention of corruption and coordination of the fight against corruption with the aim of bringing it into line with this law. "

Sarajevo, May 2016