



REPUBLIC OF NORTH MACEDONIA



MANAGING CONFLICT OF INTEREST

Practical guide to the rules for ad-hoc detection and management of cases of conflict of interest for the members of the Government of the Republic of North Macedonia



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The preparation of this practical guide is aimed at implementing the recommendation vi from GRECO’s Fifth Evaluation Round of the Republic of North Macedonia titled “Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies.”

I. Introduction

The conflict of interest and its manifestations, in recent years, have increasingly attracted the attention of the professional and the general public and are increasingly becoming the subject of analyses and debates, but also of specific actions of the competent institutions. This is a positive development, as it reflects a growing awareness of the serious consequences that may occur if the conflict of interest is not properly regulated and managed.

The risks that may arise from a conflict of interest seem to have been somewhat underestimated previously and have been overshadowed by the risks associated with corruption. Although any manifestation of corrupt practices should be accompanied by criminal prosecution, the existence of a conflict of interest, still, is a situation that often occurs regardless of the will of the individual. The existence of a conflict of interest does not always imply that there are illegal activities in such form. However, it is clear that a conflict of interest is often a breeding ground for corruption. Therefore, the development and implementation of a system for timely response and management of conflict of interest situations is essential. Regulations and practice should be designed not only to establish the responsibilities of officials, but also to enable resistance to misconduct. Hence, preventing conflict of interest and its manifestations means establishing mechanisms to cope with it before, or at the moment of its occurrence.

The purpose of this Guide is to assist in detecting and managing conflict of interest for those holding the highest executive positions. It can also be used equally by other elected and appointed persons, as well as by public sector employees. We hope that the Guide will not only enable effective development and implementation of conflict of interest management, but it will also answer a series of questions from everyday practice.

II. What is conflict of interest?

International standards, guidelines and recommendations define that:

- public interest must be a priority;
- the transparency of the decision-making process is exceptionally important;
- a system for reporting and monitoring property and interests should be established;
- individual responsibility and a personal example are the basis for good governance;
- the organizational culture that does not tolerate conflict of interest must be encouraged and developed.

The basic task of the officials in performing their official duties and powers is to act in favor of the public interest. In their daily routine, these people have a number of roles. As beings, they are simultaneously representatives of the government and private individuals

and this can often lead to situations of conflict of interest. Since citizens expect the officials to behave honestly, fairly and impartially, it is especially important that the officials do not become involved in any situation that may lead them to a state of actual conflict of interest, but also to prevent situations of potential and so called observable conflict of interest.

The existence of a conflict of interest, as opposed to corruption, as already mentioned, is a natural situation in everyday life. This means that conflict of interest is a potential risk that is often a real entry point into corruption if it is not properly managed. **Corruption always involves a conflict of interest, although it does not mean that all cases of conflict of interest are also cases of corruption.** Therefore, the solution lies in the timely and proper management of conflict of interest.

Pursuant to the Law on Prevention of Corruption and Conflict of Interest: *“Conflict of interest implies a conflict between public powers and duties with the private interest of the officials, in which the official has a private interest, which affects or may affect the exercise of his public powers and duties.”*

A conflict of interest situation can occur both in order to gain personal benefit, as well as to avoid personal losses, whereby the benefit or loss can be tangible or intangible¹.

Acting in accordance with his/her private interests in a situation of a conflict of interest, the official causes harm to other persons, to the society as a whole and to public interest².

Officials and close persons

Pursuant to the Law on Prevention of Corruption and Conflict of Interest, officials are all elected and appointed persons and employees in the public sector.

The term “close persons” means persons in a marital or extramarital union with an official, blood relatives in a straight line and in a lateral line up to the fourth degree, relatives by marriage up to the second degree, as well as any natural person or legal entity with whom the official has a financial interest (father, mother, brother, sister, uncle, aunt, first cousins, son-in-law/mother-in-law – father-in-law, daughter-in-law/mother-in-law – father-in-law, stepfather / stepmother / stepchildren, grandfather, grandmother and grandchildren of a spouse, brothers and sisters of a spouse).

A general principle in the prevention of conflict of interest is the obligation of the officials to always act in favor of public interest, regardless of their private interests and to act

¹ Private interest includes not only financial interest, making profit or avoiding losses, but also intangible benefits such as services and privileges.

² According to the Law on Prevention of Corruption and Conflict of Interest, Article 8, the term “public interest” implies protection of the fundamental freedoms and rights of man and of the citizen recognized by international law and established with the Constitution of the Republic of Macedonia, prevention of risks to health, defense and safety, environmental protection and nature protection, protection of ownership and freedom of the market and entrepreneurship, rule of law and prevention of crime and corruption.

in accordance with the principles of legality, equality, efficiency, trust, independence, publicity, impartiality, honesty and professionalism.

Hence, the official should never be motivated to conduct his official duties due to family, ethnic, religious, political or other private interests.

In addition, although officials may have their own personal views, prejudices and beliefs, they are expected to put them aside in the execution of their official duties. However, if personal preferences and traits affect the proper execution of a public duty, then they can also lead to a conflict of interest.

Hostility, as well as friendship itself, can lead to a real conflict of interest if the official gives them priority in his/her actions.

Forms of conflict of interest

Conflict of interest can be real/actual, visible and potential.

- A real conflict of interest involves a direct conflict between the official duties and responsibilities of the official and his/her existing private interests.
- An observable conflict of interest refers to a situation in which there is a personal interest in regard to which others could reasonably consider that it affect the performance of the official's duties in the future, even though such an inappropriate influence does not have to exist or there is no influence at all.
- A potential conflict of interest exists when an official has a private interest that could conflict with his/her official duty in the future.

The recognition and definition of the differences between the real and the observable i.e. the potential conflict of interest is important for its identification, and hence for the determination of the appropriate management approach. It is important to understand that a poorly managed *observable* conflict of interest can be just as harmful as a poorly managed *real* conflict of interest.

III. Why is managing conflict of interest important?

The appropriate management of conflict of interest brings a number of benefits to public sector institutions.

First, the chances of corruption or misconduct are reduced.

Furthermore, effective policies and procedures for identifying, detecting and managing conflict of interest enable an effective response to unfounded allegations of bias.

In addition, the institution will show its commitment to good management by means of transparent operation, and especially by resolving issues that are most commonly related to conflict of interest.

IV. How should officials behave?

The conflict of interest management system should be based on accepted principles and restrictions that must be complied with.

- **Act in accordance with the law and the ethical principles**

The rule of law includes compliance with all applicable laws and by-laws. However, the laws cannot always fully regulate all specific cases, which is why officials should use the appropriate ethical standards, because only their compliance ensures the proper functioning of the institutions. The most important ethical values are: integrity, honesty, impartiality, loyalty, trustworthiness and respect for people.

- **Encourage others to respect the law and the ethical values**

The highest representatives of the executive power through their example and by acting in accordance with the law and the ethical values in professional and private life, will encourage others to act in the same way.

- **Contribute to the growth of the citizens' trust in the country**

The citizens' trust means a belief that the country and its bodies function efficiently and legally and that government representatives have the abilities, knowledge and impartiality that they use for the common good. Therefore, officials can contribute to increasing the trust of citizens in the country by complying with the law and the ethical values. The decline in trust among citizens is actually a result of violation of the law and disrespect for ethical values.

- **Be impartial**

A difficult task that a representative of the executive power is faced with, is to separate official and private interests. It is often difficult to refuse help for the family or close persons, including party affiliation. However, remember that private relations must not affect the performance of official duties. Officials should first examine themselves whether their private interests or the interests of their closed persons are in conflict with their official

responsibilities. The conflict of interest that arises as a result of the above, should be resolved immediately.

Namely, if a representative of the executive power participates or decides on matters for which he or a person close to him/her has a private interest, he/she is obliged to report the private interest, to request to be exempted and to stop his/her actions.

When the official finds out about circumstances that suggest the existence of a conflict of interest or a potential conflict of interest, he/she is obliged to immediately request to be exempted and to stop his/her actions.³

The official will be exempted from performing a specific action by means of a decision of the body in which he/she is elected or appointed, i.e. where he performs functions, public powers or official duties and at the request of an interested person who found out about circumstances suggesting a conflict of interest or a potential conflict of interest.⁴

Furthermore, the official who participates or decides in the procedure for selection, appointment or employment or is involved as a member of the body conducting that procedure, is obliged to inform the head of the body, i.e. the institution where the official performs public authorizations in regard to all procedures that may cause a conflict of interest.

- **Do not use public functions to gain any tangible or intangible benefit or to behave in a way that demonstrates a desire to gain such benefit**

In many cases, corruption starts with small gifts that can end up in big deals where the function is abused or a trading in influence occurs. For this reason, refusal allows a person to remain honest and independent. This is far more valuable than any personal gain. Only a clear distinction between personal interests and official duties guarantees free decision-making. Accepting gifts and participating in deals or using influence from a position of power restricts this freedom.

- **Protect the information obtained in the performance of public office**

Top executives of executive power dispose of information that can be exceptionally important in making decisions. In many cases, these officials are bound by secrecy. Moreover, these officials should immediately withdraw from the procedures related to the information obtained during the performance of the duties or the performance of the function, which may put them in a position of conflict of interest, because they must not use this information in order to gain benefit or advantage for oneself or for another person. This is contrary to the Law on Prevention of Corruption and Conflict of Interest.⁵

³ Article 75 paragraph (1)

⁴ Article 75 paragraph (2)

⁵ Article 50 paragraph (1) An official must not use the available information in the performance of his/her functions, public powers and official duties for the benefit or advantage for oneself or another person.

This obligation remains within 3 years from the day of termination of the function i.e. the duties⁶.

▪ **Be loyal to the functions or the service you perform**

The holders of the highest positions in the executive power should fulfill the competencies and obligations designated by law or bylaws. These requirements sometimes result in a conflict of interest, which must be resolved individually by the person who holds the position. At the same time, these persons should comply with the ethical standards, because the good functioning of the state largely depends on the appropriate behavior of government officials.

From the many years of operation of the State Commission for Prevention of Corruption, it has been found that officials often decide when a private interest exists, i.e. they do not report it.

Therefore, if you have a dilemma about the conflict of interest situation which you are experiencing, and you cannot assess with certainty whether that situation can lead to a violation of law, ask for an opinion of the State Commission for Prevention of Corruption.

Pursuant to the Law on Prevention of Corruption and Conflict of Interest, it is prohibited to exert influence on a representative of the executive power in procedures for employment or promotion of close persons in the body in which he/she is elected or appointed or in another state body or public enterprise, a public institution or other legal entity which disposes of state capital which is supervised by the body in which the person is elected, i.e. appointed⁷.

An elected or an appointed person or a person in charge in a public enterprise and another legal entity that disposes of state capital is obliged to inform the State Commission for Prevention of Corruption about any election, appointment or employment, promotion of a member of his family in a state body, a local self-government body, a public enterprise or another legal entity that has state capital at its disposal, within ten days from the day of the performed selection, appointment, promotion or employment⁸.

▪ **Do not accept other function or performance of other activity**

The function of a minister or a deputy minister in the Government of the Republic of North Macedonia is incompatible with other elected and appointed functions elected in direct elections or elected or appointed by the President of the Republic, the Assembly of the Republic of North Macedonia, the Government of the Republic of North Macedonia or the local self-government bodies.

A minister or a deputy minister in the Government of the Republic of Macedonia may not simultaneously perform the function of a person in charge or a member of a

⁶ Article 50 paragraph (2) The obligation from paragraph (1) of this article remains within three years from the day of termination of the function, i.e. the duty, unless otherwise stipulated by law.

⁷ Article 56 paragraph (1)

⁸ Article 56 paragraph (2)

management body or a supervisory body in a public enterprise, a public institution or other legal entity that has state capital.

A minister or a deputy minister in the Government of the Republic of North Macedonia may not perform the function of a member of the Board of Directors or of another management body in a trade company or other legal entity that is engaged in a profit-making activity.

If these persons manage a trade company or an institution as owners, they are obliged, upon taking office, to entrust the management to another person or body, except to members of their family and within 30 days from the transfer of the management rights, to submit data to the State Commission for Prevention of Corruption about the person to whom they transferred the management rights by attaching a proof thereof.

▪ **Be accountable**

A minister or a deputy minister in the Government of the Republic of North Macedonia is obliged within 30 days from the day of taking office, to report to the institution i.e. the body in which he/she performs the function, the legal entities in his ownership, in which he has shares, whereupon the body is obliged to publicly publish this data.

Legal entities owned by a minister or deputy minister and their close persons may not:

- establish business relations with the ministry governed by the minister or the deputy minister, at the time when they perform their functions; and
- use grants, loans or financial support from the country.

▪ **Restriction to perform an activity upon termination of the function**

This risky area is related to a possible conflict of interest at a representative of the executive power who is employed in the private sector upon termination of office, because it is assumed that he/she may have created benefits and privileges for himself/herself while performing the function.

In order to prevent this form of conflict of interest, the law stipulates that a representative of the executive power within three years may not be employed by a company in which he performed supervision or had established any contractual relationship in the exercise of public powers or duties and was not able to acquire shares on any grounds in the legal entity where he worked or performed supervision.

Furthermore, a representative of the executive power within two years after the termination of the performance of public powers or duties, i.e. after the termination of employment, may not:

- act as a representative of an international or other organization that has established or establishes a contractual or business relationship with the body in which he/she worked previously,

- represent a legal or a natural person before the body in which he performed public powers in cases in which he participated in the decision-making as an official,
- perform management or audit activities in the legal entity in which at least one year before the termination of the performance of public power, his work was related to a supervisory function.

- **Discretionary powers do not provide you complete freedom in decision-making**

Discretion implies free decision-making on the action in a specific official decision. The extensive use of discretionary powers creates a high risk of conflict of interest. The Law on Prevention of Corruption and Conflict of Interest clearly states that every representative of the executive power in the exercise of discretionary powers is obliged to make decisions conscientiously, taking into account all facts and circumstances of the specific case and the principle of legality and fairness.

V. What should be done to reduce the risks of conflict of interest situations?

The following is necessary in order to avoid conflict of interest:

- Awareness, will, commitment and engagement of the representatives of the executive power in avoiding situations of conflict of interest by giving a personal example and encouraging all other employees to recognize the conflict of interest situations;
- Expansion of knowledge about the meaning of conflict of interest and how to avoid it;
- Use of trainings, publications, experts, e-learning platform in order to properly manage conflict of interest;
- Provision of clear and practical examples that illustrate this phenomenon;
- Assessment of the risks of conflict of interest, introduction of a risk management and monitoring system;
- Appointment of a person or a team for implementation of the mentioned system;
- Consideration of the issue of conflict of interest, as a part of the process of building organizational culture;
- Application of sanctions for non-compliance with the rules for conflict of interest management;
- Resolution of all cases of conflict of interest in a fair and unique way.

VI. Self-assessment procedure for conflict of interest

In an event of suspicion of the existence of conflict of interest in a specific situation, the very official can identify a real, a potential or an observable conflict of interest through honest answers to the following questions:

- Are there any personal interests or interests of close persons that may affect the performance of my official duties?
- Can I acquire personal benefit from this condition?
- Will my actions cast doubt on my impartiality?
- How will others perceive my involvement in the specific procedure or decision-making process?
- Are there any risks for me or my institution?
- Is my involvement in the specific decision-making process fair and reasonable in every respect?
- What can I gain or lose with a specific procedure or decision?
- What are the potential consequences of ignoring a conflict of interest? What if my behavior becomes apparent?
- Have I made any promises or any commitments regarding my actions?

If you are not completely sure about this self-assessment process and you still have a dilemma, do not hesitate to ask for an opinion from the State Commission for Prevention of Corruption