

IPA TWINNING PROJECT „SUPPORT TO EFFICIENT PREVENTION AND FIGHT AGAINST CORRUPTION “

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# MANAGING CONFLICT OF INTERESTS GUIDELINES

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## I. Introduction

These Guidelines have been developed within the EU Twinning project No. MK10/IB/JH/01 under the title *'Support to efficient prevention and fight against corruption'*. The aim of this Twinning project is to attain efficient enforcement of the anticorruption policy and to further promote good governance and rule of law. 8 components of the project covered 8 different areas including Component 2 "Improving the system of management of conflict of interests". Component 2 is divided into 3 activities (2.1, 2.2, 2.3). These Guidelines were drafted as a result of activity 2.3 of the project.

Conflict of interest is gaining more and more attention in recent years and, in fact, has already become the subject of public debate. This is a positive development, because it reflects the growing awareness of the serious consequences of this harmful social phenomenon.

It seems that the risks of conflict of interest were previously undervalued and remained in the shadow of the risks associated with corruption. It is clear that a conflict of interest is often the breeding ground for corruption. Although, every manifestation of corruption should be prosecuted, the existence of a conflict of interest, however, is natural. But the existence of a conflict of interest does not always mean that we do deal with criminal activity. In case of conflict of interest the development and implementation of a system of management of conflicts of interest is essential.

The aim of these Guidelines is to assist in the preparation and implementation of the system of management of conflict of interests. We hope that the Guidelines not only allow the effective development and implementation, but also answer a series of questions in the daily practice.

These Guidelines incorporate the international standards and recommendations of the OECD.

The following materials were used in the preparation of the Guidelines:

- 1) "Managing Conflict of Interest in the Public Service. OECD Guidelines and Country Experiences", OECD 2003 – available at the official website of the OECD:  
[www.oecd.org/gov/ethics/48994419.pdf](http://www.oecd.org/gov/ethics/48994419.pdf)
- 2) "Managing Conflict of Interest in the Public Sector – Guidelines", Independent Commission Against Corruption; Crime and Misconduct Commission, Australia 2004 – available at: [http://www.integrity.qld.gov.au/assets/document/catalogue/icac\\_info\\_sheets/Managing\\_conflicts\\_of\\_interest\\_in\\_the\\_public\\_sector\\_-\\_toolkit.pdf](http://www.integrity.qld.gov.au/assets/document/catalogue/icac_info_sheets/Managing_conflicts_of_interest_in_the_public_sector_-_toolkit.pdf)
- 3) "Conflict-of-interest policies and practices in nine EU Member States: a comparative review" SIGMA Papers, No. 36, OECD 2005 – available at the official OECD Library website:  
<http://dx.doi.org/10.1787/5kml60r7g5zq-en>
- 4) "The Anti-Corruption Handbook for Civil Servants", Central Anti-Corruption Bureau, Poland 2015.

The Organization for Economic Cooperation and Development (OECD) has developed guidelines which ensure that:

- the public interest must come first;
- transparency of decision making is paramount (this means supporting objective scrutiny by putting in place a system of declaration of interests and conflicts);
- management should lead by individual responsibility and personal example;
- organizational culture that does not tolerate conflict of interests should be established.

The OECD defines conflict of interests as follows:

Conflict of interest involves a conflict between the public duty and the private interest of a public official, in which a public official's private-capacity interest could improperly influence the performance of their official duties and responsibilities. The public officials while performing their duties must always act in favor of the public interest, completely excluding their private interest, respecting the principles of the legislation, efficiency, confidentiality, independency, individuality, honesty and professionalism.

## II. What is a conflict of interest?

The main task of the representatives of public authorities is to serve the public interest. In their daily routines these people exist in many roles at the same time. They are both representatives of authority and private persons. This may give rise to conflict of interest. Because citizens expect from politicians and public officials an honest, fair and impartial behavior, it is important that representatives of the authorities should not engage in this type of conflict.

The existence of conflict of interest, as opposed to corruption, is natural. Conflict of interest is thus a potential and often actual gateway to corruption. Corruption may involve conflict of interest, though not all cases of conflict of interest are cases of corruption. The key is therefore the proper management of conflict of interests, and not necessarily combating it, as in the case of corruption.

The Organization for Economic Cooperation and Development (OECD) has undertaken extensive work on conflict of interest and has developed the following simple and practical definition:

*A „conflict of interest“ involves a conflict between the public duty and private interests of a public official, in which the public official has private ... interests which could improperly influence the performance of their official duties and responsibilities.*

A conflict of interest can arise from avoiding personal losses as well as gaining personal advantages – whether financial or other.

A conflict of interest can be actual, perceived or potential.

- An actual conflict of interest involves a direct conflict between a public official's current duties and responsibilities and existing private interests.
- A perceived or apparent conflict of interest can exist where it could be perceived, or appears, that a public official's private interests could improperly influence the performance of his or her duties – whether or not this is in fact the case.
- A potential conflict of interest arises where a public official has private interests that could conflict with their official duties in the future.

Understanding and defining the differences between actual, perceived or apparent and potential conflicts of interest assists in identifying when a conflict exists and determining which type of management approach may be the most appropriate.

It is important to recognize that a poorly-managed *perceived* or *apparent* conflict of interest can be just as damaging as a poorly-managed *actual* conflict of interest. The critical factor is that public officials must not only behave ethically, they must also be seen to behave ethically.

In the Macedonian legislation there is a legal definition of conflict of interest, according to which:

*„conflict of interest” shall mean a conflict between the public authorizations and duties with the private interests of officials, where the official has a private interest which has an impact or could have an impact on the performance of his or her public authorizations and duties.*

Public authorizations and duties shall mean the execution of activities of public interest under equal conditions in the material and immaterial sense.

Public interest is the wider general interest for the general wellbeing and advancement of all the citizens under equal conditions in a material and immaterial sense which may be endangered by causing damages of material and immaterial nature arising from conflicts between private and public interests of public officials.

Private interest means material and immaterial interest of an official that may influence his/her decision-making while discharging public authorizations and duties.

Private interest may result in an official gaining personal benefits to which they are not entitled. By acting according to their private interest in a position of conflict of interest, an official causes harm to other persons, to society in general and the public interest.

Private interest does not only encompass financial interest, the making of a profit or avoidance of losses, but also intangible benefits such as services, favors and privileges.

A general principle in preventing conflicts of interest is the obligation of officials to always act in the public interest, regardless of their private interests, and to act in accordance with the principles of legality, efficiency, confidentiality, impartiality, independence, honesty and professionalism.

Thus an official must never be motivated in carrying out their official duties by family, ethnic, religious, political or other personal interests.

Moreover, we all have our own personal opinions, prejudices and attitudes, which we are expected to set aside when performing our official duties. However, if personal values are likely to impact on the proper performance of public duty, then these can also lead to a conflict of interest.

**Enmity as well as friendship can give rise to an actual or perceived conflict of interest.**

According to the Law on the Prevention of Conflict of Interest, officials include the following positions: the president of the Republic, the members of parliament, the mayors, the ambassadors and other persons appointed by the state to positions abroad; the persons elected or appointed to and by the Parliament and the Government, the state administration authorities and other state authorities, the judicial authorities, public enterprises, institutions, other legal entities of the central government and the local authorities, the civil servants and the employees in the state administration authorities and other state authorities, the judicial authorities, public enterprises, institutions, other legal entities of the

central government and the local authorities, the counselors in the municipal councils, the counselors in the council of the city of Skopje, as well as persons employed through the agencies for temporary employment with authorizations specified by law.

Affiliated persons are persons either in wedlock with the official or in some other non-marital relationship with the official, any lineal blood relatives and lateral relative by consanguinity up to the fourth degree, adoptive parent or adoptee, in-laws conclusive with the second degree of relation, as well as any natural person or legal entity with which the official has a private interest.

Public officials may not carry out supervision or oversight over the work of affiliated persons, who may justifiably be deemed to have an interest in connecting them to the official.

### **III. Why managing conflicts of interest is important?**

Managing conflicts of interest properly brings a range of benefits for public sector organizations.

First and foremost, opportunities for corruption or improper conduct are reduced.

Secondly, effective policies and procedures for identifying, disclosing and managing conflicts of interest mean that unfounded accusations of bias can be dealt with more easily and efficiently.

Thirdly, the organization can demonstrate its commitment to good governance by addressing an issue that is commonly associated with corruption and misconduct.

A transparent system that is observed by everyone in an organization as a matter of course will also demonstrate to members of the public and others who deal with the organization that its proper role is performed in a way that is fair and unaffected by improper considerations.

Failure to identify, declare and manage a conflict of interest is where serious corruption often begins and this is why managing conflicts of interest is such an important corruption prevention strategy.

**Conflicts of interest can not always be avoided or prohibited. Unavoidable conflicts of interest need to be identified, disclosed and effectively managed.**



#### **IV. How the officials shall behave?**

The following are the principles that should guide any official. These principles should underpin the development of the management system of conflicts of interest. They reflect the values that are respected in all democratic countries in the world.

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

The Republic of Macedonia is a country of the rule of law and whose officials are required to act on the basis of and within the law. This principle shall include all applicable legal standards, including those arising from internal normative acts. Since it is not possible to extend the provisions of the whole area of social life, the law can not be conformed fully to the current situation and does not always solve specific cases. When there is no appropriate provisions in law or the law allows for some flexibility in the operation, officials should use the appropriate ethical standards, because only their observance ensures the proper functioning of the society. The most important ethical values include: honesty, loyalty, integrity, reliability, impartiality and respect for people. Having these values is important because of the common good and the menial role of the state and its organs towards its citizens.

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

These Guidelines is a kind of call to all officials, to act, both in their professional and private life, in accordance with the law and ethical values.

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

Citizens' confidence is the belief that the actions of the state and its bodies are reliable and the representatives of the country have the abilities and knowledge that can be used for the common good. Due to this belief people should have a sense that the state action is rightful and in accordance with the law. Officials may therefore contribute to increasing citizens' trust in the state by complying with the law and ethical values. The decline of social trust is in fact usually the result of violations of the law and disregard for ethical values such as integrity, equality and justice.

- **Be impartial, do not favor any party or person**

Difficult task facing the representative of the authority is to separate business and private contacts. It is difficult to refuse assistance to the family or friend. Remember, however, that private relations can not influence them in the discharge of official duties. Officials should examine whether their private interests or their near relatives are not in conflict with official duties. A resulting conflict of interest should be immediately resolved.

- **Do not use public functions to achieve any material or personal benefits or behave in a manner indicating a desire to obtain such benefits**

In many cases corruption starts with small gifts. A representative of the authority that demonstrates an unblemished attitude does not accept any benefits. Refusal of acceptance allows to remain honest and independent. It is much more valuable than any advantage. Only a clear separation of personal and business interests ensures a freedom of decision-making. Accepting gifts limits this freedom.

- **Protect information obtained whilst performing public functions**

Officials have access to information which can be extremely important to many persons. In many cases, officials are bound to secrecy. Moreover, they should withdraw from the act immediately, if it would be related to use of information obtained in connection with the performance of duties or the exercise of authority which is in conflict with the law. Public officials may not use such information to achieve their own goals.

- **Be loyal to the functions or offices which you perform or hold**

Officials often have to meet the requirements imposed on them by the law. These requirements sometimes result in a conflict that must be resolved individually by a person performing a function or holding an office. At the same time public officials should obey ethical standards, because the good functioning of the state depends largely on the proper conduct of the representatives of authorities. Largely, due to the honesty of officials and persons performing public functions, their sense of duty and loyalty to the state, the public order in the country is maintained. Notify to the relevant authorities any violations of the law.

- **Follow the principle of equality before the law, which provides equal opportunities to all citizens, regardless of their national, ethnic, racial and religious identity**

The principle of equality before the law concerns all persons subject to national legislation. According to this principle, all persons, including the representatives of authority, are to be treated equally, i.e. by equal measure, without discriminating or favoring differentiation. This means that politicians and persons performing public functions should not put themselves above the law. Furthermore, they should equally treat all citizens. This principle results also in the prohibition of political, social and economic discrimination.

## **V. How officials can avoid a conflict of interest?**

To avoid a conflict of interest, it is worth to:

- engage political leaders, superiors, officials in the avoidance of conflict of interest, and get their support and to set an example;
- disseminate knowledge about what is a conflict of interest and how to avoid it;
- allow access to knowledge on the management of conflict of interests (e.g. trainings, publications, experts, e-learning platform);
- provide a clear and practical examples illustrating this phenomenon;
- provide clear rules to be followed in the event of conflict of interest;
- assess the risks of conflict of interest;
- consider the issue of conflict of interest while developing organizational culture;
- introduce a system of management of conflict of interests and regularly assess its operation;
- appoint a person or a team responsible for enforcing of such a system;
- introduce mechanisms to identify and document violations of this system;
- specify sanctions for non-observing the rules for management of conflict of interests;
- resolve all conflict of interest cases in just and uniform manner.

## **VI. What role in the avoidance of conflict of interest may play a superior?**

### **Be aware**

The behavior of the superior plays a huge role in the avoidance of conflicts of interest. Directing of the work of subordinate officials means that their superior should be an example for them. Remember that a conflict of interest may have negative effects where:

- the official and substantive oversight is insufficient,
- there is too much confidence in subordinates, as well as in long-term or highly specialized employees,
- superiors give bad example,
- there is no response when misbehavior is detected.

### **Talk**

Regularly talk with employees about the threats they faced or may face during the implementation of the duties and professional tasks. The conversation will help you identify the areas at risk. Analyze threats, including those in other offices that occurred while performing similar tasks. Based on the results of the analysis, think about what changes need to be carried out, e.g. in the structure of the organization, flow of documents and the division of responsibilities, in order to avoid such risks in the future.

Good communication with employees will prevent many unnecessary problems, especially as a superior you should:

- consider professional and personal problems of your employees,
- use available remedies to avoid a conflict between the interests of the employee arising from his outside activities or interests of his close relatives, and his professional duties,
- demonstrate caution in a situation where the employee has clearly too much or too little responsibility,
- note the personal weaknesses (e.g. addiction, expensive lifestyle, difficult to finance hobbies or over-indebtedness of your employees). Employees of the precarious financial situation should not be employed in the purchasing department, public procurement or on the positions where they would be particularly exposed to unfair influence of third parties.

### **Observe**

There are many symptoms that can be observed in the behavior of your subordinates. Remember that the occurrence of such symptoms does not always mean that there is a conflict of interest involving your subordinate. Refer yourself to the common sense. The symptoms may relate to an employee or tasks performed by him.

With regard to the employee pay attention to:

- financial situation: unreasonably high standard of living or financial problems,

- undertaking any other remunerative activities without required permission or informing their superiors,
- untypical behavior (e.g. resulting from the fact that the employee is being blackmailed or have a guilty conscience),
- sudden change in behavior towards colleagues and superiors,
- reduction or lack of identification with the employer or the tasks performed,
- addiction: alcohol, drugs, gambling, etc.,
- desire to impress, bragging about its professional and personal contacts,
- private contacts (e.g. invitations, non-vocational activities, contracts or consulting expertise, equity, etc.),
- receiving benefits from third parties (e.g. special prices for purchases, accepting expensive dinners in restaurants, invitations to private or business events).

With regard to the tasks performed by the employees pay attention to:

- failure to comply with existing legislation,
- consent to weaknesses, in particular to the illegal or questionable behaviors,
- committing 'minor irregularities',
- differences between the actual course of the procedure and the subsequent documenting thereof,
- incoherent assessment of the situation and different decisions in similar cases but different applicants,
- abuse of decision-making powers,
- deliberately avoiding control,
- striving for the achievement of specific tasks,
- failure to provide information on all actions taken,
- reluctance to give reasons for decision,
- bias for certain applicants or bidders,
- disregard for the principles of economy and rationality of public expenditure,
- attempts to influence decisions in cases that do not belong to the scope of responsibility of the employee,
- unjustified reluctance of an employee to change the scope of tasks or to transfer to another position, especially if related to the promotion or increase in salary, or at least with the prospect of it.

### **Prevent**

As a superior you are required to act in accordance with the rules of professional ethics and avoid conflict of interest, including raising awareness of your subordinates. You have similar duties to your superiors as your employees have to you. Please consider the following actions in the most vulnerable areas:

- do not work routinely,
- inform your employees about the risks,

- require an information from employees about the status of ongoing tasks,
- introduce the additional responsibilities associated with reporting tasks,
- make use of the four-eye principle (have someone else review and approve actions or decisions of an employee),
- if possible, change the composition of the teams, working groups, etc.,
- strengthen the official and substantial oversight,
- use of internal control.

### **React**

In the case of justified suspicion of a conflict of interest think about taking immediate action, such as:

- reassign tasks from the employee,
- ban an employee from access files or certain documents,
- inspect the workplace of the employee (such as a computer, memory stick, desk, notes etc.),
- initiate internal control procedures.

Assess how to proceed on the basis of the circumstances of the case. Lack of response can damage not only your image, but can also expose you to disciplinary or criminal liability. Do not hesitate to seek guidance from people competent in the field of conflict of interest management wither within your organization or in other public bodies.

### **Apply**

In order to avoid conflicts of interest, you can not forget about the official and substantive oversight, which, after all, belongs to your principal duties as a supervisor. Lack of supervision can lead to disastrous consequences, particularly in hazardous areas. Therefore try the following:

- optimize control procedures, e.g. by incorporating the control mechanisms (e.g. double checks),
- make sure that your subordinates do not become isolated or overly independent in their actions,
- pay attention to symptoms that indicate the existence of a conflict of interest,
- through random audit, check whether your subordinates do not go beyond their competence or simply violate applicable laws and procedures,
- examine satisfaction with the implementation of the duties and professional tasks by subordinates through discussions with the clients,
- ensure the transparency of the decision-making process.

### **Inform**

If you are the head of a state or local government institution, you are obliged to notify the relevant law enforcement agency of an offence which you discovered in connection with the exercise of your official duties.

## **VII. What role in the avoidance of conflicts of interest may play an institution?**

Each institution should strive to apply the principles of impartiality, reliability and compliance with the law. There is no doubt that a conflict of interest is a serious obstacle to the realization of these general objectives.

One way to overcome this obstacle is to introduce a system of management of conflicts of interest. The system should determine the behavior of all officials in order to eliminate or reduce adverse events with their participation.

Adoption of a system of management of conflicts of interest is a confirmation that the institution is able to assess the existing risks and to prevent the negative events from occurring in the future.

**The management and employees of the office should act jointly and in compliance with the established rules!**

A system of management of conflicts of interest should take into account the organizational structure and the substantial specificity of particular institution. Each institution must regularly analyze risks associated with conflicting interests.

Basing on the results of such analysis following steps may be taken:

- update the system of management of conflicts of interest,
- determine what changes should be carried out:
  - in the organizational structure of the institution,
  - within the subordination of officials,
  - in the scope of responsibilities of particular officials,
  - in the way of servicing clients,
  - in the method of documenting of the tasks performed,
  - in the flow of documents.

**Transparency protects against conflict of interest!**

Please consider appointing an employee or a team responsible for management of conflicts of interest. The tasks connected with the management of conflicts of interest may be executed by staff usually dealing with internal investigations, internal controls and/or oversight over professional conduct of employees.

A person or a team charged with tasks in the area of management of conflicts of interest may be given following tasks:

- contact with the management, officials and clients, in order to advice in the avoidance of conflicts of interest,
- receiving, assessing and inspecting reports about the existence of a conflict of interest,
- analyze and identify conflict of interests risks,



- carry out training in the area of conflict of interest management,
- cooperation with the SCPC and other law enforcement institutions,
- information activities on conflict of interest.

Another important element of the system of management of conflicts of interest is constant raising awareness of officials through the regular training or discussion. In particular, it should apply to persons newly employed or carrying out tasks in hazardous areas.

**Raising awareness of officials forms the organizational framework of the institution!**

If the institution determines that a conflict of interest exists, it should inform and explain the situation to the employees and take relevant remedial steps to avoid the same or similar events in the future. In the case of a justified suspicion of a conflict of interest, it must be notified to the State Commission for Prevention of Corruption.

## **VIII. Competences of SCPC and procedure in cases of conflict of interest**

The State Commission for the Prevention of Corruption is a specialized, independent, autonomous and leading institution for the prevention of corruption and conflict of interest. Established in 2002, the Commission performs the following tasks:

- develops anti-corruption policies and measures;
- implements and initiates amendments to laws;
- promotes the strengthening of the regulatory and institutional framework;
- promotes and carries out inter-institutional and international cooperation;
- carries out research, training and information activities.

The core competencies of the SCPC, pursuant to the Law on the Prevention of Corruption and Conflict of Interest, are as follows:

- to adopt national programs for the prevention and elimination of corruption and conflict of interest;
- to work on improving anti-corruption legislation;
- to initiate appropriate proceedings by other authorities;
- to initiate criminal, misdemeanor and disciplinary proceedings, as well as procedures for the supervision, dismissal, relocation and allocation of employees;
- to act in cases of corruption and conflict of interest;
- to be the sole authority to determine the existence of conflict of interest
- to register and monitor the assets of elected and appointed officials and verify declarations of assets and statements on conflict of interest;
- to cooperate with domestic and similar international institutions;
- to coordinate activities in the fight against corruption and conflict of interest;
- to work on raising public awareness of the negative consequences of corruption and conflict of interest;
- to contribute towards the realization of the principle of transparency of operations.

Reports on cases of corruption and conflict of interest may be submitted to the SCPC in oral or written form by any natural or legal person. These reports may also be submitted anonymously. The person submitting such a report is entitled to feedback and appropriate action from the SCPC.

Elected and appointed office-holders and other officials must, within 30 days of assuming public authorities and duties, submit to the State Commission for the Prevention of Corruption a statement on conflict of interest on an official form that can be downloaded from the website of SCPC.

Civil servants and employees in the authorities of the administration and other state authorities, judiciary authorities, public enterprises, institutions, central and local government, as well as persons employed through agencies for temporary employment, must submit a statement on conflict of interest to the body in which they are employed. In

case of failure to submit such a statement, an official may be fined by a court of law in the amount of 1000 to 3000 € in its equivalent value in MKD.

If an official finds himself or herself in a position of conflict of interest while exercising public authority and duties, he or she must inform the SCPC of this fact within 30 days.

The procedure for determining conflict of interest is initiated and carried out by the SCPC as follows:

- ex officio;
- upon the request of an official;
- upon a report from another person;
- at the request of the manager or head of the authority in which the official is employed;
- on the basis of an anonymous report.

For the purposes of determining the facts of the case, the SCPC collects documents, data and information from other entities that are obliged to respond within 15 days. The SCPC adopts a decision on whether conflict of interest exists within 30 days.

If the SCPC determines that a conflict of interest exists, the Commission submits this decision to the official, who must remedy the situation within 15 days. If the official acts in line with the decision, the procedure is terminated. If not, the SCPC issues a public warning.

## **IX. Declaration of conflict of interest - tool in the system of prevention of conflict of interest**

Management of the system to prevent conflicts of interest, both at the institutional level and at the level of the system in the country, requires constant improvement and upgrading. No state can have full insight into the interests, particularly the elected and appointed officials, if it does not have enough tools to monitor it.

Exactly such tool is the declaration of conflict of interest. Pursuant to the Law on Prevention of Conflict of Interest, officials have obligation to submit a declaration of conflict of interest, who within 30 days of taking the exercise of public powers and duties should submit it to the State Commission for Prevention of Corruption.

Declaration of conflict of interest is also filed by civil servants and employees in state administration and other state bodies, judiciary, public enterprises, institutions and other legal entities of the central and local governments specified by law, and persons employed by temporary employment agencies with authorization. Also for this category of officials, the deadline for submission of the declaration of conflict of interest is 30 days, but certainly, from the date of employment and in the body or institution, which employs.

### **WHICH DATA IS CONTAINED IN THE DECLARATION OF CONFLICT OF INTEREST**

First, it is the personal data of the official filing declaration of conflict of interest, then the data about the public authority and duty for which he is elected or appointed, i.e., employed.

Especially important are the elements of declaration of conflict of interest given by the data for the institution/authority where the official is elected/appointed/employed and the name of the institution/authority that had carried out the election or appointment/employment, and of course the date of election/appointment/employment.

### **WHY THE DATE OF ELECTION/APPOINTMENT/EMPLOYMENT IS IMPORTANT**

Because of the fact that as of that date the deadline for submission of declaration of conflict of interest starts running and failure to respect this entails misdemeanor liability for the official obliged to do so.

During the misdemeanor proceedings, which according to the law are initiated by SCPC for this type of misdemeanor, the competent court will impose a fine to such official for a misdemeanor in the amount of 1,000 to 3,000 euros in denars.

### **WHAT OTHER DATA THE DECLARATION CONTAINS**

This relates to the personal engagements of the official who submitted the declaration such as other public powers and duties; data about ownership, founding, shareholding or about

membership in management boards and in particular, data as to whether he is an authorized official in a company. This also involves data about membership in citizens' associations and foundations.

#### WHY THIS DATA IS NEEDED

After filing the declaration, SCPC immediately makes insight into this data, and is provided an opportunity to act promptly if it establishes a specific violation of the law.

The examples you will see later in these Guidelines will give you a clearer picture of the procedure and of the cases when it is done.

#### DATA IN THE DECLARATION RELATING TO RELATIVES AND IN-LAWS

Besides data discussed above in the text, the declaration also contains data about the powers and functions of relatives of the elected/appointed/employed official, which from the viewpoint of prevention of conflict of interest is particularly important. The law offers the framework and basis for the obligations of officials in relation to the prevention of conflict of interest when it comes to their relatives and in-laws. This is equally significant, in terms of the entire system for managing conflict of interest, also for the data about relatives of the officials, since both the Law on Prevention of Conflict of Interest and the Law on Prevention of Corruption contain provisions that regulate or restrict certain conditions that are conditions of conflict of interest.

## **X. Examples arising from the practical application of the Law on Prevention of Conflict of Interest**

### **Accumulation of power**

Simultaneous exercise of multiple functions by one person is contrary to the legal regulations in this area (Law on Prevention of Conflict of Interest, Law on Prevention of Corruption) that provide for the exercise of one rather than several public functions. In this way, there arises accumulation of functions, which in turn creates prerequisites for the public interest to be subordinated to the private interests of a public official.

Example:

1. A same person exercises the following functions: director of financial affairs in a state institution and member of a management board in shareholding company with a 100% of its shares being a state capital.
2. Exercising three functions: member of a managing board of a public enterprise, member of a municipality council and member of a supervisory board of a public health facility.

### **Violation of Article 9 of the Law on Prevention of Conflict of Interest**

Concurrent exercise of public powers and duties established by law and as an owner managing a company or institution.

Example:

1. Member of a municipality council and manager of a private company.
2. Minister and manager of a private company.
3. MP and manager of a private company.

### **Violation of Article 20 of the Law on Prevention of Conflict of Interest**

Exercise of public functions and receiving reimbursement for activity in citizens' associations, foundations, and organizations (except for travel expenses related to the activity thereof).

Example:

1. Organizational director in public health institution, and founder and director of a foundation, as well as founder and president of a sports association. Such official receives reimbursement in the citizens' foundation and in the sports association.

2. Member of a managing board of public enterprise and member of a board of private foundation while receiving reimbursement for each board session.

### **Nepotism**

Giving advantage, benefit or other favors by the official in the exercise of official duties to a particular individual or group of individuals with whom the official has a family or friendly ties.

Example:

1. Director of a kindergarten employs a relative (his own daughter) in the same institution, by signing the decision on candidate selection and the employment contract.
2. Director of a public enterprise, after 6 months since assuming the function, announces a public call for temporary employment, after which his daughter is employed.
3. Director of a state clinic employs his own son through a transfer from primary to tertiary healthcare sector. For this purpose, he annulled a public competition for employment of two medical doctors without any legal basis.
4. Director of a primary school employs two relatives of his: his sister and wife.

Officials must not act in that case when they have a personal interest. When such official finds out about circumstances indicating a conflict of interest, he will immediately ask to be exempt and will have to cease his action. The exemption decision is made by the body which the official has been elected or appointed to or where he is employed, and at the request of the person concerned.

### **Limitations upon termination of office**

This risk area is related to possible conflict of interest among officials that after leaving public office are employed in the private sector. It is assumed that such official has created for himself benefits and privileges while still performing the function.

Example:

Member of a council, who upon termination of office gets employed before the end of the legally prescribed time limit in the private firm, where he previously conducted supervising as a member of the said council.

### **Determining conflict of interest in the process of conducting public procurement**

An official must not affect the decision making process on public procurement or in any other way to use his position for a decision in order to achieve private interest or advantage for himself or his relatives.

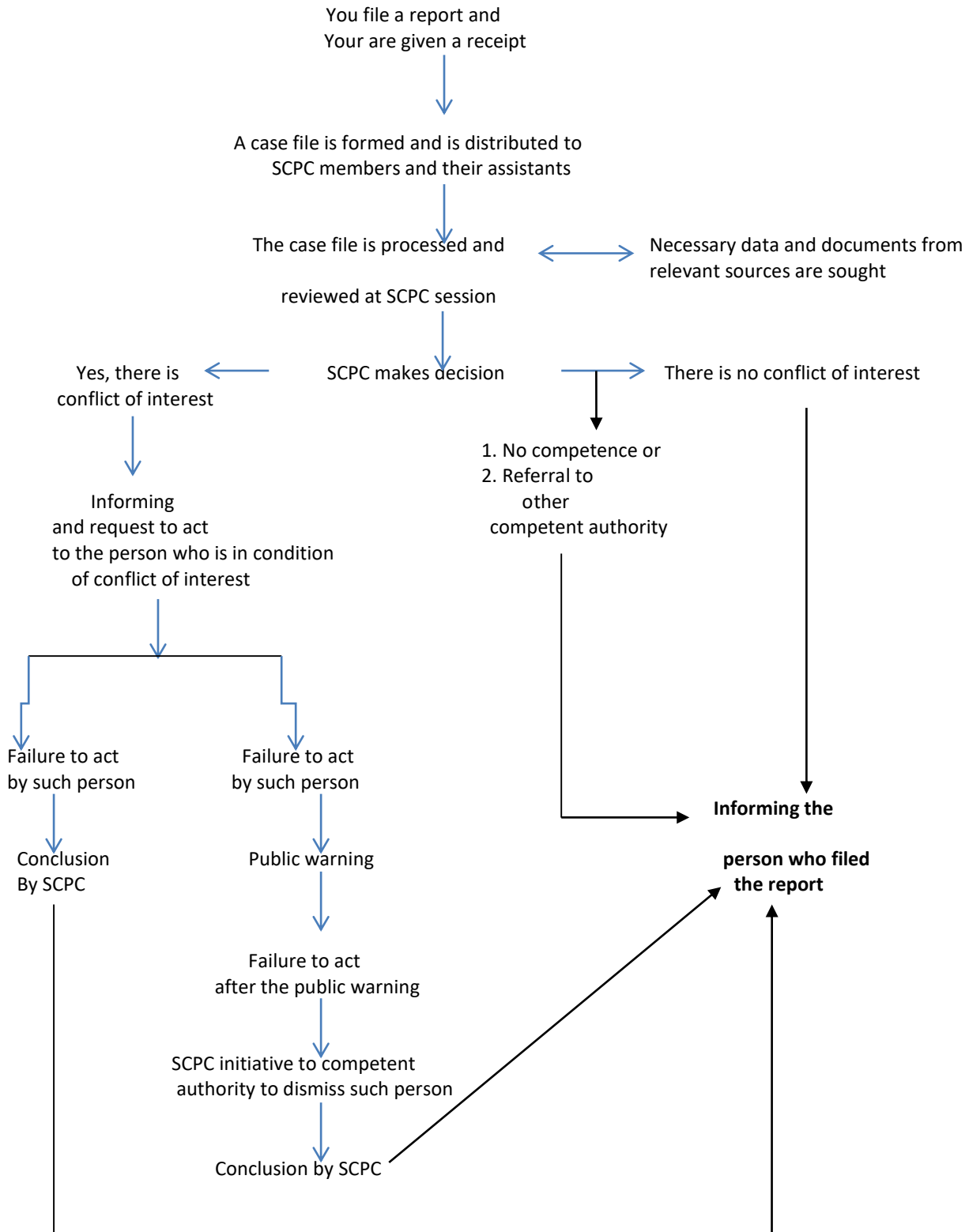
Example:

Director of an agency is in a situation of conflict of interest because his relatives are employees of companies, which appear as economic operators, carrying out public procurement orders, announced and commissioned by this agency and signed by the director himself.



## Acting upon reports filed

A report on a case of conflict of interest may be filed to the SCPC by any natural or legal person, by revealing own identity or anonymously, in writing, and such person has the right to expect a reply on the proper handling by SCPC



## SELF-ASSESSMENT PROCEDURE OF CONFLICT OF INTEREST

In cases of doubt regarding the existence of a conflict of interest, an official may identify a potential conflict of interest by sincerely answering the following questions:

- Is there a personal or private interest that may have an influence on the performance of my official duties?
- Can I obtain a benefit from this interest that may cast doubt on my impartiality?
- How will others see my involvement in the specific procedure or decision-making process?
- Are there risks for me or my institution?
- Is my involvement in a specific decision-making process fair and reasonable under any circumstances?
- What do I have to gain or lose from a certain action or decision?
- What are the potential consequences of ignoring the conflict of interest? What if my behavior becomes public?
- Have I made any promises or assumed any obligations regarding the specific areas?

**If you are not completely sure after this process of self-examination,  
please do not hesitate to contact the SCPC.**