

GUIDELINES FOR DETERMINING CONFLICT OF INTEREST OF PUBLIC OFFICIALS

Introduction

A conflict of interest in the performance of public functions exists when the private interests of a public official affect or may affect their impartiality in the performance of public functions, as well as in other situations that may lead to a conflict of interest. A public official is obliged to perform their duties in such a way that the public interest is not subordinated to private interests and that no conflict of interest arises in the performance of public duties. The interference between a private interest and a public function become problematic when the private interest is likely to interfere with the independent, impartial, and objective exercise of the public duties.

The legal provisions on conflict of interest in the performance of public functions are intended to prevent conflict of interest from arising and to resolve and manage conflict of interest when such situations arise. Furthermore, the LPC also prescribes restrictions in the performance of public functions relating to the performance of incompatible functions, the performance of duties in commercial companies, membership in working bodies and the receipt of remuneration, the conclusion of service contracts, as well as restrictions after the termination of public functions.

The Agency shall determine the existence of conflict of interest and restrictions on the performance of public functions and shall take measures to eliminate them through preventive action in proceedings on requests for the issuance of opinions. A public official is obliged to take measures to resolve conflict of interest or comply with restrictions in the performance of public functions, as well as to report any suspicion of a conflict of interest or restriction to the Agency, which issues an Opinion that is binding on the public official. Similarly, a request for an Opinion on the existence of restrictions after the termination of public office may also be submitted by a public official whose term of office has ended.

Opinions primarily relate to situations in which a public official may find themselves in the course of performing public functions: conflict of interest and exclusions in deliberation and decision-making, restrictions in the performance of functions, the performance of incompatible functions, duties and tasks, membership in management and supervisory bodies, membership in working bodies, acceptance of gifts, as well as restrictions after leaving office, termination of contracts, acceptance of sponsorships and donations, and the status of public officials.

In accordance with the obligations set out in the National Anti-Corruption Strategy 2024-2028, APC has developed these Guidelines for Determining Conflict of Interest of Public Officials.

1. Conflict of interest

Conflict of interest - Article 9

A public official is obliged to perform their duties in such a way that the public interest is not subordinated to private interests and that no conflict of interest arises in the performance of public duties.

A conflict of interest in the performance of public functions exists when the private interests of a public official affect or may affect the impartiality of the public official in the performance of public functions, as well as in other situations that may lead to a conflict of interest.

The existence of a conflict of interest is confirmed by the measures taken by the Agency to prevent conflict of interest.

Opinions on the existence of a conflict of interest in the performance of public functions and restrictions on the performance of public functions, as well as decisions on violations of the provisions of this law relating to the prevention of conflict of interest in the performance of public functions, restrictions on the performance of public functions, gifts, sponsorships, and donations, and reports on the income and property of public officials, which the Agency issues or submits in accordance with this law, are binding on public officials.

A public official shall be deemed to have violated the provisions of this Act if, within five days of receiving the opinion of the Agency referred to in paragraph 4 of this Article, he or she fails to act in accordance with that opinion and the obligations prescribed by this Act, or acts in a manner that violates the prohibitions and rules prescribed by this Act, as well as other provisions prescribing conflict of interest in the areas regulated by these provisions.

The legal provisions on conflict of interest in the performance of public functions are intended to prevent situations in which the personal interests of public officials may affect the impartial performance of their duties, as well as to enable the adequate resolution and management of conflict of interest when they arise. The appearance of a conflict of interest may also be considered as such a conflict and should also be avoided by the public official in the exercise of its duties.

The law precisely defines the conduct of public officials and their obligations in order to ensure compliance with the restrictions on the performance of public functions.

In Montenegro, the concept of a public official is very broad. The Law on Prevention of Corruption defines a public official as, within the meaning of this Law, any elected, appointed or designated person in a state authority, state administration body, judicial authority, local self-government body, local administration body, independent body, regulatory body, public institution, company or other legal entity exercising public powers or performing activities of public interest, or that is state-owned, as well as a person whose election, appointment or designation requires the consent of a public authority, regardless of whether the position is permanent or remunerated.

Therefore, persons holding management positions in state-owned enterprises are also considered public officials, provided that they are appointed in accordance with the cited provision of the Law (which is generally the case)

One of the basic purposes of the LPC is to prevent conflict of interest in the performance of public functions and to prevent private interests from influencing or appearing to influence decisions in the performance of public functions. **A conflict of interest is a situation in which the private interests of public officials interfere with the public interest in such way that the impartiality of the public decisions could be questioned.**

Namely, subjects to the LPC are selected, or appointed to public office, to make decisions in the public interest and must not place their private interests above the public interest. Public decisions should be taken in consideration of the public interest and without interference of any private consideration. Such safeguards are essential to strengthen trust in public officials who undertake specific actions, but also in the authorities within which they perform their public functions. They also reinforce the trust of citizens and society that the powers entrusted to public officials in the public interest are actually exercised without the influence of their private interests.

A conflict of interest, whether actual, potential or perceived, does not in itself necessarily constitute an act that has the characteristics of a corrupt criminal offense, but its transparent disclosure, timely recognition and appropriate action are a prerequisite for the prevention of corruption.

Types of conflict of interest

The LPC recognizes actual and potential conflict of interest but also perceived and hidden conflict of interest.

- **An actual conflict of interest** exists when a public official's private interest has influenced or can reasonably be considered to have influenced their impartiality in the

performance of their public duties.

- **A potential conflict of interest** exists when the private interests of a public official may affect their impartiality in the performance of their public duties.
- **Perceived conflict of interest** exists where circumstances create the impression that a public official could be biased, even though there may be no actual, demonstrable influence on their decision-making. The key element is public perception, rather than proven personal gain.
- **Hidden conflict of interest** exists where an official has a real private interest that influences or may influence their decision-making, but that interest has not been disclosed or has been deliberately concealed. In this case, it is not merely a matter of perception, but of an actual conflict that is being hidden.

A potential conflict of interest arises when private circumstances in the personal, professional, or business sphere of a public official's life arise in the context of the exercise of public authority and may affect the impartiality of the performance of public functions. **Therefore, potential conflict of interest must be properly managed in order to prevent actual, potential, perceived or realized conflict of interest when a specific private interest of an official affects his impartiality in the performance of public functions.**

In this sense, a prevented conflict of interest refers to a situation in which a conflict does not materialize because appropriate preventive measures have been taken, for example through recusal or reassignment of responsibilities.

The declaration of interests is a key tool for preventing conflict of interest. It helps foster ethical reflection among public officials and is a mean of formalizing and structuring ethical considerations to identify situations in which preventive measures should be considered.

Declaration of conflict of interest - Article 10

If a public official in a government body in which he performs a public function participates in the discussion and decision-making in a matter in which he or a person connected to the public official has a private interest, he shall be obliged to refrain without delay from taking any action for which there is a risk of a conflict of interest, and to submit a written declaration of private interest or the risk of a conflict of interest, and to inform the authorities and other participants in the discussion and decision-making process thereof.

The obligation to submit a statement and notification under paragraph 1 of this Article does not apply to members of parliament and experts, nor to public officials who are subject to the rules on exceptions prescribed by a special law or other act.

The authority in which the public official performs his or her public function shall enter the statement of the public official referred to in paragraph 1 of this Article in the minutes and request the opinion of the Agency on this matter.

In the case referred to in paragraph 1 of this Article, the public official may not participate in the discussion and decision-making until the Agency has given its opinion on the existence of a conflict of interest.

If, in the case referred to in paragraph 1 of this Article, the Agency finds that there is a conflict of interest and notifies the public official and the authority referred to in paragraph 3 of this Article thereof, the public official may not participate in the discussion and decision-making, and the authority shall be obliged to adopt a decision on his exclusion.

The competent authority shall be obliged to suspend the implementation of the decision taken contrary to paragraphs 1 to 4 of this Article and shall notify the Agency thereof in accordance with the law.

One of the most effective mechanisms for preventing conflict of interest is **exclusion and the implementation of recusals measures**.

A public official shall **refrain from taking any action** that could place him in a real, potential or perceived conflict of interest, including advising, discussing, proposing, and any other action that precedes decision-making, as well as refraining from taking action after the legal relationship has been established (e.g., monitoring the fulfillment of contractual obligations).

After that, the public official makes a **written statement about the risk of a conflict of interest** and informs the authority, which asks the Agency for an opinion on the matter. If the opinion confirms that there is a conflict of interest, the authority decides to exclude the public official. After the recusal, it is recommended that the public official authorize another person (deputy, assistant, other member of management) to act within the limits of his or her powers, in accordance with the relevant internal acts of the authority.

Good practices for implementing a recusal procedure

In order to implement efficiently recusal measures, it can be advised to create a register to categorise the recusals and external roles of the official. Before meetings, this

register can be used to identify potential conflict of interest and determine whether recusal is required.

- **Maintain an up-to-date register of recusals and external roles** held by public officials.
- **Notify concerned individuals in advance** (e.g., by email before commissions or meetings) when they must abstain from participating in a discussion or vote.
- **Apply recusal procedures broadly**, including situations involving external mandates or organizational responsibilities and personal relationships.
- **Clarify the form of recusal required**, such as abstaining from voting, refraining from discussion, and temporarily leaving the meeting room. Leaving the room should be considered as mandatory in most cases.
- **Organise the agenda strategically** when multiple recusals are expected, to minimize disruption and ensure efficient proceedings.
- **Provide for specific quorum rules** to ensure that decisions can still be validly adopted when one or more members are recused from participation.
- **Appoint the authorized substitute** when needed.

Example:

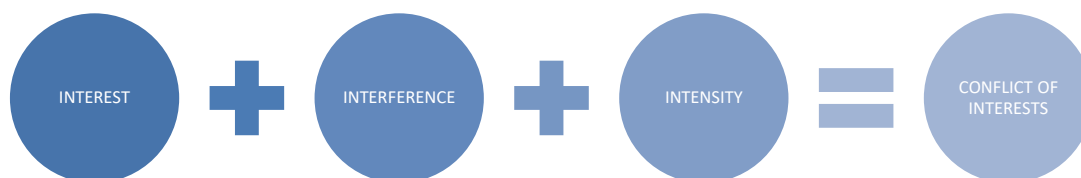
The management body of a public institution sent a request to the APC for an opinion on the legality of actions taken to prevent a conflict of interest. The request states that, during the review of the documentation of the candidates for the selection of the director of this institution, one of the members of the management body made a statement about the existence of a conflict of interest and stated that he would not participate in the decision-making process, as one of the candidates for the selection of the director is a person related to him. The management body adopted a decision on the exclusion of the appointed member and a decision on the appointment of his replacement in the discussion and decision-making on the aforementioned selection. In the aforementioned case, the APC issued an opinion that the specific matter had been handled in accordance with the provisions of the LPC.

French definition of Conflict of interest

According to Article 2 of the law of 11 October 2013 on the transparency of public life, a **conflict of interest** can be defined as:

« any situation of interference between a public interest and a private interest which is likely to influence or appear to influence the independent, impartial and objective exercise of a function constitutes a conflict of interest. »

3 cumulative criteria can help identify a situation of conflict of interests:



- The interest in question can be either **direct or indirect**; **material or moral**; current or past.
- The interference can be **material**, **geographical**, or **temporal**.
- The intensity of the situation is such that it **influences or appears to influence the independent, impartial and objective exercise of a position**.

Practical tools to identify the interest

It is essential to identify the categories of third parties, and for each of these categories, the regular relationships maintained, the nature of these relationships, the internal functions of the structure in relation to these third parties. Assessment of the general functioning of a service, an administration or a public company is therefore a useful approach. Can be identified:

- users (or clients);
- suppliers and service providers, whether or not within the framework of public procurement;
- partners (associations for example), whether they are bound by a form of agreement or whether the relations are informal
- lobbies;
- experts, who for certain public structures are led to present reports or opinions having an important influence on the decisions made;
- members of the family;
- personal relationships.

Practical tools to evaluate the intensity of the interference:

The type of interference: the interference must be of such a nature as to influence or appear to influence the independent, impartial, and objective performance of public duties. This degree of influence must be assessed on a case-by-case analysis, but answering the following questions help determine it:

- To what extent do the powers held by an official in the performance of their public duties enable them to advance their own interest?
- To what extent can their interest benefit from their public duties?

The temporal dimension: a former professional activity creates a moral interest with the former employer, but the intensity of this moral interest decreases over time. After 3 years, it is generally considered as extinct.

When a conflict cannot be resolved by recusal, or when it is possible to give up an interest, this renouncement might be an appropriate way to prevent a conflict of interests. For example, it is possible to give up volunteer functions, such as the presidency of an association or a position on a board of directors, if holding such a role creates a situation of conflict of interest.

More generally, it may be necessary to waive a cumulative function with the public service, if this function puts the person in a conflict of interest situation, notably when the recusal required to avoid the conflict would prevent the individual from properly performing their public duties.

2. Opinions on the existence of conflict of interest and restrictions in the performance of public functions

Giving an opinion on the request of a public official in the event of a suspected conflict of interest and in relation to restrictions in the performance of public functions - Article 30

When there is suspicion of a conflict of interest or restriction in the performance of public functions, a public official is obliged to take measures to resolve the conflict of interest or comply with the restriction in accordance with the law, as well as to report the suspicion to the Agency by submitting a request for an opinion on the existence of a conflict of interest or restriction in the performance of public functions.

A public official who has ceased to hold office may submit a request to the Agency for an opinion on the existence of a restriction under Article 17 of this Act.

A public official, or a public official who has ceased to hold office, shall be obliged to provide accurate information regarding a possible conflict of interest in the request for an opinion referred to in paragraphs 1 and 2 of this Article.

A public official shall be deemed to have violated the provisions of this Act if, within five days of receiving the opinion of the Agency referred to in paragraphs 1 and 2 of this Article, he or she fails to act in accordance with that opinion.

A public official may request the Agency to deliver its opinion within a period not exceeding 15 days from the date of submission of the request, in order to exercise and protect his rights and interests or to perform the obligations in relation to which he requested the opinion.

Rule of confidentiality of proceedings - Article 31

The procedure under Article 30 of this Act shall be confidential.

The Agency shall publish the opinions requested under Article 30 of this Act on its website in accordance with the law governing the protection of personal data.

One of the most important mechanisms for preventing corruption and the preventive action of the APC in this regard are the **Opinions on the existence of a conflict of interest** in the performance of public functions, which the APC issues in accordance with the provisions of the LPC and which are binding on public officials.

The procedure for issuing opinions on the prevention of conflict of interest, in addition to the application of the LPC, also includes the application of other regulations governing conflict of interest in relevant areas, covering a wide range of possibilities: in relation to the performance of duties in several bodies, as well as the performance of the functions of a public official in a commercial company and the performance of potentially incompatible functions, situations relating to the membership of a public official in management and supervisory bodies in public- companies, institutions in which the municipality/the state has an ownership interest, and bodies of non-governmental associations, such as non-profit organizations, in relation to the payment of remuneration by a public official on the basis of membership in bodies of public enterprises and institutions, associations and other associations, as well as situations related to the conclusion of service and business cooperation agreements, and in relation to the prescribed restrictions in the period of one year after the termination of public office.

The aforementioned legal provisions stipulate the right or obligation of public officials to request the opinion of the APC when there is suspicion that certain actions in a given situation are contrary to the provisions of the LPC, as well as **the obligation of the Agency to provide a reasoned opinion within 15 days of receiving the request from the public official.**

Furthermore, the opinions of the APC **are binding** in nature, and public officials are obliged to act in accordance with the opinion received within five days of the date of receipt of the opinion. A public official is considered to have violated the provisions of the LPC if they fail to act in accordance with the APC's opinion **within five days of receiving the Agency's opinion (unconscious performance of public functions).**

All opinions are published on the APC website, thereby informing the public of their content and enabling other officials to familiarize themselves with the Agency's practice.

The published opinions represent a unique catalog of interpretations, or a unique "good practice" and recommendations on how public officials should behave in the same or similar situations.

To further enhance the clarity and practical usefulness of this catalog, the Agency may also consider publishing anonymized extracts or summaries of particularly illustrative decisions, highlighting key reasoning and lessons learned.

Those extract are also efficient because as they are anonymized, they do not enter the scope of personal data regulation and can be published for an unlimited period (European General Data Protection Regulation, GDPR).

By taking such action in cases of potential conflict of interest, the APC also establishes a mechanism for the preventive removal of legal violations.

3. Decisions on the confirmation of conflict of interest and restrictions on the performance of public functions

Initiation of proceedings - Article 34

The procedure for determining whether a public official has violated the provisions of this law relating to the prevention of conflict of interest in the performance of public functions, restrictions on the performance of public functions, gifts, sponsorships and donations, and reports on the income and property of public officials shall be initiated by the Agency at the initiative of the authority in which the public official performs or has performed public functions, the authority responsible for the selection, appointment, or assignment of the public official, another state body or municipal body, another legal or natural person.

The procedure referred to in paragraph 1 of this Article may also be initiated by the Agency ex officio, on the basis of its own findings or anonymous initiatives.

The information on the initiator of the initiative referred to in paragraph 1 of this Article shall be confidential.

In addition to the opinions that the APC gives preventively at the request of public officials, the mechanism for preventing corruption is an administrative or management procedure resulting from APC decisions confirming whether a public official has violated the provisions of the LPC relating to the prevention of conflict of interest in the performance of public functions and restrictions on the performance of public functions.

The APC administrative procedure may be initiated ex officio or upon the request of any legal or natural person. The decision taken by the APC in the aforementioned procedure is final and may be appealed in an administrative dispute.

If the APC decision confirms that a public official has acted contrary to the provisions of the law in the area of conflict of interest or restrictions on the performance of public functions, this shall be considered an improper performance of public functions, of which the Agency shall notify the authority in which the public official performs public functions and the authority responsible for the selection, appointment, or assignment of public officials, in order to initiate proceedings for dismissal, suspension, or imposition of disciplinary measures.

A public official who has been dismissed for these reasons may not perform public functions or the duties of a civil servant for a period of four years from the date of dismissal, unless this restriction applies to a public official who is elected directly in elections.

It is important to point out the legal obligation of the authority in this regard, namely that the authority is responsible for the selection, appointment, or placement of a public official, it is obliged to verify, prior to deciding on the selection, appointment, or placement of a public official at the Agency, whether the proposed candidate, in the last four years prior to their candidacy, in their capacity as a public official, has been found guilty of conduct contrary to the provisions of the LPC.

4. Restrictions on the performance of public function

Performance of other public duties - Article 11

A public official may engage in scientific, educational, cultural, artistic, and sports activities and receive income from copyrights, patents, and similar rights, intellectual and industrial property, unless otherwise provided by law.

Membership of a public official who is appointed or elected to a permanent or temporary working body that constitutes a public authority shall not be considered the performance of two or more public functions within the meaning of this Act, except for those who make decisions or participate in decision-making in accordance with the law governing administrative procedure.

A public official is obliged to report accurate and complete information on income earned from performing activities or transactions referred to in paragraphs 1 and 2 of this Article to the Agency.

In the case of membership in more than one working body referred to in paragraph 2 of this Article, a public official may earn income in only one working body in the same month.

In the case of working bodies and membership of a public official in the same, **a public official may be appointed or elected to permanent or temporary working bodies that constitute a public authority** (except those that make decisions or participate in decision-making in accordance with the law governing administrative procedure), and in that case shall not be considered to be performing two public functions, with the restriction that in the same month he or she may receive remuneration through membership in only one working body.

It may also engage in **scientific, educational, cultural, artistic, and sports activities and earn income from copyrights, patents, and similar rights, intellectual and industrial property**, unless otherwise provided by law, provided that the income earned from the performance of the aforementioned activities or activities, must be reported to APC.

Example:

The Director General of the Ministry requested an opinion on whether he could be a member of the Advisory Body of the Government of Montenegro, and the APC gave its opinion that the person in question may be a member of the aforementioned working body, which has an advisory role and does not make decisions or participate in decision-making, but at the same time instructed the official that in the event of membership in more than one working body, he may only receive income from one working body in the same month, and that he is obliged to report accurate and complete data on the income he receives from performing the aforementioned activities or transactions to the Agency.

Transfer of management rights in commercial companies - Article 12

A person who is the owner or founder of a commercial company, institution, or other legal entity is obliged to within 30 days of the date of election, appointment, or nomination to public office, transfer their management rights in those entities to another legal or natural person, so that that person may exercise them in their own name, but on behalf of the public official, until the termination of their public office.

In the event that a commercial company or other entity referred to in paragraph 1 of this Article has a management body in which the public official, as a member of that body, exercises his or her management rights, the transfer of management rights shall imply the obligation of the public official to resign from membership in the management body, in accordance with the law.

The public official is obliged to provide the Agency with information on the person to whom the management rights have been transferred and evidence of the transfer of management rights within five days of the date of transfer of management rights.

A person who is the owner or founder of a commercial company, institution, or other legal entity is required to **within 30 days of the date of appointment to public office, transfer its management rights in these entities to another legal or natural person**, so that this person may exercise them in their own name, but on behalf of the public official, until the end of their term of office. The public official is obliged to **notify the APC within five days of the transfer of management rights and to provide information about the person to whom the management rights have been transferred and evidence thereof**. In this case, the person to whom the public official has transferred the management rights becomes a related person to the public official.

Performing management and other functions in a commercial company - Article 13

A public official may not be the president, authorized representative, or member of the management or supervisory body, nor the executive director or member of the management of a commercial company.

The LPC does not allow public officials to perform management functions in commercial companies, so it is necessary for a candidate for public office to take steps prior to appointment to public office that will prevent the aforementioned restriction in the performance of public office from occurring, and if, in the course of performing public functions, they accept these duties, they are obliged to resign from public office within 30 days of the start of performing the aforementioned duties.

Performing public functions in a commercial company or legal entity owned by the state, a public institution, or another legal entity - Article 14

A public official may not be the president or a member of the management or supervisory body, executive director, or member of the management of a commercial company or legal entity owned by the state, a public institution, or another legal entity.

Exceptionally, a public official, except for the President of Montenegro, a member of parliament, a member of the Government of Montenegro, a judge of the Constitutional Court of Montenegro, a judge, the head of the State Prosecutor's Office, a state prosecutor, chief special prosecutor, and special prosecutor may be the president or a member of the management and supervisory body of a commercial company or legal entity owned by the state, or a public institution in a commercial company or legal entity owned by the state, or a public institution in which the state or municipality is the owner.

A public official who performs duties in the state administration and local government bodies and local self-government bodies may not perform the function of a representative. A committee member may perform duties in state administration and local administration and local self-government bodies, except for the duties of the mayor, deputy mayor, chief administrator, secretary of the secretariat, head of special services, member of the board of

directors and administrative board, executive director of economic associations and public institutions founded by the municipality, member of the council and director of the local public broadcaster and tourist organization, as well as other positions within the scope of functions appointed by the municipal assembly.

A public official may be the president or member of the management and supervisory bodies of scientific, educational, cultural, artistic, humanitarian, or sports associations, unless otherwise specified by special regulations.

On the basis of membership in the management or supervisory bodies referred to in paragraphs 2 and 5 of this article, a public official may not receive income or other compensation.

Obligation to submit a resignation - Article 15

A public official who, in the course of performing public functions, accepts another duty or a function referred to in Article 13 or Article 14, paragraphs 1 and 3, of this Act, shall be obliged to resign from public office within 30 days of taking up the other function or duty.

If a public official in the case referred to in paragraph 1 of this article does not resign, the public official shall be deemed to have ceased to perform their function on the date of commencement of the other function.

In practice, the administration has the highest requirement for the consideration of public officials in terms of the application of Article 14 of the LPC, which regulates the performance of public functions in a commercial company or legal entity owned by the state, a public institution, or another legal entity.

Example:

A public official, a member of the Municipal Assembly, submitted a request to the APC for an opinion on whether he could also perform the function of a member of the management body of a legal entity owned by the state. The APC issued an opinion that the appointed public official cannot simultaneously perform the function of a member of the management body of the aforementioned legal entity with this public function, and that he is obliged to resign from one of the functions within 30 days and provide the Agency with proof of this. The public official acted in accordance with the APC's opinion, resigned from one of the functions, and submitted proof of this to the APC. Namely, certain categories of public officials cannot be members of the management or supervisory bodies of state-owned legal entities, and among these categories of officials are members of the board.

Example:

A public official, a state secretary in a ministry, submitted a request to the APC for an opinion on whether he could also perform the function of a member of the management body of a legal entity owned by the state. The APC issued an opinion that the appointed public official may, exceptionally, be a member of the management body of the said legal entity, provided that he cannot earn income or other remuneration on the basis of his membership in the said management body. The public official acted in accordance with the opinion of the APC and submitted evidence and relevant documentation to the APC. In this case, there is a legal possibility for the appointed person to be a member of the management body of the aforementioned legal entity in state ownership, but without remuneration on the basis of the aforementioned, because the LPC provides in paragraph 2 of Article 14 for an exception to the general prohibition in paragraph 1 of the same article, except for certain categories of public officials, among which the person appointed in the specific case is not included.

Example:

A public official, chief administrator in a municipality, submitted a request to the APC for an opinion on whether, in addition to the aforementioned function, he could also be a member of the management body of a sports association. The APC issued a negative opinion, taking into account the provisions of a special regulation – the Sports Act, Article 62, which prohibits certain persons, including, among others, the chief administrator of a municipality, from participating in the bodies of sports organizations.

Service and Business Cooperation Agreement– Article 16

A public official may not conclude a contract for the provision of services with a commercial company or legal entity that is state-owned.

A public official may not conclude a contract for the provision of services with a public authority or commercial company that is in a contractual relationship or performs tasks for the authority in which the public official performs his or her function, unless the value of such contracts is less than EUR 1,000 per year.

The public authority in which the public official performs public functions may not conclude a contract with a commercial company or other legal entity if the conclusion of such a contract would result in a private interest for the public official and/or a person related to him.

If a public official or authority acts contrary to paragraphs 1, 2, and 3 of this article, the provisions of the Law on Obligations relating to the nullity of contracts shall apply to the concluded contract.

Example:

A public official from a state administration body sent a request to the APC for an opinion on whether there was a potential conflict of interest due to the conclusion of a contract for the provision of services with a legal entity. The APC issued an opinion that the contract in question was concluded contrary to the provisions of the LPC, given that the legal entity with which the contract was concluded is state-owned and that the contract cannot remain legally valid, or that the provisions of the Law on Obligatory Relations relating to nullity apply to it.

Restrictions upon termination of public office - Article 17

A public official may not, for a period of one year upon the termination of public office:

- 1) appear before the authority in which he performed public office as a representative or agent of a legal entity, entrepreneur, or international or other organization that has or establishes a contractual or business relationship with that authority;*
- 2) establish a working relationship or business cooperation with a legal entity, entrepreneur, or international or other organization which, on the basis of a decision of the authority in which the public official performed his or her function, derives a benefit;*
- 3) represents a legal or natural person before the authority in which he performed a public function in a matter in which he participated in the decision-making process as a public official;*
- 4) performs management or audit tasks in a legal entity in which, at least one year prior to the termination of public office, his duties were related to supervisory or control tasks;*
- 5) enters into a contractual relationship or other form of business cooperation with the authority in which he performed public functions.*

A public official may not, for a period of two years after leaving public office, use, for the purpose of obtaining benefits for himself or another person or for causing harm to others, information and knowledge obtained in the performance of public functions, unless such information and knowledge is available to the public.

The LPC also prescribes certain restrictions on public officials after they have ceased to hold public office, for a period of one year after the cessation of public office (the so-called cooling-off period).

Example:

A public official whose term of office has ended has asked the APC for an opinion on whether he can be employed by the body in which he performed his public function, or in which he served as a member of the board of directors. The APC issued an opinion that this is a restriction after leaving public office and that, for a period of one year after leaving public office, he may not enter into a contractual relationship or other form of business cooperation with the authority in which he performed public office.

CONCLUSION - CONSEQUENCES OF THE OPINIONS AND DECISIONS:

What are the possible consequences of violating legal provisions and the opinions and decisions made?

- restrictions on appointment: a public official may be prevented from being appointed to other positions;
- a public official may be subject to disciplinary sanctions or suspension
- annulment of the selection decision: the decision on the selection of a public official may be annulled;
- resignation: an official may be forced to resign from public office;
- acceptance of additional contracts and remuneration: in certain cases, it is not permitted to conclude a contract for additional work or the provision of services or to accept remuneration in administrative bodies.
- Dismissal: an official may be dismissed from public office;
- Post-functional restrictions: restrictions on business activities apply for one year after the termination of office.

Similarly, for violations of the provisions of the LPC relating to the prevention of conflict of interest and restrictions on the performance of public functions, **financial penalties ranging from EUR 500 to EUR 2,000 are also provided for violations by public officials, and for persons who have ceased to hold public office, if they violate the provisions of Article 17 of the LPC within one year after ceasing to hold public office, fines ranging from EUR 1,000 to EUR 2,000.**

Possible consequences of violating legal provisions and the opinions and decisions regarding conflict of interest in France

The High Authority for Transparency of Public Life is at the heart of a deterrent system of follow-up and sanctions.

In the event of violation of an incompatibility opinion, the High Authority for Transparency in Public Life may publish a special report in the Official Journal including the opinion given and the written observations of the person concerned.

Each year, the High Authority asks people who have obtained an opinion with reservations to justify, by any element, compliance with the reservations.

For civil servants, the violation of an incompatibility opinion or the lack of a referral can also lead to specific sanctions (article L. 124-20 of public servant code):

- Disciplinary sanctions
- Deduction on pensions for retired civil servants
- The breach of the new contract, without prior notice and compensation

However, the High Authority has no legal means authorizing it to request information from the administration or the entity being joined as part of a revolving doors scheme.

The increased number of requests for opinions in order to avoid situations of potential conflict of interest, as well as the high percentage of compliance with opinions and actions in accordance with the Agency's decisions, indicate a certain strengthening of the awareness of public officials and the responsibility of public authorities in terms of compliance with the obligations prescribed by the LPC.

The submission of resignations and the refusal of monetary compensation in connection with public office also represent one of the indicators of increased responsibility and conscientious performance of public functions.

Given the need to further raise awareness among public officials and employees in the public sector, as well as the general public, about the importance of preventing conflict of interest and the mechanisms for preventing and sanctioning them, the Agency will continue to carry out educational and preventive activities in cooperation with other state bodies.

At the link below, you can find a questionnaire with the most frequently asked questions and answers in the field of preventing conflict of interest and restrictions in the performance of public functions: <https://www.antikorupcija.me/me/sukob-interesa/2002161737-q/>