



COMMENTS ON THE PROPOSED NEW LAW ON THE PREVENTION OF CONFLICTS OF INTEREST

Summary

The new law would change the election procedure for the President and members of the Commission for preventing conflicts of interest by increasing the number of candidates on whom the Parliament will vote. Although the votes from the majority of members of Parliament will be required for being elected, the proposal does not provide for the second round of voting. Instead, the whole procedure must be repeated, and the Parliament will never vote on only two candidates. In this way, even in a secret ballot, only candidates who have the support of the ruling majority can be elected.

On a positive note, the Proposal introduces the obligation for officials to declare a potential conflict of interest when it arises during their term in the office. However, the proposed formulation is not clear enough as it says that this declaration should be made "in an appropriate way" without defining this term.

Also on the positive note is the provision that an official should be exempted from participating in decisions that affect his business interest and the interests of his relatives, but also when they affect the business interests of his employers in the last two years before assuming the position. This restriction should however be extended to business entities with which the official or his relatives had significant business relations in this period.

A positive aspect of the proposal is the introduction of an annual obligation to submit a declaration on property and income. However, for the sake of completeness, information on transfers and gifts for the benefit of other persons made in the last ten years should also be provided. Information should also be provided on the conversion of agricultural land to construction sites owned by the official.

The biggest weakness of the proposed law is that it does not link the principles of Articles 2 and 5 of the existing law (now becoming Articles 2 and 6) with possible sanctions. The purpose of keeping them is therefore not clear. In the explanatory notes for the new law, the Government does not say whether it intends to adopt a code of conduct or a code of ethics for senior officials at the national level and for members of Parliament, which could then ensure the implementation of these principles beyond what is operationalized in this law. At the same time, the bill stipulates that such codes of conduct should be adopted at the local level.

General Remarks

The Government should explain why it is necessary to enact a new law and not to amend the existing one based on which the case law has developed.

The new law proposal takes over Articles 2 and 5 from the existing law (now Articles 2 and 6) which define the conflicts of interest and provide the general principles of conduct for officials, including the prohibition of using the public office for personal gains. However, The Constitutional Court and the Administrative Courts in their judgments have in the meantime prevented the direct application of these articles and any sanctions for their violation, including through the declaration of the Commission that these principles have been violated.

In contrast, GRECO in its latest report for Croatia emphasized the central importance of these articles and warned of the need to ensure their enforcement. In fact, in Articles 66 and 92 of

its report, GRECO expressed concern that the Commission is authorized only to declare a violation of these principles, but not impose penalties. Judicial decisions have however declared that the Commission does not have the authority to declare that these articles have been violated. As a result, many proceedings initiated by the Commission have been terminated.

In the context of such judicial practice, the Government should explain the purpose of reiterating these provisions and why they cannot be made more precise and linked to possible sanctions, especially given that it otherwise refers to GRECO's recommendations.

At the same time, the explanation of the proposal is silent on whether the Government intends to adopt a code of conduct, or a code of ethics for senior officials at the state level and members of Parliament, although the bill provides for such codes of conduct to be adopted at local levels.

In the same way, the proposal is silent on GRECO's recommendation on the rules of conduct for top officials regarding contacts with lobbyists and other persons who try to influence the decisions of state bodies.

The lack of clarity by the Government on aspects of the rules of conduct of officials that are not covered by the operational norms of the proposed law makes it impossible to see whether the legislator intends to provide other mechanisms for implementing Articles 2 and 6.

Specific Comments

Article 9, paragraph 1:

The article introduces the obligation to report a potential conflict of interest if it arises but uses a vague wording "appropriately".

This needs to be clarified, and it should be stated that such declaration is submitted to the Commission.

Article 9, paragraph 2:

The second paragraph states that an official may not participate in decision-making that affects his business interest and interests of his relatives but also the business interest of employers by whom he was employed in the last two years before taking the office.

This restriction should be extended to business entities with which the official and his relatives had significant business relationships. These can be defined, inter alia, through the share of transaction amounts in the total revenues of both parties.

Article 11:

This article requires that all activities performed by the official two years before taking office be declared on the property card.

In the European Commission, such obligation applies to all activities in the last ten years. It should be applied here as well.

To provide complete information on the property and income position of the official, the article should include the obligation to report transfers and donations of real estate and other property above a certain value in the last ten years to other persons, as well as benefits generated by converting agricultural and similar land into construction sites.

Article 35:

Regarding the election of members of the Commission, the proposed law stipulates that the competent Parliamentary Committee should propose to the Parliament at least three candidates for the President of the Commission (so far two) and at least three candidates for each member, i.e., a total of 12 candidates. Voting is secret, but only those candidates who get a the majority of votes of all members of Parliament would be elected. The proposal does not say what happens if none of the three presidential candidates or any of the 12 candidates

for members get a majority, nor does it provide for the second round of voting. This implicitly means that the procedure must be repeated, and three or more candidates again submitted to the Parliament, instead of the two candidates who received the most votes for the presidency in the first ballot. The same goes for member candidates.

Despite the secret ballot, in such a procedure only the candidate of the ruling majority can be elected because the votes of the opposition parties in the first round will most likely be scattered. Even if a small number of members of the ruling majority do not vote for the "official" candidate, another candidate cannot be elected.

For the sake of a more representative composition of the Commission, a two-round vote should be envisaged.

Article 43

This article prescribes a fine of HRK 1,000 for heads of state authorities who turn a deaf ear to the request of the Commission to provide the necessary information necessary to establish the facts.

The envisaged penalty is symbolic and will not ensure delivery of the necessary data, so it needs to be increased.

Resources for Implementation

The new law will significantly expand the circle of officials whose fulfillment of obligations will have to be controlled by the Commission. The bill, however, does not provide any information on how much more funding for the work of the Commission will have to be provided. It just states that the resources will be allocated in the budget.

Such wording does not fulfill the purpose of the provision that the proposer of a new law should provide information on the necessary means for its implementation.