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URGENT OPINION ON THE DRAFT LAW AMENDING THE LAW ON PREVENTION OF CORRUPTION (AS OF MAY 2026)

SERBIA

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Based on an unofficial translation of the Draft Law, as provided by the requesting body.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Overall, the Draft Law aims to provide for more enhanced corruption prevention regulations, implementing number of previous recommendations made by ODIHR and other international organizations, albeit at times only partially.

The new provisions establish a clearer separation between official duties and political activities, prohibit the use of official social media accounts for party campaigning, and introduce restrictions on certain promotional activities during election periods. The Draft Law also introduces expedited procedures and publication requirements for decisions of the Agency for the Prevention of Corruption ("the Agency") during election campaigns. Proposed amendments regulating political activities of public officials and monitoring during election campaigns are broadly in line with previous ODIHR recommendations aimed at preventing the misuse of public office and administrative resources, contributing to a level playing field among electoral contestants.

The introduction of an explicit monitoring mandate for the Agency during election campaigns, together with obligations to publish findings relating to potential misuse of administrative resources, also addresses concerns repeatedly identified in ODIHR election observation reports regarding the effectiveness of oversight and enforcement mechanisms. These measures, when applied effectively and appropriately, may contribute to enhancing the effectiveness of campaign-related remedies and increasing transparency.

At the same time, while the above amendments constitute a step in the right direction, it remains essential to ensure their effective, consistent and impartial implementation in practice.

Furthermore, consideration should be given to further clarifying the regulation of promotional activities, including by narrowing the scope of permissible exceptions to the relevant prohibitions. Similarly, further strengthening of the Agency's mandate, as well as its decision-making framework and procedural safeguards, warrants particular attention.

The expansion of the definition of "public officials" to encompass a broader range of actors exercising significant influence over public decision-making is also a positive development. At the same time, the Law should ensure that the determination of whether a person falls within its scope depends primarily on the nature of the functions performed and the influence exercised, rather than on formal job titles, predefined categories of office-holders, or the duration, frequency or contractual basis of the engagement. Consideration should also be given to ensuring that persons falling within the expanded scope of the Law are subject, prior to assuming their functions, to appropriate integrity safeguards aimed at identifying potential conflicts of interest, incompatible activities, significant financial interests, beneficial ownership arrangements, business relationships, previous professional engagements, and other factors relevant to the impartial and accountable exercise of public functions.

It is equally important to ensure that restrictions on post-employment activities are framed broadly enough to encompass all forms of professional engagement that are materially connected to functions exercised during public office and that may affect public confidence in the integrity, impartiality and independence of public administration.

Public authorities are also encouraged to ensure that adoption of the Draft Law, as well as any amendments to the existing anti-corruption and electoral legal framework in general, are preceded by a proper impact assessment and subject to inclusive, extensive, effective and meaningful consultations throughout the legislative process, including with representatives of various political parties, academia, civil society organizations, which should enable equal opportunities for women and men to participate.

A. Regarding definition of public officials:

1. to extend the definition of “public official” to include chief of cabinet of the President and advisors to the President, as well as any person who, regardless of formal title, contractual or employment status, or mode of engagement, substantially contributes to the preparation, co-ordination, adoption or implementation of decisions of the President of the Republic, the Government, the Prime Minister, Deputy Prime Ministers, ministers or other senior executive authorities, where such activities may materially influence public policy, appointments, public procurement, the management of state-owned enterprises, regulatory decisions, the management or allocation of public resources or other matters of significant public interest; [para. 25]

2. to ensure that the expanded definition of “public official” be accompanied by appropriate integrity safeguards, in particular, by requiring that persons falling within the extended scope of the provision be subject, prior to assuming their functions, to integrity screening aimed at identifying potential conflicts of interest, incompatible activities, significant financial interests, beneficial ownership arrangements, business relationships, previous professional engagements and other factors relevant to the impartial and accountable performance of public duties; [para. 28]

B. To supplement Article 15 of the Law on Prevention of Corruption to provide clear limits on the duration of any extension of the Director’s mandate beyond the expiry of the term of office while considering appropriate mechanism to ensure the timely, transparent and predictable appointment of a successor, including a potential anti-deadlock mechanism to address a prolonged failure by the National Assembly to appoint a successor as per Article 13 of the Law; [para. 32]

C. To require that public authorities’ response to the Agency’s initiatives or opinions on draft legislation are sufficiently detailed and substantively reasoned, addressing the substance of the Agency’s findings, and are made publicly accessible, while specifying the consequences related to the failure to respond or to the submission of unsubstantiated reasoning; [para. 35]

D. Regarding misuse of public office and public resources:

1. to further strengthen Article 50 by clarifying and broadening the definition of “promotional activities” in a manner that encompasses both direct and indirect forms of electoral advantage arising from the use of public office, institutional visibility or public resources for a political party, political entity, coalition, candidate, electoral list or campaign position, including through the presentation of public achievements, major announcements linked to or aimed at creating a favourable perception towards a given party or candidate, public investments, public programmes or institutional activities during the electoral period in a manner that may influence voters; [para. 57]

2. to narrow the scope of permissible exceptions to the prohibition of promotional activities to include only the activities that are objectively necessary for the discharge of the relevant public function and cannot reasonably be postponed until after the electoral period, such as communications required to protect public

health or safety, respond to emergencies, comply with legal obligations, or address other matters of urgent and overriding public interest, while also ensuring that they are interpreted restrictively and conducted in a manner that fully excludes any political messaging, party symbols, campaign communication, promotion of candidates or electoral lists, or any form of presentation capable of conferring an electoral advantage; [para. 58]

3. to strengthen the Agency's electoral campaign monitoring framework by complementing random sampling with risk-based and targeted monitoring of higher-risk categories of public officials, such as the President, Prime Minister, all cabinet ministers, regardless of the random draw, also taking into account previous decisions and established patterns of violations, recurring allegations concerning specific institutions or categories of public officials, findings from earlier electoral cycles, and any publicly available information indicating an elevated risk of misuse of administrative resources, while ensuring that the Agency is allocated adequate human, technical and financial resources to effectively carry out its mandate; [para. 63]

E. Regarding post-employment restrictions:

1. to ensure that restrictions apply to all high-risk categories of public officials, narrow or remove completely the exemption for directly elected officials provided under Article 55 (5) of the Law; [para. 69]

2. to clarify and expend the scope of restricted post-employment activities as to encompass all forms of professional engagement that are materially linked to the functions exercised during public office and that may affect public trust in the impartiality of public administration; [para. 71]

F. To consider introducing a more differentiated approach to sanctions, whereby the severity of the penalty is determined by relevant factors such as the gravity of the violation, the nature and extent of any misuse of public resources, the duration and repetition of the conduct, the institutional position of the official concerned, and the impact of the violation on the equality of electoral contestants. [para. 89]

These and additional recommendations are included throughout the text of this Urgent Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

I. INTRODUCTION

1. On 19 May 2026, the Secretary General of the National Assembly of Serbia sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request for a legal review of the Draft Law Amending the Law on Preventing Corruption (hereinafter "the Draft Law").

2. On 23 May 2026, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the Draft Law to assess its compliance with international human rights standards and OSCE human dimension commitments. Given the urgency indicated by the requestor, ODIHR agreed to prepare an Urgent Opinion, which does not provide a detailed analysis of all the provisions of the Draft Law, but primarily focuses on the several key areas of concern, while recognizing the areas of improvement. The absence of comments on certain provisions of the Draft Law should not be interpreted as an endorsement of these provisions. The Urgent Opinion should be read in light of other recent findings and recommendations from previous ODIHR election observation reports and legal opinions on Serbian legislation.[1]

3. This Urgent Opinion was prepared in response to the above request. ODIHR conducted this assessment within its general mandate to assist OSCE participating States in the implementation of their OSCE human dimension commitments.[2] ODIHR remains ready to continue providing legislative assistance, including through the review of a revised Draft Law and other existing or draft legislation relating to political parties and electoral reform.

II. SCOPE OF THE URGENT OPINION

4. The scope of this Urgent Opinion covers the Draft Law submitted for review. Thus limited, the Urgent Opinion does not constitute a full and comprehensive review of the Law on Prevention of Corruption nor of the entire legal and institutional framework governing the prevention of corruption in Serbia.

5. The Urgent Opinion raises key issues and highlights areas of concern. In the interest of conciseness, it focuses on those provisions that require amendments or improvements rather than on positive aspects of the Draft Law. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and

1 See, in particular, ODIHR, Informal Comments on Two Sets of Draft Amendments to the Law on Prevention of Corruption of the Republic of Serbia (19 November 2024) and ODIHR, Opinion on the Draft Law Amending the Law on Financing Political Activities (11 May 2026), Sub-Sections 2.11, 2.12 and 2.13. See also ODIHR, Report on Early Parliamentary Elections in Serbia, 17 December 2023, especially Recommendation 17. See also ODIHR, Urgent Opinion on Draft Amendments to Several Pieces of Election-related Legislation of Serbia, Recommendation D, paras. 32-33; ODIHR-Venice Commission, 2022 Joint Opinion on the Constitutional and Legal Framework Governing the Functioning of Democratic Institutions, Electoral Law and Electoral Administration in Serbia, paras. 103 and 114-126.

2 See in particular, the *OSCE Final Document of the Eleventh Meeting of the OSCE Ministerial Council*, Maastricht, (2003), para. 2.2.7, which provides: "*We agree to make the elimination of all forms of corruption a priority. We will consider accession to, encourage ratification of, and support full implementation of, international conventions and other instruments in the field of combating corruption, in particular those developed by the Council of Europe and the Organisation for Economic Co-operation and Development (OECD). We welcome the adoption of the UN Convention against corruption and look forward to its early signature, ratification and entry into force*." See also OSCE, *Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism*, MC.DOC/2/12, Dublin, 7 December 2012; and 1999 Istanbul Document (Summit of Heads of State or Government), 19 November 1999, para. 33, where OSCE participating States committed to strengthen their efforts to *"promote good government practices and public integrity"* in a concerted effort to fight corruption.

recommendations, as well as relevant OSCE human dimension commitments and international good practices.

6. The Urgent Opinion also highlights, as appropriate, good practice from other OSCE participating States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model but rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

7. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[3] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[4] and commitments to mainstream gender into OSCE activities, programmes and projects, the Urgent Opinion integrates, as appropriate, a gender and diversity perspective.

8. In view of the above, ODIHR stresses that this review does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Serbia in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

9. The prevention and fight against corruption is an integral part of the commitments undertaken by OSCE participating States, as underlined in particular in the 2012 OSCE Ministerial Council's Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism,[5] among other OSCE commitments.

10. International anti-corruption standards are found principally in the United Nations (UN) Convention against Corruption[6] (hereinafter "the UNCAC") as well as the Council of Europe (CoE)'s Criminal Convention on Corruption,[7] CoE Civil Law Convention against Corruption[8] and CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.[9]

11. International and regional standards are also supported by a number of soft-law documents, including the UN Declaration against Corruption and Bribery in International Commercial Transactions,[10] the UN General Assembly Resolution 51/59

3 See *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Serbia ratified this Convention on 12 March 2001.

4 See *OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04* (2004), para. 32.

5 OSCE, *Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism*, MC.DOC/2/12, Dublin, 7 December 2012.

6 UN Convention Against Corruption (UNCAC), adopted on 31 October 2003, ratified by Serbia on 20 December 2005.

7 CoE Criminal Law Convention on Corruption, adopted on 27 January 1999, ratified by Serbia on 18 December 2002, not yet in force.

8 CoE Civil Law Convention Against Corruption, adopted on 4 November 1999, ratified by Serbia on 9 January 2008.

9 CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, adopted on 8 November 1990, ratified by Serbia on 9 October 2003.

10 UN General Assembly, United Nations Declaration against Corruption and Bribery in International Commercial Transactions, A/RES/51/191, 86th plenary meeting 16 December 1996.

on Action against Corruption,[11] Council of Europe (CoE) Committee of Ministers Recommendation (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption[12] as well as CoE Recommendation (2000)10E on Codes of Conduct for Public Officials.[13] Guiding principles and recommendations specific to anti-corruption agencies or authorities can be found in the Jakarta Statement on Principles for Anti-Corruption Agencies[14] (hereinafter the "Jakarta Principles"), its 2020 Colombo Commentary[15] and the Anti-Corruption Authority Standards of the European Partners against Corruption (EPAC) (hereinafter the "EPAC Principles").[16]

12. Moreover, the recommendations of the CoE's Group of States against Corruption (hereinafter "GRECO") are also of relevance here. In particular, GRECO's compliance reports on Serbia, and its anti-corruption body, have been reviewed in the context of preparing this Urgent Opinion.[17]

13. In addition, international guidance on anti-corruption continues to be shaped by the Conference of the States Parties (CoSP) to UNCAC, most recently, the 2025 Resolution 11/7 of the CoSP, which underscores the importance of enhancing transparency in the financing of political parties and election campaigns, while addressing emerging risks associated with increasingly complex and indirect financing arrangements, as a core component of anti-corruption frameworks and prevention of economic crimes.[18]

14. Furthermore, Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes[19] by ODIHR and the CoE's European Commission for Democracy through Law (Venice Commission) are of relevance, along with ODIHR election observation reports and legal opinions on anti-corruption.[20]

1. General Comments

15. As mentioned above, this Urgent Opinion assesses, among other things, to what extent the Draft Law under review has complied with previous ODIHR recommendations, including those from ODIHR's Final Report on the Early Parliamentary Elections in

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11 UN General Assembly, Resolution on Action against corruption, A/RES/51/59, 12 December 1996.
12 CoE, Committee of Minister Resolution (97) 24 of 6 November 1997 on the Twenty Guiding Principles for the Fight Against Corruption.
13 CoE, Committee of Ministers Resolution (2000)10 E of 11 May 2000 on codes of conduct for public officials and its Explanatory Memorandum.
14 See Jakarta Statement on Principles for Anti-Corruption Agencies (2012).
15 *Colombo Commentary to the Jakarta Statement on Principles for Anti-Corruption Agencies* (2020).
16 Available at < EPAC Setting Standards for Europe.indd >.
17 For such reports in general, please see <http://www.coe.int/t/dghl/monitoring/greco/documents/index_en.asp>; for the most recent reports on Serbia, see <Serbia - Serbie - Group of States against Corruption>, and in particular, GRECO, *Fifth Evaluation Round – Evaluation Report Serbia*, 21 June 2024.
18 See UNCAC Conference of the States Parties (CoSP), *Resolution 11/7 on Preventing and Combating Corruption through Enhancing Transparency in the Funding of Political Parties, Candidatures for Elected Public Office, and Electoral Campaigns*, adopted during the 11th session of the CoSP held in Doha, Qatar, from 15 to 19 December 2025, which highlights in particular the need to strengthen oversight mechanisms, including through improved inter-institutional co-operation, and to prevent undue influence as well as the circumvention of legal restrictions, while also reflecting a growing international recognition that political finance frameworks must adapt to evolving risks, including those arising from new technologies and increasingly sophisticated financial flows.
19 See ODIHR-Venice Commission, Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (2016).
20 See ODIHR, Informal Comments on Two Sets of Draft Amendments to the Law on Prevention of Corruption of the Republic of Serbia and ODIHR Opinion on the Draft Law Amending the Law on Financing Political Activities (11 May 2026),, Sub-Sections 2.11,2.12 and 2.13. See also ODIHR Report on Early Parliamentary Elections in Serbia, 17 December 2023 – especially recommendations 15-17. See also ODIHR, Urgent Opinion on Draft Amendments to Several Pieces of Election-Related Legislation, Recommendation D / paras. 32-33; 2022 Joint Opinion on the Constitutional and Legal Framework Governing the Functioning of Democratic Institutions, Electoral Law and Electoral Administration in Serbia, paras. 103 and 114-126. For other ODIHR legal reviews on anti-corruption, see *ODIHR Urgent Opinion on the Draft Amendments to the Integrity and Prevention of Corruption Act (2020)*; *ODIHR Urgent Comments on the Draft Decree of the President on Measures to Improve the Anti-Corruption System of Uzbekistan* (10 July 2020); *ODIHR Opinion on the Law on Prevention of Corruption of Montenegro* (29 October 2018) (hereinafter "2018 Montenegro Opinion"); ODIHR *Opinion on Two Draft Anti-Corruption Laws of Ukraine* (18 July 2014); ODIHR *Opinion on the Law on the Bureau on Prevention and Combating of Corruption of Latvia* (17 November 2014).

Serbia of 17 December 2023,[21] the 2022 ODIHR and Venice Commission Joint Opinion on the Constitutional and Legal Framework Governing the Functioning of Democratic Institutions - Electoral Law and Electoral Administration,[22] and the 2024 ODIHR Urgent Opinion on Draft Amendments to Several Pieces of Election-Related Legislation,[23] as well as GRECO's Fifth Evaluation Round recommendations.[24]

16. Overall, the Draft Law represents progress towards implementing previous recommendations of ODIHR and other organizations, particularly the expansion of the definition of "public officials", the regulation of conflicts of interest and of political activities of public officials, the monitoring of election-related conduct, and the expansion of integrity safeguards for certain categories of senior executive advisers. In particular, several amendments seek to address recommendations arising from ODIHR election observation reports, particularly those relating to the misuse of public office and administrative resources during election campaigns. The introduction within the Draft Law of a new Article 50 regulating the political activities of public officials constitutes a step in a right direction in line with previous ODIHR recommendations to ensure a level playing field.[25] The new provisions establish clearer separation between official duties and political activities, prohibit the use of official social media accounts for party campaigning, and introduce restrictions on certain promotional activities during election periods. At the same time, although several of the amendments are welcome and represent a step in the right direction, it is essential to ensure their effective and unbiased application in practice.

17. The Draft Law further introduces expedited procedures and publication requirements for decisions of the Agency for the Prevention of Corruption (hereinafter "Agency") during election campaigns, which is welcome as these measures may enhance the effectiveness of campaign-related remedies and increase transparency. Similarly, the introduction of an explicit monitoring mandate for the Agency during election campaigns, together with obligations to publish findings relating to potential misuse of administrative resources is a positive step, responding to concerns repeatedly identified in ODIHR election observation reports concerning inadequate oversight and enforcement. At the same time, and as will be discussed in greater detail below, several ODIHR previous recommendations remain only partially addressed. Specifically, the Draft Law does not fully address structural incumbency advantages, including the use of institutional communication channels, government publicity, and state resources that may indirectly benefit ruling parties. It is to be further noted that broad exceptions to campaign-related restrictions may limit the effectiveness of the new safeguards. Finally, ODIHR considers that transparency could be further strengthened, as publication requirements remain incomplete and do not always ensure sufficiently detailed and accessible information for effective public scrutiny.

18. Importantly, the Draft Law also reflects on GRECO's Fifth Evaluation Round recommendations by expanding, among other[26], the definition of "public official" to include the Head of the Prime Minister's Office, the Head of the Deputy Prime Minister's Office, advisers to the Prime Minister and Deputy Prime Minister, and

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21 See ODIHR Report on Early Parliamentary Elections in Serbia, 17 December 2023.

22 See 2022 Joint Opinion on the Constitutional and Legal Framework Governing the Functioning of Democratic Institutions, Electoral Law and Electoral Administration in Serbia.

23 See ODIHR, Urgent Opinion on Draft Amendments to Several Pieces of Election-Related Legislation,

24 See GRECO, *Fifth Evaluation Round – Evaluation Report Serbia (2024)*.

25 See ODIHR Report on Early Parliamentary Elections in Serbia, 17 December 2023 – especially recommendations 5, 15-17; ODIHR, Informal Comments on Two Sets of Draft Amendments to the Law on Prevention of Corruption of the Republic of Serbia; and 2022 Joint Opinion on the Constitutional and Legal Framework Governing the Functioning of Democratic Institutions, Electoral Law and Electoral Administration in Serbia.

26 In addition, the Draft Law strengthens the role of the Anti-Corruption Agency by requiring public authorities to respond to Agency initiatives and corruption-risk opinions, as well as clarifies asset declaration requirements that overall corresponds to GRECO recommendations.

special advisers to ministers. While the extent to which the Draft Law implements GRECO recommendations ultimately falls within GRECO's own assessment mandate, ODIHR notes that certain recommendations remain only partially implemented[27]. In particular and as will be discussed in greater details below, several categories of actors capable of exercising significant influence over public decision-making remain outside the scope of the legislation, including the chief of the office of the President, presidential advisers, as well as potentially external consultants, temporary experts, service-contract personnel.

2. Definition of Public Officials

19. Article 1 of the Draft Law amends the definition of "public official" by extending it to include: civil servants occupying designated positions of the Deputy Director of the Agency for Prevention of Corruption, the Head of the Office of the Prime Minister, the Head of the Office of the Deputy Prime Minister, advisers to the Prime Minister and Deputy Prime Minister, and special advisers to ministers; a director, a member of the supervisory board or of the executive board of a public enterprise and of a legal entity in which the Republic of Serbia, an autonomous province, a unit of local self-government or a city municipality holds majority ownership or controlling ownership on another legal basis; a representative of the Republic of Serbia, an autonomous province, a unit of local self-government or a city municipality in the assembly of a legal entity in which the Republic of Serbia, an autonomous province, a unit of local self-government or a city municipality holds ownership.

20. The current version of the Law defines a public official as any person who was elected, appointed or nominated to a public authority, with the exception of persons who are representatives of private capital in managing bodies of companies that are public authorities. The proposed expansion of the definition constitutes a welcome development. By bringing within the scope of the Law on Prevention of Corruption certain categories of advisers and senior officials operating in close proximity to the highest executive authorities, the amendment addresses a number of concerns previously raised in international monitoring processes regarding gaps in the personal scope of integrity and anti-corruption legislation.[28] In particular, the inclusion of senior advisers and heads of executive offices strengthens the framework applicable to individuals who may exercise significant influence over public decision-making despite not holding traditional public offices. While the Draft Law extends the definition of public officials to the Head of the Office of the Prime Minister and the Head of the Office of the Deputy Prime Minister, advisors to the Prime Minister and the Deputy Prime Minister, and a special advisor to a minister, it is also **recommended to supplement the definition to include chiefs of cabinet of the President, as well as advisors to the President.**[29]**.**

21. The amended definition also extends the definition of "public officials" to persons performing managerial, supervisory or representative functions in public enterprises and in legal entities in which the Republic of Serbia, an autonomous province, a unit of local self-government or a city municipality holds majority, controlling or other ownership interests. This expansion is welcome and reflects international standards

27 Other recommendations which remain only partially implemented relate to, among other, conflict of interest, post-employment restrictions, as well as transparency and follow-up to Anti-Corruption Agency requests, and the verification and scrutiny of asset declarations.

28 See, among other, GRECO, *Fifth Evaluation Round – Evaluation Report Serbia*, Recommendation iv.

29 See GRECO *Fifth Evaluation Round – Evaluation Report Serbia*, paras. 31-33 and 43.

concerning the notion of a public official.[30] The Draft Law also expands the concept of a "public authority" to include entities in which the State holds shares ("shareholder"). This is a positive clarification as it aligns the terminology used in the Law with the legal structure of shareholding companies, where ownership is exercised through shareholders rather than members.

22. At the same time, the current definition of "public official" excludes "*representatives of private capital in managing bodies of companies that are public authorities*" (i.e. owned, controlled by public authorities (governments, municipalities, or state agencies))[31]. While the rationale for this exclusion may be to distinguish between public and private interests within mixed-ownership entities, this exclusion raises questions since such representatives may nevertheless participate in decisions involving the management of public assets, public resources or matters of public interest. Where private-sector representatives exercise decision-making powers within entities performing public functions or managing public resources, a purely formal distinction based on the origin of their appointment does not fully reflect the underlying integrity risks. **It is therefore recommended to include private-sector representatives who participate in decision-making or management/allocation of public resources within the definition of "public official" for the purpose of the Draft Law**

23. It is noted that both GRECO[32] and the Organisation for Economic Co-operation and Development (hereinafter "OECD")[33] recommendations emphasize the importance of ensuring that integrity frameworks cover not only formally appointed office-holders but also persons who are able, in practice, to influence the formulation, co-ordination or implementation of public policies.

24. In this regard, the definition's application in the Draft Law is tied primarily to specific job titles and categories of office holders rather than to the actual functions performed by an individual. Consequently, as mentioned above, several categories of persons who may exercise considerable influence over public decision-making or the management of public resources could remain outside the scope of the Law. This may include members of expert bodies, external consultants, individuals engaged under service contracts, and other persons who, while not formally being public office-holders, regularly participate in policy development, strategic planning, appointments, public procurement processes, the governance of state-owned enterprises, or the allocation of public resources.[34] The exclusion of such persons from the scope of the applicable corruption prevention framework may create significant integrity risks, especially when they may exercise substantial influence over public affairs without being subject to the transparency, conflict-of-interest and asset disclosure obligations applicable to public officials, which may undermine the effectiveness of the overall anti-corruption framework.

25. **It is recommended to supplement Article 1 by extending the definition of "public official" to any person who, regardless of their formal title, contractual or employment status, or mode of engagement substantially contributes to the**

30 See, in particular, Article 2 (a) of the UNCAC, which adopts a broad and functional approach encompassing not only persons holding legislative, executive, administrative or judicial office, but also "*any other person who performs a public function, including for a public agency or public enterprise, or provides a public service as defined by the Law of the State Party and as applied in the pertinent area of law of that State Party*".

31 According to the Law, "public authority" is an authority of the Republic of Serbia, autonomous province, local self-government unit and city municipality, an institution, a public enterprise and another legal person whose founder or member is the Republic of Serbia, the autonomous province, a local self-government unit or a city municipality.

32 See GRECO *Fifth Evaluation Round – Evaluation Report Serbia*, para. 43, where GRECO recommended that "*the remit of the Law on Prevention of Corruption be expanded to cover all persons with top executive functions (PTEFs), including the Prime Minister's and Deputy Prime Ministers' chiefs of cabinet as well as special and government advisers*".

33 See OECD, Western Balkans Competitiveness Outlook 2024: Serbia, anti-corruption policy section, p. 107.

34 GRECO *Fifth Evaluation Round – Evaluation Report Serbia*.

preparation, co-ordination, adoption or implementation of decisions of the President of the Republic, the Government, the Prime Minister, Deputy Prime Ministers, ministers or other senior executive authorities, where such activities may materially influence public policy, appointments, public procurement, the management of state-owned enterprises, regulatory decisions, the management or allocation of public resources or other matters of significant public interest.

26. Importantly, the determination of whether a person falls within scope of this Law should depend on the nature of the functions performed and the influence exercised, rather than on the duration, frequency or formal basis of the engagement. The delegation, outsourcing or entrustment of public functions or decision-making responsibilities to advisers, consultants, contractors or other private actors should not affect the application of obligations under this Law. Moreover, such a definition should establish a competent authority and a clear, effective procedure for the regular identification of individuals who fall within its scope. As mentioned above, the Draft Law extends its scope to advisers serving top executive office-holders, including ministers and other members of the Government which constitutes a positive development. At the same time, it may be questioned whether a comparable rationale could apply to certain categories of parliamentary advisers and assistants. While members of parliament are covered by the Law on Prevention of Corruption, persons assisting them in the performance of their duties do not appear to fall within its scope. While there is currently no generally accepted international or regional standard requiring parliamentary advisers or assistants to be treated as public officials for the purposes of anti-corruption legislation, there is a growing recognition that integrity risks may arise among parliamentary staff who enjoy privileged access to decision-making processes and political office-holders.[35] The legal drafters could consider assessing whether to extend the definition of "public officials" to include parliamentary advisers.

27. Furthermore, the proposed expansion of the definition is not accompanied by corresponding safeguards designed to mitigate the integrity risks associated with the newly covered categories. The Draft Law does not appear to require prior integrity screening of high-level advisers and appointees, nor does it establish specific mechanisms to verify potential conflicts of interest, business relationships, beneficial ownership interests, previous professional engagements or other circumstances that could affect the impartial performance of public functions. The absence of such safeguards may reduce the practical effectiveness of the amendment.

28. **It is, therefore, recommended that the expanded definition be accompanied by appropriate integrity safeguards. In particular, persons falling within the extended scope of the provision should be subject, prior to assuming their functions, to integrity screening[36] aimed at identifying potential conflicts of interest, incompatible activities, significant financial interests, unexplained wealth acquired during a previous public post, beneficial ownership arrangements, business relationships, previous professional engagements and other factors relevant to the impartial and accountable performance of public duties. In addition, for the purpose of greater transparency and owing to their role in the decision-making process, the relevant public authorities should publish and regularly update information concerning the names, functions, areas of responsibility and legal basis of engagement of advisers, consultants and other persons covered by the functional criterion.**[37] More generally, effective implementation of the expanded

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35 See e.g., European Parliament, *Resolution of 13 July 2023 on recommendations for reform of European Parliament's rules on transparency, integrity, accountability and anti-corruption* (2023/2034(INI)).

36 See GRECO *Fifth Evaluation Round – Evaluation Report Serbia*, , paras. 24 and 31.

37 *Ibid*, paras. 32-33.

definition will require that the Agency for Prevention of Corruption be provided with adequate powers, resources and institutional capacity to supervise compliance by newly covered categories of persons, including with respect to integrity screening, declaration requirements and conflict-of-interest, given the reported lack of human, technical resources to carry out its corruption prevention tasks.[38]

29. Finally, while going beyond the scope of this Urgent Opinion, the amendments also raise broader questions concerning the categories of public-sector personnel covered by the Law and the relationship between the Law, Law on Civil Servants,[39] and the wider civil service framework and, where relevant, sector-specific legislation, in particular whether equivalent integrity safeguards – including conflict-of-interest rules, restrictions on incompatible activities, disclosure obligations and enforcement mechanisms – apply to categories of public employees not expressly covered by the Law.[40] The authorities should ensure that the applicable integrity regimes provide coherent and comparable levels of protection across the public administration, particularly where different categories of public personnel perform functions involving similar corruption and conflict-of-interest risks.

RECOMMENDATION A.

1. To extend the definition of "public official" to include chief of cabinet of the President and advisors to the President, as well as any person who, regardless of formal title, contractual or employment status, or mode of engagement, substantially contributes to the preparation, co-ordination, adoption or implementation of decisions of the President of the Republic, the Government, the Prime Minister, Deputy Prime Ministers, ministers or other senior executive authorities, where such activities may materially influence public policy, appointments, public procurement, the management of state-owned enterprises, regulatory decisions, the management or allocation of public resources or other matters of significant public interest.

2. To ensure that the expanded definition of "public official" be accompanied by appropriate integrity safeguards, in particular, by requiring that persons falling within the extended scope of the provision be subject, prior to assuming their functions, to integrity screening aimed at identifying potential conflicts of interest, incompatible activities, significant financial interests, beneficial ownership arrangements, business relationships, previous professional engagements and other factors relevant to the impartial and accountable performance of public duties.

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38 See European Commission, Serbia Report 2024, p. 34. See also OECD, Western Balkans Competitiveness Outlook 2024: Serbia – Anti-corruption policy, p. 104 and p. 114.

39 See Law on Civil Servants of Serbia, Official Gazette RS, No. 79/05).

40 Based on publicly available sources, Serbian legislation appears to distinguish between several categories of persons serving within state institutions. First, public office-holders (*funkcioneri*) comprise elected, appointed or nominated persons such as the President of the Republic, members of parliament, ministers, judges, prosecutors and other senior office-holders. These persons are generally subject to the Law on Prevention of Corruption and related legislation and are distinct from civil servants. Second, civil servants (*državni službenici*) perform the substantive work of state administration and are primarily regulated by the Law on Civil Servants. Within this category, a distinction is made between persons appointed to managerial positions (*položaji)*, such as assistant ministers, secretaries and directors, and civil servants occupying executive positions (*izvršilačka radna mesta*), ranging from senior advisers to junior administrative staff. Third, state employees *(državni nameštenici*) perform auxiliary and technical functions and are subject to a more limited set of rights and obligations under the civil service framework.

3. Agency for the Prevention of Corruption

4.1. Termination of Office of the Director and Appointment of the New Director

30. Article 2 of the Draft Law seeks to amend Article 15 of the Law on Prevention of Corruption by providing that, where the public office of the Director of the Agency for the Prevention of Corruption ceases due to the expiry of the term of office, the Director shall continue to perform his or her functions until a newly appointed Director assumes office.

31. The apparent purpose of the amendment is to ensure the uninterrupted functioning of the Agency and to prevent a leadership vacuum between the expiry of one mandate and the appointment of a successor. This objective is legitimate and consistent with international standards concerning the independence and effectiveness of anti-corruption bodies, which underline continuity in the exercise of leadership functions as an important component of institutional stability, independence and effectiveness.[41]

32. At the same time, while continuity mechanisms serve a legitimate purpose, they should be accompanied by appropriate safeguards to ensure that temporary arrangements do not become a substitute for regular appointment procedures or to create prolonged interim leadership arrangements. **The proposed amendment should provide clear limits on the duration of any extension of the mandate and safeguards to ensure that interim arrangements are strictly time-bound,**[42] after which an alternative or secondary appointment procedure would be triggered. The legal framework should also **ensure that the appointment procedure for a successor is conducted in a timely, transparent and predictable manner, with appropriate mechanism for addressing a prolonged failure by the National Assembly to appoint a successor as per Article 13 of the Law, including a potential anti-deadlock mechanism.**[43] This could include, for example, a greater role for an independent and pluralistic appointment body should the National Assembly fail to appoint a successor within a reasonable time, or another appropriate independent mechanism.[44] While the design of any such mechanism is a matter for the national legislator, it should be guided by the need to maintain institutional continuity while preventing indefinite extensions of interim leadership

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41 See Jakarta Statement on Principles for Anti-Corruption Agencies (2012), Principle 5 - Continuity, which reads verbatim: "*In the event of suspension, dismissal, resignation, retirement or end of tenure, all powers of the ACA head shall be delegated by law to an appropriate official in the ACA within a reasonable period of time until the appointment of the new ACA head*." See also the *Colombo Commentary on the Jakarta Statement*, adopted at a Global Expert Group Meeting in Colombo and published by UNODC in 2020, which explicitly discusses continuity in the leadership chapter (para 35): "*ACA leaders need to have security of tenure and sufficient time to succeed without the risk of being removed arbitrarily. Finally, if the leadership is removed, the agency's continuity of service should be ensured by law*". See also as a comparison, ODIHR, Urgent Note on International Standards and Comparative Practices Regarding the Continuation of Ombudspersons' Terms of Office until the Appointment of a New Office-Holder (2020).

42. A comparable solution exists in Croatian legislation: where the Croatian Parliament does not elect the President and members of the Commission for the Resolution of Conflicts of Interest before the expiry of their mandate, they may remain in office only until the election of their successors and for no longer than six months. See Croatian Law on the Prevention of Conflict of Interest, Article 34.

43 See e.g., as a comparison with respect to interim leadership mechanism for national human rights institutions, ODIHR Opinion on the Draft Law of Albania on the People's Advocate (2026), para. 74, which notes that the legislation "*should provide clear limits and safeguards to ensure that interim commissioner appointments are strictly time-bound and cannot be used in practice to bypass the parliamentary appointment procedure or to create prolonged interim leadership arrangements*".

44 See e.g., as a comparison with respect to interim leadership mechanism for national human rights institutions, ODIHR Opinion on the Draft Law of Albania on the People's Advocate (2026), para. 68. Any anti-deadlock mechanism needs to be devised carefully in order to be effective and not to be perceived as undermining an objective of seeking consensus. The primary function of the deadlock-breaking mechanism is to push the majority and the minority to find a compromise to avoid the crisis or malfunctioning of an institution; therefore, such a mechanism should continue to incentivise the majority and the minority to seek an agreement, which may not be the case with rapidly decreasing a requirement for a qualified majority. The challenges of designing appropriate and effective anti-deadlock mechanisms must be acknowledged as there is no single model. Various solutions could be explored in this respect. For example, the participation in the vote could be made mandatory in order to have the required quorum. As underlined by the Venice Commission, beyond decreasing majorities in subsequent rounds of voting, which may not reach the intended goal, it is also possible to have recourse to the involvement of other, independent or more neutral institutional actors or consider establishing new relations between state institutions but each state has to devise its own formula; see Venice Commission, *Updated compilation of Venice Commission opinions and reports relating to qualified majorities and anti-deadlock mechanisms in relation to the election by parliament of constitutional and supreme court judges/presidents, prosecutors general, members of judicial and prosecutorial councils, independent/non-political bodies and ombudspersons*, CDL-PI(2025)023-e.

arrangements that could affect legal certainty and the perceived independence and legitimacy of the Agency.

RECOMMENDATION B.

To supplement Article 15 of the Law on Prevention of Corruption to provide clear limits on the duration of any extension of the Director's mandate beyond the expiry of the term of office while considering appropriate mechanism to ensure the timely, transparent and predictable appointment of a successor, including a potential anti-deadlock mechanism to address a prolonged failure by the National Assembly to appoint a successor as per Article 13 of the Law.

4.2. Submitting Initiatives for the Adoption of Regulations and Providing Opinions on Draft Laws

33. Article 3 of the Draft Law seeks to amend Article 35 of the Law on Prevention of Corruption by introducing two procedural obligations for state administration authorities. First, such authorities are required to inform the Agency, within 30 days, whether they accept an initiative (for the adoption of regulations to eliminate the risk of corruption or align regulations with ratified international agreements in the field of fight against corruption) submitted by the Agency or to provide reasons for its non-acceptance (proposed new Article 25 (2) of the Law). Second, they are required to submit a statement regarding the Agency's opinion on the assessment of corruption risks in draft legislation (proposed new Article 25 (4) of the Law).

34. The proposed amendment is a positive development, as the effectiveness of corruption-risk assessment mechanisms depends not only on the issuance of opinions by oversight bodies, but also on the extent to which such opinions are meaningfully addressed by competent authorities and made visible to the public in due time.[45]

35. Article 15 of the Law could be further enhanced by **requiring that the Agency's recommendations be made public, along with the response of the Government and Presidential administration,** as recommended by GRECO.[46] It would also be advisable to require that **such responses must be sufficiently detailed and substantively reasoned, addressing the substance of the Agency's findings – it is recommended to supplement Article 15 in this respect**. Furthermore, the provision does not appear to provide for any consequences in cases where a competent authority fails to respond within the prescribed deadline or provides only formal or unsubstantiated reasoning.

36. In addition, complementary mechanisms aimed at reinforcing parliamentary and public oversight could also be considered, e.g., the submission of periodic public reports by the Agency to the National Assembly on the implementation of its initiatives and opinions related to anti-corruption, or the systematic transmission of cases of non-

45 See GRECO, *Fifth Evaluation Round – Evaluation Report Serbia* (2022), para. 38, concerning the role of the Agency for the Prevention of Corruption in legislative procedure concerning regulations which bear a risk of corruption and the need for public recommendations and responses by the competent authorities.

46 See GRECO, *Fifth Evaluation Round – Evaluation Report Serbia* (2022), para. 38 and Recommendations iii and viii, concerning the role of the Agency, public follow-up to recommendations and transparency of the legislative process, recommending specifically that "*the role of the Agency for the Prevention of Corruption be strengthened by making public its recommendations and the response of the Government and Presidential administration*" (para. 38). See also OECD, Western Balkans Competitiveness Outlook 2024: Serbia – Anti-corruption policy, concerning implementation, institutional accountability and follow-up to anti-corruption measures; OECD Public Integrity Handbook states under "12.2.1. Fostering adequate responses by public sector organisations to oversight bodies' advice": "*To facilitate organisational learning and demonstrate the accountability of public sector organisations, adequate responses to oversight bodies' sanctions, rulings and formal advice is required*".

acceptance of the Agency's recommendations to relevant parliamentary committees for review within existing oversight procedures[47].

37. More generally, although going beyond the scope of the Urgent Opinion, to ensure that the Agency's functions are effectively carried out, inter-institutional co-operation and information-exchange mechanism with other relevant public authorities, with due compliance with applicable standards on processing of personal data, as well as the interoperability between the Agency's registers and other registers containing beneficial-ownership data, should be ensured[48].

RECOMMENDATION C.

To require that public authorities' response to the Agency's initiatives or opinions on draft legislation are sufficiently detailed and substantively reasoned, addressing the substance of the Agency's findings, and are made publicly accessible, while specifying the consequences related to the failure to respond or to the submission of unsubstantiated reasoning.

4.3. Decision-Making and Procedural Safeguards

38. Article 21 of the Draft Law amends Article 80 of the Law on Prevention of Corruption by further regulating the Agency's decision-making powers in proceedings concerning violations of the Law, establishing a 30-day time limit for the Agency's Board to decide on appeals, which is reduced to 15 days in cases arising during an electoral campaign.

39. The amendment is a welcome development insofar as the introduction of expedited deadlines aims to address previous concerns raised regarding the need for timely decision-making by the Agency, especially during electoral campaigns. As was previously emphasized, alleged violations involving the misuse of administrative resources, abuse of power, or other conduct capable of affecting the equality of electoral contestants may require particularly prompt review[49]

47 This can be particularly implemented in the light of Article 39 of the Law which states that "At the request of the National Assembly or on its own initiative, the Agency may submit to the National Assembly reports on the state of corruption and on the risks of corruption in public authorities". It is also important to mention that the competent parliamentary committee should examine the Agency's annual, extraordinary and thematic reports within a reasonable timeframe, provide the Director with an opportunity to present the findings at a public hearing, and publish its conclusions and any recommendations for follow-up. Consideration could also be given to establishing a mechanism for monitoring the implementation of such conclusions and recommendations. This would help ensure that the statutory reporting relationship between the Agency and the National Assembly results in meaningful institutional follow-up, rather than the mere formal receipt of reports. At the same time, given the particular nature of the relationship between parliaments and anti-corruption bodies, it may be useful to clarify that parliamentary accountability mechanisms should be designed and implemented in a manner that fully respects the Agency's institutional and operational independence. While parliamentary committees may legitimately examine systemic findings, institutional performance, the implementation of recommendations, resource requirements and broader enforcement trends, they should not direct or influence the Agency's handling of individual cases, seek access to confidential case-related information, or interfere with ongoing proceedings. Explicitly distinguishing between legitimate parliamentary oversight and impermissible interference would further strengthen the proposed framework for enhanced parliamentary scrutiny.

48 See Resolution 11/8 emphasizing the need enhancing inter-agency cooperation between anti-corruption bodies and financial intelligence units for effective anti-corruption and asset recovery action.

49 See ODIHR, Informal Comments on Two Sets of Draft Amendments to the Law on Prevention of Corruption of the Republic of Serbia, 19 November 2024, recommendation 17/2022, which requires expedited deadlines for the entire dispute resolution process related to campaign finance violations. See also ODIHR, Republic of Serbia, Early Parliamentary Elections, 17 December 2023, Final Report, recommendation 17; ODIHR, Republic of Serbia, Local Elections, 2 June 2024, Final Report, recommendation 20. See also ODIHR, Venice Commission, Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes, Section C.1.6. As indicated in para 72 of the ODIHR Opinion on the Draft Law Amending the Law on Financing Political Activities, "for complaints related to election campaigns, the decision deadline is reduced from five to three days, counted from the receipt of confirmation that the political entity has been notified or from the expiry of the deadline for submitting the requested documents. This is a positive development that supports timely decision-making during electoral periods. For non-

40. Moreover, 15 days deadline is also introduced by the Draft Law with respect to appeal by the applicant of the request or report against the decision of the Director of the Agency determining that there are no grounds for initiating proceedings for a violation of this Law (Article 20 of the Draft Law introducing amendments to Article 78 of the Law). While this is a positive step, it may be beneficial to further address the threshold for rejection of the request, the procedural rights of the reporting person, as well as the absence of a general time limit within which the Agency should either initiate proceedings or issue a rejection decision.

41. It is welcome that proposed amendments to Article 85 of the Law require that the operative part and a summary of the reasoning of first-instance and/or final decisions be published on the Agency's website within one day of adoption, and appeals within one day of receipt and, in cases where a final decision imposes a measure under Article 82, its publication in the Official Gazette of the Republic of Serbia.

42. These amendments are welcome as they strengthen transparency and prompt public access to information concerning the Agency's decisions during electoral campaigns, as recommended by ODIHR.[50]

43. Article 26 of the Draft Law supplements Article 91 of the Law, which provides that "[t]he Agency shall act upon anonymous complaints if the allegations from the complaint and the provided evidence raise suspicions of corruption" by a new paragraph providing that the Agency shall not act upon anonymous complaints that do not contain clear allegations and supporting evidence. The objective of the amendment appears to be to prevent the Agency from devoting resources to complaints that are manifestly unfounded, abusive or insufficiently substantiated. Such an objective is legitimate and may contribute to the efficient functioning of the Agency.

44. At the same time, the requirement that anonymous complaints contain both clear allegations and supporting evidence if interpreted strictly may risk setting an unduly high threshold at the initial stage of proceedings. The UNCAC's section on preventive measures calls in its Article 13 (2) for access by the public to "reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention."[51] **Therefore, the relevant consideration should be whether the information provided is sufficiently specific and credible to allow for verification, without requiring the reporting person to provide evidence of the alleged wrongdoing**.

45. The Agency should conduct a preliminary verification where anonymous complaints contain information indicating significant violations of the Law, including misuse of public office or resources, conflicts of interest, concealment of assets, or other matters of significant public interest.[52]

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campaign-related complaints, however, a new 30-day deadline is introduced for issuing decisions, which is a lengthy period". In addition, it is important to address the issue of substantive threshold for rejection, the procedural status and rights of the reporting person.

50 See ODIHR, Republic of Serbia, Early Parliamentary Elections, 17 December 2023, Final Report, recommendation 17; and ODIHR, Republic of Serbia, Local Elections, 2 June 2024, Final Report, recommendation 20. To ensure that summary of the reasoning provides for a sufficient information for meaningful public scrutiny, it would be important to define minimum elements of the published reasoning, including the relevant facts, principal evidence, legal assessment, findings and measure imposed.

51 Moreover, the Technical Guide states that for implementing this provision it should be ensured "that, subject to legal safeguards against malicious or defamatory reporting, those who distrust the established channels of reporting or fear the possibility of identification or retaliation are able to report […]". See UNODC, Technical Guide to the UNCAC (2009), p. 64.

52 See 2022 Joint Opinion on the Constitutional and Legal Framework Governing the Functioning of Democratic Institutions, Electoral Law and Electoral Administration in Serbia, para. 103. A comparable regional solution exists in Montenegro. Article 34 of the Montenegrin Law on Prevention of Corruption provides that the Agency may initiate proceedings *ex officio* on the basis of its own knowledge or anonymous initiatives. See Montenegro, Law on Prevention of Corruption, Article 34.

4. Conflict of Interest

46. Article 4 of the Draft Law seeks to amend Article 42 (2) of the Law by removing the exception that previously allowed a public official to continue acting in a matter involving a suspected conflict of interest where a removal of said public official would create a "danger of delay" [of the decision-making process/official action/procedure].[53]

47. This amendment is welcome as the previous rather vague wording afforded public officials a considerable discretion to determine whether circumstances justified continued participation in decision-making, thereby creating a risk that urgent, or allegedly urgent, situations could be invoked to justify involvement in matters in which a conflict of interest may arise[54]. The amendment addresses GRECO recommendation.[55]

48. At the same time, the Law does not appear to clarify the measures that may be taken where a public official nevertheless participates in a matter despite a suspected or established conflict of interest, nor does it address the potential implications for decisions, contracts or other acts adopted in such circumstances, unless this is addressed in other pieces of legislation. While the legal consequences of a conflict of interest may depend on the nature of the act concerned and the broader legal framework, the absence of any express reference to follow-up measures may weaken the practical effectiveness of the provision.

5. Incompatibility of Other Work with the Discharge of Public Office

49. Article 5 seeks to amend Article 46 (3) of the Law by providing that a public official shall submit a request for the Agency's consent to engage in additional work or a business activity within 15 days from the commencement of such engagement or activity.

50. The apparent objective of the amendment is to introduce greater procedural clarity by establishing a specific deadline for the submission of requests to the Agency. To that extent, the amendment may contribute to legal certainty and facilitate the practical implementation of the provision.

51. At the same time, the proposed approach raises concerns as it permits a public official to commence an additional work engagement or business activity before the Agency has had an opportunity to assess whether such activity is compatible with the proper, impartial and independent performance of public office.

52. This approach appears difficult to reconcile with the preventive purpose of incompatibility and conflict-of-interest rules, which are generally intended to identify and address potential risks before they materialise, rather than after the fact. From this perspective, a system based on prior assessment is generally better suited to safeguarding public confidence in the integrity and impartiality of public office than a system relying primarily on ex post notification or approval, with possible narrowly defined exceptions in genuinely urgent or exceptional circumstances, accompanied by

53 Article 42 (2) of the Law currently states that "*a public official shall stop acting in a case in which there is a suspicion of a conflict of interest, unless there is a danger of delay*".

54 Moreover, stronger conflict-of-interest safeguards can also contribute to ensuring a level playing field during elections.

55 See GRECO, Fifth Evaluation Round – Evaluation Report Serbia, para. 74 and Recommendation xi, which specifically recommends that the exception allowing action in cases involving a "risk of delay" be removed from the Law on Prevention of Corruption.

adequate safeguards.[56] The legal drafters should consider revising Article 46 (3) of the Law **to ensure that the Agency is able to assess the compatibility of additional work engagements and business activities before such activities commence**.

7. Misuse of Public Office and Public Resources

7.1. Public Officials' Membership and Function in a Political Entity

53. Article 6 of the Draft Law seeks to supplement Article 50 of the Law by introducing a more detailed regulatory framework governing the conduct of public officials who are members of or office-holders within political parties or political entities, including new provisions regarding an assumption of acting in official capacity unless explicitly stated otherwise (para. 2), regulation of the use of social media accounts (para. 3), ban on promotional activities during electoral campaigns with exceptions along with a definition of "promotional activity" (paras. 7-8), a ban on party activities during working hours during electoral campaigns (para. 9) an obligation not to present oneself in official capacity at party events; and an obligation to correct incorrect announcements (para. 10).

54. Such amendments are generally welcome as they respond to long-standing concerns raised by ODIHR regarding the misuse of public office and public resources during electoral campaigns.[57] They also introduce useful clarifications, in particular, with respect to the obligation to distinguish between official and political communication and the prohibition on using official social media accounts for party-related content.[58]

55. At the same time, several aspects of Article 6 raise concerns as to their clarity and potential effectiveness in practice. The exceptions to the prohibition of promotional activities under draft Article 50 (7) of the Law appear broadly formulated and may significantly weaken the intended safeguards. In particular, exceptions relating to activities planned prior to the calling of elections, events conducted in accordance with "established practice", and activities linked to international relations may be interpreted expansively. To avoid misuse of such exceptions, **additional safeguards could be added, including a requirement to notify the Agency of pre-planned events with supportive documents with evidence of pre-planning (budget allocation, contract date, prior public announcement). Moreover, it would be advisable to require the Agency to assess the possibility to publish a list of qualifying events carried out according to established practice, withing a short time-frame after the elections are being called**. In the absence of clearer delimitation or safeguards, such exceptions could be relied upon to justify activities that, while formally compliant, may still result in electoral advantage for incumbent political actors.

56. Further concerns relate to the definition of "promotional activity", which appears narrowly framed. By focusing on activities aimed at directly influencing voters to support a candidate or electoral list proposed by the political party upon whose proposal

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56 For example, § 9 of the German Ordinance on the Secondary Employment of Federal Civil Servants, Professional Soldiers and Temporary Soldiers (Federal Secondary Employment Ordinance - BNV) requires "written consent prior" to commencing the additional work; the German Law on Ministers requires a notification "one month prior to commencement" (§ 6a).

57 See ODIHR, Republic of Serbia, Early Parliamentary Elections, 17 December 2023, Final Report, recommendation 5; and ODIHR, Republic of Serbia, Local Elections, 2 June 2024, Final Report, recommendation 14, which states: "*To prevent misuse of state resources, consideration could be given to prohibiting the announcement and implementation of extraordinary social welfare programmes and public infrastructure projects after the call of elections*". See also ODIHR, Informal Comments on Two Sets of Draft Amendments to the Law on Prevention of Corruption of the Republic of Serbia; and 2022 Joint Opinion on the Constitutional and Legal Framework Governing the Functioning of Democratic Institutions, Electoral Law and Electoral Administration in Serbia, paras 114-126 .

58 These measures align well with the Recommendation CM/Rec(2022)12 of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns, particularly regarding transparency, identification of political actors, accountability in online campaigning, and strengthened oversight of electoral communication, including on social media..

the public official was elected or appointed, the definition may not fully capture indirect forms of promotion. This may include promotion of coalition partners, the governing majority more broadly, or the presentation in the form of "information campaigns" of governmental achievements and public policies in a manner that confers an electoral advantage without necessarily explicitly supporting a candidate or party list.[59] Further, as underlined in the ODIHR-Venice Commission Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (2016), "*the legal framework should state that **no major announcements linked to or aimed at creating a favourable perception towards a given party or candidate should occur during campaigns.** This does not include announcements that are necessary due to unforeseen circumstances, such as economic and/or political developments in the country or in the region, e.g. following a natural disaster or emergencies of any kind that demand immediate and urgent action that cannot be delayed*".[60] It is recommended **to supplement Article 50 in this respect**.

57. With regard to the obligation to correct incorrect announcements concerning a public official's capacity when participating in an event (Article 50 (10)), any correction should be issued through the same communication channel as the original incorrect announcement, in order to ensure equivalent visibility and reach. To be effective, the political party or entity should also have an obligation to, if possible, depending on the medium originally chosen, remove or correct the incorrect announcement, with separate sanction under the Law on Financing Political Activities.

58. In light of the above, **it is recommended to further strengthen Article 50 by ensuring a more precise regulation of promotional activities and the use of public office during electoral campaigns. In particular, the definition of "promotional activity" should be more broadly framed to capture both direct and indirect forms of electoral advantage**. Such a definition should encompass any activity by a public authority, public official or other person which results in, or is capable of resulting in, electoral advantage for a political party, political entity, coalition, candidate, electoral list or campaign position, including through the presentation of public achievements, major announcements linked to or aimed at creating a favourable perception towards a given party or candidate, public investments, public programmes or institutional activities during the electoral period in a manner that may influence voters.

59. **The drafters may also consider narrowing the scope of permissible exceptions to the prohibition of promotional activities. Any such exceptions should be interpreted restrictively and should apply only where the activity is objectively necessary, cannot reasonably be postponed until after the electoral period[61], and is carried out in a manner that excludes political messaging, party symbols, campaign communication, promotion of candidates or electoral lists, or any presentation capable of conferring electoral advantage.**

7.2. Monitoring of Activities of Public Officials by the Agency for the Prevention of Corruption

59 ODIHR, Informal Comments on Two Sets of Draft Amendments to the Law on Prevention of Corruption of the Republic of Serbia, 19 November 2024, concerning officials' campaigning and the separation of official and campaign activities,.

60 See ODIHR-Venice Commission, Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (2016), B.1.3. See also ODIHR, Republic of Serbia, Local Elections, 2 June 2024, Final Report, recommendation 14, which states: "*To prevent misuse of state resources, consideration could be given to prohibiting the announcement and implementation of extraordinary social welfare programmes and public infrastructure projects after the call of elections*".

61 For example, public announcements relating to a public health emergency, natural disaster, or other urgent matter affecting the public, depending on the context, may be considered permissible where they are necessary to inform or protect the public. However, the exception should not extend beyond what is strictly required for that purpose and should not be used to promote individual office-holders, candidates, political parties or electoral lists.

60. Article 7 of the Draft Law introduces a new Article 50a, establishing the Agency's competence to monitor the activities of public officials during electoral campaigns. The monitoring would include appearances of public officials in the media, at press conferences and public events, statements published on public authority websites and official social media accounts, as well as open private communication channels used by public officials to publish information on activities undertaken in their official capacity. The Agency would adopt a monitoring plan within three days from the calling of elections, based on a randomly selected sample of public officials, publish monitoring findings once a week, and initiate proceedings *ex officio* where there is suspicion of a violation.

61. The introduction of an explicit monitoring mandate for the Agency is positive and responds to concerns raised by ODIHR regarding the misuse of public office and public resources during election campaigns and the need to strengthen oversight and monitoring of compliance with the rules, also in line with international recommendations.[62] The obligation to publish weekly findings may also improve transparency and public awareness during the campaign[63].

62. At the same time, as recommended before, **the Law should mandate the APC to monitor the legally prescribed public activities of public officials from the call of elections, instead of only during the election campaign as currently provided in Article 50a (1).**[64]

63. First, the proposed monitoring model is primarily based on a randomly selected sample of public officials. While sampling may be useful as one monitoring method aimed at ensuring impartiality and preventing politically selective monitoring, it is not sufficient for detecting and preventing serious abuses during electoral campaigns and may unduly limit the Agency's ability to exercise professional judgment in identifying risks and allocating its oversight resources. In this respect, the methodology should remain sufficiently flexible to enable the Agency to adapt its monitoring strategy to the specific circumstances of each election, taking into account also the number of complaints received, previous patterns of violations, identified risk factors or other objective circumstances etc.

64. In addition to sampling, **Article 50a (4) could be supplemented by ensuring that the Agency has sufficient discretion to adopt a risk-based monitoring approach covering higher-risk categories of public officials, including senior office-holders such as the President, Prime Minister, all cabinet ministers, regardless of the random draw, also taking into account previous decisions and established patterns of violations, recurring allegations concerning specific institutions or categories of**

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62 See ODIHR, Informal Comments on Two Sets of Draft Amendments to the Law on Prevention of Corruption of the Republic of Serbia, p. 14 on the oversight competences of the Anti-Corruption Agency. See UNCAC Conference of the States Parties (CoSP), *Resolution 11/7 on Preventing and Combating Corruption through Enhancing Transparency in the Funding of Political Parties, Candidatures for Elected Public Office, and Electoral Campaigns*, adopted during the 11th session of the CoSP held in Doha, Qatar, from 15 to 19 December 2025, which highlights in particular the need to mandate the competent national authorities or oversight bodies, as appropriate, to monitor for and detect the misuse of publicly controlled resources in a manner that supports or undermines any political party, candidature for elected public office or electoral campaign. p. 14.

63 Importantly, the monitoring findings, as well as the Agency's annual reports, should, where appropriate and in compliance with applicable personal data protection requirements, include data disaggregated by sex and other characteristics. Such data could encompass, among other elements, the number and profile of officials selected for monitoring, complaints received, proceedings initiated, categories of alleged violations, decisions adopted and sanctions imposed. The inclusion of such information would enhance transparency and facilitate the assessment of whether monitoring and enforcement activities are applied in a consistent and non-discriminatory manner.

64 See ODIHR, Republic of Serbia, Early Parliamentary Elections, 17 December 2023, Final Report, recommendation 17, which provides that "*monitoring the compliance with this law should be a designated task for the Agency's field monitors, if they continue to be deployed in future elections*"; ODIHR, Informal Comments on Two Sets of Draft Amendments to the Law on Prevention of Corruption of the Republic of Serbia, p. 14; 2022 Joint Opinion on the Constitutional and Legal Framework Governing the Functioning of Democratic Institutions, Electoral Law and Electoral Administration in Serbia , paras. 101 and 105, recommending requiring the publication of the campaign observers' monitoring reports by the APC.

public officials, findings from earlier electoral cycles, and any publicly available information indicating an elevated risk of misuse of administrative resources. While the Law should focus on setting out objectives, powers and safeguards, the technical methodological details should be left to the Agency to determine in secondary regulation or other guidance documents, in order to allow for institutional flexibility. At the same time, as mentioned above, it is essential to ensure that the Agency has adequate staff, technical tools and financial resources to perform its oversight and monitoring functions effectively throughout the entire electoral period.[65]

65. Second, the minimum sample sizes may appear too limited considering the number of public officials and the scale of election-related activities.[66] Especially the minimum sample of three persons when simultaneous elections are held in several cities/municipalities may be sufficient for smaller municipalities, but may be inadequate for larger urban centers, especially in case of documented past irregularities. The legal drafters could **consider tailoring the sample size to the population of the cities/municipalities, or allow the possibility to increase the sample for cities/municipalities with documented prior violations**.

66. Third, Article 7 provides for weekly publication of monitoring findings. The provision could be enhanced by specifying the minimum content of such findings, including identified risks, types of activities monitored, methodology, number of monitored appearances and communications, suspected violations, initiated proceedings, and follow-up actions taken by the Agency.

67. Furthermore, the Draft Law appears to focus primarily on conduct occurring during the formal electoral campaign period, in particular, following the registration of electoral contestants. However, it should be noted that the misuse of administrative resources is not limited to the official electoral campaign period and may arise during the entire electoral process.[67] **The legal drafters should consider extending certain safeguards, transparency requirements and monitoring mechanisms beyond the formal campaign period so as to address risks associated with the misuse of administrative resources throughout the entire electoral process**.

RECOMMENDATION D.

1. To further strengthen Article 50 by clarifying and broadening the definition of "promotional activities" in a manner that encompasses both direct and indirect forms of electoral advantage arising from the use of public office, institutional visibility or public resources for a political party, political entity, coalition, candidate, electoral list or campaign position, including through the presentation of public achievements, major announcements linked to or aimed at creating a favourable perception towards a given party or candidate, public

65 See European Commission, Serbia Report 2024, p. 34.

66 Monitoring 50 persons in parliamentary or presidential elections, 30 in provincial or Belgrade elections, and 20 in local elections may be insufficient to identify systematic misuse of public office, particularly where elections are held simultaneously across multiple municipalities (Article 50a (5)); while Article 50a (6) provides that "*Where elections are held simultaneously in several cities/municipalities, the list shall contain at least 3 persons performing public office in each such city, municipality, or city municipality*".

67 See ODIHR-Venice Commission, Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (2016), para. 13, which states: "*an electoral process should be understood as a period much longer than the electoral campaign as strictly understood in national electoral law. It covers the various steps of an electoral process starting from, for example, the definition of the electoral constituencies, the nomination or the registration of candidates or lists of candidates for competing in elections. This period lasts until the election of public authorities. It includes all activities in support of or against a given candidate, political party or coalition by incumbent representatives before and during the election day. This broad definition covers the multifaceted ways in which administrative resources may be misused during the entire electoral process, not only the official electoral campaign period.*"

investments, public programmes or institutional activities during the electoral period in a manner that may influence voters.

2. To narrow the scope of permissible exceptions to the prohibition of promotional activities to include only the activities that are objectively necessary for the discharge of the relevant public function and cannot reasonably be postponed until after the electoral period, such as communications required to protect public health or safety, respond to emergencies, comply with legal obligations, or address other matters of urgent and overriding public interest, while also ensuring that they are interpreted restrictively and conducted in a manner that fully excludes any political messaging, party symbols, campaign communication, promotion of candidates or electoral lists, or any form of presentation capable of conferring an electoral advantage.

3. To strengthen the Agency's electoral campaign monitoring framework by complementing random sampling with risk-based and targeted monitoring of higher-risk categories of public officials, such as the President, Prime Minister, all cabinet ministers, regardless of the random draw, also taking into account previous decisions and established patterns of violations, recurring allegations concerning specific institutions or categories of public officials, findings from earlier electoral cycles, and any publicly available information indicating an elevated risk of misuse of administrative resources, while ensuring that the Agency is allocated adequate human, technical and financial resources to effectively carry out its mandate.

8. Post-employment Restrictions ("Revolving Doors")

68. Article 8 of the Draft Law seeks to amend Article 55 of the Law regulating post-employment restrictions applicable to public officials.[68] It expands the scope of the "revolving doors" provisions, prohibiting a person whose public office has ceased from establishing a business or otherwise professional relationship with the public entity concerned for a certain period of time, to cover situations where, during the performance of public office, the official participated in decision-making concerning the business operations of a legal person, entrepreneur or international organization, or where the relevant public authority exercised supervisory functions over such entities. The existing exemption, with respect to "public officials elected directly by citizens", from such post-employment restrictions provided Article 55 (5) of the Law remains unchanged.

69. Overall, the proposed amendment to Article 8 is an important improvement, as it broadens the scope of post-employment restrictions beyond situations involving a formal business relationship between the public authority and the entity concerned to capture cases where a public official may have exercised regulatory, supervisory or decision-making powers affecting a potential future employer or business partner.[69]

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68 Article 55 (1) of the Law on Prevention of Corruption currently reads: "*Without the obtained consent of the Agency, a person whose public office has ceased may not establish an employment relationship and/or business cooperation with a legal person, entrepreneur or international organisation that has a business relationship with the public authority in which the public official has been discharging a public office, for two years after the termination of public office*".

69 See GRECO, Fifth Evaluation Round – Evaluation Report Serbia, Recommendation xii. See also Council of Europe, Legislative Toolkit on Conflict of Interest (2015), Article 8, which states: "*[Post-employment conflict] Public officials cannot conduct professional activities including lobbying or be employed by a private sector entity [for a specified period of time] after leaving office where such activities or employment relate directly to the functions held or supervised by the public officials during their tenure, or otherwise constitute a conflict of interest.*"

GRECO recommended that post-employment restrictions rules apply to all persons with top executive functions, including the President, the Prime Minister's and Deputy Prime Ministers' chiefs of cabinet as well as special and government advisers.[70] The broadening of the definition of "public officials" envisaged by the Draft Law, if the recommendations provided in para. 20 *supra* are addressed regarding the inclusion of the advisors to the President and the President's, the Prime Minister's and Deputy Prime Ministers' chiefs of cabinet, would mean that post-employment restrictions would also apply to them.

70. However, the proposed amendment remains insufficient to ensure a fully comprehensive post-employment regime. Such restrictions should apply to all high-risk categories of public officials, including those holding top executive functions and, where relevant, directly elected officials whose previous mandate involved regulatory, supervisory or decision-making powers, including Members of Parliament and locally elected officials.[71] **It is recommended to ensure that restrictions apply to all high-risk categories of public officials, narrow or remove completely the exemption for directly elected officials provided under Article 55 (5) of the Law**

71. In addition, it would be advisable to clarify that post-employment restrictions are not limited to formal employment relationships, but also extend to other forms of professional engagement, including consultancy, advisory services, representation, lobbying activities, management positions, ownership or beneficial ownership arrangements, and other forms of co-operation that may create, or appear to create, a conflict of interest or undue influence linked to the former public function.[72] This would help ensuring that the prohibition cannot be circumvented through indirect arrangements. At the same time, it would be important to ensure a determination of whether a professional engagement is sufficiently connected to previous official functions to justify restrictions.

72. In this regard, **it is recommended to consider clarifying and expending the scope of restricted post-employment activities so as to encompass all forms of professional engagement that are materially linked to the functions exercised during public office and that may affect public trust in the impartiality of public administration.** It may also be considered appropriate to empower the Agency to assess, on a case-by-case basis, the nature of the former official's functions, the decisions taken or supervised, access to confidential information, and the potential risk that the proposed activity may undermine public confidence in the integrity of public service.

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70 See GRECO, Fifth Evaluation Round – Evaluation Report Serbia, para. 88 and Recommendation xii.

71 See e.g., Council of Europe, Legislative Toolkit on Conflict of Interest (2015), Article 19 (4), which provides that post-employment restrictions apply to Members of Parliament insofar as they have exercised preparatory, decision-making or supervisory functions in relation to individual private sector entities; it further provides that lobbying of Parliament is prohibited for a specified period after leaving office. The Toolkit extends a broadly comparable approach to local government, stipulating that the provisions applicable to Members of Parliament apply *mutatis mutandis* to members of local councils (Article 23 (1)). See also OECD, Western Balkans Competitiveness Outlook 2024: Serbia – Anti-corruption policy, p. 104, concerning post-employment restrictions and the need to address remaining gaps in the conflict-of-interest framework. By way of comparative European practice, France entrusts the High Authority for Transparency in Public Life (HATVP) with monitoring the post-public employment activities of former ministers, presidents of local executive bodies and members of independent authorities: for a period of three years, persons who held such offices must refer the matter to HATVP so that it can examine whether the private activity they intend to pursue is compatible with their former functions; see OECD, *Strengthening the Transparency and Integrity of Foreign Influence Activities in France*, 2024, referring to Article 23 of Law No. 2013-907 on transparency in public life..

72 See e.g., OECD Public Integrity Handbook (2020), Section 13.3.2. See also for comparative European practice, Croatian Conflict of Interest Act, Article 20, which restricts former officials from accepting appointment, election or employment with legal persons connected to the authority in which they held office; see also European Parliamentary Research Service, *Rules on "revolving doors" in the EU*, 2024, noting cooling-off provisions in several EU Member States, including Croatia and Ireland. Ireland is additionally relevant because its regime links post-employment restrictions to lobbying activities and provision of services to persons carrying on lobbying activities.

RECOMMENDATION E.

1. To ensure that restrictions apply to all high-risk categories of public officials, narrow or remove completely the exemption for directly elected officials provided under Article 55 (5) of the Law.
2. To clarify and expend the scope of restricted post-employment activities as to encompass all forms of professional engagement that are materially linked to the functions exercised during public office and that may affect public trust in the impartiality of public administration.

9. DISCLOSURE OF ASSETS AND INCOME

73. Article 16 of the Draft Law seeks to amend Article 69 of the Law, which regulates extraordinary asset and income declarations. It aims to further clarify the circumstances under which a "significant change" in assets or income arises and specifies the relevant reference period for assessing such changes. It further provides that changes in the structure of declared assets include changes in ownership or lease rights over movable property subject to registration. At the same time, the provision remains vague with respect to the proposed trigger for such extraordinary reporting, which may undermine legal certainty, foreseeability of sanctions, and effective compliance. It is unclear, inter alia, how the provision applies to items that are neither assets nor income, such as loans, the use of bank safes, entrepreneurial activity (e.g. if without profit), or how the threshold is calculated in case of changes in shareholdings or sub-shareholdings, or in case of increases in the value of existing assets with or without the asset being altered, and what the change in the structure of declared assets means other than changes in ownership or lease rights. It is also unclear whether the threshold applies per transaction or cumulatively, whether it is based on transaction value or market value, and whether the reporting obligation arises immediately upon crossing the threshold or only at the end of the reporting period. It also does not fully capture situations where assets are held indirectly through associated persons or legal entities, or where assets are transferred to third parties while remaining under the effective control or benefit of the public official. If retained, the definition should **encompass not only formal changes in ownership, but also economically relevant changes affecting the beneficial ownership, control, use, enjoyment, transfer or encumbrance of assets, as well as significant changes in liabilities, financial obligations and interests held directly or indirectly through associated persons or legal entities.** As it is, the provision may require declarants to engage in continuous monitoring of accumulated changes and different abstract reference points over time, without certainty as to if and when reporting is needed.

74. These uncertainties may reduce the effectiveness of the extraordinary reporting mechanism. It is noted that GRECO specifically recommended that "asset and income declarations of persons with top executive functions be subject to regular substantive control and that the Agency for the Prevention of Corruption be provided with adequate resources for that purpose".[73]

75. **The legal drafters should seek to clarify the above-mentioned aspects and remove ambiguities in the definition and scope of reportable changes, or alternatively, given the inherent difficulties of defining the concept of "significant change", replacing or complementing the current model with a system of regular annual**

73 GRECO, Fifth Evaluation Round – Evaluation Report Serbia, Recommendation xiii, concerning substantive control of asset and income declarations of persons entrusted with top executive functions.

declarations, which is more widely used across European jurisdictions and generally provides a clearer and more predictable framework for both declarants and enforcement authorities. As e-declarations are the standard by now, it appears more convenient for declarants to mostly confirm the same data from last year in an automatically pre-filled form than to trace for themselves for each item the thresholds over years. In any case, the Law should provide that asset and income declarations of persons with top executive functions are subject to regular substantive control, while ensuring that the Agency for the Prevention of Corruption is provided with adequate resources for that purpose.

76. Article 17 of the Draft Law seeks to amend Article 70 (1) of the Law by deleting the reference to "members of municipal and city councils" from the category of public officials exempt from regular and extraordinary asset and income reporting obligations. As a result, members of municipal and city councils will also be required to submit regular and extraordinary asset and income reports. This amendment is positive, as it narrows an existing exemption from asset reporting and extends transparency obligations to local-level officials. This is particularly relevant given that local officials may exercise significant influence over the management of public resources, urban planning, permits, public procurement, local public enterprises, subsidies and employment in local administration - areas that are frequently associated with corruption risks.

77. However, the effectiveness of the amendment will depend on whether it is accompanied by allocation of relevant technical, human and financial resources to process and verify these additional asset declarations in practice, given the capacity constraints already noted above.[74] The Agency should in any case apply a risk-based approach, prioritizing verification of declarations submitted by officials exercising functions associated with higher corruption risks or significant control over public resources.

78. It is therefore **recommended to ensure that the expanded reporting obligations are supported by a risk-based verification framework, adequate institutional capacity of the Agency, and clear transitional arrangements for newly included officials to ensure consistent and effective implementation**.

79. According to Article 71 of the Law, the report on assets and income shall contain the certain data concerning the assets and income of a public official and the family members. At the same time, Article 73 of the Law LPC exempts a wide range of items from publication, in particular the items in para. 1 no. 6), 8-11), 17), 19), 20), 21) (Other work, business activity and membership in the bodies of associations; source and amount of net income from other work or business activity; net income from scientific research, teaching, cultural, artistic, humanitarian or sports activities; income from copyright, patent and other intellectual property rights; source and amount of other net income; receivables and payables; financial instruments; business activity as entrepreneur; cash, digital property and valuables). At the same time, a publication of a broader scope of private data in asset and income declarations of public officials may be justified where such publication is necessary and proportionate in light of a legitimate public interest and in compliance with the requirements of the General Data Protection

74 European Commission, [2025 Rule of Law Report – Country Chapter Serbia](), p. 34.

Regulation (GDPR)[75]. **Therefore, it is advisable to expand the range of published data, while also taking into account the requirements of the GDPR[76].**

80. Article 18 of the Draft Law seeks to amend Article 71 (1) (22) of the Law by requiring public officials to report cash, valuables and other movable property exceeding EUR 5,000 in RSD equivalent, as well as "digital property (cryptocurrencies)" irrespective of value.

81. The inclusion of cryptocurrencies regardless of value is particularly important, given their potential for rapid transfer, anonymity, storage outside traditional financial systems, and possible use for concealing wealth or beneficial ownership.[77] At the same time, **it is recommended to clarify the scope and meaning of the term "digital assets" in the Law, including by specifying whether it is intended to cover only cryptocurrencies or a broader category of assets, and to establish clear and consistent rules regarding their declaration and any applicable thresholds, in order to ensure legal certainty and effective implementation**.

82. The EUR 5,000 threshold for cash, valuables and other movable property may still allow significant assets to remain outside the reporting system if held in multiple items below the threshold. **In this context, it may be considered whether greater legal certainty should be provided as to whether the threshold applies on a per-item basis or to the aggregate value of multiple items, taking into account the practical challenges associated with the application of an aggregation approach. Alternatively, consideration could be given to whether the level of the threshold itself remains appropriate**. In addition, the provision should clearly cover assets that are not formally owned but are directly or indirectly controlled, used or beneficially enjoyed by the public official, including through family members, associated persons, digital wallets, accounts, platforms or legal entities.

83. **With respect to digital assets, the reporting obligation should include sufficient information to enable effective verification, including the type of asset, value, and where possible, relevant wallet or platform identifiers, as well as valuation methodology. Without such specifications, the practical enforceability of the obligation may be limited.[78]**

10. Sanctions

84. Article 27 of the Draft Law seeks to amend Article 103 (2) of the Law by introducing a misdemeanour fine ranging from RSD 100,000 to RSD 150,000 for a public official who performs public office in breach of Article 50, paragraphs 1, 3, 4, 6, 7, 9 and 10 of the Law, which pertain to the misuse of public office and public resources during electoral campaigns (see Sub-Section 7 *supra*).

85. The provision is relevant insofar as it links the newly introduced rules on the conduct of public officials during electoral campaigns with a specific misdemeanour sanction. This is a necessary development, as rules aimed at preventing the misuse of public office

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[75] See, among other, Western Balkan Recommendation on Disclosure of Finances and Interests by Public Officials, p.5. See also ECJ (GC) 10 August 2022 – C-184/20 OT v Vyriausioji tarnybinės etikos komisija, LTZ 2023, 50. See also ECtHR, Decision on admissibility in the case of Andrzej WYPYCH against Poland, Application no. 2428/05.

[76] See Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

[77] See e.g., *Cryptocurrencies and Political Finance*, International IDEA, Discussion Paper 2/2019, pp. 19-20, noting that those with an open ledger allow the identity of people involved in the transactions to be tracked, thereby facilitating the work of oversight agencies.

[78] European Commission, 2025 Rule of Law Report – Country Chapter Serbia, p. 8.

and administrative resources should be accompanied by effective, proportionate, and dissuasive sanctions.[79]

86. In this respect, the ODIHR/Venice Commission Joint Guidelines on Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes provide that: "[…] *Sanctions for misuse of administrative resources have to be provided for and implemented. Such sanctions need to be enforceable, proportionate and dissuasive*" and that "*Civil servants who misuse administrative resources during electoral processes should be subject to sanction, including criminal and disciplinary sanctions, up to the dismissal from office*". [80] Against this background, the legal drafters could consider providing for a broader range of sanctions, including disciplinary or, where appropriate, criminal sanctions for particularly serious violations.

87. Especially, it is to be noted that the provision does not distinguish between varying degrees of seriousness. In particular, the proposed sanction range may appear insufficient to ensure a meaningful deterrent effect, particularly in relation to high-ranking public officials or serious violations committed in the electoral context. A fixed fine between RSD 100,000 (approx. EUR 850) and RSD 150,000 (approx. EUR 1,280) may be inadequate where the infringement generates significant political advantage, involves the use of public resources, or undermines the equality of electoral participants. At the same time, minor procedural breaches and serious abuses involving public resources or institutional visibility are effectively subject to the same sanctioning framework.

88. In addition, the sanctioning regime should not be limited to monetary fines. For serious violations, the Law should also provide for supplementary measures, such as public disclosure of the violation, prohibitions on further unlawful conduct, disqualification and loss of office or other corrective measures capable of mitigating or reversing the effects of the breach.[81]

89. In light of the above, it is **recommended that the sanctioning framework be further developed to ensure that penalties are fully effective, proportionate and dissuasive in line with international standards on the misuse of administrative resources during electoral processes**.

90. In particular, the legal drafters should **consider introducing a more differentiated approach to sanctions, whereby the severity of the penalty is determined by relevant factors such as the gravity of the violation, the nature and extent of any misuse of public resources, the duration and repetition of the conduct, the institutional position of the official concerned, and the impact of the violation on the equality of electoral contestants. In particular, the framework should ensure that repeated violations are subject to progressively more severe consequences, including the possibility of initiating proceedings for the application of the most stringent measures available under the law.** In addition, **consideration should be given to complementing monetary fines with a broader range of corrective or remedial measures, where appropriate, in order to ensure that the consequences**

79 ODIHR, Informal Comments on Two Sets of Draft Amendments to the Law on Prevention of Corruption of the Republic of Serbia, 19 November 2024, concerning enforcement and sanctions for violations related to public officials' conduct during electoral campaigns, p. 14 ; 2022 Joint Opinion on the Constitutional and Legal Framework Governing the Functioning of Democratic Institutions, Electoral Law and Electoral Administration in Serbia, recommendation D..

80 See ODIHR, Venice Commission, Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes, Section A.1.1. Furthermore, Section C.2.2 of the Joint Guidelines stipulates that "Civil servants who misuse administrative resources during electoral processes should be subject to sanction, including criminal and disciplinary sanctions, up to the dismissal from office." Against this background, the absence of explicitly provided criminal sanctions may be considered as falling short of the standards set out in the Guidelines.

81 See e.g., 2022 Joint Opinion on the Constitutional and Legal Framework Governing the Functioning of Democratic Institutions, Electoral Law and Electoral Administration in Serbia, para. 116.

of violations are not limited to financial penalties and that their effects on the electoral process can be effectively addressed.

> **RECOMMENDATION F.**
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> To consider introducing a more differentiated approach to sanctions, whereby the severity of the penalty is determined by relevant factors such as the gravity of the violation, the nature and extent of any misuse of public resources, the duration and repetition of the conduct, the institutional position of the official concerned, and the impact of the violation on the equality of electoral contestants.

11. Process of Amending the Law

91. The importance of inclusive and open lawmaking process should be highlighted. In paragraph 5.8 of the 1990 OSCE Copenhagen Document, OSCE participating States have committed to ensure that legislation will be adopted at the end of a public procedure.[82] Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*"[83]. The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input at all its stages[84].

92. Effective consultations in the drafting of laws, as outlined in the relevant OSCE commitments, need to be inclusive, involving both the general public and stakeholders with a particular interest in the subject matter of the draft legislation, in this case all political parties as well as civil society organizations. Sufficient time should also be provided to ensure that the consultation process is meaningful, allowing adequate time to stakeholders to prepare and submit recommendations on draft legislation throughout the legislative process.[85] In light of the above, **the public authorities are encouraged to ensure that adoption of the Draft Law, as well as any amendments to the existing anti-corruption and electoral legal framework in general, are preceded by a proper impact assessment and subjected to inclusive, extensive, effective and meaningful consultations throughout the legislative process, including with representatives of various political parties, academia, civil society organizations, which should enable equal opportunities for women and men to participate**. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the lawmaking process, including before Parliament. As a principle, accelerated legislative procedure should not be used to pass such types of legislation. A consistent monitoring and evaluation system on the implementation of legislation should also be put in place that would efficiently evaluate the operation and effectiveness of the draft laws, once adopted.[86]

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82 See *1990 OSCE Copenhagen Document*, para. 5.8.

83 See 1991 *OSCE Moscow Document*, para. 18.1.

84 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), in particular Principles 5, 6, 7 and 12. See also Venice Commission, *Updated Rule of Law Checklist*, CDL-AD(2025)002, 16 December 2025, Part II.A.6.

85 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), paras. 169-170. See also ODIHR, *Assessment of the Legislative Process in Georgia* (30 January 2015), paras. 33-34. See also ODIHR, *Guidelines on the Protection of Human Rights Defenders (2014)*, Section II, Sub-Section G on the Right to Participate in Public Affairs.

86 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), para. 23. See e.g., OECD, International Practices on Ex Post Evaluation (2010).