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## Frequently asked questions (FAQ)

What does it mean in practice that, based on the Anti-corruption Act, the public authority should ensure the awareness of corruption prevention and the control of compliance with the obligation? **To raise awareness**, it is suitable to use lecture room training, the mapping of typical cases of conflict of interests in the field and the provision of solutions (some examples can be found on the website on corruption, which can be tailored by each authority according to their needs), test questions for evaluating such cases with a subsequent discussion, learning simulations, etc.

The assessment and management of the risk of corruption is an integral part of prevention and should precede the training of employees or at least take place at the same time. If risks are not identified, it is also difficult to prevent them. Risk assessment enables to receive an answer at where the focus of preventing corruption should be targeted in the institution. It is possible to use various methodologies to assess risks.

Different methodologies for risk assessment:

[SNC-Lavalin Guide](#) [1]

Currently, the risks of corruption of health sector have been mapped in Estonia as the only area: [Mapping of the corruption risks of health sector in Estonia](#) [2]

At the initiative of the Ministry of Justice, an anti-corruption network has been established, which, inter alia, shares the best practices amongst its members for preventing corruption.

**The control of compliance with obligations** means an overview of an authority performing a public duty whether a public official, who is carrying out a public duty on its behalf, upon its request or under its supervision, complies with the obligations of a public official arising from the Anti-corruption Act, for example:

1. whether he or she should decide on granting authorisations or benefits to himself or herself or any persons related to him or her;
2. whether he or she should decide on granting authorisations or benefits to those persons from whom he or she has accepted benefits or with whom he or she has relations due to ancillary activities – if there is a risk of corruption;
3. whether he or she abuses the influence arising from his or her position, internal information or a public instrument for corruptive purposes.

The law does not establish that the control required from the authority would be comprehensive. This can only be done to the extent of other laws. Among other things, it is required to follow the requirement of the protection of personal data – the collection of personal data (e.g. about natural persons related to an employee) can only be carried out with the prior informed consent of the data subject. Read more

[Data Protection Guide](#) [3]

Who is a public official and how is he or she different from an official?

The prerequisite for being a public official is making or participating in decisions and actions that are binding on another person. An official is an employee in public service, performing public authority (policy-making, offence proceedings, etc.) All officials are not necessarily public officials, and vice versa, a public official does not necessarily have to be an official. A public official may also be a freelancer who performs a public duty.

An official (definition of the Public Service Act) is a person in public service in an authority, performing public authority (policy-making, offence proceedings, etc.) An official is assigned to a position. The names, number and other indicators of positions are determined in the composition of

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the places of employment in an authority.

A public official (definition of the Anti-corruption Act) means each person, who performs a public duty and who has an official position to carry out this duty, i.e. the competence to make decisions or carry out activities that are binding on another person. The decision-making competence is also considered to be part of the decision-making process (e.g. as a member of the decision-making body or at different stages of the decision-making process) or substantive direction of the decision. An official position may arise from legislation, the authority's internal act, and the approved actual work organisation.

However, it can be assumed that an official – the performer of public authority – is also a public official. To refute this assumption, it should be ensured that the particular official does not have an official position, or competence to make decisions or carry out activities that are binding on another person, to participate in this or in its substantive influencing. In the context of the current Civil Service Act, it is not possible that an authority lacks a public duty.

How to decide whether an employee has an official position or not?

Briefly, an official position is a competence (right or obligation) to make a decision or carry out an act that influences another person or participate in this upon performing a public duty. Such competence may derive from legislation, a contract, and the actual work organisation of the authority.

The Supreme Court has found that it is sufficient for a person to become a public official if the person has **actually** taken up the duties of a public official, regardless of whether his or her professional obligations are specified as a separate Annex to the employment contract; the assignment of an official position to a person in criminal terms is based on the person's position and job description, as well as his or her **actual** role in the process of making and adopting decisions in the authority (judgments No. III-1/1-24/95 and 3-1-1-95-12, clause 14.2). It can be concluded that if an act or a contract, which does not establish a person's official position, contradicts the person's actual competence to make a decision, in view of the purpose of the prevention of corruption, it should be assumed that the person has an official position.

A person, who substitutes a public official for a shorter or longer period, and who has those competences during the substitution period, which make him or her a public official, is actually a public official.

While determining the definitions of a decision and an act, it is required to follow the content provided in subsection 2 (2) of the Anti-corruption Act, and not the meaning of the same definitions established in other laws.

**Decisions** include legislative acts (law, regulation, decree), administrative acts (e.g. provision of an authorisation, precept, assignment to a post, pardon), judicial decisions, internal acts of an authority, and a declaration of intention serving as the content of transaction (based on subsection 67 (1) of the General Part of the Civil Code Act, a transaction contains a declaration of intention directed at bringing about a certain legal consequence). Therefore, the decision-makers, for example, are persons engaged in the procurement, maintenance, privatisation, transfer or granting of state or municipal property, persons engaged in the ordering of services and budgetary resources, the conclusion of agreements on using the EU funds and external aid, economic and administrative officials, training managers, IT managers, and public officials related to making decisions with regard to public procurements, calls for proposals, projects, and the awarding of grants.

**An act** is an activity that causes a legal or inevitable factual consequence for another person, which is not making a decision. For example, a procedure may cover detention, security search, judicial review, registry entry, direct coercion (the affecting of a natural person, animal or thing by physical force or a weapon), responding to an emergency call number and rescue service within the meaning of the Rescue Act, closing a road, providing an explanation or other non-binding act, identification, certification, authentication within the meaning of the Notarisation Act, eviction.

An official position presumes the person's competence (right or obligation) to somehow function. The

fact that a person has a legitimate or unlawful option to behave in one way or another cannot be considered as the characteristic of an official position. For example, although a guard can transfer a letter that has been delivered to an institution, he or she does not have the competence to decide on refusing to accept the letter and, therefore, he or she does not have an official position in this respect.

Attention should be also paid to subsection 2 (3) of the Anti-corruption Act, establishing that an obligation to make a disposition is not deemed to be the competence to make decisions in the case the person has no right to determine the circumstances of the transaction and an obligation to perform an act is not deemed to be the competence to perform acts in the case the person has no right to determine the circumstances affecting the consequences of the act. In general, due to this specification, an official position is not given to a person whose competence is limited to the obligation to comply with a decision.

How to determine whether a duty is a public duty or not?

There is no definition of a public duty in legislation. Public duties may be defined as duties assigned by law, and these do not necessarily have to be related to the use of the authorisation of executive power. According to the Supreme Court (3-3-4-1-10), this is, inter alia, a duty that can be derived by interpretation.

The performance of a public duty also involves the provision of a public service. For example, subsection 5 (2) of the Public Information Act establishes that the obligations of holders of information extend to legal persons in private law and natural persons if the persons perform public duties pursuant to law, administrative legislation or contracts, including the provision of educational, health care, social or other public services, – with regard to information concerning the performance of their duties. Public services are all duties for which there is public interest or which serve as the public good. Public services include the making of decisions that are binding on third persons, the implementation of enforcement, the provision of social and educational services.

Can a person who is working in civil service under an employment contract be a public official?

Yes, he or she can. The status of a public official does not depend on the form of employment, but on the fact whether he or she has an official position or not.

What does it mean to participate in an act or a decision?

Participation in an act and decision is considered making an act or decision within the meaning of the Anti-corruption Act. Participation can take place in various ways: for example, at different stages of making a decision or carrying out an action, or while deciding or acting as a member of the collegial body. When making a decision or carrying out an act in the composition of a collegial body, it is irrelevant that a person votes against, is impartial or otherwise passive – he or she still has the right to decide or act. Based on subsection 11 (1) of the Anti-corruption Act, making a decision or carrying out an act is also prohibited for a member of a collegial body if at least one basis for the procedural restriction that has been established in clauses 11 (1) 1)–3) occurs.

If participation in an act or decision takes place at different stages of the decision or action, it is also prohibited for a public official to make a decision or act if at least one of the grounds for the procedural restriction provided for in subsection 11 (1) of the Anti-corruption Act exists. For example, if a person, who is subject to the basis of application of the procedural restriction, participates in the supervisory proceedings leading to a precept, the procedural restriction will be extended to this person even if the latter is not entitled to conclusively formulate or sign the decision.

The Anti-corruption Act goes even further beyond the scope of the act or decision, considering that making a decision or carrying out an act also includes a situation in which the decision or act is substantively directed by a person, who does not have formal competence in decision-making or carrying out the act. The Supreme Court has found that the obligatory feature of competence required from a public official is not a final independent adoption of decisions on administration, supervision or management, but it is sufficient if a person can effectively channel such a decision-making process (3-1-1-109-09, clause 9.2; 3-1-1-68-05, clause 8).

However, it is important to note that the Anti-corruption Act (subsection 2 (3)) does not consider the

activities of such a person as making a decision or carrying out an act, who does not have the right to determine the circumstances of a transaction or the circumstances that influence the consequences of an act. The activities of a public official should have at least a possible relation to the consequences of a decision or an act to other person. According to clause 11 (3) 6) of the Anti-corruption Act, the procedural restrictions should not be applied if there is no risk of corruption upon routine making of a decision or performing of an act. For example, holding a measuring tape in a supervisory activities is generally not considered as participation in the operation. Also, a secretary, who transcribes a procedural decision, does not directly participate in the decision-making process, and he or she is not likely to be covered by the definition of the official position.

What is a public instrument? Can I bring a pen home from work?

A public instrument means tangible or other resources meant for the performance of a public duty, e.g. the amount allocated from the budget, public sector assets placed in a public undertaking or foundation, labour force or equipment purchased, software, vehicle fuel, communications service or electric power obtained at the expense of the said resources. Also, the same applies to the working time of the employees of the authority performing a public duty and the premises entrusted to the authority. As stated, the purpose of such instrument is to carry out a public duty – either directly (e.g. national defence investments, social or operating grants), indirectly (wage fund and infrastructure of the officials) or even more indirectly (public sector investments, the profits of which can be used directly for the performance of a public duty).

Unlawful possession of foreign property entrusted to a person for the benefit of himself or herself or a third person is an appropriation and punishable by criminal penalties. Any direct diversion of financial resources from its legitimate purpose is generally punishable as an appropriation. If a public instrument is used lawfully but in violation of official duties in an manner which results in an unequal or unjustifiable benefit to a public official or a third party from the perspective of the public interest, then this is prohibited. If such an act is committed for personal gain, it will be punishable as misdemeanour.

For example, there could be rules for using a telephone or a car belonging to the institution, which prohibits or limits private calls or private journeys. If such a restriction or limit is violated, it will be considered as a breach of official duty. At least an official is subject to requirements that his or her activities should comply with laws and legislation and he or she is obligated to use the property and resources of the authority and those entrusted to him or her in a prudent and purposeful manner (section 50 and subsection 51 (5) of the Civil Service Act). If such a violation leads to an unequal or unjustified advantage, it is considered as a corrupt use of a public instrument.

Also, a situation may be considered corrupt if the head of an authority creates unnecessary job for a family members for the summer season, the manager takes his or her subordinates to a familiar farmer for the purpose of harvesting potatoes, the head of the department of economic affairs keeps his or her car in the authority's garage during the winter period or a public official uses his or her place of work in the authority as his or her business office. However, the decisive factor is whether the advantage to be established is unequal or unfounded from the perspective of public interest. Taking a pen home from work, charging a private mobile phone from an outlet at work or printing a couple of sheets containing private conversation from a printer at work will probably not exceed this limit. However, this is particularly not the case if the public official is not compensated for using a private pen or mobile phone for work or printing work documents from a printer at home.

What is the difference between trading in influence and corruptive use of influence?

Unlike trading in influence, the corruptive use of influence lacks the element of reciprocity – the corruptive user of influence does not necessarily “sell” his or her influence and may directly use it for his or her own benefit; in case of trading in influence, the trading of alleged or actual influence for pay is the factor that is reproached. A public official can use influence in a corruptive manner, however, a person who is engaged in trading in influence might not be a public official. The corruptive use of influence presumes a violation of official duties, but the same does not apply to trading in influence. Trading in influence aims to influence a public official at the final stage, while in case of corruptive use of influence may affect any person. Trading in influence results in criminal penalties, while the corruptive use of influence for own benefit leads to misdemeanour liability.

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What is the difference between income derived from corrupt practices and bribe?

If there is an informed relation between offering or providing proprietary or other benefit to a public official and expected, to be received or already received professional service from a public official, this is considered as bribery. If a favour cannot be identified, it may be corrupt income.

Income derived from corrupt practices (also proprietary or other) means benefits that are:

1. offered to a public official or any third person due to his or her official duties (but in which case the specific favour cannot be identified or recognisable for the parties to the transaction);
2. demanded from a public official or
3. received while violating the obligations of a public official.

A benefit offered to a third person occurs, for example, if the provider of the benefit makes a donation to the political party related to a public official at least with the knowledge and approval of the public official, pays for the sports expenses of a child of a public official with the knowledge and approval of the public official, or carries out an unfavourable transaction with a private limited company where the sole shareholder is a public official.

A benefit is considered to be offered **due to the official duties** of a public official particularly in case the provider's clear intention is to influence a public official in a way that he or she generally prefers the provider of the benefit. Whether a public official agrees to behave according to the expectations of the provider of a benefit is not decisive.

**A benefit requested by a public official** is any benefit, which is requested by a public official, regardless of the fact whether the benefit is intended to be a favour to a specific behaviour of a public official or not. Here, the objective of avoiding corrupt enrichment of a public official is at the forefront.

**A benefit that has been obtained** as a result of violating official duties is any benefit, which has been received as a result of violating the obligations of restriction on activities or procedural restriction, a public instrument, the prohibition of the corruptive use of influence or internal information or other obligations of a public official.

The definition of a benefit includes both proprietary (including financial) and non-material benefits. The former wording of the Anti-corruption Act treated income derived from corrupt practices and bribe as a benefit, which was received in the form of financial payments, gifts, remuneration in kind, beneficial favour or benefit, freely transferring shares, share certificates, and other securities, as well as the shares of a private limited company or selling them beyond their market price, by means of becoming a co-owner of an immovable, a partner or a shareholder of a public limited company and other companies, and also as economic or other benefit not indicated above. The same types of benefit are also covered by the definition of a benefit in the current Anti-corruption Act (the definition of a benefit is also used by the Penal Code when defining a bribe. Generally, the benefit is not a reimbursement of expenses.

Bribery is punishable under the Penal Code. The acceptance of income derived from corrupt practices is subject to misdemeanour liability. The provider and intermediary of a bribe are also punished by criminal procedure, however, the same does not apply to the provider and intermediary of income derived from corrupt practices.

What does a restriction on activities mean? Who does it apply to?

A restriction on activities means a prohibition to engage in ancillary activities. The restrictions on activities that apply to officials have been established in section 60 of the Civil Service Act, however, the corresponding restrictions of other public officials have been provided in specific laws (e.g. Government of the Republic Act, Local Government Organisation Act, Courts Act). If a procedural restriction aims to prevent conflict of interests with regard to a specific decision or act, a restriction on activities intends to avoid any activities in a broader sense that could impede objective performance of official duties or lead to a situation with a risk of corruption.

What does a procedural restriction mean? Who does it apply to?

A procedural restriction aims to prevent conflict of interests. The restrictions enable to preclude a situation where a public official makes a decision or carries out an act [related to himself or herself](#) [4] or a person related to him or her.

The procedural restrictions apply to all public officials within the meaning of the Anti-corruption Act. Conscious violation of the conditions for non-application of restriction on activities or procedural restriction is a misdemeanour or a crime, depending on the value of the decision or act.

What are the emergency conditions when it is not required to apply a procedural restriction?

For example, the state of emergency is when there is a water accident in rural municipality at night that floods the whole village and the only quickly available plumber is the son of the rural municipality mayor, who makes a lot of money this night, as he fixes the pipes.

What are the decisions or activities the authority implements to ensure its organisation of work?

An example of this is a case where, on behalf of the authority, the head of the authority has to conclude a leasing agreement on a car, which he or she starts to use, set his or her own telephone limit or order new furniture to his or her office. Such a decision or act also includes the establishment of internal rules to which the head of the authority is also linked, or the distribution of routine duties to subordinates, among whom there are also his or her close ones.

As the recruitment or appointment (including promotion, dismissal) of above-mentioned close persons is the settlement of an employment matter, this exception to the procedural restriction is not applicable in these cases.

What are routine decisions that do not have a risk of corruption?

These are activities for which it would be unlikely that a different kind of action would be performed, for example, issuing a birth certificate to a grandchild; signing of a routine paycheck, etc.

What does an unreasonable procedural restriction mean depending on the local specifics?

Examples include small-scale and remote local governments (e.g. Ruhnu, Piiressaare), where purchasing food from a local store in the interests of rural municipality may be considerably more reasonable even if this store belongs to the family member of the official involved in this purchase transaction.

How should an authority inform about the exception to the procedural restriction?

The website of the authority should publish a notice **without a term** that "the procedural restriction was not applied"; the notice may contain other circumstances, for example, that the basis for non-application is clause 11 (3) 4) of the Anti-corruption Act, that it concerns the annual wage directive or bonus, or that it affects the person [related to the manager](#) [4]. The publication of the notice should not violate the principles of protection of personal data or business secrets.

**Allikas URL:** <https://www.korruptsioon.ee/en/conflict-interests/frequently-asked-questions-faq>

**Lingid:**

[1] <http://unpan1.un.org/intradoc/groups/public/documents/unpan/unpan039112.pdf>

[2] <http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=55833/Tervishoius%FCsteemi+p ettuseid+ja+korruptsiooniriske+kaardistav+uuring.+Tartu+%DClikool%2C+RAKE+2011.pdf>

[3] <https://www.aki.ee/et/eraelu-kaitse/mida-peab-teadma-isikuandmete-tootlemisest>

[4] <http://www.korruptsioon.ee/et/huvide-konflikt/korduma-kippuvad-kusimused>