

# **Code of Conduct for Customs Officials South-Eastern Europe experience**

## **Evaluation Report**

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## List of Acronyms

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BiH	Bosnia and Herzegovina
CO	Customs officials
CoE	Council of Europe
CoE Code	Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials
Col	Conflict of interest
GRECO	Group of States against Corruption (Council of Europe)
PO	Public officials
UN	United Nations General Assembly
UNCAC	United Nations Convention Against Corruption
UN Code	Annex to the United Nations General Assembly Resolution A/RES/51/59
WCO	World Customs Organisation
WCO Code	World Customs Organisation Model Code of Ethics and Conduct

## Introduction

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The Fifth round of GRECO (Group of States against Corruption) evaluations focuses on preventing corruption and promoting integrity in central governments and law enforcement agencies. One part of the assessment to be conducted in the course of this round is the examination of the Codes of Conducts of the corresponding institutions<sup>1</sup>. It is not specified directly what criteria GRECO will use in evaluation of the national Codes of Conduct. The provisions of the 5th round questionnaire give some clarification to this issue, while underlying what areas will be in focus of GRECO experts:

1. Conflict of interest (bullets 12.2, 12.3) and asset disclosure (bullets 12.4, 14.1, 14.2);
2. Misconduct (breach of Code) reporting (bullet 15.6);
3. Prohibition or restriction of certain PO activities (bullet 13.1);
4. Declaration of assets, income, liabilities and interests (bullets 6.1 -6.5);
5. Supervision and enforcement (bullets 15.1, 15.2), including complaints system available to citizens (bullet 15.4).

In order to provide a preparatory support to the GRECO a comprehensive research was conducted analysing the content of the Codes of Conduct for Customs adopted by the countries of South-Eastern Europe (SEE). The study concentrated on the assessment of the compliance of these legal acts with international standards adopted by the United Nations (UN), the Council of Europe (CoE) and the World Customs Organisation (WCO).

It is important to note that the following study is limited to evaluation of provisions regarding integrity of the Customs officers only. The other issues, such as rights of the employees, working environment, public statements, dress standards and others are excluded from the evaluation as non-relevant to the context of this paper.

The other specific of the presented report is that it does not assess legislation complimentary to the Codes. The idea/thinking process that lies under the elaboration of any Code of Conduct is the adoption of a legal act which will serve as **Integrity Constitution** for public officials. This document should cover all the aspects related to integrity of Customs officials. Therefore, every Code evaluated in this study was examined "as it is"- as if no supporting regulation is provided in other documents<sup>2</sup>. For instance, if it is found that Code of Conduct does not give any clarification regarding gifts policy, this will be recognized as a shortcoming, regardless the fact that the mentioned area is covered in the Criminal Code. To be clear, the role of the Code of Conduct is to serve as the main source of expertise on the integrity of public officials, thereby the omissions of certain rules clarifying this issue diminishes the value of this legal act and defeats its purpose.

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<sup>1</sup> Questionnaire: Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies // URL:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806cbe37;>

<sup>2</sup> The exclusion is granted to the legislative acts reference to which was given in the Codes of Conduct.

## Chapter I. International instruments

The necessity of introducing Codes of conduct in national legislation was expressed in the United Nation Convention Against Corruption, stressing-out their role as the universal standards of integrity, honesty and responsibility of public officials.

### *Article 8. Codes of conduct for public officials*

- 1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.*
- 2. In particular, each State Party shall endeavor to apply, within its own institutional and legal systems, Codes or standards of conduct for the correct, honorable and proper performance of public functions.*
- 3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.*
- 4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.*
- 5. Each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.*
- 6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the Codes or standards established in accordance with this article.*

The UNCAC gives only general introduction to what should shape a Code of conduct, leaving the opportunity to discuss the detailed content of this document to other specialised acts. As such, there are two international instruments, providing their interpretation of a model Code of Ethics. First, the International Code of Conduct for Public Officials contained in the annex to *the UN General Assembly*

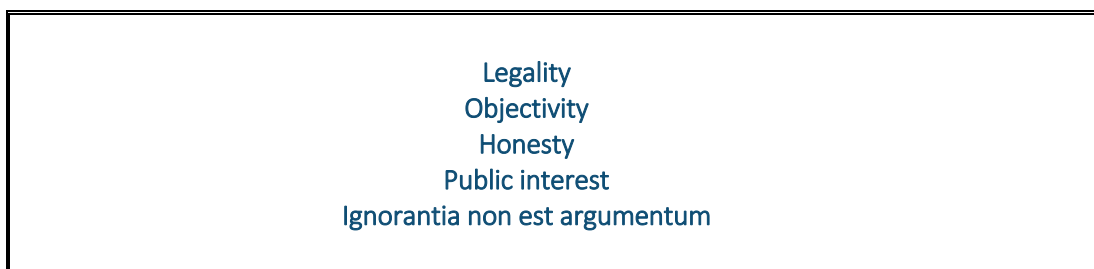
resolution 51/59 of 12 December 1996. The Code is quite brief, it contains only 11 short positions. The second treaty was adopted by the *Committee of Ministers of the Council of Europe on 11th May 2000*. The Model Code is an integral part of the *CoE recommendations* on promotion of ethical values as an instrument in fighting corruption. The Code presented here is much more thorough, than the UN model, it covers not only general principles, but provides some detailed regulation to various issues of public employee's behavior.

What is the purpose of the Codes of Ethics, as it states by the model regulation? Article 3 of the CoE model Code gives a general answer - the goal of the document is to specify and inform the public of the standards of integrity and conduct for PO and to help the officials to meet these standards. The similar provision can be found in the UN resolution 51/59, which states that the countries need some technical assistance to improve public management systems and to enhance accountability and transparency.

The general notion on PO integrity is further clarified by supporting regulation provided by the mentioned documents. Firstly, international community formulates several basic principles of public official's integrity which can be divided into two groups: principles regarding the execution of PO's duties and principles on the integrity of the public official.

Principles regulating the execution of PO's duties (or **principles of professional integrity**) form a very small group. The Codes only prescribe that public officials should perform their duties – with care, efficiency, professionalism and diligence (article 3 of the UN Code; article 5.2 of the CoE Code). This principle is not directly connected to the corruption prevention regulation, however it is the first step for maintaining integrity in public office, as it proclaims the value of executing the highest standards of performing the official duties by the public employees.

The issue of the integrity of public officers (**principles of personal integrity**) is the focus of the presented Model Codes. The mentioned documents prescribe the following values to be respected by any public functionary:



The principle of **legality** is declared by the both model Codes (Article 2 of the UN Code<sup>3</sup>; articles 4.1 and 7 of the CoE Code) and prescribes that public officials should carry out their duties in accordance with law and lawful instructions. Therefore, it implies that public officials should restrain themselves from exercising any order given by a superior if it contradicts the Law. Moreover, the provisions of the CoE Model Code stress out that the manner of execution of legal orders themselves should be lawful, as well (article 7).

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<sup>3</sup> UN recommendation provides that public officials should perform their duties in accordance with laws or administrative policies. However, in relation to the Codes of Conduct to be adopted in the countries of the SEE region, it should probably be specified that the laws and administrative policies should not contradict to the essence of Law itself, in a way how it is interpreted by the international community.

The **principle of objectivity** as it is expressed in the model Codes encompasses several requirements. It prescribes that PO should give *fair* treatment to any situation while exercising their duties (articles 5.2, 6 of the CoE Code). This means the necessity of following *non-prejudice* (article 12.6 of the CoE Code) and *non-discrimination* (article 3 of the UN Code) clauses, as well as implies avoidance of any situations which can hamper PO's *impartiality* (article 13.2 of the COE Code). Specifically speaking, CoE standards clarify, that it is forbidden to be a member/in association with any organisation, to be engaged in any activity (including political) or acquire any position, whether paid or unpaid, if it intervenes with PO impartial behavior or poses any risk to it (articles 4.2 and 16.2)<sup>4</sup>.

The impartiality clause is further supported by the special provisions on dealing *with conflict of interest*<sup>5</sup> (articles 8, 13, 14, 20 of the CoE Code). The Model CoE Code states that within public officials' responsibilities lies not only restriction of any active misuse of official position<sup>6</sup> but also a duty to be on alert, to avoid and report any actual and potential Col (articles 8, 13). Furthermore, the individual who has not been yet appointed for a position of PO has to undergo an integrity check, including identification of any conflict of interest and its resolution (articles 13.5 and 24). The international standards also require that in case when public officials find themselves in a conflict of interest situation, it should be declared immediately to the responsible authority (article 19 of the CoE Code). The self-reporting obligation is applied as well to the disclosure of PO/ PO family members' assets, liabilities (bullet 8 of the UN Code) and outside interests (article 14 of the CoE code).

Another provision on Col policy introduced in the Model Codes is the recommendation that public officials should be aware of the conflict of interest risks and do not let themselves to be put or appear to be put in a position of obligation to return a favor (article 20 of the CoE Code). This especially important in cases when PO are proposed an improper offer. In this situation a special integrity policy has to be employed. This issue is discussed in detail in the CoE Code (articles 18 and 19) and in the article 9 of the UN Code. According to these references, it is said in the Council of Ministers Recommendation that public officials should not demand or accept gifts, favors hospitality or any other benefit for themselves or third persons (family, close relatives, friends, persons or organisations with whom he or she has or had business or political relations which may influence or appear to influence the impartiality of the PO). In cases of doubt a superior advice should be obtained. Moreover, in dealing with situations where PO are given an improper offer, they should take all the necessary actions to protect themselves from it. This includes: refusing the offer; identifying the person who made the offer; keeping in contact with the mention person as long as it is needed to obtain evidence of this misconduct; preserving or using as little as possible of the gift if it cannot be returned; reporting the attempt of giving an improper offer (with a written record, if possible).

*Former employees' behavior* is another dimension that is part of the conflict of interest policy. The special status of public officers implies that some of the restrictions imposed on them go beyond their period of service. Therefore, the Model Codes of both the UN (articles 7, 10) and Council of Europe (articles 26, 27) contain provisions regulating the conduct public officials – *after leaving the office*. These rules generally require that no special treatment<sup>7</sup> should be given to ex-POs and no the ex-PO should seek it himself/herself. It also states that the obligation to avoid any conflict of interest applies posteriorly as well. This obligation covers the former official's employment endeavors (requirement to immediately disclose to supervisor any offer/acceptance of the offer of employment that could create

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<sup>4</sup> For example, in case of political involvement it is required that PO should pay attention to what should be said during political debates (Art 16 – CoE);

<sup>5</sup> Under the provisions of the CoE Model Code of conduct conflict of interest may arise from situations in which PO have private interests which influence, or appear to influence the impartial and objective performance of their official duties (Art 13 (1));

<sup>6</sup> By offering an undue advantage or by seeking to influence a third person by using official position/ offering personal advantages (CoE- Art. 21);

<sup>7</sup> In particular, provision of employment opportunities and privileged access to public service (CoE – Art 26).



a conflict of interest) and actions on behalf of corresponding public institutions or in benefit of a third person.

The principle of objectivity is closely related to the other important value – **pursuance of public interest**. This implies that while performing their functions PO should always apply a public interest filter: if their actions are for the benefit of the society (article 5.1 of the CoE Code, article 1 of the UN Code).

The presented model instruments do not provide any explanation as to what we should understand under the principle of **honesty** (article 5.2 of the CoE Code). Therefore, its meaning should be searched in the common sense interpretation. The Oxford dictionary defines honesty as, *inter alia*, honorable and respectable behavior towards another person<sup>8</sup>. The honesty principle, thus, implies that public officers should always maintain the highest level of personal integrity and restrain from any abuse of their position, influence (articles 8 and 21 of the CoE Code). The honesty principle also requires diligence in dealing with public resources (article 23 of the CoE Code), including official information usage (article 22.3 of the CoE code).

The principle “**Ignorantia non est argumentum**” (ignorance is no argument), introduced in the article 28 of the CoE Code prescribes that public employees should proactively observe all the relevant regulation with regard to the performance of their official duties. The breach of this obligation may result in disciplinary action. The Code further clarifies that in pursuance of this duty PO should seek advice from an appropriate source when they are unsure of how to proceed.

Apart from the regulation on PO`s conduct, the Model Codes provide some supporting rules designed to assist in maintaining integrity of PO conduct by executing **control measures** over prospective and employed public officers.

*Prevention of public integrity breach* of a currently employed officer is an important part of CoE Code regulation and can be found in articles 12 “Reporting”, 24 “Integrity checking” and 25 “Supervisory accountability”.

*Reporting a misconduct* requirement is connected to the legality principle and prescribes a set of actions that public officials have to take if they encounter a misconduct situation:

1. If public officials were required to act in a way which is inconsistent with the Code of Conduct (for example, to exercise actions which include maladministration);
2. If public officials are aware of a Code breach exercised by another public official;
3. If public officials possess any evidence, have a suspicion or are aware of any allegation of unlawful or criminal activity related to the public service.

The reporting mechanism is an important instrument of detection and prevention of continuous breaches of the integrity rules and related criminal activity. While this rule is not provided in the presented Model Codes, the international community has a common understanding that it is crucial that supporting regulation is elaborated to ensure that official-whistleblower will not be subject of any retaliation (including disciplinary punishment) for these actions<sup>9</sup>.

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<sup>8</sup> See Oxford Dictionaries // URL: <https://en.oxforddictionaries.com/definition/honesty>;

<sup>9</sup> For example, article 32 of the UNCAC states: “Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them”.

*Integrity checking* is another necessary control mechanism, which requires that all the candidates for the PO position are chosen carefully and do not have any “spots” in their background, which in the future may lead to a breach of the Code of Conduct. The provision on integrity checking formulated by the CoE model Code states that public officials who are responsible for recruitment, promotion or posting should ensure that appropriate checks on the integrity of the candidate are carried out (article 24). It is also stipulated that if results of this check make the responsible officials uncertain on how to further proceed, they should seek appropriate advice. It is not specified however, who is eligible for giving such advises, therefore the suggestion is that the higher level of authority is implied.

Another instrument of integrity breach prevention is maintaining a *constant monitoring* over the performance of public officials. This duty is usually within the responsibilities of PO supervisors (article 25 of the CoE model Code); it implies that they not only should exercise monitoring, but also act on any of the situations which may result in a misconduct. As it is stipulated in the CoE Code, a supervisor is answerable of any acts or omissions of a public official which are made in breach of the Code of Conduct policies and purposes, if no necessary steps to prevent this situation were taken (article 25).

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The examination of the international standards shows that they provide national authorities with clear and detailed directions on the values expected to be adhered to in public service. These directions correspond to the principles of professional and personal integrity. In other words, the model regulation presented in the UN and CoE instruments provides a basis for the elaboration of a legislative framework establishing a work environment where corruption and opportunistic practices are not acceptable.

## Customs service – model Customs` Code of conduct and its implementation in the SEE Region

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**T**he World Customs Organisation is an intergovernmental body with a mission “to enhance the effectiveness and efficiency of Customs administrations”. It operates in this field since 1952 and undoubtedly accumulated significant experience in the sphere of Customs` regulation, including PO conduct. The result of the WCO`s work on elaboration of integrity rules for employees in Customs service is presented in the Model Code of Ethics and Conduct adopted in 2002.

The WCO represents customs administrations of 180 member countries, including countries of RAI`s region<sup>10</sup>. Therefore, it is logical to expect that the regulation elaborated by the WCO is widely addressed in the Customs Codes of Conduct of these countries.

The model Code of Conduct prepared by the WCO is significantly more detailed than the UN General Assembly Code and goes far beyond the regulations provided by the Council of Ministers. The WCO Code includes all the important recommendations on the conduct of public official expressed in the above-mentioned documents: general principles, rules regarding work and personal integrity of the employee, supporting provisions on conflict of interest, offers and gifts, use of public resources/information, behavior of former officers and control measures. Moreover, the Code introduces several additional rules for integrity behavior which reflect the peculiarities of the Customs service.

### General principles

Alongside with the principles of integrity behavior<sup>11</sup> which expressed as well in the model Codes of the UN and Council of Europe, the WCO Code requires that public officials should adhere to the obligations of “**good citizens**” (article). This principle implies that public officials should “satisfy in good faith their obligations as citizens, including all just financial obligations, especially such as taxes that are imposed by law”<sup>12</sup>. The importance of this rule lies in the fact that the specifics of Customs work create the necessity that its officers maintain the highest level of personal integrity so not to put in risk the integrity of the Customs service in general. Individuals, who avoid exercising their citizen obligations may employ the same manner of behavior as Customs officers.

### Supporting regulation

As it was mentioned before, the Model Code of the WCO provides wider regulation to the conduct of public officials than it was set by the UN and CoE standards. Most of these provisions are of universal character and can be incorporated in every national Code of conduct.

The WCO Code devoted a big part of this document to the issue a **conflict of interest**. The article 5.1

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<sup>10</sup> Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Moldova, Montenegro, Macedonia, Serbia and Romania;

<sup>11</sup> See WCO Code, article 1.1 (legality, honesty, objectivity, public interest, ignorantia);

<sup>12</sup> Supra, note Article 1.1.

contains a *definition* to this legal phenomena: “Conflicts of interest, or the appearance of a conflict of interest, may arise from official dealings with, or decisions made in respect to, individuals who share private interests. For example, membership of societies, clubs, other organizations, or even family relationships can create conflicts of interest or the appearance of a conflict of interest”. These provisions are in line with the Transparency International standards on CoI definition<sup>13</sup>. Moreover, the WCO Code thoroughly covers the question of *offering policy*, which is directly connected to the problem of CoI. Apart from the rules which repeat the provisions of the UN and CoE Codes, the WCO gives some clarification for unusual situations, where offering takes place. First case, discussed by the WCO Code, covers Customs employees involved in public procurement. If a general rule (which is relatively the same in all model Codes) states that public officials should assess with necessary caution if an offer is improper, then in cases when Customs PO is involved in procurement any benefits offered to this employee are recognized as improper and forbidden to accept. The second WCO novelty with respect to CoI policy is the regulation of cases when the benefits obtained by PO are incidental. By incidental benefits the Code means free gifts offered to anyone who is using the service of the commercial organisation. With regard to such offers it is prescribed that its acceptance is possible under the condition that these benefits are genuinely intended for any client, and that PO restrain from using them for personal purposes beyond the established parameters (article 4.3). Two other specialised cases in relation to gift offering which have been included in the WCO Model Code concern offers of free travel (article 4.4) and concessions/discounts (article 4.5). With regard to free travel (meaning no cost and/or complimentary travel by giving out vacant seat places for use on official business) the prior high-level approval should be obtained - where the approval serves as a promise that no suspicion of improper relations between offering and Custom sides exists. The similar rule applies to the cases where companies offer discounts to all or a significant number of staff in Customs. The Code prescribes that the offer should be made based on the purchasing power of the staff as individuals. The difference in the approach that the Code gives to the last situation is that in no case the discount/ concessions is allowed to be accepted if the offering organisation has an official business with Customs service.

The Customs Model Code also discusses some *other situations out of which the conflict of interest may arise*, namely: *personal association with those who do business with Customs; shareholdings; involvement in business interest and governmental contracts; seeking different employment; engaging in outside employment; family member employment; financial transactions between Customs employees, supervisors and subordinates* (articles 5.1 -5.7)<sup>14</sup>. The main goal of the regulation over these issues is to provide clear guidance for avoiding conflict of interest in various and maybe not obvious occasions. For example, the Code states that if COs` family members work in places which are not considered as a permitted outside employment for Customs officials (because of a high possibility of conflict of interest), this Customs worker should report this to the specialised department which will verify the existence or appearance of a conflict of interest (article 5.6)<sup>15</sup>.

Finally, following the policy set-out by the international standards on dealing with conflicts of interest (article 26 of the CoE model Code, article 10 of the UN model Code) the WCO model Code included regulation on *behavior of former employees* of Customs service (article 5.7). The presented below list of restrictions generally repeats the CoE recommendations. Nevertheless, the rules included in this

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<sup>13</sup>See Transparency International, Anti-Corruption Glossary: “Conflict of interest. Situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests” // URL:[https://www.transparency.org/glossary/term/conflict\\_of\\_interests](https://www.transparency.org/glossary/term/conflict_of_interests);

<sup>14</sup> Any types of financial transactions between Customs employees are strongly discouraged by the WCO Model Code, and transactions between subordinates and employees are prohibited. Moreover, a general rule about internal financial transactions between Customs employee requires that those should not be conducted in official time or with using Government property/other resources;

<sup>15</sup> It is not specified, however, what should be done in cases if a conflict of interest is detected.

document look clearer, and some of them impose additional (bullets 2) and more rigorous (bullets 4, 5) requirements over former Customs officials` activity:

1. former officials should limit their appearances before the Government on behalf of parties with whom former employees interacted during their work at Customs;
2. former employees should act in a way that their words and actions do not harm people`s confidence in Customs integrity;
3. former Customs employees should be restricted from being employed at the related public/private sector during a certain time period after leaving the office;
4. former Customs employees should be prohibited from providing services to/on behalf of any non-Government employers or other persons, whether or not these services are done for compensation;
5. Customs employees who are about to leave the service should consult Customs Ethics Office/designated official to determine which avenues of employment should not be pursued

*Official resources and services.* The general requirement provided in the WCO Code regarding public property is similar to the model regulation of the UN and CoE; it states that unless specifically and reasonably authorised, the use of Customs` resources and information is for the official benefit only (article 9.1). The WCO Code, however, goes beyond declaring this passive responsibility, prescribing that it is a Customs employee`s responsibility to make necessary arrangements to provide a proper control over Customs assets (article 9.1). Moreover, the Code establishes a wider regulation over the public resources usage, while giving explanation to what should be included in the term “public property”. Aside the financial property, the Code regulates in detail the use of Customs motor vehicles, electronic network and official identification (articles 9.2 - 9.4). Finally, in addition to the usage of official resources, WCO Code also covers the problem of dealing with public property which due to some reason is no longer needed, retired, or is its` amount exceeds the actual need in it. The article 10 regulates this aspect and states that as a general rule Customs employees are allowed to purchase this property if it is on public sale, unless:

1. Customs employees, due to their official position, have been able to obtain special knowledge about the condition of the goods being sold;
2. Customs employees have been officially associated with the disposal arrangements;
3. Customs employees receive goods at a discount, that would not be available to a member of the public;
4. Items are being sold by or at the direction of Customs.

**Integrity control measures.** It should be noted that the WCO Code`s not only implemented the existing international standards on the integrity breach prevention (article 12 of the CoE model Code” Reporting”), but substantially extended this regulation. If the COE Code only requires that public officials should report any case of potential or committed integrity breach, then the WCO introduces additional responsibility for Customs employees to *self-report their involvement in criminal proceedings as a defendant* (article 2.1). Furthermore, the Code states that a senior manager should decide if the mentioned officials can be retained on normal duty, moved to alternative duties or even suspended from duty (article 2.1). Besides, the WCO Code proclaims a policy of *non-tolerance to any criminal activity involvement*. This means that aside the reporting duty Customs employees who committed a crime - in particular crimes involving prohibited drugs, fraud, bribes or illegal movement

of goods - in addition to criminal proceedings will be subject to disciplinary action (article 2.1).

*Complaints observance* is another important novelty which the WCO Code introduces as an integrity control measure. The Article 2.2 states that in order to maintain public confidence in Customs service the complaints against Customs and/or its employees must be promptly and objectively investigated. If properly implemented, this rule can help Customs service to maintain a high level of citizens trust in its efficiency and integrity.

### Specialised rules

Due to the specifics of the work environment in the Customs service, the Model Code of the WCO elaborated a set of individualized rules of conduct which reflects the peculiarities of a Customs official's status. Firstly, due to the fact that one of the Customs service responsibilities is to prevent smuggling, the WCO model Code introduced special provisions regarding **handling the seized or forfeited items**. The regulation covering this issue is very clear and exhaustive – it states that Customs employees are prohibited from purchasing forfeited/seized goods at Custom sales (it is a common practice that these types of property are subsequently brought to public sales). The only exception to this rule is granted for the situations when the sale is conducted by another Customs department responsible for governmental property.

The WCO Code also provided a regulation on Customs personnel *accountability when handling official property*, which reflects the essence of Customs service work (Appendix to the WCO Code). For example, with a view of ensuring Customs officials' *independence while exercising their responsibilities* over property seizure, it is prescribed there that "no Customs employee's baseline employment or basic salary should be solely dependent upon the level of seizures or forfeitures (or proceeds thereof) achieved, even though they may receive appropriate official recognition and/or financial award, based on the merit of their actions".

Secondly, among the requirements contained in the WCO Code on the officials' conduct there is a chapter entitled "work environment". This part of the Code provides regulations for maintaining a healthy and safe workspace in Customs service, which reflects the values of personal and professional integrity. Most of these principles have already been mentioned in the previous chapters of the Code, and can be applied in any Code of conduct as a set of general rules. However, one principle has a special importance to the Customs service, due to the specifics of the sphere of its expertise. Given that one of the Customs' duties is prevention of smuggling of illegal drugs through the border, the Code requires that Customs officials themselves should be free of any drug addiction in present or past (otherwise it creates a conflict of interest situation). Thus, the WCO Code prescribes, that new entrants are advised to undergo drug screening. Furthermore, the Code prohibits the employment of persons who prior were / are involved in drug sell/use /possession/ distribution and requires that if Customs officials are found to be involved in the mentioned activities, the appropriate disciplinary measures should be imposed towards them.

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The analysis of the model regulation for public officials' conduct shows that nowadays the international standards elaborated quite comprehensive set of recommendations, thoroughly covering the issue of POs' integrity. To be said, the specialised model Code for Customs, prepared by the WCO still looks more appropriate, as it gives much more attention to the details of a PO's behavior, which the general recommendations from the UN and CoE lack. It is suggested, therefore, that the national

authorities while implementing the integrity standards should take into account the provisions expressed in all of the discussed documents, thus covering in their acts the following integrity issues:

**I. General principles:**

- a) Legality;
- b) Objectivity;
- c) Honesty;
- d) Public interest;
- e) Ignorantia non est argumentum (ignorance is not an argument);
- f) Good citizen;

**II. Supporting regulation**

- 1. Provisions on conflict of interest, including:
  - a) Conflict of interest policy (definition, avoiding, declaration, reporting);
  - b) Offers policy;
  - c) Incompatibilities with Customs service`s employment and other restrictions;
  - d) Misuse of public position and influence;
  - e) Assets and interest disclosure;
- 2. Regulation on public resources, information usage;
- 3. Regulation regarding after-service activity of former Customs employees;
- 4. Prevention of integrity breaches:
  - a) Background check and reaction (criminal offence involvement, complaints observance)
  - b) Provisions on criminal conduct reporting:
    - self-reporting obligations;
    - whistleblower duties;

**III. Specialised provisions, reflecting the peculiarities of Customs service work**

- 1. Rules regarding handling the seizure or forfeited items;
- 2. 3. Drug control.

## Chapter II. National legislation

The second Chapter of this study is devoted to the examination of the existing Codes of conduct for Customs officials adopted by the RAI`s contracting parties: Albania, Bosnia and Herzegovina, Bulgaria, Macedonia, Montenegro, Moldova and Serbia. The assessment of Romania legislation is not included in this report as of now no text of Rumanian Customs Code of conduct is publicly available on the internet. The list of integrity issues presented above will be used as a criterion for evaluation of the mentioned legal acts.

### Albania

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The Albanian Code of Ethics for Customs was introduced into national legislation quite recently, in November 2014. At the first glance, the Code presents the exact replica of the WCO model regulation, a mere translation of the international standards into the Albanian legislation. However, after careful examination serious differences can be found between these legal acts. Some of the peculiarities are the Codes' additions to the minimum standards, established by the WCO. To be said, many differences are also the result of omissions of certain important provisions.

#### Higher standards

The additional provisions of the Albanian can be found in the articles 4.3, 4.4 and 6. First two articles introduce additional restrictions to the *offers acceptance* policy. As such, the article 4.4 prohibits accepting any offers of free trips even for official purposes, then the provisions of the WCO model Code (article 4.4.) state that such offer may be accepted if a prior high-level approval is gained. The same approach the Code exercises in connection to incidental benefits and reductions in prices – accepting such benefit will be considered as a violation of the Code of Ethics. In comparison, the WCO Code allows accepting these offers with two conditions: if the benefits are used by Customs officials within the established parameters (article 4.3.), and if the high-level official approval is obtained (article 4.4.).

Another set of rules prepared by the Albanian legislators responds to the article 6 of the WCO model Code which prescribes that [national] legislators should elaborate a clear regulation governing *politically-related activities*. In pursuance of this recommendation the Albanian Code provides a clarification on the types of political activities which are prohibited for Customs officers article 7.2), namely:

- a) to exercise political propaganda and discuss political matters during working hours;



- b) to wear signs of political parties or associations during working hours;
- c) to distribute propaganda materials in any of work premises;
- d) to use the official facilities for exercising political activities;
- e) to participate in demonstrations unauthorized by the authorities.

The last interesting novelty of the Albanian Code which expands the standards set by the WCO model Code is regulation of Customs officers conduct in case they are facing financial difficulties. In such situations when a person cannot pay-off his/her debts, the Code prescribes that public official should promptly inform the Director General of Customs (article). Moreover, it is stated that although financial difficulties won't necessary lead to the discharge of the official<sup>16</sup>, however, the Customs authorities should ensure that this employee is not placed in positions there exists a risk that he/she will misuse public funds.

### Lower standards

The Comparative analysis shows that although the Albanian Customs Code of conduct closely follows the wording of the WCO Code, some important provisions of this document were not included in the final version of the national regulation. The full list of these omissions is presented below:

1. Good citizen principle (article 1.1. of the WCO Code);
2. Requirement to provide an advice and proper official protection to Custom officials who became whistleblowers, while reporting integrity breaches of the Code of Ethics (article 2.3 of the WCO Code);
3. Provisions clarifying the difference between proper and improper gifts (article 4.1 of the WCO Code). The Albanian Code (article 4.1) refers to the specialised Law № 9367, "On Prevention of Conflict of Interest in Exercising Public Functions" with regard to this question. However, this document does not give any additional explanation while *referring back* to the specialised institutional legislation (article 23) – which is the Albanian Code of Ethics for Customs;
4. Employment policy: the provisions of the Albanian Code cover this issue very briefly in the article 5.4. It states that employee should receive a written approval by the Director General of Customs for part-time employment in the field of teaching. It also prescribes and that multiple employment should not cause a conflict of interest or hinder the performance of official Customs duties. However, the WCO Code prescribes that prior written permission should be given in any cases when the official is willing to hold an outside employment. Moreover, no requirements have been found in the Albanian Code regarding the customs officer's behavior while he/she is looking for a new job (article 5.4 of the WCO Code), as well as no restrictions are given with respect to family members' employment (article 5.6 of the WCO Code);
5. Former Customs officer's conduct, in particular, dealing with official information, post-government employment policy; communications and appearances on behalf of the third parties; provision of services on behalf of

<sup>16</sup> Unless a serious misconduct regarding public finance usage takes place and results in disciplinary or penal proceedings.

the Customs (article 5.7 of the WCO Code);

6. Public resources: electronic network access and usage (article 9.4), official stationary, stamps and postal services usage (article 9.1) are not covered; usage of other objects (telephones, photocopying material of stationery, scanners, printers; vehicles, ships, machinery and various equipment;) only mentioned;
7. Purchasing of the Customs property: the WCO Code's prohibition to purchase articles which are being sold by/at the direction of Customs or being seized/forfeited under the direction of Customs and/or incident to the functions of Customs (articles 10.1, 10.2);
8. Accountability of the seized/forfeited property: a guidance for Customs offices on the integrity rules over the procedure of seizure/forfeit of the property (Annex to WCO model Code)<sup>17</sup>.

It also should be mentioned that as the Albanian Code closely follows the recommendations of the WCO model Code, therefore some provisions which were covered by other international instruments (CoE model Code) are not included. These are the rules on the reporting rights of a Customs officer<sup>18</sup> (article 12.3 of the CoE Code), wider incompatibility rules<sup>19</sup> (article 15.2 of the COE Code), provisions about the abuse of official position and influence (articles 20, 21 of the CoE Code) and the obligation to exercise integrity checks (article 24 of the CoE Code).

## Conclusion

Taking into account all the mentioned peculiarities of the Albanian Code of Ethics for Customs, it is reasonable to conclude, that in the current state this Code is *partially compliant* with the international regulation. The question that should be asked: what goal the Albanian legislators pursued while implementing the WCO model Code only and why some of its important provisions did not appear in the national Code?

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<sup>17</sup> Albanian code provides some regulation regarding the purchasing of seized goods (article 1.2), yet it is much less detailed: "Customs officers should not be considered in favor towards others, when purchasing goods confiscated or seized. They are forbidden to buy directly or through third parties goods for sale organized by Customs. It is also prohibited to purchase goods that are under the employees' responsibility (to take all measures for the sale of the goods in question), or if the employees have specific knowledge about these goods due to their official position";

<sup>18</sup> PO officials who reported the breach of the Code by other PO or PO who were required to act in a way which is inconsistent with the Code and believe that the response does not meet their concern may report the matter in writing to the relevant head of the public service;

<sup>19</sup> PO should be required to notify and seek the approval from supervisor to carry out certain activities, "whether paid or unpaid".

## Bosnia and Herzegovina

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**A**s the Customs Policy law of BiH says, it regulates conduct of the indirect taxation authority, therefore the employees of this institute will be considered as custom officials. The Code of Ethics for ITA was adopted in June 2006, the official site of the ITA<sup>20</sup> explains that this Code is based on the recommendations of the Arusha Declaration, Revised Arusha Declaration, the Guidelines of the WCO (World Customs Organization) on integrity self-assessment, the Model Code of Conduct and the WCO's Guide to improve integrity as auxiliary instruments to Arusha Declaration. Thus, it can be assumed that the Code of conduct for Customs in BiH should reflect in its provisions the mentioned international standards, and the regulation introduced by the WCO model Code in particular.

### General principles

The provisions of the ITA Code of Conduct address most of the general principles outlined in the discussed model Codes of the UN, Council of Europe and World Customs Organisation. The *legality* principle is expressed in the articles 1.1 and 1.2 of the Code; the principle of *objectivity* is widely covered throughout the text of the ITA Code (requirements of *impartiality, fairness, non-discrimination* are set out in the articles 1.2, 1.3, 4.1.1, 8.1 and 8.2). Moreover, the ITA Code of Conduct pays special attention to the principle of *honesty*, not only by devoting a whole article (1.3) to the description of this value, but also by introducing the rule of “*fair compensation*” which goes beyond the minimum standards set by the model Codes. This obligation states that ITA officials should report any cases of miscalculation with regard to their salary – if as a result of this mistake the officials received an extra payment (article 1.3.3). Finally, the principle of a *good citizen* was also included into the text of the ITA Code in the article 5.2 which states that all employees of the ITA shall fulfill their citizen duties, such as payment of taxes, contributions and other financial obligations. At the same time, the principles of “*public interest*” and “*Ignorantia non est argumentum*” are not directly expressed in the Code. It is legible, however to assume, that the content of this legal act implies that the mentioned principles should abide the ITA officials’ performance. For example, the Part III of the Code’s preamble states that employees should not have any second motives while acting in official status, and article 1.2 of the Code requires that PO should familiarize themselves with the Code and by signature accept the consequences of non-compliance with these rules.

### Supporting regulation

The analysis of the supporting regulation provided by the ITA Code allows to conclude that Bosnian regulation for Customs POs` (including former employees) conduct` is generally in line with the international standards.

The Code covers most of the spheres of customs officials` activities linked to possible integrity breaches. Articles 1.2, 5.3 and the whole Chapter 7 of the Code cover in detail the issue *public resources and information usage*. The provided regulation includes all the corresponding recommendations of

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<sup>20</sup> See Uprava za indirektno oporezivanje Bosne i Hercegovine // URL: <http://www.uino.gov.ba/b/Kodeks.html>.

the WCO and other model Codes: general principles and specific types of public property. The ITA Code also provides some extra regulation on the usage of public firearms, which reflects the specifics of the Custom service work as law enforcement agency. Finally, the ITA Code (article 7.6) took into consideration the WCO complementary provisions on purchasing of public property by the employees. Likewise, the Code forbids ITA officials to participate in bidding and buying of goods that are seized or confiscated by the ITA (article 4.3). However, regarding the purchasing of other items which are in the ITA or any other public institution property, no restriction is imposed by the national Code (although the WCO regulation demands that serious integrity filtering to be applied for Customs employee to be authorised for this purchase). It is suggested that the ITA Code introduces these provisions as well, because customs employees should not enjoy having any advantage of their status over the general public, unless it is authorised for the official need.

*Conflict of interest policy* is another aspect of the PO integrity which was thoroughly discussed in the text of the ITA Code of Conduct. Chapters 3 and 4 of ITA Code incorporate the model Codes recommendations on the Col problems: Col definition (articles 4.1.1, 4.1.2) gift policy (articles 3.1, 3.2), list of acceptable gifts (article 3.1.2, 3.2), rules on dealing with and prevention of a conflict of interest (articles 4.1.3, 4.1.4, 4.4), incompatibility rules, including participation in business interests of the ITA (articles 1.4.2 , 4.6.1 – 4.6.5), asset disclosure obligation (article 4.7) , and shareholding (article 4.7), regulation on former ITA officers` behavior (articles 4.6.5, 4.6.7) and reporting duties (article 4.5). In addition, the BiH Customs Code introduces several novelties which complement the standard Col regulation. Firstly, it establishes that Col testimonies should be submitted in writing via a standardized “declaration” form (art. 4.1.4). The same rule applies to the situations when ITA officials are involved in activities incompatible with the ITA official status (article 4.6.4). These provisions establish an additional guarantee that all the conflicts of interest cases will be timely addressed and properly stored for precedential needs.

Secondly, the definition of a conflict of interest used in the ITA Code is more detailed as it provides a long list of examples of Col cases (article 4.4.2), for instance:

1. PO participation in a committee deciding on the employment or promotion of PO`s family members, relatives or personal friends;
2. PO participation in the selection process for training courses or study tours in the country or abroad, if one of the candidates in consideration is a family member, relative, or a personal friend;
3. Provision by a PO of any preferential treatment to specific supplier, contractor, client or subordinate due to personal reasons.

Second ITA Code`s novelty on Col prevention which could be recommended to national legislators is a set of rules established by the article 5.1, which address so-called “personal financial responsibility” obligation. The following provisions describe the duty of ITA official to wisely asses and take care of them of personal financial situation. The authors of the Code logically assumed that personal financial problems may consequently cause serious harm to the integrity for public officials. Therefore, the regulation requires that ITA employees should take proper care of their private finances and restrain from agreeing to any financial commitments which they cannot fulfill. However, in case when financial troubles remain for a long time, the Code says that it is a duty of the ITA officials to report this situation to their supervisors.

Despite the overall positive assessment of the ITA Code provisions on conflict of interest, it should be noted, that there are several shortcomings. Firstly, the Code has not fully incorporated the international recommendations on dealing with *improper offers*. Although article 3 of the legal act provides an exclusive list of acceptable benefits, no explanation is provided on the actions to be taken

by the ITA officials in response to improper offers. Secondly, the analysis indicated the absence of provisions on *misuse of public position* as it is prescribed by the Model Codes (for example article 21 of the COE Code). The only reference to this issue can be found in the article 1.4.5 of the ITA Code devoted to the investigation of COs' involvement in criminal or other punishable activity. The mentioned article states that Customs employees should not use their official position or relationships that are established in the course exercising of official duties to influence or interfere with corresponding investigations. Thirdly, the *incompatibility* regulation provided by the Code does not encompass all the necessary requirements set out in the international standards - the provisions on *post-employment restrictions* imposed on former ITA officials are much milder. The ITA Code only prescribes that, after the termination of the employment contract, former ITA officials are expected to avoid situations in which their experience and knowledge gained during ITA service could lead to creation of unfair competition. However, no clarifications given by the CoE and WCO models have been included in the national Code (for example, time limit restriction and obligations on employment consultations).

Among the strong sides of the ITA Code the analysis noticed its regulation on *prevention of integrity breaches*. The evaluation concluded that the ITA Code covers most of the model Codes' recommendations on monitoring and reaction (article 1.6.), integrity checking (article 2.6) and complaints observance (article 2.6). With regard to dealing with public objections the ITA Code even added some extra provisions, expanding the model regulation. These provisions included in the article 2.7 and specify the ways in which citizens can lodge a complaint against ITA employees: orally – by phone or directly and in writing - by comments. In this regard it is important to mention that the ITA Code requires that the same level of treatment should be given while dealing with oral objections, even if these complaints are of a minor character (article 2.7.2). The authors of the Code explain this policy with an observation from practice – that a large number of low-significance objections can be solved “on the spot”, just after reporting them. Finally, articles 1.5. and 1.4. of the ITA Code discussed the COs' responsibility to report any breach of the Code of conduct/other criminal activity involvement. In the article 1.5, the regulation establishes whistleblower obligations, requiring that if ITA officials have any knowledge that another ITA employee violated official duties or is involved in criminal activity, they should immediately contact their supervisors to report this issue. In the article 1.4, the regulation repeats the WCO model Code (article 2.1.), which introduces a policy of non-tolerance to any criminal activity involvement and obligation to declare PO current involvement in criminal proceedings as a defendant. BiH legislators go even further than international standards requiring that self-reporting should cover any criminal charges and offences committed at work or connected to it, as well as POs' involvement in any offence if it negatively affects the performance of their official duties and all the sanctions imposed on POs in the last 10 years (if they are still in the record). Furthermore, as a complementary measure which ensures the higher level of self-reporting and its accuracy, the ITA Code prescribes that giving false statements or report failure will bring sanctions on the corresponding ITA official (article 1.4.4). From a critical standpoint, the BiH Code does not include in the whistleblower obligation the duty to report any suspicions/allegations evidence of integrity breaches, as it is stipulated in article 12.2 of the CoE Model Code. The national code does not declare as an imperative rule that whistleblowers should be protected against retaliation of any kind, as well.

### **Specialised rules**

The common critic which is given to the most of the national Codes of conduct assessed in this study concerns the poor introduction of the WCO recommendations reflecting the peculiarities of Customs service. The ITA Code is not an exclusion – in its' current state the document covers these issues just partially. To be precise, the Code implemented only the general rules regarding seized and forfeited items (article 7.6), while not taking into account the WCO guidelines provided in the Annex. As for the

requirement of exercising drug control measures – the regulation has been introduced by the article 8.4., establishing non-tolerance policy towards drugs misuse. The article prescribes imposition of additional disciplinary sanctions on PO who are involved in importation, export, possession, trade or use of illicit drugs or other prohibited substances. The Code also requires that any employee involved in such activities should report this to the supervisor. Yet, the obligations to exercise control measures (for example, background check, regular monitoring) have not been introduced in the BiH Code.

### **Conclusion**

The examination of the Customs Code of Conduct of Bosnia and Herzegovina showed that its provisions closely follow the international recommendations on integrity of PO. The level of BiH legislative compliance with international model Code of conduct can be recognized as generally satisfactory, however some important aspects of the PO conduct, in particular CoI regulation, need to be further elaborated.

## Bulgaria

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The Code of Ethics for Customs officials in Bulgaria has been introduced by the order of the Ministry of Finances of Bulgaria in 2016. According to the text and structure of this document it follows the model presented by the UN model Code. The provisions of which this Code consists are short, can be widely interpreted and therefore quite vague. This style of regulation is appropriate for application in international standards, as it aims to give basic directions in a form of principles and general statements. However, national legislation should be more precise and provide clear answers to various questions which may arise while implementing international models.

### General principles

As it was said earlier the format in which the Bulgarian Customs Code of conduct is presented implies that the regulation will concentrate on providing of general guidelines. Therefore, the Code declares most of the principles expressed in the model Codes of the UN and COE.

It is interesting to notice, that while the principles of *honesty* (bullet 2) and *public interest* (bullet 9) can be found in the form of general statements, *legality* and *objectivity* principles are covered more comprehensively throughout the whole document. As such the *objectivity* principle is presented with impartiality, neutrality, non-prejudice, equality, non-discrimination and fairness clauses (bullets 6, 8, 9). At the same time, the *legality* principle (bullets 2, 5, 21) requires that all actions of Customs officials should be in compliance with these international standards and corresponding national legislations, but it also underscores the right of Customs employees to refuse the implementation of unlawful arrest orders. To be said, to properly meet the requirement of the legality principle Customs official should be given a right to refuse obeying any unlawful orders, not just those limited to the arrest of an individual.

As for *good citizen* and *“ignorantia”* principles - they are indirectly expressed in the text of the Bulgaria Code. For example, respectively, bullet 4 states that Customs officers should act in a way that will not harm the prestige of customs administration not only in the performance of their duties, but in public and private life, and bullet 28 requires that customs officials bear disciplinary liability for non-compliance with the Code.

### Supporting legislation

The supporting regulation of the Bulgaria`s Customs Code is presented mostly in a form of general statements, thus it is quite fragmentary and vague.

The provisions on *conflict of interest* are limited to the following requirements:

1. *Conflict of interest definition*: customs officials may not be in financial dependence or in other links with outside individuals or organizations if it can influence the performance of their duties (bullet 12);
2. *Offers policy*: customs officials may not receive any benefits from the third parties which can

reasonably be perceived as the result of a compromise with their honesty and fairness in the performance of their duties (bullet 11);

3. *Incompatibility rules*: customs officials cannot perform activities forbidden by the Customs Act, the Civil Servants Act and any other relevant regulations, as well as receive income from such activities (bullet 24). In exercising the actions incompatible with the behavior prescribed under this Code, customs officers will be retired from service in Customs (bullet 25);

3. *Misuse of public position and influence*: customs officials must not use for private reasons their official position and authority, as well as information became known to them in connection with the performance of the official duties (bullet 16). In acquiring and managing of personal and family property Customs officials should act in a way that does not create suspicion of their abuse of official position (bullet 23).

Apart from the aforementioned requirements, no additional regulation covering the issue of conflict of interest is presented in the Bulgarian Code. In particular, no obligation is posed on CO with regard to the assets and interest disclosure, no guidance is given relating to the avoidance of conflict of interest situations and identification of an improper offers and other related issues discussed in the model Codes.

With regard to the *dealing with Customs resources*, the Code provides only general prohibition to use public property for a personal benefit (bullet 15)<sup>21</sup>. In addition to that, no guidance is also given on *former Customs employee`s behavior*, no regulation on *integrity breach prevention* is included in the Code, and no specialized rules cover the questions dealing with seized/forfeited items and the exercising of drug controls.

## Conclusion

Overall, the analysis of the Bulgarian Customs Code of conduct shows that the document reflects the recommendations of only one of the discussed international instrument – the UN resolution. This policy is not sufficient, given that the international community has already elaborated additional detailed regulation of POs` conduct. Knowing also that Bulgaria is a member of the World Customs organization <sup>22</sup>, the question arises, why the regulation established by the WCO model Code still has not been incorporated in the Bulgaria Code.

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<sup>21</sup> To that said, the Codes pays attention to specifics of customs service the Code, while prescribing that Customs employees should comply with the regulations on fire weapons usage (bullet 17);

<sup>22</sup> Since 1973, see List of the WCO Members // URL: <http://www.wcoomd.org/~media/wco/public/global/pdf/about-us/wco-members/list-of-members-with-membership-date.pdf?db=web>.



## Croatia

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**C**roatian Customs Code of Ethics (Code of Ethics for officials of the Ministry of Finance, Customs Administration) has been adopted in 2006, however up till now its content does not fully reflect the regulation established by the model Codes. As well as the previously discussed Bulgaria case, Croatian Code lacks details and clarity. With exception to the basic principles<sup>23</sup> Croatian regulation does not cover a wide range of the aspects of Customs official's integrity.

### General principles

Customs Code of conduct for Croatia contains most of the integrity principles expressed in the model regulation. *Legality principle* and *public interest* principles are mentioned in the articles 2.1 and 2.1 and require that in performance of the official duties Customs officials should not act in private interest and respect the Croatian Constitution, laws, by-laws and "rules of the profession". *Honesty* and *objectivity* principles are mentioned in the title of the article 2 ("honesty and impartiality") which contains provisions on conflict of interest, misuse of official position, influence and information. The *Objectivity* principle is further covered by the article 2.2, which requires political neutrality, and in the article 2.4, which prescribes that a PO should adhere to a non-discrimination policy, act correctly, fairly, and impartially.

The examination of the **supporting legislation** of the Croatian Code concluded that it does not satisfy the minimum standards introduced by the UN, CoE and WCO models.

Regarding the *conflict of interest* and related issues, the document discusses only the topics of *offer acceptance* and *misuse of public position/influence*. Moreover, the regulation on offers is limited to the requirements that Custom officers should not accept/solicit any benefits and must report if offered any (2.1). The regulation on the *misuse of influence/ position* generally repeats the provisions of the CoE model Code (article 21), however it is slightly more precise. In accordance to the article 2.1. of the Croatian Code it is prohibited to use special rights and Customs officer's position for personal gain or benefit of the related persons, including but not limited to the following actions: influencing the decision of the legislative, executive or judicial power; achieving certain benefits or rights; securing a business transaction. The Code also clarifies the meaning of the "related person" category, saying that it applies to family members, close relatives, friends and other legal and natural persons with whom CO have private, business and political relationship (article 2.1).

Alongside with the conflict of interest policy, the Croatian Code give some clarification regarding two more aspects of PO` integrity discussed in the model Codes. First issue - *public resources* – finds its regulation in the articles 2.1 and 2.7: the officials should responsibly treat State property and financial resources entrusted to them. Unlike the WCO model Code, the Croatian Code does not provide any details on how this requirement should be implemented with respect to different types of property. It is also recommended that Croatian Code provides a clear prohibition for using public resource and information for personal benefit, as it is stipulated in the international standards. In the current version

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<sup>23</sup> *Good citizen* and *Ignorantia* principles have not been explicitly introduced into the Croatian Code.

of the Code, the requirement is only directly expressed for the usage of the official information (articles 2.1 and 2.3). The second issue – *integrity control measures* – is examined very briefly, as the Code only states that Customs administration should appoint a special committee to monitor the implementation of this Code. No clarification regarding the competences of this entity is given, as well as no reference is provided to any legal act regulating the activity of the committee (article 3).

## **Conclusion**

The evaluation demonstrates that the Croatian Code of Ethics for Customs presents another case, where national legislators used the UN model Code of conduct for PO, as a sole example of such regulation. Meanwhile, the article 8(3) of the UNCAC clearly states that the UN model is just one of the existing standards, implying that its parties should not restrict themselves with the provisions of this act. Finally, in 1996 Croatia became a member of the Council of Europe, and since 1993 is a member of the World Customs Organization. Therefore, it is highly recommended that the model legislation elaborated by these international organizations is taken into account as well.

## Macedonia

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The revised Code of Conduct for Customs officers was adopted in Macedonia in 2013. The Code is composed of 30 articles which cover a wide range of Customs officials' integrity issues<sup>24</sup>: general principles, conflict of interest policy (including gift/offer acceptance; misuse of public position and influence), regulation on public resource and information usage; requirements on integrity breach prevention and some additional regulation not prescribed by the model Codes. The Code mainly uses the statements of declarative character, therefore as well as in the case of Bulgaria and Croatia, the regulation needs more details and clarification.

### General principles

General integrity principles are well known to the Macedonian Customs Code of Conduct; they can be found in different articles throughout the whole document. The principle of *legality* is mentioned by articles 1, 4, 5 and requires that all the actions of Customs employees should be in compliance with the national regulation (including Customs Code), ratified international agreements and revised Arusha declaration. It is also noted that Customs employees' obligations include studying and adherence to the legislation related to the performance of their duties (article 4). The Code states that customs officials should accept personal responsibility for the performance of official duties and should be aware of the consequences of non-compliance with the Code of conduct<sup>25</sup>. This requirement is in a way an interpretation of the principle "*Ignorantia no est argumentum*" as it provides that Customs employees are personally accountable for educating themselves about their official responsibilities and acting accordingly. The principles of *honesty, objectivity and public interest* are mentioned in the article 2 of the Code: it is prescribed that Customs officers should act honestly, responsibly and diligently, express dedication to their work and respect to the others' rights and dignity (including non-discrimination and non-privileges policy). It also required that CO should avoid any kind of improper behavior and any situations which may harm the reputation of the Customs administration.

Most of the mentioned principles are further described in other provisions of the Code. For example, objectivity principle is clarified in the articles 3, 9, 16, 17 and 18 which require that the actions of Customs employees should not be affected by personal or other non-public interests and values, namely, prejudice, career ambitions, conflict of interest, supervisor's threats or political views. It should also be noted that, just like the Albanian Code of conduct, the Macedonian Code pays special attention to the regulation of the respect of political neutrality. Aside the general requirement, the authors of the Code require that in exercising of the PO powers and the performance of their tasks customs officers should not conduct any political activities, if it undermines the confidence of citizens and legal persons in their ability to perform official duties without any political favoritism (article 17). Moreover, it is prescribed that under no circumstances Customs employees should try to convince any individual or legal person or colleagues to join the political party (article 17).

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<sup>24</sup> The only principle that has not been reflected in this Code is a requirement of exercising "good citizen" duties;

<sup>25</sup> The article 29 of the Code provide that any conduct of Customs officials which is in contrary to the Code requirements will be a subject of a disciplinary proceeding.

The Macedonian Code also gives a specific interpretation of the principle of *ethical behavior* which explains the connection between POs' personal conduct and the integrity breaches. The article 28 requires that Customs officers should not only avoid involving in activities that conflict with [legal and] ethical norms, but that also they should bear in mind that these activities could be a reason for a blackmail.

**The supporting regulation** provided in the Macedonian Customs Code of conduct is significantly less detailed than the international standards recommend. The act covers only few elements of the integrity policy for PO.

With respect to the *conflict of interest* the regulation established by the Code is very fragmentary. Aside the requirement to avoid and formally report any conflict of interest situations (articles 15.2 and), no definition of the Col term is provided, no subjects of potential Col are indicated and no obligation of asset declaration is stipulated. The regulation on offer acceptance is also partially elaborated. As the analysis shows, the Macedonian Code imposes three obligations onto the Customs' employees: to never solicit or accept any benefit or offer (and if accepted a gift – immediately hand it over to the direct supervisor) and to report any offers given in exchange for preferential treatment. The questions related to the definition of an improper offer are not discussed in the Macedonian Code, neither the requirements to support the prosecution of a person who offered an improper benefit (for example, gathering evidence, Article 19 of the CoE model Code). Furthermore, no information is given in the Code regarding the issues of incompatibility: with exception to the prescription of politic neutrality, no further regulation is provided, neither regarding employment restrictions, nor about former Customs employees' behavior.

The code also gives some requirements in connection to CO involvement in *public procurement* procedure. It prescribes that procurement procedure should be conducted in accordance with law, without any discrimination, privileges or influence of personal interests. However, the presented rules do not directly prohibit CO engaged in procurement to accept offers from current or prospective suppliers, as it is stated in the WCO Code (article 4.1). The Macedonian code also lives for the authorities' discretion the question of restrictions posed on Customs officials intending to participate in purchase of excess Government property (article 10.1 of the WCO code).

The only element of Col policy which was covered by the Macedonian Code in compliance with the international standards is the provision governing the *usage the of the official position* – article 2 of the Code introduces the prohibition to abuse status and powers whoever is the beneficiary. To be said, under the Macedonian Code the same rule does not automatically apply to the cases of influence abuse – the list of beneficiaries here is limited the customer officers themselves and the interests of members of their families (article 3).

The issue of *public resources* usage has been briefly addressed by the Macedonian code in three articles (19, 20, 21). The provisions of these articles include the principles of financial funds usage (official money should be spent wisely, purposefully and legally; only authorized persons can make decisions about financial obligations), prohibition to use official information for personal benefit and threshold requirements for usage of other public resources (CO should use it in economical, effective and legal way). At the same time, no special rules regarding dealing with the specialized property items (for instance, motor vehicles) have been provided.

The regulation introduced by the Macedonian Code on the *integrity control measures* is partially compliant to the international standards. Several short provisions of the Macedonian Customs Code reflect this issue, though they mention only some of the PO responsibilities and in need of further clarification:

1. Self-reporting: Customs officers are obliged to inform their immediate supervisors if criminal proceedings have been initiated against them (article 6.2);
2. Whistleblowing obligation: Customs officers should report their knowledge of any improper offer taking place (article 13.3);
3. Control obligations: immediate superiors, and in their absence the higher managerial workers/professional liability department, should supervise proper implementation of the Code's provisions (article 30).

Aside from the mentioned regulation no additional provisions regarding the prevention of integrity breach were found in the text of the Macedonian Code.

Another shortcoming of the Macedonian code of Conduct is that this legal act does not reflect the *specifics of the Customs' field of activity*. The requirement of maintaining a specific drug policy is limited to the prohibition of using drug substances (article 24) and smuggling them (article 6.1), however no background checks and periodical control measures are prescribed. No information is given as well to the issue of purchasing of seized or forfeited items.

### **Conclusion**

The examination of the Macedonian Code of conduct for Customs demonstrates that this legal act is partially compliant to the recommendations developed by the UN, CoE and WCO model Codes of Conduct. Much has to be done both in clarifying the existing legislation as well as in provision of regulation to various areas of Customs officers' conduct that currently did not get any coverage in the Macedonian Code.

# Montenegro

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**T**he Montenegro's Code of Ethics for Customs was adopted in July 2012 and implemented in January 2013. The WCO integrity newsletter gives this document a positive characteristic<sup>26</sup>: "The Code of Ethics contains a clear ethical framework for the conduct of Customs officers. It comprises provisions on issues of legality, impartiality, professional standards and accountability, conflicts of interest, gift acceptance, etc. The Code also contains a series of practical measures which must be undertaken in order to ensure that the actions of Customs officers are in harmony with the regulations or provisions of the Code <...> The Customs Service has also set up a system of internal sanctions in the event of conduct unbecoming of Customs officers. Such sanctions are established in accordance with the law".

The Code of Conduct of Montenegro is an example of successful work of local legislators in interpretation and implementation of various international standards into the national Code. The discussed document contains provisions of the UN, CoE and WCO model Codes, it takes into account most of the recommendations made in these legal acts, therefore practically every aspect of Custom official's integrity is reflected in the Montenegrin Code. To be noted, some of the important provisions are still missing: as such, honesty and good citizen principles are not proclaimed, neither are the restrictions regarding the use of public position and influence. The rules on prevention of the integrity breaches need to be substantially clarified.

## General principles

The list of integrity principles presented in the Montenegrin Code with partially reflects the regulation provided by the international models: it includes the requirements of *legality* <sup>27</sup>; *objectivity* (articles 4, 16 and *public interest* (article 4). The "*ignorantia*" principle is also mentioned by the Montenegro's Code in the preamble and the article 49: Customs officers are encouraged to make themselves acquainting with the ethical standards and responsible for violations of the standards and rules of behavior established by the Code. Honesty

The **supporting legislation** presented in the Montenegrin Code of conduct for Customs is generally in compliance with the international standards.

The regulation thoroughly discusses the *conflict of interest* policy and related issues. As such, article 16 of the Code<sup>28</sup> provides a definition to a CoI which is similar to what is recommended in the CoE

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<sup>26</sup> WCO Integrity Newsletter, 2013 // URL

[http://www.wcoomd.org/~media/wco/public/global/pdf/topics/integrity/resources/newsletters/wco-integrity-newsletter\\_eng8.pdf?db=web](http://www.wcoomd.org/~media/wco/public/global/pdf/topics/integrity/resources/newsletters/wco-integrity-newsletter_eng8.pdf?db=web);

<sup>27</sup> "Article 3. Customs officer within its rights and powers, shall be in the performance of its activities abide by the Constitution, laws and regulations, by-laws, internal instructions, instruction and professional and high moral standards";

<sup>28</sup> "Article 16. Conflict of interest, in terms of this article occurs when the officer has a personal interest which influences, may influence or appear to influence the impartial and objective performance of the tasks, at the same time, personal interest of customs officers implies is gaining a pecuniary or other advantage, for him personally, his family, close

model Code. Furthermore, articles 12 and 17 of the Code introduce the policy for avoidance of Col situations, which is similar to what is provided in the CoE standards:

1. CO are obliged to be alert to any possible or actual conflicts of interest;
2. CO are obliged to take the necessary actions to avoid conflicts of interest, including no putting themselves in subordinate position as a result of an offer acceptance;
3. CO are obliged to immediately inform in writing their superiors if, during the performance of official duties, a conflict of interest appears;
4. CO are obliged to ask for being discharged from certain official affairs, if participation in them may create a conflict of interest;
5. CO are obliged to comply with the decision to immediately stop engagement in any activities from which a conflict of interest may arise.

While regulating the issue of *offer acceptance* the Montenegrin Code (articles 12, 13, 14) widely implements the recommendations given by the CoE Code (article 19). Firstly, the Code provides clarification on dealing with improper offers, saying that Customs official should refuse any kind of this benefit (if the offer cannot be refused - preserve it and use it as little as possible), identify (if possible) the person who made the offer; look for witnesses to the mentioned misconduct and report the improper offer to the Department of Internal Control. Secondly, the Montenegrin Code gives an explanation to what can be considered as an acceptable offer (article 13), stating that this can only be a duly reported commemorative or protocol gifts. By commemorative gifts the Code means advertising materials, such as calendars, pens, notebooks, etc. At the same time, the protocol gifts category covers conventional hospitality during official visits, delegations and business trips, at seminars and conferences, if the refusal may cause an embarrassing situation in a professional sense; business lunches after the official meetings are also acceptable.

Other two Col-related areas discussed in the Montenegrin Code are *assets disclosure* obligation and *incompatibility* restrictions. The asset disclose obligation is established by the articles 23 and 24 of the Code and requires, on the one hand, from Customs officers to provide information on their possessions (and within 30 days – to report of any changes in this regard) and, on the other hand, from the respected authorities - to verify this data.

The *incompatibility* rules laid out in the Code cover political neutrality (article 4), as well as *business and outside employment* endeavors of CO. With regard to business affairs, the Code is quite rigorous, as it forbids any engagement in private business or its co/ownership (articles 20 and 21) by Customs officials. Moreover, it prescribes that Customs employees should declare if any person related to them<sup>29</sup> is about to engage in commercial relations with Customs administration – if this activity can lead to a conflict of interest situation<sup>30</sup>. At the same time, while regulating POs' outside employment the Montenegrin legislators apply a more flexible approach. Unlike the national Codes which were discussed earlier, it allows Customs employees to be engaged in pedagogical work, scientific research,

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relatives, friends or other legal or natural persons with whom [customs officer] has individual, business or political contact or cooperation”;

<sup>29</sup> By persons related to CO the Code understands collateral relatives to the second degree, in-laws to the first degree, marital and common-law spouses, adoptive parents and adopted children (article 22). Customs officials should report within 30 days any changes which occur in their family situation;

<sup>30</sup> Namely, in the spheres of international freight forwarding, foreign trade operations, services in foreign trade and other activities that can lead to a conflict interest situation (article 22).

humanitarian, sport and other similar activities (article 19). The underlying idea behind this ruling seems quite logical – CO status should not prevent this person from participating in socially beneficial activities. Yet, the meaning of the phrase “other similar activities” is not clear, and therefore without proper explanation this provision can be used as a loophole for engaging in incompatible activities. That being said, it should be noted that the Code provides some protection from such abuse by requiring that no CO can have an outside employment without prior approval from their superior officer (article 19).

From a critical point of view, it should be mentioned that some areas related to the field of Col still have not been properly covered in the Code. Firstly, the regulation on the activities of *former Customs employees* is only partially compliant with the international standards. The Montenegrin Code responds to this call in article 33, prescribing that no former Customs official is entitled to any privileged access to information and Customs services. However, the presented rule covers a very limited range of issues which a former officer may encounter. The regulation in the Montenegrin Code does not address restrictions with regards to the future employment of former officers (such as, a time limit before employment in the related endeavors; gaining consultation on future employment compatibility; advantage position while searching for a new employment, in particular in public office); it also does not forbid the provision of services on behalf of Customs by the former officer, as well as the use of official information for personal gain.

The *issues of influence and power abuse* is another field for improvement – in the existing version of the Montenegrin Code it is not possible to find any specific provision regarding the prohibition of such actions. Although the logic of the Code indirectly implies the existence of these restrictions, the gravity of the misconducts in connection to the abuse of influence/power requires a specialized clause to be clearly expressed in the Code of Conduct.

On the other hand, the regulation on dealing with *public resources/information usage* established by the Montenegrin Code appears to be in compliance with the international standards. The requirement regarding the proper use of public resources is mentioned in a number of articles: article 15 expresses a general prohibition to make a personal use of any services at the expenses of the Customs; articles 7 and 25 adds that CO can use official resources and information only for official purpose; article 26 extends the previous rule onto the Custom’s finances, asking for its rational, economical and relevant spending. Finally, articles 27, 28 and 29 discuss the specifics of usage of certain types of public resources: cars, IT, computers, phone services, official identification and security passes – the regulation reflects most of the recommendations provided by the WCO model Code (chapter 9), excluding the provision on stamps/ postal services and non-motor vehicles.

Moreover, special attention should be given to article 36 of the Montenegrin Code – the regulation presented there is a novelty of national legislators, it cannot be found in the minimal international standards related to public official’s conduct. The article introduces a “public premises” restriction – stating that official premises should be used for Customs service affairs only, and any activity pursuing private purposes is strictly forbidden. As an example of a private activity the article refers to the sales of goods and provision of services, which are not connected to the execution of the official duties of the CO.

At the same time, the evaluation indicated that the provisions of the Montenegrin Code do not impose any restrictions on PO participation in public procurement (articles 10.1 and 10.2 of the WCO Code) and government contracts (article 5.3 of the WCO code).

The other issue that should be stipulated in every Code of conduct, as it is recommended by the model Codes, is the measures of *integrity control*. The Montenegrin Code addresses this problem in the articles 42, 44, 45 and 46. These articles discuss the duties of the Customs’ managers (requiring



that they should take appropriate actions in response to information that CO activity has elements of corruption-related conduct or breaches the Code of Ethics); establish a specialized Ethics committee mandated to interpret the text of the Code of Ethics, initiate amendments to it, monitor the implementation of the Code of Conduct, promote conduct standards in Customs and manage the complaints towards Customs officers. The Montenegrin Code also introduces the responsibility to report on breaches to the Code of Conduct. Customs officials are required to report to their superiors any situation where they are requested to act in a way that is unethical or contradicts the Code's provisions, as well as any other cases of violation of the Code of Conduct or laws (article 4). Furthermore, the Code also mentions the self-reporting duty, prescribing that Customs officials should report any criminal proceedings in which they are involved as defendants. There are certain key omissions, however. It is recommended to include in the Code the provisions of article 12 of the CoE model Code, which require reporting not only of already happened or ongoing breaches, but also any suspicions, evidence or allegations of unlawful or criminal activity related to public service. The Montenegrin Code should as well introduce the general rule on whistleblower protection, which prohibits imposition of any sanctions on the CO reported an integrity breach.

The last part of the evaluation of the Montenegrin Code assesses its compliance with *specialized regulation* regarding the conduct of officers employed in Customs. In this respect, the conclusion is that of a mixed review. The national authorities prepared a universal Code of conduct applicable in any public institution, however the specifics pertaining to the Customs' field of expertise have not been reflected in this document - neither the rules regarding drugs control, nor the regulation about handling the seized or forfeited items.

## **Conclusion**

The examination of the text of the Montenegrin Code of Ethics for CO shows that, in general terms, it is compliant to the international standards. With some important omissions properly addressed, this document can serve as an exemplary Code of Conduct for Customs and other PO.

## Moldova

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The new edition of Moldova's Ethics and Conduct Code for Customs was adopted in November 2016. The legal document contains most of the recommendations expressed in the international Model Codes. Nevertheless, certain provisions are too general and miss important aspects of integrity regulation.

### General principles

The majority of the declarative statements introducing the principles of Customs employee's behavior are presented in Chapters I-III of the Moldovan Code (Articles 3-7). The articles declare the same principles for public officials' conduct as established by the international standards (with the exception of the "good citizen" requirement). As such, the Code prescribes that Customs officers in Moldova should follow the principles of *legality*, meaning that in exercising official duties they should, firstly, respect and adhere to the Constitution, national legislation and international treaties, to which Moldova is a party (article 4) and, secondly, exercise only lawful orders issued by superiors. CO should always prioritize public interest and Customs values in performing of official duties (article 4). The Moldovan Customs officers are also required to demonstrate professional and ethical integrity by performing their duties *honestly, being fair, respectful and impartial* (and non-discriminative, in particular) in their relationships with citizens, colleagues and supervisors (articles 4, 12(1), 14, 17). Finally, the Code considers as Customs employees' personal responsibility acquaintance with its provisions (article 5) and make CO accountable for breaching them (Chapter VI).

### Supporting regulation

The Code of Ethics and conduct for Customs in Moldova represents another example of competent legal drafting. In regulation of the CO integrity issues, the Moldovan authorities actively employs both writing styles – by combining general statements with detailed descriptions.

The Code's provisions on *conflict of interest* exemplify this approach. The regulation provided there comprehensively addresses all the aspects of this issue. Article 9 "conflict of interest and related situations" requires that PO restrain from misusing their position for private interests and from soliciting any rewards for these actions. It also prescribes that Customs officers should avoid engaging in situations which may cause a Col, including involvement in specific activities while being subjected to the influence of political or personal interest. In this regard article 7.1. of the Code clearly states that Customs officers are prohibited to examine any inquires the solution of which are not in competence of/ have not been delegated to these PO. The law furthermore obliges Customs employees to report each case of conflict of interest and influence abuse, as well as to submit an asset declaration (articles 9 (d), 9 (g) )<sup>31</sup>.

While the overall assessment of the Moldova Code's provisions on Col prevention shows a high level of compliance with the international standards, the present analysis indicates several shortcomings.

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<sup>31</sup> To be said, the Code does not specify the periodicity of this reporting.

As such, it should be noted, that for the purpose of clarity the prohibition of influence misuse should be directly stated. Furthermore, no restrictions are provided by the Code with respect to a category of persons presenting a high “CoI risk” (a party with whom Customs officers share private interests such as, family members, society members, etc.), although it is specifically alluded to in the articles 4.5 and 5.2 of the WCO Code.

With regard to the *COI-related issues* the directions provided by the Moldova Code are quite thorough. The *offer acceptance* policy addresses practically every recommendation made in the Model Codes. By improper offer Moldova Code refers to gifts, favors, invitations, loans and other valuable items or services to which the official or a third person is a beneficiary, and if the approval/acceptance of these offers can influence the impartiality of the Customs employees, or represents a form of reward (article 8). The types of benefits which the Code describes as acceptable include symbolic, protocol or courtesy gifts not exceeding the certain price limit established by the Law (1000 lei<sup>32</sup>). It is also added that in any case of offering or accepting a benefit it has to be properly declared in accordance with the Government Decree № 134 from 22.02.2013. The mentioned Decree gives clarifications on the procedure of declaration, storage, use and purchase of gifts. The general rule expressed in it based on the consideration that any improper benefit received by public officers will automatically be recognized as a State property. The document also contains various supplementary provisions, for example, it states that the received improper gifts can be purchased by Customs officers after its evaluation by the Commission in charge of gifts registration. Another noticeable addition introduced by the Decree provides that if the gift has a cultural value, it can be given free of charge to a museum, library or other organisation. On a less positive side, the examination of the Code and the legislation in reference noted, that the model recommendations on the reaction to the improper gifts still have not been fully introduced. The regulation provided in the presented acts is limited to the reporting and non-acceptance obligations. The important requirements established by the CoE model Code (article 19) discussing prosecution measures (f.e. identification of a person who made an offer) are missing. Moreover, no attention was given by Moldova’s Code to the specific types of offers discussed in the Model regulation: incidental gifts, offers of free travel for official purposes, concessions and discounts (articles 4.3-4.5 of the WCO Code), as well as any gifts for Customs staff involved in procurement (article 4.2 of the WCO Code).

Another important aspect of the conflict of interest policy is the *incompatibility* restrictions. Moldova’s code of ethic and conduct for Customs provides several rules with respect to this issue. Article 7 prescribes that while acting in official duty Customs officers are forbidden from being involved, actively or passively, in any political activity – namely, by expressing or showing any preference to any political party during exercise of the duties, or being a member in governing organs of a political party. Furthermore, article 7(c) of the Code directly prohibits to use official symbols of Customs service for personal need. Meanwhile, the issue of employment or business incompatibility is not addressed: no restrictions are posed on double and family member’s employment, as well as on getting governmental contracts (as it is recommended by the article 5.3 of the WCO Code).

The incompatibility provisions also cover activity of *former Customs employees*: it is prescribed that for a year after leaving service in Customs ex-officials are not allowed to hold governing, audit, or control positions in entities which they directly supervised/controlled on behalf of Customs (articles 7.2, 7.3). Former Customs employees are also prohibited from representing the interests of individuals and legal entities in matters related to previously performed functions (excluding lawyer duties and preparation of petitions). At the same time, the Moldovan code does not directly forbid any preferential treatment towards former Customs officials searching for a new job. Likewise, no requirement to consult Customs` Ethics office about the incompatible areas of future employment and

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<sup>32</sup> See Hotărîre № 134 din 22.02.2013 // URL:  
<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=346892&lang=1>.

time restriction are stipulated in this document.

The analysis of the legislative provisions of Moldova's Code on the question of *public property usage* shows that this topic is given a very general regulation. All the provisions on the issue are covered in two articles (article 10 and 11). The code requires that Customs officers should not use official resources, including information for any purposes if it is not properly authorised or legally prescribed. The articles also state that while using official property, employees have to provide necessary protection to it use it only during official work hours and only for official purposes. The specific types of public property - such as information systems, certain high-level official documents, stamps, customs seals, internet, finances and public vehicles – are only mentioned in requirement on their proper usage according to official policies, purposes and procedures. No specific rules clarifying this provision have been given, even though it is recommended by the WCO model Code (articles 7- 9.4). Finally, the issues of public procurement and government contract restrictions still not regulated in the revised Code.

The regulation pertaining to the *prevention of integrity breaches* contained in the Moldova's Code also covers most of the basic principles, while missing some specific details. The discussed Code contains provisions both on self-reporting obligations and whistleblower duties. Articles 5.3 and 5.4 prescribe that Customs officers should report about any criminal or administrative<sup>33</sup> proceedings they are involved in as defendants, as well as about any criminal sanctions imposed on them and/or about any committed misconduct (excluding the ones where the conviction was cancelled).

With respect to the whistleblower obligation, the Code requires that cases when Customs employees were given an illegal order (in breach of law and normative acts, with exceeding or abusing of official competences), they should immediately report this to the corresponding authority (article 5.2(b)). The Code additionally underlines that no Customs employee should be subjected of any retaliation for these actions (article 5.2 (d)). It is, however, mentioned that in situations where the report was not made "in good faith", its author may face sanctions. The definition of "good faith" in this context is not given by the Code, therefore leaving a potential loophole for imposing unjustified sanctions on whistleblowers. The Code also did not clarify what actions Customs officials should undertake with regard to obtained evidence or in case of having a suspicion/allegation about unlawful or criminal activity. It also seems that authors of the Moldovan Code of Conduct did not introduce the rules on control and monitoring measures over prospective and already employed Customs officers (background checks, regular monitoring and compliance observance).

Another shortcoming identified in the regulation of Moldovan Code is that it lacks specialized provisions reflecting the particularities of the Customs service. The examination showed that no regulation on dealing with items seized/forfeited by the Customs is given. Moreover, the requirements about drug control measures (background checks, regular monitoring) are also non-existent.

## Conclusion

Based on the aforementioned analysis, it is suggested that the Moldovan Code is partially compliant to the international standards on Customs officials' conduct. The document is definitely an example of a good first step in providing of effective regulation over integrity issues in public service. Nonetheless, more work on clarification of the Code's provisions is pending. Although the regulation addresses most of the important aspects of public official's integrity, it lacks details, omits important but not obvious rules (f.e. explanation of control supervisors control duties (article 15(j)), and does not contain specialized regulations for Customs' PO.

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<sup>33</sup> It is important to know that, in comparison, the minimum international standards require self-reporting only for activities amounting to engagement in criminal proceedings.

## Serbia

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**T**he Code of conduct for Customs was adopted in Serbia in 2003. According to the information presented in the Customs' Service official website, it has not been amended since. The text of this document is very brief, it contains only 10 short articles. It is logical to assume that the act of this size cannot possibly cover even the basic standards established in the Model Codes. Therefore, this explains why Serbia's Code of Conduct for Customs is largely non-compliant to the international regulation.

The examination of the Code shows that it mentions general principles of *legality* (article 1), *objectivity* (bullets 1, 2, 6), and public interest (article 7). Concerning the supporting regulation, the Code briefly discusses the issues of *offer acceptance* (article 3)<sup>34</sup> and *public resources usage* (article 9)<sup>35</sup>. As for the other aspects of CO integrity – they need to be introduced in a revised Code.

To be noted, while most of the recommendations of the international standards are not reflected in the Serbian Code, it includes one provision which can be considered as a novelty and could be included in the model regulation. This requirement is found in the article 5 and prescribes that Customs officers should not cooperate with a person/ a group of persons if there are reasonable grounds for suspicion that they are linked to criminal activity. The exception is granted to the cases when the nature of COs' job requires this cooperation (article 5).

Overall, the results of the evaluation of the Serbian Code of Conduct suggest that the national authorities should prepare an updated version of this document which provides, if not a detailed regulation as presented in the CoE and WCO model Codes, at least general articles/statements mentioning all the aspects of Customs employee's integrity obligations.

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<sup>34</sup> "The Customs officers and employees shall not accept money, gifts, favors or benefits of any kind for themselves or others, relating to the performance of their official duties or encourage giving thereof or indicate by their behavior, actions or words that they expect benefit and shall take no actions that might put them in a subordinate position";

<sup>35</sup> "The Customs officers and employees shall keep and maintain with the utmost care and respect, assets, equipment, facilities and premises used by them in the performance of their duties, and the material and equipment officially available to them, shall be used with due diligence and never for private purposes".

## General observations

The present examination of the national Codes of Conduct in the countries of South-Eastern Europe provides mixed results. On the one hand, several respondent countries (Bosnia and Herzegovina, Moldova, and Montenegro) show significant progress in introducing a proper regulation of CO integrity behavior. Their Codes reflect most of the recommendations given by the Model instruments, moreover the wording of these provisions speaks highly of the quality of the legal drafting. On the other hand, a number of the assessed countries in the course of this study demonstrated a polar picture (Bulgaria, Croatia, and Serbia). These Codes of Conduct are fragmentary, lack details and contain mostly general statements in dire need of further clarification. It should be noted, however, that the assessment of the Codes implemented by RAI's contracting parties gives a strong impression that the main issues of CO integrity - such as conflict of interest, offer policy, incompatibility, power abuse and others - are generally known to the national authorities. This leads us to believe that some missing provisions of the Codes of Conduct can be found in other legislative acts of these countries. The recommendation, nonetheless, stands at the same point – the crux of the POs' Codes of Conduct is that all the rules on integrity policy should be incorporated in one document.

Overall, the study concludes that none of the countries under study yet established a Code of Conduct for CO that is fully compliant with the model international standards. Moreover, the questions of public procurement, government contracts, whistleblower protection, conduct of former employees, regulation on improper gifts, employment restrictions and specifics of certain types of property usage should receive increased attention by most of the national legislators. The same can be said with regard to the introduction of rules reflecting the specifics of the Customs service. Therefore, the results of the evaluation suggest that most of the countries-respondents should observe more closely the existing international standards.

Despite the fact that SEE Codes show quite modest levels of compliance, the evaluator notes that certain countries strive to establish additional integrity rules expanding the model regulation. These provisions express interesting ideas and are recommended for implementation in any Code of Conduct. The following rules are the most pertinent:

1. Rule of "fair compensation": public officials should report any cases of miscalculation with regard to their salary – if as a result of this mistake the PO receive an extra payment (Bosnia and Herzegovina);
2. Regulation on the usage of public firearms for PO in law enforcement (Bosnia and Herzegovina, Croatia);
3. Extended self-reporting rule: PO should report any criminal charges and offences committed at work or connected to it, as well as POs' involvement in any offence (if it negatively affects the performance of their official duties) and all the sanctions imposed on POs in the last 10 years (if they are still in the record). False statements or failure to report will bring sanctions on the corresponding public official (Bosnia and Herzegovina);

4. Restrictions imposed on off-duty conduct: a PO, in their private life, should not only avoid getting involved in activities that conflict with [legal and] ethical norms, but that also should bear in mind that these activities could be a reason for a blackmail (Macedonia);
5. Rule for the usage of public premises: official premises should be used for Public service affairs only, and any activity pursuing private purposes is forbidden (Montenegro);
6. "Non-cooperation" rule: Public officers should not cooperate with a person, or group of persons, if there are reasonable grounds for suspicion that they are linked to a criminal activity. The exception to this rule are the cases where the nature of COs' job requires this cooperation (Serbia).

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