



# **Reflecting the European values on incompatibilities and conflicts of interest in the Romanian local public administration**

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# Reflecting the European values on incompatibilities and conflicts of interest in the Romanian local public administration

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The human resource is the most important wealth of any national or European public institution, because it is one of the main drivers of accelerating reforms in the European space. From this perspective, we consider necessary and appropriate that the human resource to be informed and to respect the principles and specific methods of incompatibilities and conflicts of interest in national regulations and acts and, also, their understanding in the wider context of European Union provisions. The paper aims to examine how, in Romania were covered by various categories of acts incompatibilities and conflicts of interest regarding the local public administration.

**Keywords:** conflicts of interest, incompatibilities, local public administration, European values.

## 1. Introduction: what are the incompatibilities and what are the conflicts of interests?

The existing comparative studies in the field of conflicts of interest and incompatibilities compare and describe very different laws, standards and codes of ethics. For example, in some Member States general rules are laid down in the constitution or in the penal codes that refer to ethics (and conflicts of interests) and incompatibilities. These constitutional or criminal law rules are applicable to more than one institution and apply to the whole country. In other countries the constitution does not regulate ethical issues at all. The different way of regulate and the different levels of regulation suggest that regulation of these two issues under values promoted by the European Union, it can represent a solution and it can create an unitary way of understanding the incompatibilities and conflicts of interests.

*The incompatibilities* reflect those situations where a public official held several positions at the same time, although to cumulate them is prohibited by law<sup>2</sup>.

Example of incompatibilities: Y is mayor of the Municipality B and at the same time, Y is a civil servant in another public authority.

In Romania, incompatibilities are very strictly regulated in the Constitution, regarding the public officials, of the different power of the state. In this sense, we can give as example:

❖ Art. 71<sup>3</sup> *Incompatibilities regarding the deputies and senators:*

(1) No one may at the same time, deputy and senator.

(2) The position of Deputy or Senator is incompatible with the exercise of any public authority, with the exception of Government membership.

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<sup>2</sup> *Guide to incompatibilities and conflicts of interest*, issued by the NIA and SAR, retrieved from: [www.fonduri-ue.ro](http://www.fonduri-ue.ro), accessed: 10.09.2015

<sup>3</sup> Constitution of Romania.

❖ Art. 105<sup>4</sup> *Incompatibilities regarding the members of Government*

(1) Membership of the Government is incompatible with other public office in authority, except the office of Deputy or Senator. Also, it is incompatible with holding an office of professional representation paid by a trading organization.

Art. 125<sup>5</sup> *Incompatibilities regarding the statute of judges*

(3) The office of judge is incompatible with any other public or private office, except for academic activities.

Regarding the conflicts of interest, in the specialty literature, it has been underlined that is a complex concept with various dimensions: social, political, economical, cultural dimensions.

It is full of controversy and ambiguity. Conceptions about what should be defined as conflicts of interest are constantly evolving. *In the last several decades, the public standard of morality has become much stricter. Previously accepted conduct...is now deemed unethical and previously unethical conduct is now deemed criminal*<sup>6</sup>.

OECD used a generic definition of conflict of interest: a conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the public official's private-capacity interest could improperly influence the performance of his/her official duties and responsibilities<sup>7</sup>.

Conflicts of interest of the public officials involve a conflict between public duty and private interests, whereby the public official has a private interest which could improperly influence the public interest, activities and decisions<sup>8</sup>.

As example we can have, the following: the mayor of the X city signs a contract with his wife. Another example is organizing a tender by the County Council where is participating the company of the brother's council president, who win.

It has to be underlined that for a conflict of interest a public official *must take a decision* that would influence a personal interest, to be found in the situation of incompatibility, a public official *should not take any* decision it is sufficient that occupy simultaneously two or more functions, whose cumulating is prohibited by law.

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<sup>4</sup> Constitution of Romania.

<sup>5</sup> Constitution of Romania.

<sup>6</sup> F.A. Antechiarico, J.B. Jacobs, *The Pursuit of Absolute Integrity*, Chicago, 1996, p.16.

<sup>7</sup> OECD, *Managing Conflicts of Interest. A Toolkit*, Paris, 2004, pp. 22-23

<sup>8</sup> C. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, *Regulating Conflicts of Interest for Holders of Public Office in the European Union A Comparative Study of the Rules and Standards of Professional Ethics for the Holders of Public Office in the EU-27 and EU Institutions*, EIPA, Maastricht, 2011, p. 27.

Incompatibility occurs only if a public official has another position in the public or private sector whose exercise may question his objectivity.

## 2. European values on incompatibilities and conflicts of interest

The values regarding the incompatibilities and conflicts of interests are reflected in various acts in the EU member states. It can be made a difference between laws and codes of conduct/ethics.

<i>Applicable to (Scope) Type of regulation</i>	<b>ALL INSTITUTIONS (GOVERNMENT, PARLIAMENT, COURT OF JUSTICE, COURT OF AUDITORS, CENTRAL BANK)</b>	<b>INDIVIDUAL INSTITUTION(S) — 'LESS THAN ALL' INSTITUTIONS</b>
<b>General rule/and or regulation (including provisions on conflicts of interests)</b>  <i>Compliance based (normative)</i>	<b>General regulation applicable to all institutions [GL]:</b>  • Constitution • Penal Code • Administrative Acts • Civil Servants Act	<b>General regulation applicable to individual institutions [GIL]:</b>  EX: Central Bank Act; Court of Auditors Act
 <i>Integrity based</i>	<b>General codes and/or standards for all institutions [GC]:</b>  EX: Seven Principles of Public Life (UK)	<b>General codes and/or standards for individual institutions [GIC]:</b>  EX: Codes of Conduct, Rules of Procedure
<b>Specific rule and/or regulation (explicitly on ethics and conflicts of interests)</b>  <i>Compliance based (normative)</i>	<b>Specific regulation CoI applicable to all institutions [SL]:</b>  EX: Prevention of Corruption Act (SI); Ethics in Public Office Act (IE);	<b>CoI legislation applicable to individual institutions [SIL]:</b>  EX: Incompatibility Act for Government and Parliament (AT)
 <i>Integrity based</i>	<b>Specific codes and/or standards for all institutions [SC]:</b>  EX: Conflicts of Interest and Post- Employment Code for Holders of Public Office (CA)	<b>Specific codes and/or standards for specific institutions [SIC]:</b>  EX: Ministerial Code of Ethics (UK)

*Figure 1: Type of regulation of the conflict of interests and incompatibilities in EU states*

Source: C. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, *op. cit.*, p. 25.

Most existing comparative studies in the field of conflicts of interest compare and describe very different laws, standards and codes of ethics. For example, in some member states general rules are laid down in the constitution or in the penal codes that refer to ethics (and conflicts of interests). These constitutional or criminal law rules are applicable to more than one institution and apply to the whole country<sup>9</sup>.

<sup>9</sup> C. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, *Regulating Conflicts of Interest for Holders of Public Office in the European Union A Comparative Study of the Rules and Standards*

From the Figure 1, we can underline that the EU member states share common values regarding the conflicts of interest and incompatibilities, but the way of regulating these two issues are different from a country to another. We can: legally binding rules and internal administrative practices and codes of ethics.

The common European values regarding the incompatibilities and conflict of interests, are also reflected by the instruments adopted by the member states regarding the solving of these two problems. In these sense, it should be underlined the OECD study, which is highlighting the most important instruments used in the EU states:<sup>10</sup>

- ❖ Restrictions on ancillary employment;
- ❖ Declaration of personal income;
- ❖ Declaration of family income;
- ❖ Declaration of personal assets;
- ❖ Declaration of family assets;
- ❖ Declaration of gifts;
- ❖ Security and control of access to internal information;
- ❖ Declaration of private interests relevant to the management of contracts;
- ❖ Declaration of private interests relevant to decision-making;
- ❖ Declaration of private interests relevant to participation in preparing or giving policy advice;
- ❖ Public disclosure of declarations of income and assets;
- ❖ Restrictions and control of post-employment business or NGO activities;
- ❖ Restrictions and control of gifts and other forms of benefits;
- ❖ Restrictions and control of external concurrent appointments (e.g. with an NGO, political organisation, or government-owned corporation);
- ❖ Recusal and routine withdrawal of public officials from public duty when participation in a meeting or making a particular decision would place them in a position of conflict);
- ❖ Personal and family restrictions on property titles of private companies;
- ❖ Divestment, either by the sale of business interests or investments or by the establishment of a trust or blind management agreement.

### **3. Conflicts of interest and incompatibilities in the Romanian local public administration**

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*of Professional Ethics for the Holders of Public Office in the EU-27 and EU Institutions*, EIPA, Maastricht, 2011, p. 25.

<sup>10</sup> OECD, SIGMA Study: *Conflict-of-Interest Policies And Practices in nine Eu Member States: A Comparative Review*, Paris, 2005, pp. 7-8.

### ***3.1. Conflict of interest***

The notion of conflict of interest has been introduced in the Romanian legislation in 2003 through *Law no. 161/2003* on certain measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, preventing and sanctioning corruption, as amended and supplemented.

The conflict of interest was generally defined in the article 70 of the Law no. 161/2003 and the definition has been customized for different categories of persons: (a) Member of the Government and other public authority of the central government (State Secretary, Undersecretary of State functions assimilated, prefect or sub-prefect); (b) local elected officials (mayors and deputy mayors, chairmen and deputy chairmen of county councils, local and county councilors); (c) civil servants.

For local officials, the definition of conflict of interest is supplemented by the notion of personal *interest*, as defined by Law no. 393/2004 on the status of local elected officials, amended and supplemented.

The evaluation of conflicts of interest and incompatibilities is conducted by the *National Integrity Agency*, under the Law no. 176/2010 on integrity in the exercise of public functions and dignities, amending and supplementing Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency and amending and supplementing other laws.

Declarations of assets were introduced in Romanian legislation in 1996 by the Law no. 115/1996 on the statement and control of the wealth of dignitaries, magistrates, civil servants and persons responsible for the management and control. Since 2003, these declarations became public and were added to the declarations of interests.

The Control of assets and interests declarations is exercised by the National Integrity Agency (NIA). If NIA identifies unexplained wealth, it forwards the evaluation report to the competent Wealth Investigation Commission which may require to the court of justice the confiscation of the unjustified wealth.

### ***3.2. Incompatibilities***

Through Law no. 161/2003 were introduced the incompatibilities for public dignities and functions. General incompatibilities are completed with other types of incompatibilities in the various fields of functions or special laws.

The Law 161/2003 is regulating various categories of incompatibilities for the local public administration, such as: mayors, local councilors and civil servants.

Regarding the incompatibilities of mayors in the local public administration, the law provides that the mayor can not occupy the following features or attributes: local councilor, county councilor; prefect or sub-prefect; public official or employee with an individual employment contract regardless of duration; president, vice president, general manager, director, manager, administrator, member of the board or auditor or any directorship or executive in companies, including banks or other credit institutions, insurance companies and financial institutions, the RAs of national or local, to national companies and enterprises, and public institutions; chairman or secretary general meetings of shareholders or partners in a company; member of an economic interest group; deputy or senator; minister, state secretary, deputy secretary of state or some other assimilated; any other public office or paid employment in the country or abroad, except for teaching or functions within associations, foundations or other organizations.

The statute of civil servant is incompatible with any other public as well as political position. Incompatibility in the case of civil servants provides that these persons can not hold other positions and can not carry out other activities, paid or unpaid, as follows:<sup>11</sup>

- ❖ within public authorities or institutions;
- ❖ in the cabinet of officials, unless the public official is suspended from the public under the law during his appointment;
- ❖ in the autonomous administrations, companies or other lucrative public sector
- ❖ as a member of an economic interest group.

#### **4. Conclusions**

The study underlined the fact that the Romanian local public administration adopted the principles and values regarding the incompatibilities and conflicts of interests shared also by other European Member States.

In this regards, it can be highlighted the fact that we have in Romania the following situation:

1. centralized rules, which can be found in the penal law – like the Criminal Code or in the law on corruption – like the law Law no. 78/2000 preventing, detecting and punishing corruption<sup>12</sup>. Also, important to be underlined is that the conflicts of interest are also part of the detection and investigation of corruption, because certain instruments of these policies –

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<sup>11</sup> Article 63, Law no. 161/2003 regarding the incompatibilities for public dignities and functions. Amended by GEO. no. 40/2003, GEO no. 77/2003, GEO no. 92/2004, Law no. 171/2004, Law no. 96/2006, GEO no. 31/2006, Law no. 251/2006, Ordinance no. 2/2006 GEO no. 119/2006, Law no. 144/2007, Law no. 359/2004, GEO no. 14/2005, Law no. 330/2009, Law no. 284/2010, GEO no. 37/2011.

<sup>12</sup> published in the Official Gazette of Romania, Part I, no. 219 of 18 May 2000 with subsequent modifications and amendments/

such as the declaration of income or the declaration of family assets – can help a great deal in the detection of corrupt practices<sup>13</sup>. In Romania, these instruments are part of the punishing instruments because in some conflict of interest is considered a criminal act.

2. specific rules and standards in the field of conflicts of interests and incompatibilities, here it can be included the special laws regulating these two issues and also the acts of the National Agency of Integrity.

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### Bibliography

- F.A. Antechiarico, J.B. Jacobs, *The Pursuit of Absolute Integrity*, Chicago, 1996;
- C. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, *Regulating Conflicts of Interest for Holders of Public Office in the European Union A Comparative Study of the Rules and Standards of Professional Ethics for the Holders of Public Office in the EU-27 and EU Institutions*, EIPA, Maastricht, 2011;
- Constitution of Romania was amended and completed by the Law No. 429/2003 on the revision of the Constitution of Romania, published in the Official Gazette of Romania, Part I, No. 758 of 29 October 2003;
- Law no. 161/2003 regarding the incompatibilities for public dignities and functions. Amended by GEO no. 40/2003, GEO no. 77/2003, GEO no. 92/2004, Law no. 171/2004, Law no. 96/2006, GEO no. 31/2006, Law no. 251/2006, Ordinance no. 2/2006 GEO no. 119/2006, Law no. 144/2007, Law no. 359/2004, GEO no. 14/2005, Law no. 330/2009, Law no. 284/2010, GEO no. 37/2011;
- Law no. 78/2000 preventing, detecting and punishing corruption published in the Official Gazette of Romania, Part I, no. 219 of 18 May 2000 with subsequent modifications and amendments;
- NIA and SAR, *Guide to incompatibilities and conflicts of interest*, retrieved from: [www.fonduri-ue.ro](http://www.fonduri-ue.ro), accessed: 10.09.2015;
- OECD, *Managing Conflicts of Interest. A Toolkit*, Paris, 2004;
- OECD, SIGMA Study: *Conflict-of-Interest Policies And Practices in nine Eu Member States: A Comparative Review*, Paris, 2005.

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<sup>13</sup> OECD, SIGMA Study, *op.cit.* , p. 6