

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY ROMANIA

ARTICLE 7, PARAGRAPH 4 UNCAC

CONFLICT OF INTEREST

ROMANIA (NINTH MEETING)

I – Information requested from States parties in relation to preventing and managing conflicts of interest (art. 7, para. 4)

1. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention, and in particular to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest

Description of the specific conflict of interest standard(s), indicating if these standards:

➤ **Are publicized widely**

The National Integrity Agency (A.N.I.) operates on the principle of transparency. In this regard, since its establishment in 2007, A.N.I. took a series of measures in order to ensure the transparency regarding its missions.

Portal of assets and interest disclosures

One of these instruments is the public **Portal of assets and interest disclosures** (<http://declaratii.integritate.eu/>), where the disclosures submitted before the Agency by the public officials that have this obligation, are published. Up to present time, more than **7,6 million assets and interest disclosures** are available on the Portal.

Guidelines

Moreover, A.N.I. has developed two **general guidelines on (i) the legal regime of incompatibilities and conflicts of interest, and for (ii) filling in the asset and interest disclosures**, that are annually updated and posted on the Agency's website. At the same time, interested persons may submit complaints before the Agency, by accessing a specially designed form, available on the website. Likewise, in the context of the 2016 local and parliamentary elections, ANI has disseminated the guides to all entities involved in the election process.

In addition to publishing the aforementioned data and documents on A.N.I.'s website, which is updated on a regular basis, in order to provide the latest information regarding the Agency's activity, A.N.I. disseminates relevant materials, such as guidelines, brochures to entities and persons on the occasion of training sessions and other similar events.

Clarifications and F.A.Q.

At the same time, upon the request of natural and legal persons, A.N.I. issues clarifications on the incompatibilities or conflicts of interest regime, or regarding the filling in of assets and interest disclosures. The Agency's website also provides a **Questions and Answers** section, where one can find relevant information regarding the most common cases, based on the most frequent information persons have requested the Agency throughout the years.

These measures have aimed to raise awareness among the public officials that have the legal obligation to submit assets and interest disclosures.

Preventing conflicts of interest

In the same regard, A.N.I. also focuses on alternative measures of preventing integrity incidents. On this line, the Agency developed a system that has the objective to prevent conflicts of interest in the public procurement field, by automatically detecting whether participants in the public bid are relatives or are connected to people from the contracting institution's management, entitled PREVENT. The system aims to raise the accountability among heads of public authorities and to avoid situations where EU financed projects are blocked due to fraud issues as well as to raise the absorption rate of the structural funds. The system operates on the basis of the Law no. 184/2016 *to establish a mechanism to prevent conflict of interest in public procurement contract awarding* that provides the obligation to fill in relevant data and information about the decisional factors within the contracting authority and about the bidders. This data shall be filled in whenever they open a procedure for public procurement / when the bids are submitted. These types of information are introduced in a form – INTEGRITY FORM, available in the Romanian Electronic System for Public Procurement (SEAP).

In order to increase the level of awareness, as to the entry into force of the aforementioned Law, the National Integrity Agency launched on its website a distinct section, which has the role to supply information to the persons with attributions in the implementation of this Law.

A.N.I. provided these persons with the Law no. 184/2016, a *Guideline on filling in the Integrity Form*- available for download, a list of the most frequently asked questions in regard to the mechanism to prevent conflict of interest in public procurement procedures and the related answers. Nonetheless, the Agency disseminated around 500 *Guidelines*, on the occasions when the integrity inspectors took part in meetings as lecturers.

The Agency set up an exclusive email address and appointed integrity inspectors to respond to a special telephone line for contracting authorities, in order to supply them with any needed clarifications on the Integrity Form.

Public information materials

The information published by the Agency also consists in the release of **public information materials**, which have the role to emphasize the current activity of A.N.I. in relation with its publics. The various materials (findings, events, external audits reports) can be found on the Agency's website (<http://www.integritate.eu/>).

The continuous publicity of A.N.I.'s findings had a deterrent effect in terms of committing integrity incidents by persons who have the obligation to declare their assets and interest. Thus, during its 10 years of activity, the Agency published **1.430 press releases** on cases finalized by the integrity inspectors. A.N.I.'s press releases are strongly promoted by the mass media.

Furthermore, A.N.I.'s activity is synthesized in its **activity reports**, which are drawn up both quarterly and annually and are published on the Agency's website.

The Agency also publishes definitive and irrevocable evaluation reports, together with the list of persons under the interdiction to occupy a public office or dignity for a period of three years, following a definitive incompatibility or administrative conflicts of interest decision.

➤ Regulate the outside activities of public officials

As to the European Union's recommendation through the Verification and Cooperation Mechanism, followed by the adoption of Law no. 144/2007 *regarding the establishment, organization and functioning of the National Integrity Agency*, Romania established A.N.I., an autonomous administrative institution with exclusive competence in verifying **unjustified wealth**, and the **legal regime of conflicts of interest and incompatibilities**.

Administrative conflict of interest

A public official is in conflict of interest when, by virtue of the office or the public position they hold, they take a decision or participate in taking a decision on a matter in which they have a personal interest.

Administrative conflict of interest is defined by art. 70 of Law no. 161/2003, as “when the person exercising a public dignity or a public position has a personal interest related to financial aspects, which might influence the objective performance of his duties under the Constitution and under other laws.”

However, the conflict of interest is defined separately in various special laws, based on categories of positions the different persons may occupy. For example, local elected officials have specific regulations in Law. no. 393/2004 *on local elected officials* and the Law no. 215/2001 *on the Local Public Administration*, while for MPs, there is Law no. 96/2006 *on the statute of deputies and senators*.

There are several types of conflict of interest, but they are not differentiated by legislation: potential, current and consumed.

- Potential conflicts of interest refer to the situation where a public official has personal interest;
- Actual conflict of interest arises when the official is forced to make a decision that would benefit them or close connections;
- Consumed conflict of interest describes the situation in which the public official was already involved in the decision where they had a personal interest, in violation of the law.

Aside from a situation of conflict of interest, public officials may find themselves in an incompatibility state. The distinction between conflict of interest and incompatibility, is that if the incompatibility involves holding two or more positions simultaneously (without this implying a decision-making), where conflict of interest is concerned, the person occupying a public office would be making or participating in a decision which generates a benefit for them, or for persons close to them. Also, another distinction is that one precedes the other, that is, **an incompatibility precedes a conflict of interest**.

Incompatibility

Incompatibility is defined as the situation where a public official's position is incompatible with performing other activities or holding other positions, as clearly provided by law.

The legal regime of incompatibilities is governed by Law no. 161/2003 *on certain steps for assuring transparency in performing high official positions, public and business positions, for prevention and sanctioning the corruption*. At the same time, there also are other laws that have distinct regulations for specific categories of positions or public office. For example, also the Constitution contains a number of provisions regarding incompatibilities applicable to the President of Romania, members of Parliament and the Government, Law no. 7/2004 *on the Code of Conduct for public servants* establishes incompatibilities for public servants, Law no. 303/2004 *on the statute of magistrates* sets incompatibilities for that category, Law no. 94/1992 *on the organization and functioning of the Romanian Court of Accounts* sets the incompatibilities for members of this Court, while Law no. 95/2006 *on health reform* includes provisions of the legal regime of incompatibilities for employees in the medical system.

- **Prohibit the holding by public officials of certain types of assets or positions in legal entities that are incompatible with their primary functions, such as individual sitting on the board of a company**

Law no. 161/2003 provides the categories of public officials and the situations under which they can find themselves, with the violation of the legal provisions regarding the legal regime of conflicts of interest and incompatibilities.

Therefore, the Law provides such situations for parliamentarians (deputies and senators), members of the Government and other public offices of authority within the central and local public administration (minister,

secretary of state, undersecretary of state, prefect and deputy prefect), local elected officials (mayor, deputy mayor, president and vice-president of the county council, local councilor, county councilor), public servants, magistrates etc.

Moreover, there also are other laws that have distinct regulations for specific categories of positions or public office. For example, also the Constitution contains a number of provisions regarding incompatibilities applicable to the President of Romania, members of Parliament and the Government, Law no. 7/2004 *on the Code of Conduct for public servants* establishes incompatibilities for public servants and Law no. 303/2004 *on the statute of magistrates* set incompatibilities for that category, Law no. 94/1992 *on the organization and functioning of the Romanian Court of Accounts* sets the incompatibilities for members of this Court, while Law no. 95/2006 *on health reform* includes provisions of the legal regime of incompatibilities for employees in the medical system.

Examples of incompatibilities

The position as deputy and senator is also incompatible with:

- The positions of president, vice-president, general director, director, administrator, member of the administration board or censor of companies, including banks or other loan institutions, insurance companies, financial companies and public institutions;
- The position of president or secretary of the general assemblies of shareholders or associates in the companies stated above;
- The position of state representative in the general assemblies of the companies stated above;
- The manager position or the position as member of the administration councils of the autonomous directions, companies and state companies;
- The quality of natural person merchandiser;
- The position as member of an economic interest group;
- A public position assigned by a foreign state, except those in compliance with those agreements and conventions Romania is a part of;
- The president, vice-president, secretary and treasurer position for trade union federations and confederations.

The position of mayor is incompatible with:

- the prefect or sub-prefect position;
- the position of public official or employee with an individual employment contract regardless of its duration;
- the position of president, vice-president, general manager, director, manager, administrator, member of the board or auditor or any management or executive position in companies, including banks or other credit institutions, insurance and financial companies, the autonomous direction of national or local interest, the state companies and enterprises and the public institutions;
- the position of president or secretary of the general assemblies of the shareholders or associates of a company;
- quality of natural person merchandiser;
- the position as member of an economic interest group;
- the position of deputy or senator;
- the position of minister, state secretary, state sub-secretary or other assimilated positions;
- any other public position or paid labor, in the country or abroad, except for teacher position or other positions within associations, foundations or other non-governmental organizations.

➤ **Limit the official actions a public official may take because of a conflict of interest**

The Romanian legislation provides specific situations for some categories of persons when possible conflicts of interest may occur, as follows:

- **Local elected officials**

The provisions of article 47 of Law no. 393/2004 *on the Statute of local elected officials* establish that local elected officials are obliged to expressly mention the situations in which their personal interest are in conflict with the public interest. In the cases when the personal interest does not include a capital interest, the local councils can allow the councilor to vote.

Apart from the interest disclosure established under the Law no. 176/2010 *regarding the integrity in exercising the public officials and dignities*, local elected officials are obliged to make available to the public their personal interest by signing a **Statutory Declaration**.

In accordance with article 77 of Law no. 393/2004, county and local councilors cannot take part at deliberating and adopting acts if they have a personal interest in the issue subject to the debate. If this case occurs, the local or county councilor in cause is obliged to inform, at the beginning of the debate, about his personal interest in the issue. The announcement and the **abstaining from voting** are recorded in the signed statement of the meeting.

- **Magistrates**

The provisions of article 105 of Law no. 161/2003 state the following:

(1) Magistrates are forbidden to participate in the trial of a case as a judge or prosecutor:

a) if there are spouses or relatives up to the fourth degree among them;

b) if they, their spouses or relatives up to the fourth degree inclusive have any interest in the case.

(2) Paragraph (1) shall apply to the magistrate who participates as a judge or prosecutor in the trial of a case in the appeal stage, when the spouse or relative up to the fourth degree including magistrate participated as a judge or public prosecutor, in the background stage of that case.

(3) The provisions of paragraphs (1) and (2), are supplemented by the provisions of the Civil Procedure Code and of the Criminal Procedure Code on incompatibilities, **abstention and objection**.

- **Public servants**

According to article 79, para. 2 of Law no. 161/2003, „in case a conflict of interest arises, the public officer is obliged to refrain from solving the request, taking the decision or participating in taking the decision and **inform immediately his direct hierarchical superior**. He is obliged to take the measures imposed in order to exercise his/her public position impartially, within 3 days at most starting from the moment he is made aware upon the situation”.

On the other hand, PREVENT is an advanced informatics system, that crosschecks databases or information on actors involved in public procurement procedures, contracting authorities or bidders. The purpose of this mechanism is to detect possible links between these actors which can result in possible conflicts of interest. When possible conflicts of interest are detected, the National Integrity Agency sends an Integrity warning, and the contracting authority has the obligation to remove the actions or elements that might generate a conflict of interest.

➤ **Apply criminal, administrative or other sanctions where public officials do not comply with applicable conflicts of interest regulations**

The competence for identifying conflicts of interest is that of the National Integrity Agency. The conflicts of interest cases are managed by the integrity inspectors – the specialized personnel within the institution. Following the finalization of an evaluation report regarding a possible conflict of interest, in order for this report to take effect, it has to remain definitive. An evaluation report remains definitive through a definitive Court decision or if the

evaluated person has not challenged the report before Court within the legal term of 15 days in an administrative court.

According to the legal provisions, in the definitive cases, A.N.I. shall notify the institution where the evaluated person works, in order to apply the legal disciplinary sanctions. These disciplinary sanctions are provided by the Constitution, the applicable law for each category of public office etc.

At the same time, whenever the Agency identifies indications on possible criminal or corruption offences, it notifies the competent prosecution bodies for further investigation.

Up to present time, the National Integrity Agency has **finalized** around **15.000 files** and has **applied** almost **6.000 administrative fines** for failure to submit assets and interest disclosures in legal terms, for non-disciplinary sanctions applied after the ascertaining act remained final or for failure to comply with the legal provisions by the head of institution etc. At the same time, the Agency has ascertained **1.703 cases of incompatibilities, 596 cases of administrative conflicts of interest, 152 cases of unjustified wealth** (amounting to over **28 million Euros**) as well as **671 cases of possible criminal deeds**.

Of these cases, **920 cases of incompatibilities have remained definitive, 320 cases of administrative conflicts of interest, 22 cases of unjustified wealth** that have resulted in the **confiscation of almost 4,5 million Euros**. At the same time, regarding the criminal cases A.N.I. has sent before the Prosecutor's Office for further investigations and for whom the Courts have been notified, **41 convictions to imprisonment** have been issued.

The sanctions applied in the cases of definitive and irrevocable cases of conflict of interest or incompatibility are provided by art. 25 of Law no. 176/2010, stating that "*The act of the person to whom it was found the state of incompatibility or conflict of interest it is considered grounds for dismissal or, where appropriate, it is considered and it is punishable under applicable rules for dignity, public position or respective activity*". Nonetheless, as the law itself states, there are certain dignities and public offices that have specific provisions. For example:

	Incompatibility	Conflict of interest
MPs	<p>Law no. 96/2006 on the statute of deputies and senators</p> <p>Art. 7 Termination of office</p> <p>(1) The quality of deputy or senator shall cease:</p> <ul style="list-style-type: none"> a) on the date of the lawful assembly of the newly elected Chambers; b) in case of resignation, from the date mentioned in its contents, submitted to the Standing Bureau of the Chamber from which the deputy or senator is a member; c) in case of loss of the electoral rights, from the date of the final ruling of the court order for the loss of these rights; d) in the case of death, from the date recorded in the death certificate; e) in case of incompatibility. 	<p>Law no. 96/2006 on the statute of deputies and senators</p> <p>Art. 19 Conflicts of interest</p> <p>(1) The act of the deputy or senator to violate the conflict of interest legislation is a disciplinary offense and is sanctioned by the reduction of the allowance by 10% for a period of maximum 3 months. The sanction is applied by the Standing Bureau of the Chamber of Deputies or Senators.</p>
	Law no. 161/2003	

<p>Local elected officials</p>	<p>Art. 92</p> <p>(1) Infringement of the provisions of art. 90 attracts the lawful termination of the local elected official mandate at the date of concluding the contracts.</p> <p>(2) Local councilors and county councilors who have concluded contracts in violation of art. 90 are required, within 60 days of the date this law comes into effect, to give up the contracts concluded. Any person may notify the secretary of the administrative-territorial unit.</p> <p>(3) The breach of the obligation referred to in paragraph (2) attracts the lawful termination of the mandate of the locally elected official.</p> <p>(...)</p> <p>Art. 93</p> <p>(1) The provisions of art. 90 shall apply to persons employed with individual labor contract in the apparatus of the local council or county council or in the autonomous directions, under the authority of those councils or of the companies established by the local councils or county councils concerned.</p> <p>(2) The violation of the provisions of art. 90 by the persons referred to in paragraph (1) leads to the termination of the employment relationship.</p> <p>(...)</p>	
	<p>Law no. 39/2004 on the statute of local elected officials</p> <p>➤ For local councilors and county councilors</p> <p>Art. 9</p> <p>(2) The quality of local councilor or county councilor lawfully terminates before the expiry of the normal term of office in the following cases:</p> <p>(...)</p> <p>b) incompatibility;</p> <p>(...)</p> <p>➤ For mayors and president of the county council</p> <p>Art. 15</p> <p>(2) The capacity of mayor and president of the county council shall lawfully cease, before the expiry of the normal term of office in the following cases:</p> <p>(...)</p> <p>b) incompatibility;</p> <p>(...)</p>	<p>Law no. 39/2004 on the statute of local elected officials</p> <p>➤ For local councilors</p> <p>Art. 57</p> <p>(1) Violation by local councilors of the provisions of Law no. 215/2001, as subsequently amended and supplemented, the provisions of the present law and of the regulation on the organization and functioning of the council shall attract the following sanctions:</p> <p>a) warning;</p> <p>b) calling to order;</p> <p>c) withdrawal of the word;</p> <p>d) removal from the meeting room;</p> <p>e) temporary exclusion from the works of the council and the specialized commission;</p> <p>f) withdrawal of the meeting allowance for 1-2 sessions.</p>
<p>Magistrates</p>	<p>➤ Law no. 161/2003</p> <p>Art. 108</p>	

	<p>(1) The violation of the provisions of art. 101-105 and 107 (<i>*which regulate the legal regime of incompatibilities and conflict of interest for magistrates</i>) are acts of disciplinary offense and shall be sanctioned depending on their seriousness, by:</p> <p>a) Suspension from office for up to 6 months; b) Removal of the magistracy field. (...)</p> <p>(3) The judge or prosecutor sanctioned with the removal from the magistracy cannot hold any position of legal specialty for 3 years.</p> <p>➤ Law no. 303/2004 on the statute of judges and prosecutors Art. 100</p> <p>The disciplinary sanctions applicable to judges and prosecutors, in proportion to the seriousness of the disciplinary offense, are:</p> <p>a) warning; b) reduction of the gross monthly allowance by up to 20% for a period of up to 6 months; c) disciplinary move for a period of up to one year to another court or to another court or prosecutor's office, located in the district of another court of appeal or in the district of another prosecutor's office attached to a court of appeal; d) suspension from office for up to 6 months; e) exclusion from the magistracy.</p>
<p>Public servants</p>	<p>Law no. 188/1999 on the statute of civil servants</p> <p>Art. 77</p> <p>(2) Disciplinary offenses are the following:</p> <p>(...) j) violation of legal provisions regarding duties, incompatibilities, conflicts of interest and prohibitions established by law for civil servants (...)</p>

In the definitive incompatibilities cases the Disciplinary Commissions have dismissed the evaluated person from office in **219 cases**, while in **40 cases** a salary decrease between 5 % and 20% has been applied, for a defined period of time (from 1 to 6 months) and in **8 cases** the evaluated person's right to advance in grade of payment or to promote in a public office for a period of one year was suspended. At the same time, in other **13 cases** the Disciplinary Commission have applied verbal or written warnings, the allowance of the evaluated person was withdrawn for one meeting etc.

In the definitive administrative conflicts of interest cases the Disciplinary Commissions have dismissed the evaluated person from office in **64 cases**, while in **25 cases** a salary decrease between 5 % and 20% has been applied, for a defined period of time (from 1 to 6 months) and in **4 cases** the allowance of the evaluated person was withdrawn for one meeting. At the same time, in other **2 cases** the Disciplinary Commission decided to suspend the evaluated person from the public position, or have suspended their right to promote in a public office for a period of 3 years.

➤ **Description of training or advisory services to public officials regarding relevant conflicts of interest regulations**

The National Integrity Agency constantly organizes trainings and offers clarifications to the interested persons, in order to raise awareness with regard to the legal provisions on conflicts of interest.

Trainings

On a regular basis, the National Integrity Agency organizes trainings for the persons under the provisions of the Law no. 176/2010, in order to early prevent the erroneous filling in of asset and interest disclosures, as well as the occurrence of a conflict of interest or an incompatibility.

For example, only in the last year, A.N.I. has organised a series of training seminars on two of the most requested topics, that is the filling in of assets and interests disclosures through online and offline e-forms, and on the PREVENT System.

Training sessions regarding the filling in of assets and interests disclosures through online and offline e-forms

In May 2017, the National Integrity Agency organized at its headquarters 6 training sessions with persons responsible for implementing the provisions on assets and interests disclosures from over 100 institutions. With this occasion, the integrity inspectors presented to over 250 persons the legal provisions regarding the filling in of assets and interests disclosures through online and offline e-forms.

Filling in the disclosures electronically helps ensure the providing of comprehensive information which may support a possible evaluation procedure.

Training seminars on the PREVENT System

In October 2017 and January 2018, the National Integrity Agency organized, together with the Expert Forum Association, training seminars on the PREVENT system, which took place in Cluj-Napoca and Bucharest. The purpose of the training seminars was to present the obligation to complete the integrity forms related to the award procedures, as well as incompatibilities and conflicts of interest in public procurement procedures.

The seminars brought together nearly 150 representatives from public institutions at local and national level, and aimed to support the activity of contracting authorities, by facilitating a better understanding of their obligations with regard to the ex-ante verification system for public procurement, PREVENT and of the procedures that this program requires.

Collaboration with other national institutions or NGOs

The purpose of the prevention and awareness measures the Agency undertakes, targets both persons currently holding public offices, as well as future ones.

Early identification and prevention of conflicts of interest in the local public administration Project

Based on the "Early identification and prevention of conflicts of interest in the local public administration" Project, implemented by the National Integrity Agency, in collaboration with the Institute for Public Policies, through the Swiss-Romanian Cooperation Program, representatives from the Agency participated between October 2017 - January 2018 to a series of regional debates organized in Braşov, Iaşi, Brăila, Sibiu, Cluj-Napoca, Craiova, Timișoara and Bucureşti.

The sessions took place at the Prefect Institutions' headquarters and provided a good framework for the local public authorities to identify early and to contribute to the prevention and fight against corruption, including conflicts

of interest. In this respect, the representatives of the Agency presented the PREVENT system of ex-ante verification, aimed to prevent the conflict of interest in the procedure of awarding the public procurement contracts.

National Institute of Magistracy

In 2017, the Agency signed a collaboration protocol with the National Institute of Magistracy, with the main objectives of organizing preliminary training actions for auditors of justice and continuous training of judges and prosecutors, as well as integrity inspectors, on topics of common interest, namely ensuring the dissemination of informative materials on issues of conflict of interest, incompatibilities, ensuring integrity in the exercise of public offices and dignities, and preventing institutional corruption against auditors of justice, judges and prosecutors.

Ministry of Culture and National Identity

The National Integrity Agency signed a protocol with the Ministry of Culture and National Identity, with the main objectives to strengthen cooperation and coordinate efforts at the institutional level, in order to improve the mechanisms for preventing and combating corruption in the exercise of public offices and dignities.

Based on this protocol, experts from the Agency will participate in the training of the staff within the Ministry, as well as its subordinated institutions, by conducting prevention and awareness activities on integrity incidents.

In this respect, the National Integrity Agency will support the activity of prevention of the institutional corruption phenomenon, by providing clarifications requested by the personnel responsible for the implementation of the legal provisions on integrity and will carry out activities to raise awareness of the importance of complying with the legal framework in the field.

National Institute for Studies and Research in Public Administration (INSCAP)

In March 2018, A.N.I. concluded a cooperation protocol with the National Institute for Studies and Research in Public Administration (INSCAP), with the main objective to organize training programs in the public administration, in the field of public integrity and dissemination of integrity standards.

Based on this protocol, the Agency will provide lectures and case studies on: elements and concepts of practical analysis of conflicts of interest and incompatibilities, assets evaluation, filling in of assets and interest disclosures, as well as strategies and public policies in the field of public integrity.

Written clarifications – case-by-case guidance

In order to help the persons who have the obligation to declare their assets and interest, one of the most important prevention tools was the issue of **clarifications**, at the request of natural or legal persons, explanations which aimed to clarify the legal provisions on conflicts of interest, incompatibilities and how to fill in disclosures on property, income or positions owned, as well as interpretations of pertaining laws. Thus, in the 10 years of operation, almost 10.000 persons received support from A.N.I. through the clarifications expressed by the Agency.

In recent years, there was an increase in the number of civil servants or officials asking for the Agency's guidance on the interpretation of the laws on conflicts of interest or incompatibilities, but at the same time, a decrease in the number of people who either do not submit, or are late in submitting asset and interest disclosures.

- **Description of public access to information on government processes in which there is a higher risk of conflict of interest between the interests and activities of a public official and the particular type of government process**

Interested persons have access to certain databases, such as the National Trade Register Office, Electronic System of Public Procurement (SEAP), Portal of assets and interest disclosures.

In this regard, the National Trade Register Office offers information on the companies or on the shareholding, SEAP provides data on the awarding of public procurements such as contracts, bidders etc; while the Portal offers the asset and interest disclosures of persons that hold public offices or dignities.

Each website of a public institution has an asset and interest disclosure section, as well as a public procurement section.

- **Description of the specific duties and responsibilities of the specialized staff or bodies given responsibility to strengthen transparency and prevent conflicts of interest in government**

National Integrity Agency - role and competences conferred by law

The National Integrity Agency is an autonomous administrative authority with legal personality, operating nationally as a single structure, the institution in Romania with exclusive competence in managing the system of asset and interest disclosures and identifying, preventing and combating integrity incidents.

In observance of the principles with which it was invested by law, the main objective of the Agency is to ensure integrity in the exercise of public offices and dignities and to prevent institutional corruption by taking responsibility for the evaluation of asset disclosures, data and information about asset and changes in properties, incompatibilities and conflicts of interest.

The National Integrity Agency was established through *Law no. 144/2007 regarding the establishment, organization and functioning of the National Integrity Agency*.

A.N.I.'s legislative framework is also comprised of *Law no. 176/2010 regarding the integrity in exercising the public officials and dignities, in order to modify and complete Law no. 144/2007 regarding the establishment, organization and functioning of the National Integrity Agency, as well as for the modification and completion of other normative acts*.

Main attributions

- Collecting, archiving and evaluating asset and interest disclosures;
- Providing public access to asset and interest disclosures;
- Controlling the submission within the legal term of asset and interest disclosures;
- Apply sanctions provided by the law;
- Providing guidance on demand for individuals who have the obligation, by law, to submit asset and interest disclosures;
- Notifying prosecutors in cases of misconduct which may constitute criminal offenses;
- Organizing prevention and awareness activities, to promote the observance of the integrity framework.

In addition to A.N.I., an important role in the implementation of legal provisions on asset and interest disclosures is held by the designated responsible persons within each public entity.

Together with the head of the institution, the person concerned is responsible for the proper operation of the system of asset and interest disclosures, having the following duties:

- to receive and to record asset and interest disclosures;
- to make available to staff, on request, the template forms of asset disclosures and interest disclosures;
- to advise on the correct filling in of the disclosures, on submitting them in due time, as well as on the application of the legal provisions regarding the disclosure and evaluation of assets, conflicts of interest and incompatibilities;
- to keep records of disclosures in special public registers;
- to ensure that the disclosures are displayed and kept on the institution's website or its own notice board, within 30 days of receipt, by anonymizing the address of the buildings declared, with the exception of the

place where they are located, the address of the institution managing the financial assets, the personal numerical code and the signature;

- to send to the Agency certified copies of the submitted disclosures as well as of the special registers within no more than 10 days from their receipt;
- to draw up, after the deadline for submission, a list of persons who have not submitted their disclosures, which shall be forwarded to the Agency by August 1st of the same year, immediately notify these persons, requesting an opinion on the inspector's findings within 10 business days.

➤ **Description of the institutional structure and procedures to oversee the compliance with conflict of interest legislation and apply respective sanctions**

According to Law no. 176/2010, the evaluation activity of assets disclosures, data, information and patrimonial changes that may have occurred, interests and incompatibilities is performed by the integrity inspectors within the National Integrity Agency. For the President and Vice-President of the Agency and its personnel, evaluation activity of assets, interests and incompatibilities shall be conducted by the National Integrity Council¹.

The integrity inspectors perform the following activities:

- receive, collect, collate and process data and information in regard to the existing wealth while exercising public positions, incompatibilities and conflicts of interest of persons holding public positions;
- evaluate the assets and interest disclosures;
- evaluate the timely submission of the assets and interest disclosures;
- evaluate significant differences between the changes appeared in the wealth during the exercise of public positions and the income during the same period;
- assess conflict of interest or incompatibility of persons holding public offices or dignities;
- prepare evaluation reports where, after the evaluation, identify elements of infringement on the regime of assets disclosures, conflicts of interest, respectively of incompatibilities and, where appropriate, disciplinary law and criminal offenses;
- prepare evaluation reports where, after the evaluation, identify the elements of infringement on the regime of assets disclosure, conflicts of interest, respectively the incompatibilities;
- take actions and apply penalties in accordance with the legal provisions.

The National Integrity Agency's evaluation procedure for conflicts of interest and incompatibilities

The evaluation procedure in case of a conflict of interest or incompatibility can be initiated either following an ex-officio notification or following a complaint made by a natural or legal person (red flags) and consists of the verification of the interest disclosure by the integrity inspector. If elements of a conflict of interest or incompatibility are identified, the integrity inspector shall notify the person under evaluation, and ask them to present an opinion on the inspector's findings, either personally or in writing.

If within 15 days from the information receipt confirmation by the evaluated person, or following their expressed opinion, the integrity inspector further notes the existence of elements of conflict of interest or incompatibility, they will file in an evaluation report. In the absence of the above-mentioned confirmation, the integrity inspector may develop an evaluation report after finalisation of a new communication procedure.

The evaluation report shall be communicated within five days of finalisation to the person subject to evaluation and, where appropriate, to the prosecuting authorities or disciplinary authorities.

¹ The National Integrity Council is a representative body which has the task to supervise ANI's activity and to act as an interface against any external pressures which might be exercised by any public or private entities. The Council is appointed by the Senate and is composed by a number of appointed members, standing for all categories of public positions provided by the law to disclose assets and interest: representatives of parliamentary political groups, of Ministry of Justice, public servants, associations of cities, municipalities, civil society, etc). The members of the Council are appointed for a 4 years mandate.

The assessed person may appeal the evaluation report on their conflict of interest or incompatibility within 15 days of receiving it, in an administrative court.

If the incompatibility report is not challenged within the legal term of 15 days in an administrative court, the Agency should notify competent authorities to initiate disciplinary procedure, 15 days from the expiry of the above-mentioned term. Moreover, if the case may be, within six months the Agency may notify the administrative court, seeking annulment of the documents issued, taken or made in violation of legal provisions on incompatibilities.

Regarding the evaluation report for conflicts of interest, if undisputed within the legal term of 15 days in administrative court, within six months the Agency notifies the competent authorities to initiate the disciplinary procedure and, where appropriate, the administrative court, seeking annulment of the documents issued, taken or made in violation of legal provisions regarding conflict of interest.

All legal or administrative acts in violation of the legal provisions regarding conflict of interest, concluded directly or through intermediaries, if related to this situation, are null and void. Even if the person no longer holds that position, an action to declare the absolute nullity of legal or administrative documents concluded in violation of the legal provisions regarding conflict of interest can be introduced by the Agency. Moreover, the court may order the motivated reinstatement and recover of the parties' former state.

If, after the evaluation of the interest disclosure and other data and information the integrity inspector found the absence of a state of incompatibility or conflict of interest, they will produce a report in this regard, which is passed on to the evaluated person. This report may include, if appropriate, a mention of errors in terms of inadequate preparation of interest disclosures and suggestions for correction.

PREVENT System

PREVENT, an advanced informatics system, crosschecks databases or information on actors involved in public procurement procedures, contracting authorities or bidders. The purpose of this mechanism is to detect possible links between these actors which can result in possible conflicts of interest. When possible conflicts of interest are detected, the National Integrity Agency sends an Integrity warning, and the contracting authority has the obligation to remove the actions or elements that might generate a conflict of interest.

- **Description of the measures aimed at preventing conflicts of interest concerning former public officials in private entities, such as: Restrictions, for a reasonable period of time, on the professional activities of former public officials; Restrictions, for a reasonable period of time, on the employment of former public officials by the private sector after resignation or retirement**

Legal provisions regarding post-public employment (revolving doors/ pantouflage) for public office holders can be found in Law no. 161/2003, article 94, paragraph (3).

According to the aforementioned article, civil servants, who, in the exercise of their public office, have carried out monitoring and control activities on commercial companies or other profit-making entities such as autonomous administration, commercial companies or other public sector profit-making entities cannot carry out their activity and cannot provide specialized consultancy to these companies for 3 years after leaving the body of civil servants.

Moreover, according to article 13, paragraph (1) of the Government's Emergency Ordinance no. 66/2011 *on the prevention, detection and sanctioning of irregularities in obtaining and using European funds and / or national public funds related to them*, beneficiaries who are natural/legal persons do not have the right to hire natural or legal persons who have been involved in the verification / evaluation process of applications for funding during the selection procedure for a period of at least 12 months after signing the financing contract.

As indicated in the National Anticorruption Strategy (2016-2020), the legal provisions regarding post-public employment (revolving doors / pantouflage) are very poorly or not at all known in the local public administration.

On these lines, completing the legal framework by extending the scope of application of interdictions regarding the migration of public sector employees to the private sector and regulating the mechanisms for monitoring compliance with these interdictions, as well as the sanctioning framework is one of the objectives of SNA (2016-2020).

2. Please outline the actions required to ensure or improve the implementation of the measures described above and any specific challenges you might be facing in this respect

Despite the fact that the Romanian legislation consolidated throughout the time and even though integrity incidents were properly handled and sanctioned by the National Integrity Agency, the inconsistency of the legislative / regulatory framework regarding the prevention and management of conflicts of interest is still an issue. Moreover, criminal conflicts of interest were repealed in July 2017, thus creating a breach in the matter of preventing and combating conflicts of interest.

Furthermore, the legislative / regulatory framework with regards to conflicts of interest is very dense, at least in the matter of administrative conflicts of interest.

In the matter of challenges in managing conflicts of interest systems, the National Integrity Agency developed a solid approach in preventing and combating breaches of conflicts of interest regime, thus leaving only the unpredictability of the legislative framework as a challenge, along with the lack of resources.

Regarding the challenges in relation to specific recruitment, selection or training requirements for categories of positions considered vulnerable to corruption, the Agency took important steps in this matter, by drafting guidelines regarding specific categories of positions (MP's, locally elected positions, etc.), by issuing legal points of view on how to comply with the integrity legislative framework, etc.

In relation to providing ethical guidance or advice to public officials, the Agency considers that there are still challenges to be tackled, such as the lack of prevention in this matter, or the lack of the standardization in the matter of the terms used in drafting the guidelines.

On the subject of challenges in communication and, in particular, in raising awareness and disseminating information about new standards of conflicts of interest, the Agency perceives as a challenge the lack of resources, of any kind, along with the inconsistency of the legislative / regulatory framework.

3. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

In relation to those abovementioned (pct. 2), the Agency considers that any type of assistance from the list provided would be an asset to the consolidation of the legislative framework / institutional framework / policymaking framework / capacity-building framework / research / data-gathering and analysis framework / facilitation of international cooperation with other countries / etc.

Referring to the legislative assistance, the Agency does not have the possibility of initiating any legislative acts, thus leaving Ministry of Justice the unique entity that can help the Agency in initiating laws.

Regarding the policymaking process, the Agency would consider any technical assistance that would unify the policymaking process in terms of drafting and implementing, as well as using the same approach and terms, an added advantage.

In terms of technical assistance regarding the facilitation of international cooperation with other countries and taking into consideration that the Agency became a solid body in the field of preventing and combating incompatibilities, conflicts of interest and unjustified variations of wealth, nationally and internationally, the assistance should concentrate on how to import good practices, while exporting the expertise that we have developed.

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY ROMANIA**

ARTICLE 7, PARAGRAPH 4 UNCAC

CONFLICT OF INTEREST

ROMANIA (SECOND MEETING)

In what may concern the aspect of preventing conflicts of interest in the public sector, the system of declaring and monitoring assets and conflicts of interests for dignitaries and civil servants (already in place since 1996, but not open to the public until 2003) was improved through several legal acts. The Law on the local public administration from 2001 provided for a set of rules regarding conflicts of interests involving mayors, deputy mayors and local councilors. Later on, new incompatibilities applicable to all elected public officials and to civil servants were introduced (2003). Situations of incompatibilities involving members of Parliament were also defined. Furthermore, an autonomous administrative authority responsible for verifying assets, incompatibilities and conflicts of interest was created in 2007 (National Integrity Agency).