EUROPEAN UNION

EUROPEAN ANTI-FRAUD OFFICE

„ALEXANDRU IOAN CUZA"
POLICE ACADEMY

„Developing the capacity to prevent and investigate situations of incompatibility and conflict of interest affecting the financial interests of the European Union – DeCInCo_UE"
Project co-financed through the HERCULE III Programme 2014 – 2020, *„Law Training and Studies"* Action

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STRENGHTENING THE CAPACITY TO IDENTIFY INCOMPATIBILITIES AND CONFLICTS OF INTERESTS IN PROJECT MANAGEMENT

Comparative Study: LITHUANIA, GREECE, PORTUGAL AND ROMANIA

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ABSTRACT

The present *Study* is intended to be an detailed review of the incompatibility and conflict of interest situations identified in the process of accessing and using European grants and a guide to public funding beneficiaries in the implementation of nationally-funded or dedicated projects. Starting from the importance of identifying activities but especially of preventing such situations, the Study aims to highlight a series of relevant data and information found in the projects funded by European structural and investment funds carried out by the beneficiaries in Romania in 2013 – 2017, the theoretical and practical peculiarities of the legal implications and the competence of the structures empowered to deal with these situations as well as the way to solve them based on the accumulated experiences and the good practices learned.

The start of the documentation carried out in carrying out the constant Study in interpreting the official data communicated by the national authorities with attributions in the field of correct management of European funds, control and prevention of fraud at national level and establishing the "*profile*" of the most frequent situations generating irregularities, suspicions or more seriously, fraud identified during the implementation of European funded projects. The conclusions drawn from the sample provided in the reference period 2013 – 2017 pointed out that the highest frequency of irregularities remains in the area of public procurement (usually public procurement procedures) with a major financial impact on the absorption of European funds.

The Study clarifies the relationship between *irregularity / financial correction – suspicion of fraud – fraud*, as well as the form of legal liability of an administrative or criminal nature, as the case may be, the beneficiary of the financing can be guilty at the stage of drafting the project and during its development, in the event of identifying potential incompatibility and conflict of interest situations against the financial interests of the European Union.

In defining this relationship, the Study also refers to the examples of other EU Member States such as Lithuania, Greece and Portugal, the top three countries with the highest absorption rate of European funds in 2017, making direct use of sources and information presented by the foreign guests who attended the *International Seminar* organized in the project or acquired as a result of the documentation carried out during the project.

Although the vast majority of reported irregularities are in the area of public procurement, which leads us to believe that the existence of incompatibility and conflict of interest situations, other than public procurement, in the stage of project implementation is low, there are cases under analysis competent bodies to rule on the existence / non-existence of these situations. The number of cases where financial corrections have been applied is far greater than the number of cases where fraud indications of incompatibility and conflict of interest were detected because the checks made by the competent authorities were deemed to have failed to meet the necessary conditions for the existence of fraud, the nature of the conflict of interest being just an administrative one.

The Study proposes a set of measures specifically aimed at prevention so as to minimize and avoid those situations generating incompatibilities and conflicts of interest from the design phase of the project in order not to repeat the same errors encountered in the financial year 2007 – 2013 and 2014 – 2020.

In conclusion, the Study targets **five major action lines**, such as:

- the transposition into National Guidelines of a set of rules on incompatibilities and conflicts of interest identified at the level of projects with non-reimbursable external funding applicable to public offices and dignities,

- strengthening the capacity of ANI to act preventively by developing public policy programs/inexpensive instruments on incompatibilities and conflicts of interest applicable to public offices and dignities and DLAF Romania applicable to projects with non-reimbursable external financing,

- strengthening the coordination/cooperation capacity between the monitoring structures of projects with non-reimbursable external financing in relation to the beneficiaries of financing, aiming to prevent incompatibility and conflict of interest situations that may arise during the implementation of the projects;

- increasing transparency on all levels of management regarding projects implemented with non-reimbursable external funds, by setting up and implementing a National Register of Evidence of Incompatibility and Conflict of Interests;

- developing collaborations and exchanges of experience and information on prevention between public authorities and funding recipients and between them and civil society in general and on a line of verification of the situations identified between them at the level of the EU Member States and OLAF,

which are based on the arguments resulting from the systematisation and processing of the data and information transmitted, as well as the discussions with the representatives of the authorities responsible for the correct management of European funds, the control and prevention of fraud at the national level, at the international seminar ***„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests"***.

RESEARCH METHODOLOGY

By applying a complementary and integrated approach, the Study was based on an own research methodology making use of the data and information obtained from questioning the public institutions/ authorities with attributions in the field of the correct use of European funds, as well as the results generated by the wide range of documentation at the team level Project.

An important role in the realisation of the scientific content of the Study was also played by the discussions conducted with the representatives of the public institutions and authorities who participated as guests to the events organised in the project. The theoretical and practical aspects developed by the guests during the debates have highlighted a pragmatic approach of the topics focused on the potential incompatibilities and conflicts of interest that could arise in the stage of running the projects with European funding, adding value to the Study as a whole and a high quality standard.

Starting from the responsibilities given to law enforcement structures in the line of non-reimbursable external funds aiming to ascertain the irregularities generated by possible situations of incompatibility and conflict of interest, 15 (fifteen) institutions and public authorities were identified on the national level that could be consulted for documenting these situations. Thus, the documentation stage started with the collection and systematization of the official and statistical data and information provided by the institutions/public authorities with attributions in the field of management/control of the projects funded by European funds regarding the irregularities found during 2013-2017, as well as the indications of fraud detected and transmitted further to the authorized structures.

The project team, on the basis of predefined criteria, submitted requests for information under Law no. 544/2001 regarding the free access to information of public interest, to:

- The Managing Authority for Administrative Capacity Operational Program;
- The Managing Authority for the Competitiveness Operational Program;
- The Managing Authority for the Regional Operational Program;
- Managing Authority for the Human Capital Operational Program;
- Managing Authority for the Large Infrastructure Operational Program;
- Management Authority for the Fisheries and Maritime Affairs Operational Program;
- Managing Authority for the Assistance to Disadvantaged People Operational Program;
- Agency for Rural Investment Financing;
- Ministry of European Funds - Technical Assistance Operational Program;
- The National Agency for Public Procurement;
- The National Integrity Agency;
- The Anti-Fraud Department;
- The Ministry of Justice;
- The Public Ministry – the Prosecutor's Office within the High Court of Cassation and Justice;
- The Audit Authority of the Romanian Court of Accounts.

The responses received have been fully utilized from the scientific point of view, on the basis of the references provided by each institution, although the information initially requested has been grouped on the following benchmarks:

a) Management Authorities

- ✓ Number of verified refund / payment requests;
- ✓ Number of cases in which fraud indications were detected;
- ✓ Number of situations where financial corrections have been applied;

- ✓ Value of financial corrections applied;
- ✓ Quality / function of the verified persons.

b) Public Procurement National Agency

- ✓ Number of cases in which fraud indications were detected;
- ✓ Number of situations where financial corrections have been applied;
- ✓ Value of financial corrections applied;
- ✓ Quality / function of the verified persons.

c) National Integrity Agency

- ✓ Number of notifications received;
- ✓ Number of judicially recruited notifications;
- ✓ Number of remaining findings;
- ✓ The state of incompatibility cases reached the disciplinary commissions;
- ✓ Quality / function of the verified persons.

d) Anti-Fraud Department

- ✓ Total number of preliminary checks;
- ✓ Number of solved cases and the way of settlement;
- ✓ Number of cases of finding fraud indications;
- ✓ Number of judicial control actions;
- ✓ Value of the damages found
- ✓ Quality / function of the verified persons.

e) Ministry of Justice

- ✓ Number of existing / registered / solved cases
- ✓ Way of solving cases;
- ✓ Injury value/precautionary measures;
- ✓ The procedural stage of the cases;
- ✓ Quality / function of judges.

f) Public Ministry – Prosecutor's Office within the High Court of Cassation and Justice

- ✓ Number of existing / registered / solved cases;

- ✓ Way of solving cases;
- ✓ Injury value / precautionary measures;
- ✓ Quality / function of investigated persons.

g) Audit Authority within the Court of Accounts of Romania

- ✓ Number of audit missions;
- ✓ Number of cases in which fraud indications were detected;
- ✓ Number of situations where financial corrections have been applied;
- ✓ Value of financial corrections applied;
- ✓ Quality / function of the verified persons.

The statistical data provided were supplemented by a series of items of information obtained from the debates with invited to the events organized within the project, as representatives of institutions with competences in the field: National Integrity Agency, Anti-Fraud Department, Certification and Payment Authority, Audit Authority, Fiscal Administration National Agency, Public Procurement National Agency, Ministry of Justice, Public Ministry, Ministry of European Funds, Management Authorities, etc. The debates offered a qualitative perspective on the situations with emphasis on their competence to verify them and the mechanism for finding and applying the financial corrections, the causes that generate such situations, the financial impact on the entire implementation activity, the frequency of production and the preventive role exercised in view of avoid situations of incompatibility and conflict of interest.

The research methods used to substantiate the Study combine the results obtained from the statistical data with the information extracted from the bibliographic sources consulted during the documentation. Among the most important methods we mention: observation, measurement, logical and sociological method, as well as classical methods of interpretation (*grammatical, literal, systemic, historical and teleological*). The most common method could be considered to be observation, being used in the analysis of the Activity Reports prepared by The Anti-Fraud Department for the period 2013 – 2017, recommended as official

documents reflecting the results achieved by the institution during that period. Also, the observation method also contributed to the identification of the main sources underlying the issuance of hypotheses and conclusions regarding the subject approached in the Study.

Overall, consideration should be given to the degree of accuracy of the observations and the subjective factors that can directly influence the results, plus the level of experience gained during the research by the interpreters.

For the same purpose, all legislation specific to the field of implementation of European funded projects was thoroughly consulted, identifying and documenting possible incompatibility and conflict of interest situations that might arise in the process of implementing a project.

European regulations:

- Article 325 of the Treaty on the Functioning of the European Union (TFUE);

- Regulation (EU, Euratom) 1046/2018 of the European Parliament and of the Council of 18 July 2018 on the Financial Regulation applicable to the general budget of the Union amending Regulations (EU) 1296/2013, (EU) No. 1301/2013, (EU) No. 1303/2013, (EU) No. 1304/2013, (EU) No. 1309/2013, (EU) No. 1316/2013, (EU) No. 223/2014, (EU) No. 283/2014 and Decision no. 541/2014 / EU and repealing Regulation (EU, Euratom) 966/2012; Title IV, CHAPTER 1 – 6;

- Regulation no. (EC) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Regulation (Euratom) No 1074/1999;

- The Interinstitutional Agreement (IIA) of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, cooperation on budgetary matters and sound financial management;

- Technical Report no. SWD (2018) 551 final of 18.11.2018 accompanying the Report from the European Commission to the

European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism;

- Recommendation no. 10/2000 of the Committee of Ministers of the Member States on the code of conduct for public servants adopted by the Committee of Ministers on 11 May 2000;

- Management of conflicts of interest in public service, Guide developed by the Organization for Economic Cooperation and Development (O.E.C.D.), 2003;

- United Nations Convention against Corruption, United Nations – New York, 2004.

National legislation:

- Law no. 193/2017 for the amendment of Law no. 286/2009 on the Criminal Code, as subsequently amended and supplemented;

- Law no. 287/2009, republished, regarding the Civil Code, as subsequently amended and supplemented;

- Law no. 188/1999 on the status of public servants, as subsequently amended and supplemented;

- Law no. 78/2000 on the prevention, detection and sanctioning of corruption, with the subsequent amendments and amendments;

- Law no. 7/2004 on the Code of Conduct for Public servants, as subsequently amended and supplemented;

- Law no. 161/2003 on certain measures for ensuring transparency in the exercise of public dignities, public offices and business environment, prevention and sanctioning of corruption, with subsequent amendments and completions;

- Law no. 176/2010 on integrity in the exercise of public offices and dignities, with subsequent alterations and completions;

- Law no. 184/2016 regarding the establishment of a mechanism for prevention of the conflict of interests in the procedure of awarding the public procurement contracts;

- Framework Law no. 284/2010 regarding the unitary payment of the personnel paid from public funds, with subsequent alterations and completions;

- Law no. 61/2011 on the organisation and functioning of The Anti-Fraud Department – DLAF, with subsequent alterations and completions;

- Law no. 153/2017 on the remuneration of staff paid out of public funds, with subsequent alterations and completions;

- GOVERNMENT EMERGENCY ORDINANCE O.U.G. no. 66/2011 on the prevention, detection and sanctioning of irregularities in the obtaining and use of European funds and/or national public funds related thereto, with subsequent alterations and completions;

- GOVERNMENT EMERGENCY ORDINANCE O.U.G. no. 64/2009 on the financial management of structural instruments and their use for the Convergence objective, with subsequent alterations and completions;

- GOVERNMENT DECISION H.G. no. 875/2011 approving the Methodological Norms for the application of the GOVERNMENT EMERGENCY ORDINANCE O.U.G. no. 66/2011, with subsequent alterations and completions;

- GOVERNMENT DECISION H.G. no. 738/2011 for the approval of the Organization and Functioning Regulation of DLAF;

- GOVERNMENT DECISION H.G. no. 583/2016 on approval of the *National Anticorruption Strategy for 2016 – 2020*, the sets of performance indicators, the risks associated with the objectives and measures of the strategy and sources of verification, the inventory of institutional transparency and corruption prevention measures, the evaluation indicators, as well as the standards for publishing information of public interest;

- Code of Conduct to avoid incompatibility and conflict of interest situations by staff involved in managing programs funded by European non-reimbursable funds;

- DLAF activity reports for 2013 – 2017.

The information presented and the interventions at the International Seminar ***„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of***

interests” organized by the "Alexandru Ioan Cuza" Police Academy from 11 to 12 October 2018 in Bucharest contributed to the conclusions of this Study. The Seminar was atended by over 100 participants (experts from the central public institutions and authorities competent in the field from Romania as well as from other European countries), namely three experts from Lithuania, Greece and Portugal *(we would like to take this opportunity to express our extreme gratitude to Ms. Sandra KAZIUKEVIČIŪTĖ within the Special Investigation Service of Lithuania, to Mr. António João MAIA, representative of the Corruption Prevention Council of Portugal, and to Mr. Konstantinos PAVLIKIANIS, member of the General Secretariat against Corruption and representative of AFCOS Greece)*.

CHAPTER I. THE IMPORTANCE OF IDENTIFYING SITUATIONS OF INCOMPATIBILITY AND CONFLICT OF INTEREST IN PROJECT MANAGEMENT ACTIVITY

„The observance of the rule of law is an essential prerequisite for sound financial management and for the effectiveness of EU funding. It is a mechanism of general application because it does not concern certain Member States but is an important part of the new EU budgetary architecture" (2019).

***Jean Claude Juncker**, President of the European Commission, when presenting the budget proposal for the period 2021-2027*

Although on a much smaller scale compared to the rest of the situations encountered in the current activity, irregularities resulting from incompatibilities and conflicts of interest recorded on the projects level are generally accounted for, affecting equally both the financial resources allocated from European funds and the risks to corruption.

The European Commission periodically monitors Romania's progress under the Mechanism of Cooperation and Verification (MCV) on the basis of information gathered from a multitude of sources and resources, working closely with public administration authorities and Romanian society in a wide range of EU policies, including in direct meetings with non-governmental organisations active in the field of judicial reform and the fight against corruption, with professional associations and representatives of other EU Member States in Romania. In general terms, the Commission also relies on the various studies and reports provided by international institutions and other independent observers in the field of judicial reform and the fight against corruption, such as the Council of Europe Group of States against Corruption (GRECO)[1].

[1] https://ec.europa.eu/info/sites/info/files/technical-report-romania-2018-swd-2018-swd-2018-551_ro.pdf

As it results from the *Final Technical Report no. SWD(2018) 551 of 18.11.2018* which accompanies the European Commission's report to the European Parliament and the Council on the progress made by Romania within the MCV[2], of the four reference objectives of our country one is focused directly on the *„establishment, as stipulated, an integrity agency with responsibilities in the field of patrimony verification, incompatibilities and conflicts of potential interests, as well as the ability to make binding decisions that may lead to the application of deterrent sanctions"*.

Although the results obtained by the National Integrity Agency (ANI) remained constant, as between September 2017 and August 2018 there were 157 cases of incompatibility, 66 cases of administrative conflicts of interest and 11 cases of unjustified wealth detected, the legislature adopted in July 2018 two proposals for normative acts, one aimed at introducing a three-year limitation period for the facts that determine the existence of a conflict of interest or incompatibility, and another one that changes the regime of sanctioning conflicts of interest for the elected local officials, both attacked at the Constitutional Court and declared unconstitutional.

As regards the legislative initiative aiming at the establishment of a 3-year limitation period for the facts that determine the existence of a conflict of interest or of incompatibility, it was actually transposed by Law no. 54/2019 for completing Law no. 176/2010 on integrity in the exercise of public offices and dignities, amending and completing the Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency, as well as for amending and supplementing other normative acts, for the purpose of inserting a new paragraph in Article 25 of the Law no. 176/2010 and paragraph 5 respectively: *„Civil or administrative disciplinary liability for the acts that lead to the existence of conflict of interests or incompatibility of the persons in the exercise of public dignities*

[2] The MCV report can be consulted at the following address: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_ro

or public offices is removed and cannot be attacked after the 3-year general limitation period from the date of commencement in accordance with Art. 2.517 of the Law no. 287/2009 on the Civil Code, republished, with subsequent alterations and completions”.

At the same time, through Law no. 59/2019 for amending and completing Law no. 161/2003 on certain measures for ensuring transparency in the exercise of public dignities, public offices and business, prevention and sanctioning of corruption, legal provisions have been introduced regarding local elected persons, in the sense that, after paragraph 1 of article 91 of Law no. 161/2003 was inserted paragraph 1^1, with the following content: *„The status of incompatibility lasts until the date of legal termination of the mandate in which the local elected person has exercised a position or a capctity incompatible with it or until the date when the function or quality that determined the incompatibility status ceased”*.

As regards the activity of preventing conflicts of interest in public procurement procedures, the MCV Report recommends *„making sure that the PREVENT system is put into operation”.* Thus, the National Integrity Agency and the Public Procurement National Agency should introduce the practice of drawing up reports on the ex-ante checks it carries out in public procurement procedures and reports on the actions they take following these verifications, including in the case of ex-post verifications, as well as reports on the cases of conflicts of interest discovered, and to organize public debates to be answered by the Government, local authorities, judiciary and civil society.

The PREVENT system has the role of preventing conflicts of interest in public procurement procedures by creating an ex ante verification mechanism to detect situations that may generate conflicts of interest in procurement procedures launched through the electronic procurement system. It is also intended to enable contracting authorities to remedy these situations before awarding the contract. This was the result of a close collaboration between the Government, the National Integrity Agency (ANI), the Public Procurement National

Agency (ANAP) and the Agency for the Digital Agenda of Romania (AADR).

The PREVENT system involves the analysis of data and information completed in an integrity form by the contracting authority staff by cross-checking this information with the relevant databases (National Trade Register Office, Personnel Identification and Database Administration). It can automatically follow the links that may exist between public procurement officials (such as members of the evaluation committee and decision-makers within the contracting authority) and applicants in procurement procedures (tenderers or their representatives). The results of these cross checks are checked by ANI inspectors issuing a foreclosure warning to the contracting authority if the system signals a possible conflict of interest. The contracting authority is obliged to take all necessary measures to eliminate the possible conflict of interests and to inform the ANI about them only by operating the appropriate measures in the SICAP, taking them into the Form integrity and transmission of the latter to the specific analysis of the National Integrity Agency through the PREVENT/integrity inspectors.

At present, the PREVENT system is fully operational. From the start of activity in June 2017 to September 1, 2018, PREVENT analysed 16.102 procurement procedures with a cumulative value of over EUR 15 billion. Eight percent of the procedures under review concerned EU funds. As a result, ANI issued 57 warnings of integrity, regarding alleged conflicts of interest, some of them with very high value acquisitions. The total value of the procurement procedures for which there was an integrity alert is EUR 112 million. In 48 cases, contracting authorities eliminated the risk of a potential conflict of interest. In nine cases, the potential conflict of interest has not been resolved. ANI initiated an *ex-officio* conflict of interest investigation in two of these cases.

ANI also notified ANAP about 38 cases of possible irregularities in public procurement procedures regarding possible conflicts of interest between the members of the contracting authority and the tenderers in the tender. These refer to cases of potential conflicts of interest as

defined in the EU directives on transposed public procurement which are not within the competence of ANI and are therefore to be dealt with by ANAP. In addition to warnings, the PREVENT system has increased awareness among contracting authorities that regularly contact both the National Integrity Agency and the Public Procurement National Agency for advice on conflicts of interest and pre-integrity rules the preparation of procurement procedures, as well as during their development, as well as technical advice on operating in specific IT systems, namely SICAP and Integrity Form. Overall, it appears that the preventive approach has had some positive effects and the willingness of most contracting authorities to eliminate potential conflicts of interest before signing contracts demonstrates the value of the PREVENT system.

Following the passing of the Government Emergency Ordinance no. 98 of December 14, 2017, ANAP was given the possibility to fine the contracting authorities that did not respond to the alerts from the PREVENT system. However, it is not clear what the added value of the provisions on the amendment to a system initially designed for preventive purposes. The risk would be that the use of PREVENT in the form of a penalty trigger undermines the success it has had so far with regard to awareness and counseling.

With regard to the decision-making transparency of the actions taken following final and irrevocable judgments, concerning incompatibilities, conflicts of interest and illicit property, the European Commission recommends to the Romanian legislature to show transparency in its decision-making process regarding actions taken its members. Interpretation of the genre *„ the integrity-related incident found by ANI did not take place in the current mandate but in a previous office/a previous mandate"* has not been applied by the courts which have ruled, and other public institutions have applied sanctions following final judgments, irrespective of whether the persons concerned have changed their mandate or function. The vast majority of the 265 cases of incompatibility and conflicts of interest of local public servants elected between 2017 – 2018, for which the ANI reports became final, referred to incidents of integrity that took place in previous mandates or

positions, and only two cases did not apply the disciplinary sanction. This is, therefore, a new element of uncertainty in an important area to discourage sanctions on integrity policy.

In the presented context, the project management represents the "cornerstone" in the planning, organisation and implementation of the specific implementation activities, ensuring the human, financial and logistic resources necessary for the technical execution of the project within the stipulated deadline. Any deviation from legality, regularity, reality and compliance is a potential irregularity and can be treated as such by applying financial corrections from the body managing the funding. The potential cases of incompatibility and conflict of interest identified in the conduct of projects with external funding may be the subject of these irregularities, thus reducing the eligibility rate of expenditure and, implicitly, the absorption of European funds at national level. In relation to European institutions and external partners, administrative and/or penal sanctions in national projects may lead to a major lack of credibility for Romania as an EU Member State in the European Union's planning and implementation policy in the next year financial. In considering these penalties, a distinction must be made between the irregularity – suspicion of fraud – fraud, so that financial corrections and fraud reporting are done correctly.

In the sense of Article 325 of the Treaty on the Functioning of the European Union (TFUE), the Commission and the Member States are responsible for combating fraud and *„any other illegal activity detrimental to the financial interests of the Union through measures which discourage fraud and provide effective protection in the Member States as well as in Union institutions, bodies, offices and agencies. In order to combat fraud affecting the financial interests of the Union, Member States shall adopt the same measures they adopt to combat fraud affecting their own financial interests"*[3].

[3] Treaty on the Functioning of the European Union (consolidated version), published in the Official Journal of the European Union of 26.10.2012

Thus, at Member State level, actions meant to limit the threats to the EU's financial interests by increasing the internal capacity for preventing and detecting irregularities in European funded projects, establishing evidence and correctly framing situations are becoming a key priority. This role lies with the authorities responsible for managing and controlling European funds, being able to differentiate on a case-by-case basis the legality of the actions undertaken, the form of guilt and the way financial corrections are applied.

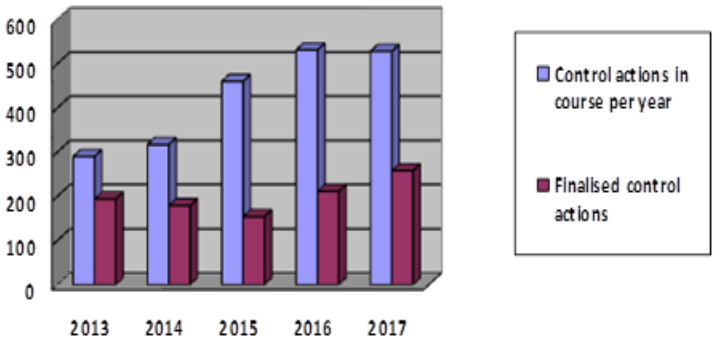
Irregularity – any deviation from legality, regularity and compliance with national and/or European provisions and with the provisions of contracts or other legal commitments made under these provisions resulting from an action or omission by the beneficiary or the authority with competences in the management of European funds, which harmed or could prejudice the EU budget/international public donor budgets and/or national public funds related to them through an undue payment		Financial correction: *exclusion from European funds and / or national public funding of expenditure for which an irregularity has been detected*
Suspicion of fraud – an irregularity leading to the initiation of an administrative or judicial procedure to establish the existence of an intention, in particular fraud. It can be considered a **intentional irregularity**		Notification of the criminal prosecution bodies
Fraud – offense committed in connection with the obtaining or use of European funds and/or related national funds, incriminated by the Criminal Code or other special laws		Final judgment of the court based on the applicable criminal law in the Member State

Following the analysis of the responses received from the law enforcement agencies in the field of European funds requested under

Law no. 544/2001 regarding the free access to information of public interest, were selected the most representative ones in order to determine the size of the phenomenon and the situations registered during 2013 – 2017.

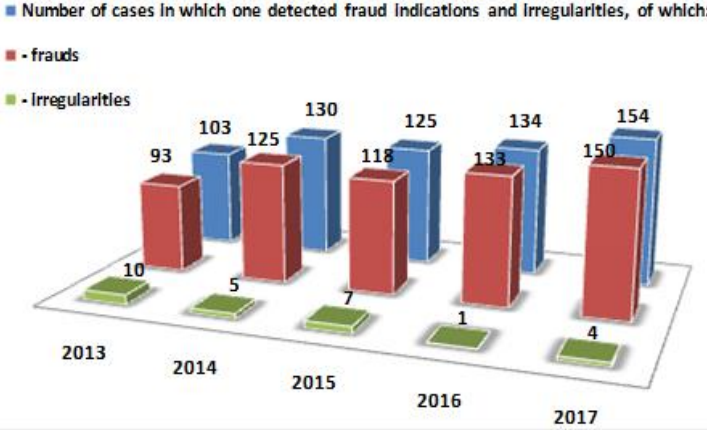
The **Anti-Fraud Department (DLAF)** has generally focused on individual control actions, with significant increases from one year to the next, thus, in terms of the number of checks conducted in 2013, we can say that activity in 2017 has increased by about 80%, as it results from the information presented in the activity reports for the reference period (Figure no. 1 - 5).

Figure no. 1



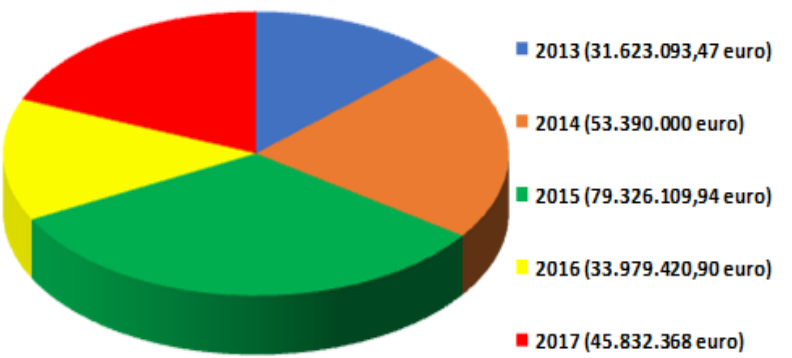
Whereas 194 control actions were completed in 2013, in 2017 the Department of Control of the Department completed 258 cases, out of which only 87 cases did not confirm the facts. There is a progressive evolution of the control actions completed in 2017 compared to the situation reported in the years 2013 – 2016, which obviously shows the high workload and the need for the protection factor (Figure no. 2).

Figure no. 2



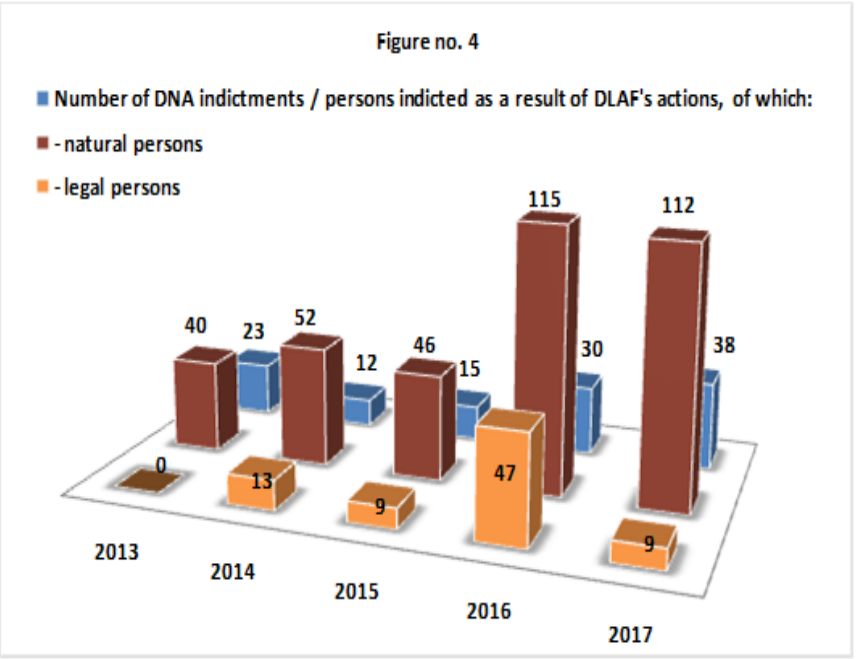
The financial impact of the investigations shows fluctuations in the reference period, representative of the year 2015 (Figure no. 3), probably due to the end of the financial year 2009 – 2013, although one of the findings made in 2017 had the amount of 12.289.342,82 euro.

Figure no. 3 Value of the amounts resulted from irregularities and possible frauds found



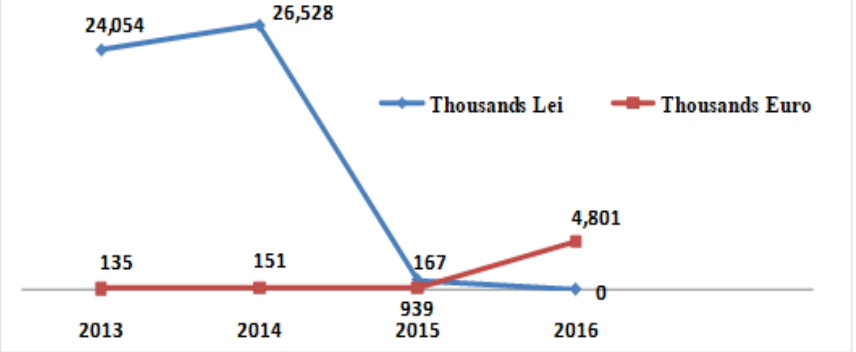
On the basis of the National Anticorruption Directorate (DNA) analysis filter – in the prosecution phase, the reference year 2017 recorded 44 indictments and guilty recognition agreements based on DLAF's complaints and analyzes following 72 control actions. The significant increase in the number of individuals sent to court in the years 2016 and 2017 (Figure no. 4) highlights the incidence of incompatibility and conflict of interest situations in projects.

Figure no. 4



The highest value for the reference period established by DNA in criminal cases finalized by indictments was recorded in 2014, amounting to 26.527.946,22 lei and 150.076,00 euros, on the basis of the control notes issued by DLAF (Figure no. 5), noting that the activity specific to the structure reported in 2017 does not reveal the exact value of the damage.

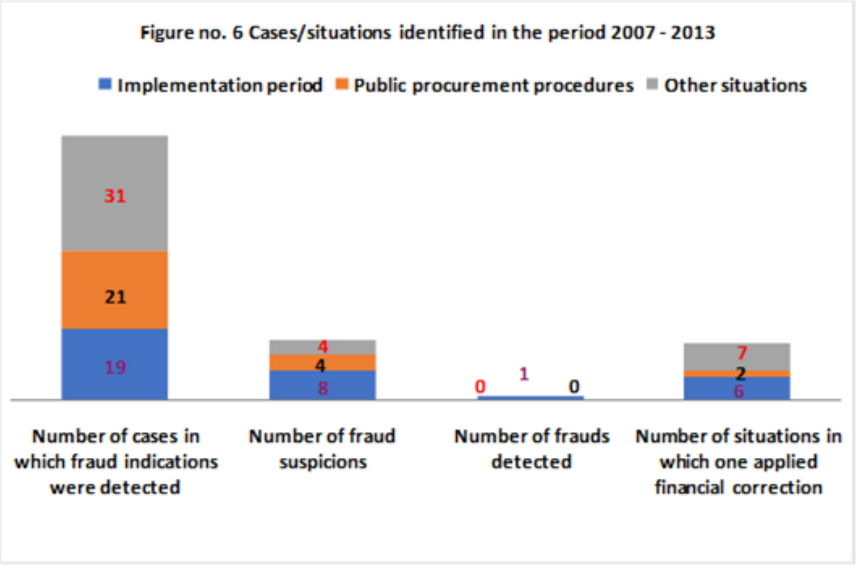
Figure no. 5 Value of the prejudice established by DNA (2013-2016)



From the perspective of the category of natural persons, we extracted the situation recorded in 2017 as an example, so it resulted that the 150 control actions completed by DLAF with suspicion of fraud involved 528 natural persons. Of these, 119 persons had the following capacities at the date of the deeds: 14 mayors, 2 deputy mayors, 21 mayoral employees, 11 public servants from APIA (7), AFIR (1) and POSDRU OIR (3), 11 site masters, 57 project managers – members in project evaluation and award committees, 2 veterinarians and 1 general school inspector. The estimated value of the financial impact of the DLAF investigations was € 45.832.368. In most situations, we can observe the status of public servants of individuals and, implicitly, we can deduce from this the legal conflicts that may arise between their basic function and roles in projects.

The **Managing Authority for Administrative Capacity Operational Program** provided structured relations for the financial years 2007 – 2013 and 2014 – 2020 on the basis of preliminary examinations and specialized investigations, thus ensuring the comparative representation of the two situations corresponding to the applied criteria (Figure no. 6 - 8).

Although a number of 14 suspicions were submitted to the competent ANI for the period 2007 – 2013 regarding the violation of the legal regime on incompatibilities and conflicts of interest in administrative matters at the level of the projects financed by non-reimbursable funds, the outcome has not been confirmed upon completion of this activity.



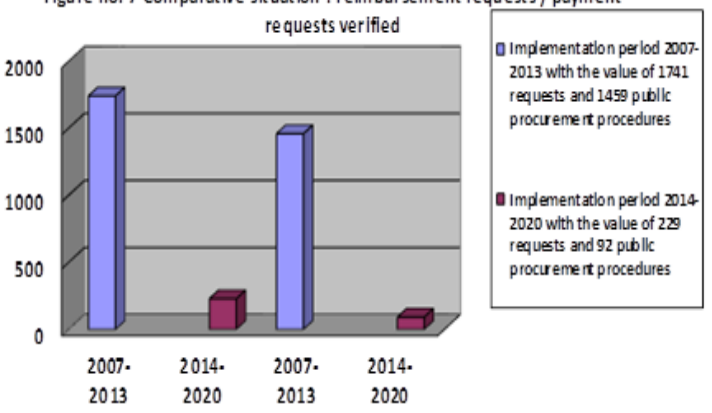
The category *Other situations* (Figure no. 6) comprises the cases detected as a result of the verifications conducted by other authorities/ other sources which may be: internal, such as the precum the Minister's Control Body, or external, such as: the Audit Authority, the Certification and Payment Authority, notifications of the *"whistle blowing"* type, etc.

The suspicions of fraud have been identified as a result of DLAF and/or DNA having performed preliminary investigations and, where appropriate, specialized investigations based on confirmation of fraud *(he situations presented are not suspected of fraud of the nature of the breach of the incompatibility / conflict of interest regime)*. Financial corrections

were applied after reimbursement of expenses for which irregularities were found for non-compliance with the eligibility rules and/or public procurement.

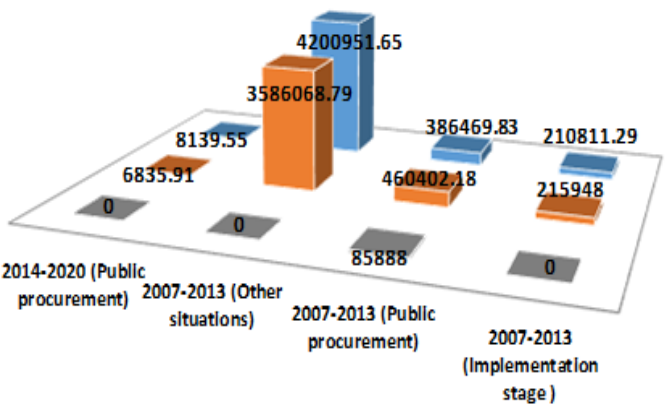
Up to now, in the Administrative Capacity Operational Program for the 2014 – 2020 financial year, only one case has been identified in which fraud indications have been detected, and a financial correction has been applied to this. The correction was applied after the reimbursement of the expenditure for which irregularities were found, on the grounds of non-compliance with the eligibility rules and/or public procurement.

Figure no. 7 Comparative situation : reimbursement requests / payment requests verified



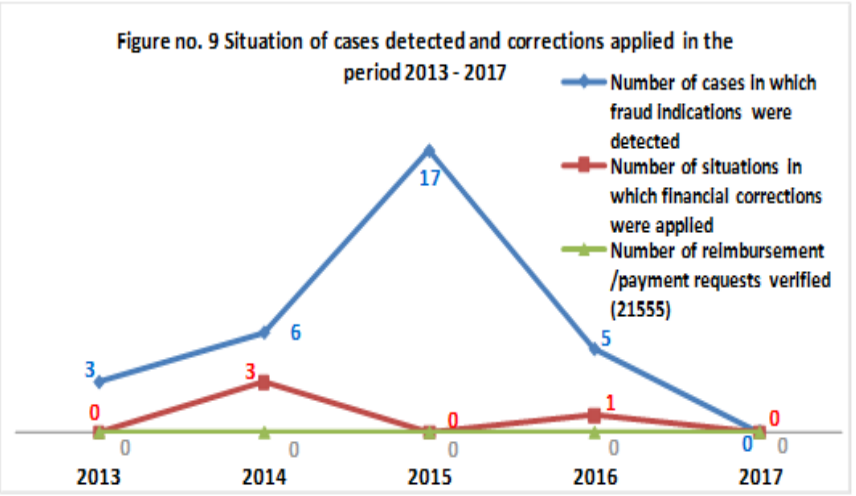
The amount of debt / receivables set out in receivables securities is in lei and includes ineligible VAT reimbursed to beneficiaries from the state budget resulting from financial corrections applied in the case of fraud indications for which irregularities were found regarding non-compliance with the eligibility rules and or in terms of purchases (Figure no. 8).

Figure no. 8



On the level of the Management Authority PODCA, only one case of a violation of the legal regime on the conflict of interest in administrative matters for which the irregularity claims found in the DLAF control act were individualized. The capacity / position of the persons verified falls within the typology of public servants, high public servants, special public servants, local elected representatives and private sector employees.

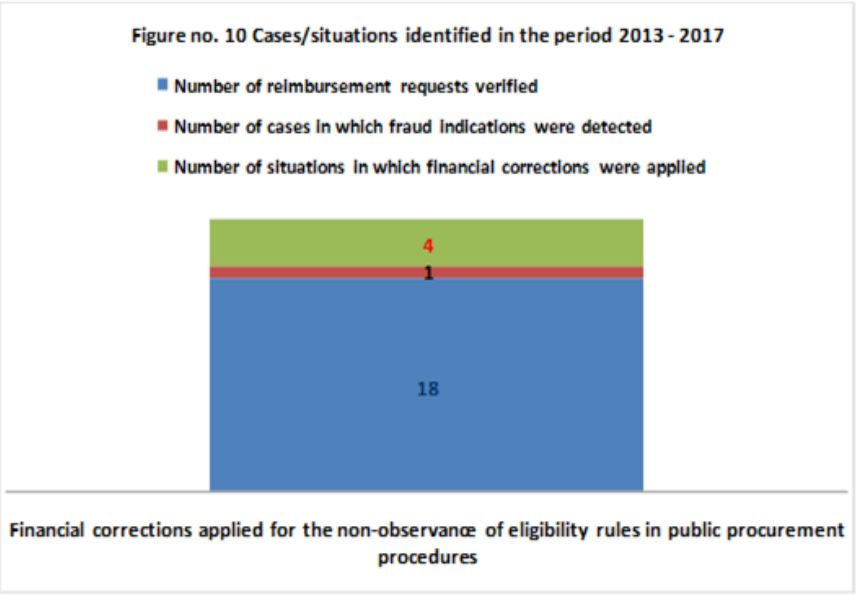
The **Management Authoritiy for the Regional Operational Programme** a presented in a synthetic and effective way the situation regarding incompatibilities and conflicts of interests, registered at the level of the institution between 2013 – 2017 (Figure no. 9).



For the period 2013 – 2017 the value of the financial corrections applied in the project evaluation/contracting stage amounts to 42.180 lei, while at the project implementation stage it exponentially increases to the amount of 3.430.694,65 lei, distributed at levels of 2014 and 2016.

The capacity/position of the verified persons is given by the category of beneficiaries using European funds, mostly coming from the private sector *(19 private beneficiaries)*, the rest being represented by territorial administrative units (ATU) and implicitly by the public servants category (11 UAT beneficiaries).

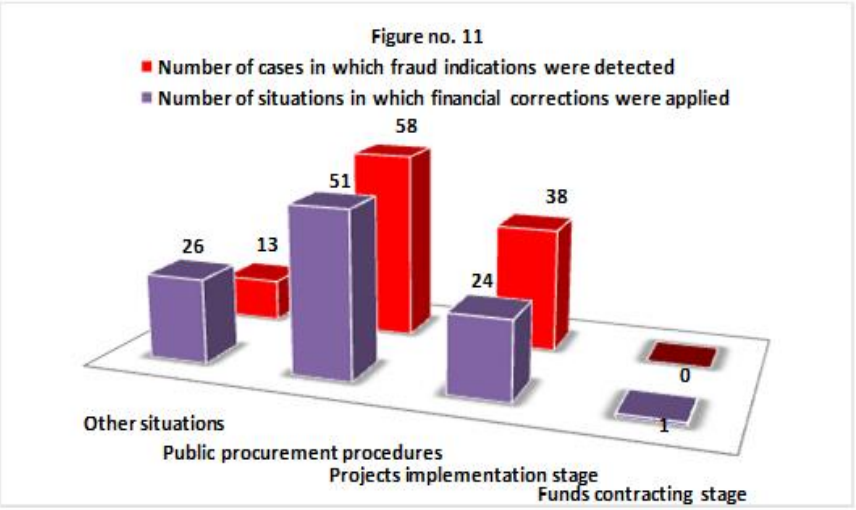
The **Management Authoritiy for the Environment Operational Sectoral Programme** (AM POS Mediu / Environment) has submitted in the same register relevant information on incompatibilities and conflicts of interest recorded during the reference period in the institution's records. Thus, at the level of MA SOP Environment there were registered 21 cases related to conflicts of interests and incompatibilities, of which 12 were classified by ANI and the remaining 9 are still investigated on the ANI/DLAF/ DNA level (Figure no. 10).



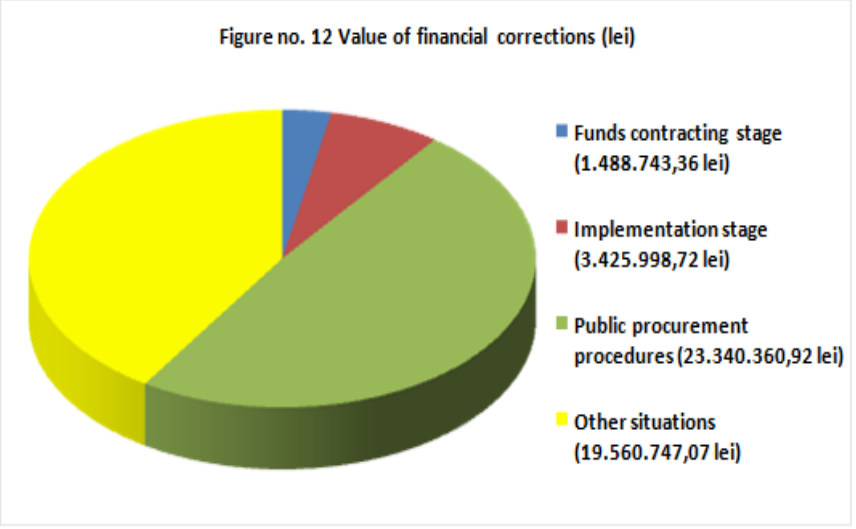
The total amount of financial corrections applied during the period 2013 – 2017 is 2.693.741,60 lei and the capacity/position of the person verified by DLAF as a result of the identified frauds was a member of the tender evaluation committee, which subsequently verification has been ranked.

The **Management Authoritiy for Maritime Affairs and Fisheries Operational Programme** centralized information on incompatibilities and conflicts of interest for the reference period 2013 – 2017, with a total of 1.788 refund/payment requests and 6.121 procurement procedures. Of the total of 6.121 procedures, only 1.841 were procurement procedures, the remaining 4.280 entered the private sphere of public procurement.

However, under these circumstances, there is an increase in the number of cases where fraud indications were detected, corresponding to the situation presented (Figure no. 11). In the category *Other situations* the Natura 2000 cases of system error type were included.



The situation of financial corrections is reflected at the level of the economic contract (Figure no. 12).



The **Rural Investment Financing Agency (AFIR)** ensures the efficient management of European funds granted to Romania through the European Agricultural Fund for Rural Development (EAFRD) for the financing of investment projects in agriculture and in the development of villages, as well as for compensatory payments, for environmental and climate measures, for afforestation and for animal welfare. The funds allocated to farmers, processors, entrepreneurs and public authorities in the 2014 – 2020 financial programming period through the National Rural Development Program (PNDR) amount to a total of 9.47 billion euros, out of which 8.13 billion euros represent the financing of the Commission European countries allocated to Romania through AFIR.

Following the implementation of three European funding programs (SAPARD Program, PNDR 2007 – 2013 and PNDR 2014 – 2020), from 2002 until now, through the Agency, 103.794 financing contracts for investment projects worth 9,9 billion euros. In the reference period 2013 – 2017, as a result of the efficient management of the European funds granted to Romania, the Agency provided the financing of EUR 3,1 billion of 40.340 investment projects in rural areas.

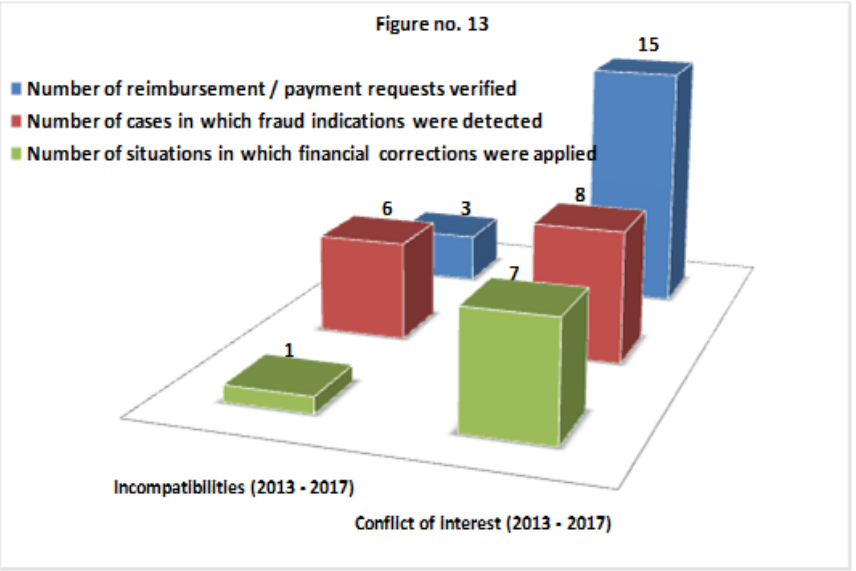
Also, to ensure the correct and efficient implementation of European funds, AFIR carries out ongoing verification of funded investments, both during implementation and during the monitoring period, after the projects are completed. The AFIR checks are in line with European and national legislation, taking place at all stages of project implementation, with both on-the-spot checks and administrative checks. All these controls and checks are carried out by the responsibility and the concern to make efficient use of the European funds offered to Romania, as well as to ensure the conditions of a real competition in accessing these funds.

Following the verification of 40.340 contracts for the financing of investment projects concluded between 2013 – 2017, AFIR identified suspicions of conflicts of interest for 15 payment claims submitted to the Agency for settlement (Figure no. 13).

At the same time, in the case of 8 projects, fraud indications were detected and financial corrections were made for 7 projects, the debts amounting to 5.605.892,13 lei. Verified persons were both private (private beneficiary, private operators participating in the selection of tenders, beneficiary and builder) as well as the public (deputy mayor, secretary at the mayoralty, mayor – president of a group of economic interest).

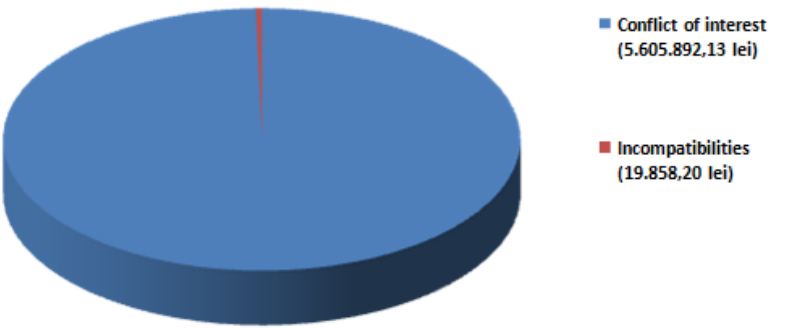
As regards cases of incompatibility, of the 40.340 projects contracted during the period 2013 – 2017, following the verifications, 6 projects and 3 payment requests were identified as having indications of fraud, in one case financial corrections were applied, the flow rate being 19.858,20 lei. The checks in this situation were targeted at a mayor and a deputy mayor.

Figure no. 13



The situation of financial corrections is reported at the level of incompatibilities and conflict of interest (Figure no. 14).

Figure no. 14 Value of financial corrections applied



The percentage of suspicions of conflicts of interest, indications of fraud and incompatibility cases, compared to the total number of contracts concluded by AFIR between 2013 and 2017, is below 0.1%. The indications of fraud are not concrete cases of fraud, which in the analysis of the competent bodies can be solved in favor of beneficiaries of European non-reimbursable funds.

The **Public Procurement National Agency (ANAP)** has provided information on data and information managed in relation with conflcts of interest identified between 2013 and 2017, thus through the Directorate-General for Ex-Ante Control, the Agency has attributions, on the one hand, to assess the compliance of the award documents, selected under the law , relating to the procedure for the award of contracts falling within the scope of procurement legislation and, on the other hand, verification of award procedures and contractual modifications selected following a selection methodology, as well as the documents related to the implementation and execution, on compliance with procurement legislation.

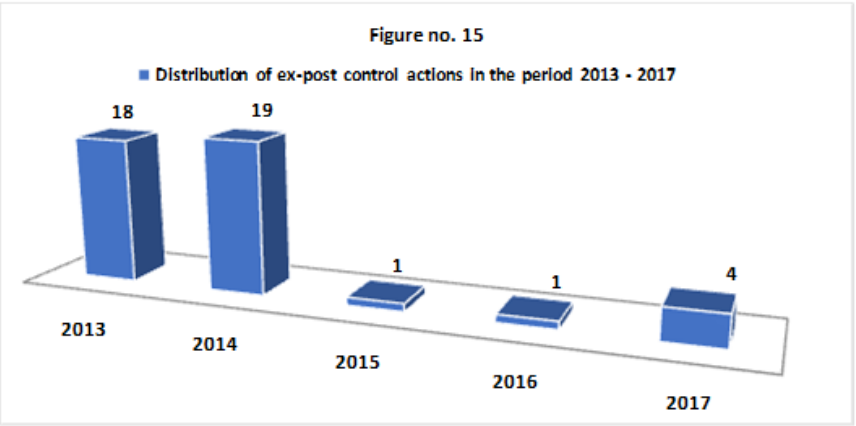
To this end, the Agency shall endeavor to ensure that the contracting authority has taken all necessary measures to avoid the

occurrence of situations likely to cause the existence of a conflict of interest within the meaning of Art. 58 – art. 63 of Law no. 98/2016 on public procurement, with subsequent alterations and completions. As a result, several complaints regarding potential conflicts of interest were transmitted to the National Integrity Agency between 2013 and 2017.

In accordance with the provisions of GEO no. 34/2006, respectively Law no. 98/2016 and Law no. 99/2016, ANRMAP/ANAP conducted the ex-post control of the award of public procurement contracts. If in the course of the investigations violations of the legislation in the field of public procurement were found, in the case of contracts funded by European funds, according to the legal provisions, the ANAP does not apply contravention measures sanctioning these violations, but transmits the findings made by the Management Authorities for recovery.

At the request of DLAF, ANAP (ANRMAP) carried out in the period 2013 – 2017 a number of 43 ex-post control actions for the award of public procurement contracts financed by European funds (Figure no. 15).

Figure no. 15



Issues related to financial corrections/sanctions or warnings are not within the competence of the National Agency for Public Procurement, which is under the responsibility of the Management Authorities.

Between 2013 and 2017, fraud indications/conflicts of interest were detected in 5 cases. In a first case, a possible conflict of interest, after a tender was opened, between a director of the contracting authority and the tenderer's main manager/associate in an open tender for the award of a works contract initiated by to a national company on the basis of a contract notice.

The call for tenders was launched through the invitation to tender for the award of a works contract initiated by a county council, where a possible conflict of interest was reported at the time of submission of tenders, in the sense that a person with a decision-making function of the contracting authority was a shareholder in one company together with one of the tenderers.

Another situation was recorded in the case of four open tender procedures for the award of service contracts initiated by four associations by the publication of three SEAP participation notices, with a possible conflict of interest in the four procedures where it was found that the same person was a shareholder in 11 commercial companies used to rent the premises of tenderers participating in those procedures. This situation was also presented to the Competition Council for competent resolution.

Another case concerns an open tender procedure for the award of a supply contract initiated by a local council by the publication of the SEAP participation notice and a possible conflict of interest after the opening of the tenders between the representative of one of the tenderers and a local councilor.

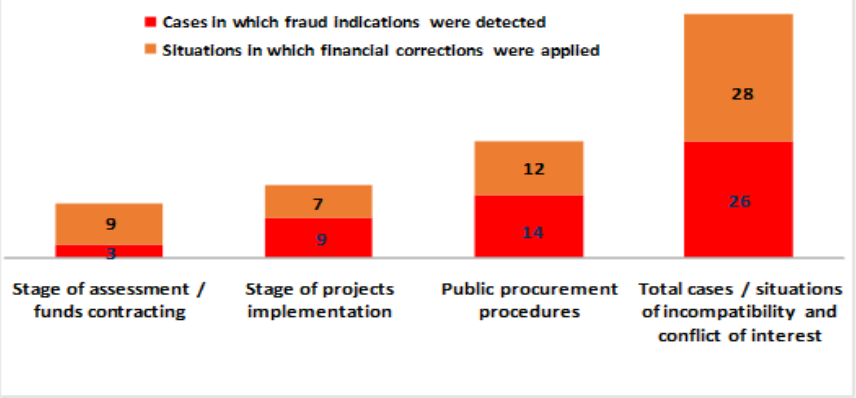
The latter case concerns an open tender procedure for awarding a works contract (design and execution) initiated by the county council by publishing a contract notice. A possible conflict of interest has been reported in the sense that it has been identified in the qualification documents filed by an association to demonstrate the requirement to ensure the existence of the equipment/means of transport/equipment necessary for the performance of the works contract, a contract equipment rental concluded with a company having as a manager/

shareholder a person holding a decision making function within the contracting authority, respectively a county counselor. In order to get out of the situation created, the contracting authority informed that the legal provisions regarding the conflict of interest are not applicable, as well as the fact that the verified person resigned from the county councilor mandate.

We can unquestionably find that the audited persons have the status of public servants or have elective positions in central or local public administrations, without the relevance of being part of the managing or execution staff.

The **Audit Authority within the Court of Accounts of Romania** has the competence to verify the use of European funds at national level, so it will be presented extensively in the future section, performing 67 audit missions during the reference period. The number of cases where financial corrections have been applied is higher than the number of cases where fraud indications of incompatibility and conflict of interest have been detected because, as a result of checks by the competent authorities, it was considered that the conditions for the existence of a fraud, conflict of interest being sanctioned only from an administrative point of view (Figure no. 16).

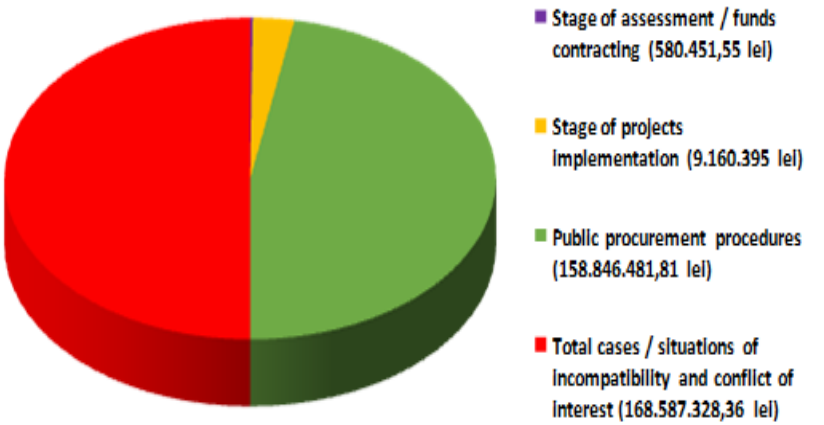
Figure no. 16 Cases/situations identified in the period 2013 - 2017



On the level of the Environment Operational Programme, two cases were detected and seven cases were reported on the POCU level and were sent to DLAF for investigation. For 2 cases identified at the level of the OP Environment and 11 cases identified at the POCU level, the corrections are 100% of the value of the expenses/contracts affected by conflicts of interest.

The value of financial corrections applied to incompatibilities and conflicts of interest between 2013 and 2017 is significant (Figure no. 17).

Figure no. 17 Value of financial corrections applied (lei)



The capacity/position of the verified persons is determined by the time when the irregularities are consumed, so in the evaluation/contracting stage we have to deal with the Management Authority, the Intermediate Body, the Project Manager, the Beneficiary of the funding; in the project implementation phase: Beneficiary, Contractor; and in the framework of procurement procedures may be: Bidder, Beneficiary, Member of the Evaluation Committee, Beneficiary Shareholders and all bidders, Administrator of the beneficiary company.

The **Public Ministry** represented by the **Prosecutor's Office within the High Court of Cassation and Justice** has provided a complete diagnosis of the statistical data managed at its level on conflict of interest for the period 2013 – 2017 which outlines in an exhaustive manner the scale and typology of this crime with the currently marginal name of *using the feature to favor people (procided by art. 301 Criminal Code)*, presented in detail below.

In the **year 2017**, from the examination of the statistical data reported by the Public Ministry – the Prosecutor's Office within the HIgh Court of Cassation and Justice (except for the two specialized structures: DNA and DIICOT), 418 cases were dealt with as a crime of using the function of favoring persons (as has been renamed the offense of conflict of interest). Out of the total number of cases dealt with, 39 cases of court referral were issued, which ordered the prosecution of 51 defendants. Thus, 34 indictments and 5 recognition agreements were drawn up; as well as 8 solutions to waive prosecution.

From the positions held by the 51 defendants, we may list: 20 mayors (city/municipality, commune), 1 deputy mayor, 4 directors of public institutions, 2 hospital managers, 3 directors within companies/legal entities administering/operating public property, 1 public procurement expert, 1 secretary and 1 referent within city and community hubs.

The prejudices caused by the defendants sent to trial amounted to a total of 3.153.932 lei.

The typologies found in cases with judicial finality during the reference period:

- local elected representatives (commune mayors), but also heads of public institutions, who perform public procurement directly from legal entities whose associates and/or administrators are their spouse or relatives to a degree prohibited by law;

- local elected local landowners, by direct custody, to first and second degree relatives;

- elected local officials (mainly mayors of the commune) who employ relatives without a contest at the public institutions they lead;

Most of the indictments concerned the offense of using the function of favoring persons by mayors (14 indictments) and heads of public institutions (6 indictments) in public procurement procedures.

In 6 other cases, the court has been notified of the offense of using the function of favoring persons by mayors for employing the wife or relatives of first degree (son, daughter).

Also, in 3 cases, the court was charged with committing the offense of using the function of favoring persons by mayors for the concession by direct custody of the local pasture to the relatives prohibited by law.

The criminal cases in which the indictments were drawn up were largely based on denunciations of various persons (including ANI complaints), compared with the ex officio notices of criminal prosecution bodies that had been numerically reduced.

In the **year 2016**, 346 cases of conflict of interest (Article 301 of the Criminal Code) have been resolved. Out of the total of these cases, 48 were dealt with by indictment (bringing to trial 54 defendants) and 4 by agreement on the recognition of guilt; as well as 9 solutions to waive prosecution.

Of the qualities held by the 54 defendants we observe: 2 MPs (deputies), 17 mayors (sector, municipality, city, commune), 4 deputy mayors, 5 directors (hospital, school, ANIF, environment protection).

The damages caused by defendants sued in total amounted to 455.792 lei.

Typologies found in cases with judicial finality during the reference period:

- MPs (deputies) who employ their relatives at the parliamentary cabinet;

- elected local officials/heads of public institutions that make public purchases from legal entities in which they held the ownerhip or belonging to the spouse or relatives down to the degree prohibited by law by direct award;

- elected local decision-makers for concession through direct award of local pasture;

- Local elected/directors who employ relatives without a contest at the public institutions they lead.

In the **year 2015**, 237 cases of conflict of interest (Article 301 of the Criminal Code) were settled, 55 cases of the court being heard (47 indictments - 52 indictees were sued - and 8 recognition of guilt), out of which in 20 cases, representing 37%, the deeds were committed in relation to public procurement procedures; 4 solutions to waive prosecution.

The typologies found in the cases solved between 2015 and 2017 are generally the same.

In the **year 2014**, 301 cases concerning conflict of interest (301 Criminal Code) have been resolved, 54 court cases have been drawn up (51 indictments – 53 prosecutors have been sued – and 3 recognition agreements of guilt), 9 criminal prosecution solutions and 238 ranking solutions.

In the **year 2013**, 381 cases of conflict of interest (Article 253^1 of the Criminal Code 1969), of which 46 by indictment (bringing to trial 51 defendants) and 23 by criminal prosecution, as well as and 312 ranking solutions.

The losses caused by defendants sent to court amounted to a total of 791.561 lei.

In the field of public procurement, for the period 2015 – 2017, the situation is documented in this way, the use of the function to favor persons (conflict of interests) – art. 301 Criminal Code had a criminal incidence, resulting in the following results:

In the year 2015, 55 cases of court notification (47 indictments and 8 recognition of guilt) were drawn up in cases of conflict of interest, of which in 20 cases, representing 37%, the offenses were committed with public procurement procedures.

The quality of the defendants: local elected – mainly mayors of the commune (fewer deputy mayors and public servants with

attributions to the public procurement department), but also heads of public institutions.

In the year 2016, 52 cases of court notification were issued (48 were tried by indictment and 4 by agreement on the recognition of guilt), with the object of conflicts of interest, out of which in 20 cases it was held that the offenses were committed with public procurement procedures. Most of the indictments concerned the commission of a conflict of interest by municipal mayors in public procurement procedures.

The persons being sued are public servants in the following official positions: elected local officials (city mayor, municipal mayors, commune deputy mayor), heads of public institutions (director of the environment agency, secondary school, sanatorium manager, expert in the public procurement department in a municipal city hall).

In the year 2017, 39 cases of court referral were issued (34 were dealt with by indictment and 5 by agreement on the recognition of guilty) concerning the offenses of conflict of interest, out of which in 20 cases (14 indictments on mayors of common and 6 indictments on heads of public institutions), the deeds were committed in connection with public procurement procedures, the quality of the defendants being the same.

The subject of contracts in which public procurement procedures were fraudulent in general is the same as in the cases of direct purchases of goods and services, execution of works, being different only to their nature (provision of medical services, legal assistance, design works, modernization of roads, works construction, purchase of air conditioning, fireworks, equipment, real estate – 2015; supply of products, real estate rehabilitation, rehabilitation of communal roads, rehabilitation of electric installation – 2016; passenger transport services, forestry services, maintenance services for water pumping stations, catering, procurement of wood, supply of vocational training services, supply of bakery products – 2017).

The typologies found in the cases solved in the years 2015 – 2017 are generally the same or elected local ones, mainly communal mayors, as well as managers of public institutions that make public procurement by direct entrusting to the benefit of legal entities like commercial companies who possessed or belonged to the spouse/relatives in a degree prohibited by law (up to the second degree of the defendants) or have been in employment relationships for the past 5 years or from which they have benefited or have benefited from any kind of benefits. The damage in such cases is worth several tens of thousands of lei, but in some cases it has reached several hundred thousand lei.

CHAPTER II. LEGAL CONSIDERATIONS ON CONFLICT OF INTEREST IN PROJECT MANAGEMENT

2.1. EUROPEAN RULES OF CONDUCT IN PUBLIC OFFICES

The essential role of public administration in a democratic society is given by the confidence that its citizens have in the state institutions, in the way public officials manage to meet their needs, by performing conveniently the tasks entrusted to them. The key element of a strong and persuasive administration is the specialized staff who must possess the necessary qualifications and have a proper legal and material framework to be able to perform tasks in an appropriate way. The Council of Europe, represented by the Committee of Ministers of the Member States, also intervenes in this direction through **Recommendation no. 10/2000** on the Code of Conduct for Public servants, which at Art. 13 sets out the definition of conflict of interest and conduct to be followed in such a situation:

„Conflicts of interest arise when the public servant has a personal interest which may influence or appear to influence the impartial and objective exercise of his official function. The personal interest of a public servant involves any advantage for himself / herself or for his / her family, close relatives, friends, persons or organizations with whom the public servant had political or business relations. Personal interest may also refer to any debts that the public servant has over the persons listed above".[4]

The solution to such a situation remains with the public servant who is the only one able to establish the existence of a conflict of interests, having a personal obligation correlative to the job he occupies, so he / she must:

- pay attention to any *real or potential conflict of interest*;
- take steps to avoid such a conflict;

[4] Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials, available at: https://wcd.coe.int/ wcd/ViewDoc.jsp?id=353945&Site=CM

- inform his/her hierarchical superior about any conflict of interest since he became aware of it;

- comply with the final decision to withdraw from the situation or to abandon the advantage at the origin of the conflict.

Preventively, before the appointment in the public office, the institution in which he/she is to occupy the post will ask the person to declare the interests. Any change in the situation during the performance of the post which might affect its official duties must be declared.

Recommendation 10/2000 also situlates the limitations on the public servant's right to carry out other activities or occupy positions or offices, whether remunerated or not, incompatible with, or prejudicial to, the positions of the public office. When such a situation is susceptible, it is required to ask for the superior's opinion. Prior to carrying out certain activities, whether remunerated or not, or to accept certain posts or functions, whatever they are, other than the public office in which he is employed, he is obliged to inform and obtain the approval of his employer.

A much simpler definition is given by the **Organisation for Economic Cooperation and Development (O.E.C.D.)**[5] which defines conflict of interest as being *„a conflict between the duty to the public and the personal interests of a public servant in which the public servant has interests in his/ehr capacity as a private person which might improperly influence the fulfillment of official duties and responsibilities”.* From the definition it follows that we can deal with an ***apparent conflict of interest*** when the interests of a public servant may improperly influence the performance of the tasks, but in reality it exercises in a transparent and equitable manner job attributions, and a ***potential conflict of interest*** where a public servant has personal interests in gaining an advantage, irrespective of its nature, although his function and job attributions do not give him official attributions at that time. In an extended form, we can have the situation where the function confers

[5] Managing Conflict of Interest in the Public Service, disponibil la adresa: https://www.oecd.org/gov/ethics/48994419.pdf

those attributes, so we have to deal with an ***actual conflict of interest.*** In these circumstances, the public servant is obliged to refrain from taking any decisions, informing his hierarchical superior about the situation. If he does not refrain from making a decision in the form of current conflicts of interest, we can speak of a ***consumed conflict of interest***, this situation will entail the legal discovery and sanction of the act.

The O.E.C.D. elements that must be taken into consideration are the following:

1. Public interest must take precedence;
2. Compliance with the principle of transparency in decision-making;
3. Institutional management must be done through individual responsibility and personal example;
4. Developing an organizational culture that does not tolerate conflicts of interest.

The conflict of interest situation needs to be analysed and interpreted according to the constitutive elements that generate it, sometimes through its behavior the public servant may harm other social values, especially when dealing with the proper performance of the job. By definition, "personal interest" is not limited to a personal and direct benefit for the public servant, and he can embody several forms for both himself and the persons in his sphere of influence (relatives or persons with whom he/she is in different ratios). Equally important is the context in which an activity is carried out. Thus, legitimate behavior of a person in the private environment can meet the pre-existing conditions of conflict of interest if such behavior improperly influences the way the public servant performs his/her job attributions. For example, negotiating a future job in the private sector does not affect the interests of society, except for the prohibitions regulated in the employment contract, whereas for a public servant negotiation before the dismissal of the public office can be considered as a conflict of

interest if the move is directly or indirectly conditioned by job attributions.

Equally, ***Regulation (EU, Euratom) no. 1046/2018*** *of the European Parliament and of the Council of 18 July 2018 on the Financial Regulation applicable to the general budget of the European Union amending Regulations (EU) 1296/2013, (EU) No. 1301/2013, (EU) No. 1303/2013, (EU) No. 1304/2013, (EU) No. 1309/2013, (EU) No. 1316/2013, (EU) No. 223/2014, (EU) No. 283/2014 and Decision no. 541/2014/EU and repealing Regulation (EU, Euratom) 966/2012* stipulates in Article 61 – Conflict of interst, that *„financial stakeholders and other persons, including national authorities of all levels involved in budget implementation in the direct, indirect and shared management of the budget, including the preparation of appropriate preparatory acts, as well as in auditing or controlling the budget, are forbidden to take measures generate a conflict between their own interests and those of the Union. They also take appropriate steps to prevent conflicts of interest from occurring with regard to the functions under their responsibility, and to address situations that can objectively be perceived as a conflict of interest".*

Where a risk of conflict of interest involving a staff member of a national authority is identified *„the person concerned shall notify his/her direct supervisor about this matter".* Moreover, the Regulation obliges the staff covered by the Staff Regulations to notify the relevant Delegated Authorising Officer. Based on an objective analysis *„the direct supervisor or the relevant Delegated Authorising Officer shall confirm in writing whether there is a conflict of interest".* When a conflict of interest is confirmed, *„the Appointing Authority or the relevant national authority shall ensure that the person concerned ceases all activities in relation to that matter".* It is up to the national authority and the authorizing officer by delegation to ensure that *„ any appropriate subsequent measures shall be taken in accordance with the applicable legislation".* In the same sense, there is conflict of interest also where *„the impartial and objective exercise of the functions of a financial*

stakeholder or other person is compromised for reasons involving family, affective life, political or national affinities, economic interest or any other direct or indirect personal interest". The similar approach of the subject also prevails in the field of public procurement.

LEGAL REGIME OF THE CONFLICT OF INTEREST
IN THE OBTAINING AND USE OF EUROPEAN FUNDS
REGULATION (EU, EURATOM) 2018/1046 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 July 2018 on the Financial Regulation applicable to the general budget of the European Union, amending Regulations (EU) 1296/2013, (EU) No. 1301/2013, (EU) No. 1303/2013, (EU) No. 1304/2013, (EU) No. 1309/2013, (EU) No. 1316/2013, (EU) No. 223/2014, (EU) No. 283/2014 and Decision no. 541/2014 / EU and repealing Regulation (EU, Euratom) 966/2012

PREAMBLE
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„It is appropriate to identify and deal separately with the different cases that are commonly called "conflict of interest" situations. The notion of "conflict of interest" should be used only in cases where a person or entity with responsibilities in the execution, audit or control of the budget, an official or an agent of a Union institution or a national authority from any level is in such a situation.
Attempts to inappropriately influence an award procedure or obtain confidential information should be considered as a serious professional misconduct which may lead to rejection of the award procedure and / or exclusion from Union funds.
In addition, economic operators may be in a situation where they should not be selected to execute a contract due to a professional conflict of interest. For example, an enterprise should not evaluate a project it participated in, or an auditor should not be able to audit the accounts he previously certified ".

Extract from the presentation of Mr. Mihai IOAN - Head of Office – FESI Coordination Authority, Ministry of European Funds at the International Seminar ***„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests"*** *organized by the "Alexandru Ioan Cuza" Police Academy in Bucharest from 11 to 12 October 2018*

We consider that the acts carried out by a person who, in the capacity of a position, participates in a public procurement or grant evaluation procedure and is directly or indirectly benefiting financially from the result obtained in the proceedings may be the subject of a potential conflict of interests. Its actions may be classified as lacking in objectivity and impartiality, subject to personal interest. Also, the official's act of participating as an applicant, candidate or tenderer in a public procedure initiated at the level of the entity he represents is in a conflict of interest situation, unless his participation in the procedure has been authorized in advance of his superior. In such cases, it is the responsibility of the authorizing officer by delegation who is required to take all necessary steps to avoid the abusive influence of the person during the process/procedure in question.

Reducing the degree of complexity of the financial rules applicable to the budget and the need to include the relevant rules in a single regulation are the reasons behind the repeal of Delegated Regulation (EU) No. 1268/2012. Also, for reasons of clarity, the main rules of the Delegated Regulation (EU) No 1268/2012 have been included in this Regulation and the rest of the rules will be subject to the service guidelines.

2.2. EUROPEAN INSTITUTIONS WITH COMMITMENTS IN THE PROTECTION OF THE FINANCIAL INTERESTS OF THE EUROPEAN UNION

On the European level, the Union's financial interests are safeguarded through bodies and institutions empowered to deal with cases involving European fraud, corruption, money laundering and diversion directly affecting the EU's consolidated budget.

EUROJUST[6] was set up in 2002 on the basis of Council Decision 2002/187/JAI with the aim of strengthening the fight against serious crime and of enhancing the effectiveness of national investigation and prosecution authorities when they face serious forms of crime organized and cross-border, and to bring those who break the law as quickly and efficiently as possible to justice.

EUROJUST seeks to be a key actor and center of expertise at the judicial level for activities to combat organized crime and cross-border crime within the European Union. Its mission is to support and strengthen co-ordination and cooperation between national authorities in the fight against serious cross-border crime affecting the European Union. The organization has its headquarters in The Hague, with its top-level representatives being seconded from the 28 member states, one from each state. National members are prosecutors, judges, or police officers with a wealth of professional experience. Together they coordinate the work of national authorities in each phase of investigation and prosecution. It also deals with the solution of the impediments and practical problems arising from the differences between the legal systems in the Member States.

National members are assisted in their work by deputies, assistants and temporarily assigned national experts. If the organisation

[6] http://www.eurojust.europa.eu/Pages/languages/ro.aspx

has concluded a cooperation agreement with a third State, that State may second a liaison magistrate to EUROJUST. Currently, liaison magistrates from Norway and the USA work in the organization. Also, according to recent European provisions, EUROJUST can send liaison magistrates to third countries.

It has an administrative apparatus of approximately 260 people, which supports sending a prompt response to requests for assistance received from national authorities or other EU bodies.

Annually it intervenes in about 2.000 cases and organizes about 200 coordination meetings at the level of the judicial, investigation and prosecution authorities of the Member States and, where appropriate, in third countries. Based on these workshops, the issues specific to these cases are resolved and operational action plans are developed on, for example, simultaneous arrests and searches.

Coordination meetings mainly address certain forms of crime defined as a priority by the Council of the European Union: terrorism, drug trafficking, human trafficking, fraud, corruption, cybercrime, money laundering and other activities related to the presence of organized crime groups in the economy. The organization has a number of key powers and roles, as conferred by the EUROJUST Decision, such as responding to requests for assistance from the competent national authorities of the Member States, or may require Member States to carry out investigations or prosecutions in respect of certain facts. It contributes to resolving conflicts of jurisdiction if, for a specific file, there are several national authorities capable of conducting investigations or prosecution. EUROJUST facilitates the enforcement of international judicial instruments such as the European Arrest Warrant. It also provides funding for the creation of joint investigation teams and their operational needs.

In its work, EUROJUST relies on the close relations with its partners in the Member States represented by the national authorities and on the level of the European Union, represented by bodies such as the European Judicial Network, Europol, OLAF (in the case of offenses

affecting the financial interests of the European Union), Frontex, Sitcen, CEPOL and the European Judicial Training Network, as well as any other competent body based on the provisions adopted under the Treaties. Ensures, on the basis of the partnerships, the fight against cross-border crime aimed at providing the best level of coordination and cooperation to ensure an area of freedom, security and justice for all citizens of the European Union (through the exchange of information between competent authorities).

EUROPOL[7] is a European Union law enforcement cooperation agency, with the main purpose of assisting in the creation of a safer Europe for the benefit of all EU citizens. Through its work, the Agency supports the 28 Member States in their fight against serious crime and acts of terrorism committed internationally. It also works with many partner countries and international organizations outside the EU.

Larger criminal and terrorist networks represent a significant threat to the Union's internal security as well as the safety and well-being of its citizens. The biggest security threats are caused by:

- terrorism;
- drug trafficking and money laundering at international level;
- organised fraud;
- euro counterfeiting;
- Illegal introduction of people.

In addition to the above, the Agency focuses on cybercrime and human trafficking that pose dangers to the growing European community. The networks behind the crimes committed in each of these areas immediately take advantage of any new opportunity and adapt to traditional law enforcement measures.

In the security architecture of Europe, EUROPOL has a central position that enables it to offer a unique range of services and to act as a:

- law enforcement assistance center;

[7] https://www.europol.europa.eu/ro/about-europol

- information center on criminal activities;
- law enforcement expertise center.

The administrative staff of the agency comprises about 1.000 employees, of which at least 100 are among the best crime analysts trained in Europe. They use state-of-the-art tools to come day to day in support of investigations carried out by law enforcement authorities in the Member States. In the course of the over 40.000 international surveys conducted annually, besides its own equipment, there are also 220 EUROPOL liaison officers located at the level of the Member States. The Agency periodically reviews and evaluates terrorism and EU crime, sometimes even prospective, to give their partners an in-depth understanding of the criminality problems facing the EU.

On the EU level, EUROPOL is subordinated to ministers within the Justice and Home Affairs Council and supports law enforcement throughout Europe in the fight against terrorism and crime in all its areas of expertise. The Council is the main forum for the control and guidance of the Europol Agency. He appoints the Deputy Director and Deputy Directors and approves the Europol budget (which is part of the EU general budget), together with the European Parliament. The Council may also adopt regulations on Europol's work with the European Parliament. Each year, the Council shall submit to the European Parliament a special report on Europol's work.

The **European Anti-Fraud Office** (**OLAF**[8]) is the only body of the European Union that has the mission to identify, investigate and stop fraud with European funds. The European Union's budget finances numerous programs and projects that improve the lives of citizens in and out of the EU. Inappropriate use of funds from the Union budget or evasion of taxes, duties and other amounts owed to the EU budget directly affect citizens and harm the whole European project.

[8] https://ec.europa.eu/anti-fraud/about-us/mission_ro

In fulfilling its mission, OLAF:

- carries out independent investigations into acts of fraud and corruption involving EU funds to ensure that taxpayers' money is directed to projects that can create jobs and foster growth in Europe;
- contributes to strengthening citizens' confidence in EU institutions, investigating serious violations of staff and members of the European institutions;
- develops the general anti-fraud policy in the European Union.

OLAF can investigate fraud, corruption and other offenses affecting the EU's financial interests, targeting:

- all EU spending – mainly spending categories related to structural funds, agricultural policy and rural development funds, direct expenditure and external aid;
- certain types of EU revenue, in particular customs duties;
- suspected serious professional misconduct of staff and members of the EU institutions.

In most cases, OLAF receives from various sources and information warnings about possible frauds and deviations resulting from controls by those responsible for the management of EU funds within the European institutions or on the Member State level. All complaints received by OLAF are subject to an initial assessment to determine whether they fall within the competence of the Office and fulfill the criteria for opening a case. Open cases fall into one of the following three categories:

- **internal investigations:** administrative investigations within the EU institutions and bodies to detect fraud, corruption and any other illegal activities affecting the EU's financial interests, including serious misconduct in connection with the performance of professional duties;
- **external investigations:** administrative investigations outside EU institutions and bodies for the purpose of detecting fraud or other offenses committed by natural or legal persons. Cases are classified as external investigations if OLAF provides most of the related material;

• **coordination cases:** OLAF contributes to investigations conducted by national authorities or other EU bodies by facilitating the collection and exchange of information and the establishment of contacts.

The **EUROPEAN COURT OF ACCOUNTS**[9], also called the *„The Guardian of EU finances"*, **i**s the European Union institution in charge with auditing its finances. It was created in 1977 and has become an independent EU institution since 1993. The Court is committed to being an efficient organization in the forefront of developments in the field of public finance and public administration auditing. The mission of the European Court of Auditors is to contribute to improving the EU's financial management, promoting accountability for the management and transparency, and acting as the independent guardian of the financial interests of Union citizens. As an independent external auditor of the European Union, the role of the Court is to verify that EU funds have been correctly accounted for if they have been collected and spent in compliance with the relevant rules and legislation and whether an optimal cost- in their use. The Court verifies whether the EU budget has been executed correctly and whether EU funds have been collected and spent in compliance with the law and the principles of sound financial management.

Given that Europe faces increasingly redoubtable challenges and increased pressure on its public finances, the role of the Court is becoming increasingly important. In democratic societies, in order to ensure effective supervision and decision-making, it is essential to have complete, accurate and easily accessible information on budget implementation and public policy implementation. This information contributes to promoting sound financial management, while serving as the basis for the obligation to respond to the management act. Like the Member States, the EU needs an external auditor to play the role of

[9] https://www.eca.europa.eu/ro/Pages/MissionAndRole/Structure.aspx

independent guardian of the financial interests of citizens. The Court identifies existing financial risks, provides assurances and makes recommendations to EU decision-makers on how to improve public finance management and ensure that European citizens know how their money is used. This is, in essence, the Court's contribution to strengthening the democratic legitimacy and sustainability of the European Union.

The Court operates as a collegial body composed of 28 members, one from each Member State. The members of the Court shall be appointed by the Council, after consulting the European Parliament, for a renewable term of six years.

Members elect from among them a president, for a three-year mandate, with the possibility of renewal. As a structure, the Court is organized in five chambers, where the members of the Court and the audit staff are assigned. Members of each chamber elect a Dean for a two-year term that can be renewed. Each chamber has two areas of responsibility:

- adoption of special reports, specific annual reports and opinions;
- preparation of the annual report on the EU general budget and the annual report on the European Development Funds, with a view to their adoption by the plenary of the Court.

The Court meets in a full 28-member college about twice a month to debate and adopt various documents, such as the Court's main annual publications - the EU's general budget report and the report on the European Development Funds. The *Committee for Audit Quality Control* consists of the member responsible for the audit quality control and one member of each room. This committee deals with the Court's audit policies, its audit standards and methodology, its audit support and its development, and audit quality control. The Administrative Committee is composed of the Deans of the Chambers, the President of the Court, the member responsible for institutional relations and the Member of the Audit Quality Control. The Committee deals with all

administrative issues and decisions relating to communication and strategy issues.

The European Court of Accounts is chaired by a chairman who is elected by members for a renewable term of three years. His role is that of *primus inter pares* – the first among the equals. The President presides over the meetings of the Court and ensures that the Court's decisions are implemented, so both the institution and its activities are well managed.

The members of the Court shall be appointed by the Council after consultation of the European Parliament following their nomination by the EU Member States. Members are appointed for a renewable term of six years. They must exercise their duties in complete independence and for the general interest of the European Union. In addition to belonging to the Court's College, members are assigned to one of the five rooms. They adopt audit reports and opinions and take decisions on broader strategic and administrative issues. Each member is also responsible for a number of specific tasks, mainly in the field of auditing. Audit activities underlying the preparation of a report are carried out by the Court's audit staff, under the coordination of a member, assisted by a cabinet. The member then presents the report for adoption at the Chamber and / or at the plenary of the Court. Once adopted, the report is presented to the European Parliament, the Council and other relevant stakeholders as well as to the media.

The Secretary-General is the highest official in the institution and is appointed to this position by the Court for a renewable term of six years. He/she is responsible for the Court's secretariat, management of activities, human resource management, finance and general services, information, workplace and innovation, translation, language services and publications. The Court's administrative apparatus has about 900 people with tasks in the field of auditing, translation and administration. The audit staff has extensive training and experience in both the public and private sectors, being specialized in accounting, financial management, internal and external audit, law, or the economy. The staff

of the Court also includes translators for 23 official EU languages, whose role is to ensure that the Court's publications can be read by EU citizens in the desired language. Like all other EU institutions, the Court hires nationals of all Member States. As EU public servants, the staff of the Court are subject to the Staff Regulations of Officials of the European Union. As an organization, the Court is divided into 10 departments (audit and administrative) which, in turn, form flexible teams set up according to the tasks they are responsible for, so as to ensure optimal exploitation of resources and the development of the necessary expertise. The Court applies an active policy of equal opportunities and its staff consists of almost equal proportions of men and women.

The European Court of Accounts is proud to have been a dedicated, professional and experienced staff of staff since 1977, whose mission is to protect the financial interests of EU citizens. Based on the institutional strategy adopted in 2013 – 2017 and in response to the European Parliament's comments on the future role of the Court, while taking into account the results of the international peer review carried out in 2014 in relation to its performance audit methodology, has decided to proceed with a reform of its internal organization. The reform is based on four principles: - a flexible response to a rapidly changing environment;

- a flexible allocation of resources to priority audit tasks;
- a timely presentation of the Court's performance;
- a better communication on the role and work of the Court.

The **COURT OF JUSTICE OF THE EUROPEAN UNION (CJUE)**[10] is the supreme judicial body of the European Union which makes judgments in pending cases, submitted for settlement. It consists of two instances:

- The **Court of Justice** made up of 1 judge from each EU Member State and 11 Advocates-General, is concerned with the applications for

[10] https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_ro

preliminary ruling from the national courts, certain actions for annulment and appeals; and

• The **Tribunal** currently constituted of 47 judges, with a trend of growth in 2019 to 56 (two judges each EU country), decides on actions for annulment brought by individuals, businesses and, in some cases, by EU governments. In practice, this court mainly deals with competition, state aid, trade, agriculture and trademark law.

The Judges and Advocates-General are appointed by the Member States by common agreement for a renewable six-year term. Judges in each court elect a president for a three-year term, which can be renewed.

The Court of Justice of the European Union, established in 1952 based in Luxembourg, interprets EU law to ensure that it applies uniformly in all member countries and resolves legal disputes between national governments and European institutions. Under certain circumstances, the Court may be heard by individuals, businesses or organizations wishing to bring an action against an EU institution that they suspect has infringed their rights. The Court makes judgments in the cases brought before it for settlement. The most common types of causes are:

• **Interpretation of legislation** (preliminary decisions) – the national courts of EU countries are required to ensure the proper application of European law, but there is a risk that courts in different countries may interpret legislation differently. If a national court has doubts about the interpretation or validity of an EU legislative act, it may request the opinion of the Court of Justice. The same mechanism can also be used to determine whether a legislative act or national practice is compatible with EU law.

• **Observance of legislation** (actions for finding the failure to fulfill obligations or *infringement* proceedings) – these are actions brought against a national government that fails to fulfill its obligations under European law. These actions can be initiated by the European Commission or another EU country. If the country concerned proves to be guilty, it has the obligation to remedy the situation immediately.

Otherwise, a second action may be brought against it, which may lead to the imposition of a fine.

- **Annulment of EU legislative acts** (if a Member State, the Council, the Commission or (under certain circumstances) the European Parliament considers that a particular EU legislative act infringes the fundamental rights or the Treaties of the Union, it may ask the Court of Justice to annul the act in question. Individuals can also ask the Court to annul an EU act that concerns them directly.
- **Guarantee of a EU action** (actions for finding the abstaining to act) - Parliament, the Council and the Commission have an obligation to take certain decisions in certain situations. If they do not, the governments of the Member States, the other EU institutions and (under certain conditions) natural persons or businesses may lodge a complaint with the Court.
- **Sanction of UE institutions** (*actions for damages*) - any person or undertaking who has suffered as a result of an action or lack of action by the EU institutions or their employees may bring an action against them through the Court.

From a procedural point of view, a natural person or an enterprise injured as a result of an action or lack of action by an EU institution or its employees may address the Court in two ways:

- indirectly through national courts (which may decide to refer the case to the Court of Justice);
- directly, by bringing the matter to the attention of the Court - if the complainant was directly and personally concerned by a decision taken by an EU institution.

If the authorities of an EU country have violated European law, the formal complaint procedure should be followed. For each case, the Court designates a Judge Rapporteur and a Advocate General. Cases are evaluated in two steps:

- *Written stage:*

➢ The parties make written statements before the Court. National authorities, EU institutions and sometimes individuals may submit observations;

➢ All of these are synthesised by the Reporting Judge and then discussed at the Court's General Meeting, which sets out:

▪ The number of judges dealing with the case: 3, 5 or 15 judges (the entire Court), depending on the importance and complexity of the case. Most cases are solved by 5 judges. There are very rare situations in which the entire Court is involved.

▪ If a hearing or an official point of view is required from the Advocate General.

• *Verbal stage – public hearing*

➢ The lawyers of both parties plead before the judges and the Advocate General, who can ask them questions;

➢ If the Court has decided that the Advocate General's point of view is needed, it is submitted after a few weeks of the hearing;

➢ Judges deliberate and then pronounce the verdict.

The cases before the Court of First Instance are similar, the distinction being of a procedural nature, so the majority of cases are settled by three judges and there are no general attorneys.

The **EUROPEAN PROSECUTORS' OFFICE (EPPO)**[11] is an initiative of 22 participating Member States that agreed to work together more closely to combat fraud against the EU, using the "enhanced cooperation" procedure. Procedurally the Prosecutor's Office will have the power to investigate and prosecute crimes affecting the EU budget, such as fraud, corruption, money laundering, cross-border VAT fraud.

The mission of the Prosecutor's Office will be to combat fraud against EU finances. It will have the competence to investigate and prosecute crimes that harm the EU's financial interests. EUROPEAN PROSECUTORS 'OFFICE will carry out cross-border investigations in cases

[11] https://www.consilium.europa.eu/ro/policies/eppo

of fraud involving EU funds of over € 10.000 or in cases of VAT fraud at cross-border level involving damages of over € 10 million. Annually, Member States lose at least EUR 50 billion in VAT revenues due to transnational fraud. They also reported that some EUR 638 million of the EU Structural Funds were misused in 2015.

Currently, national authorities can investigate such offenses, but their jurisdiction stops at national borders. Under these circumstances, national prosecutors remain with limited tools to combat cross-border financial crime. Similarly, existing bodies of the EU, the European Anti-Fraud Office (OLAF) or the European Unit of Judicial Cooperation (Eurojust) are not able to initiate investigations and prosecutions in the Member States it is necessary to create a new entity that will contribute to overcoming these shortcomings and to the suppression of crimes affecting the financial interests of the EU.

The EUROPEAN PROSECUTORS' OFFICE (EPPO) will be an independent European prosecution office responsible for investigating, prosecuting and prosecuting offenders who are harming the financial interests of the EU and their accomplices[12]. It will work in close cooperation with national law enforcement authorities and European bodies such as EUROJUST and EUROPOL. From the organizational point of view, EUROPEAN PROSECUTORS 'OFFICE will have a structure on two levels:

The strategic level composed of:

- a European Chief Prosecutor responsible for managing EPPO and organising its work;
- a college of prosecutors responsible for decision-making on strategic issues.

The operational level to be included:

- Delegated European prosecutors, responsible for conducting investigations and prosecutions;

[12] https://eur-lex.europa.eu/legal-content/RO-TXT-PDF/?uri=CELEX:C2018/418A/01&from=EN

- Permanent cameras that will monitor and direct investigations and make decisions on operational issues.

The request for the establishment of the European Prosecutor's Office and the start of the negotiation process materialized in 2013 on the proposal of the European Commission. After several rounds of negotiation, the participating Member States reached a unanimous agreement on enhanced cooperation on the European Prosecutors' Office and its own constitution document, thus the EPPO Regulation entered into force on 20 November 2017. Since the adoption of the Regulation, the Commission has regularly sent the justice ministers of the Member States information on its establishment.

The EUROPEAN PROSECUTORS' OFFICE should take up its responsibilities by the end of 2020, so that the European Commission is obliged to take a series of steps towards its establishment, namely:

- the appointment of an interim administrative director;
- the selection of the European Chief Prosecutor;
- the selection of the European prosecutors;
- budgeting.

The date on which the EUROPEAN PROSECUTORS 'OFFICE will start operations will be based on a proposal from the European Chief Prosecutor after the selection procedure has been completed.

2.3. LEGAL CONSIDERATIONS ON CONFLICT OF INTERESTS IN ROMANIAN LEGISLATION

Integrity and priority of public interest are two fundamental values recognised by the National Anticorruption Strategy 2016 – 2020 and assumed by all public institutions and authorities. Based on these values, representatives of public institutions and authorities have the obligation to declare any personal interests that may conflict with the objective exercise of job attributions. At the same time, they are required to take all necessary measures to avoid situations of conflict of interest which may arise during the exercise of public office. Thus, they have the duty to consider the public interest above all other interests in fulfilling job attributions. It contravenes the legal rules of using the public office to obtain unwarranted patrimonial or non-patrimonial benefits to them, their families or close relatives.

The preventive role can be exercised by adapting to the level of each public entity an efficient internal management system that responds to the needs identified in practice by implementing codes of ethics and professional conduct, the elaboration of on-line eGovernment procedures, debates and training activities to promote good anti-corruption practices at the level of central and local public administration, information activities for citizens, the establishment of registers for the detection of cases of abstention in decision-making in situations of conflict of interest, respectively on the recording of integrity incidents , all of which contribute greatly to achieving the specific objective 5.2 of the Strategy.

For each type of intervention one identifies **general and specific objectives**. Similarly, in order to achieve the objectives stipulated by the National Anticorruption Strategy, the strategic document stipulates **main actions**.

All these are developed by assuming decision-making transparency and

open governance as a corollary to this strategic document, coupled with the trio-thomic approach of strategic intervention in the fight against corruption, namely:

PREVENTION / EDUCATION / COMBAT

SPECIFIC OBJECTIVE 5.2

Improving the activity of identifying, sanctioning and preventing incompatibilities, conflicts of interest and unjustified wealth

*Extract from the presentation of Mrs. Alexandra Daniela PERCZE – staff assimilated to judges and prosecutors in Directorate for Crime Prevention, Ministry of Justice at the International Seminar **„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests"** organized by the "Alexandru Ioan Cuza" Police Academy in Bucharest from 11 to 12 October 2018*

The national conflict of interest approach has two perspectives: a general one on legislation covering areas of the public sector and a specific one which exclusively targets the regulatory framework and the rules established for the efficient management and use of European funds. The common element that revolves around the two approaches remains the individuals, who, in the conflict of interest situation, must have a fill a certain position. The most common situations encountered in practice, and in one situation, are addressed to the public servant during the exercise of job attributions.

The current regulatory framework establishes the common provisions of the notion of public servant and the prerogatives granted by law to the person in charge of public office. Thus, it has legal relevance to art. 2 paragraph 2 of the Law no. 188/1999 on the status of public servants, which defines the definition of public servant as being *„the person appointed, under the law, in a public office"*. In order to understand this definition, it is important to know that *„the public office represents the entirety of the duties and responsibilities established under the law in order to achieve the prerogatives of public power by the central public administration, the local public administration and the autonomous administrative authorities"*. Under these circumstances, a legal relationship

is created between the public servant and the state or administration in the form of a service report, the scope of which is clearly delimited.

Another definition of public servant is given by the criminal law in force. Thus, art. 175 of Criminal Code establishes the **definition of the public servant** as being the *„the person who, on a permanent or temporary basis, with or without remuneration:*

a) exercises attributions and responsibilities, established under the law, in order to achieve the prerogatives of the legislative, executive or judicial power;

b) exercises a public dignity or fills a public office of any kind;

c) exercises, either alone or together with other persons, within an autonomous corporation, another economic operator or a legal person with full or majority state ownership, attributions related to the realization of its object of activity.

Also, a public official within the meaning of criminal law is a person who performs a service of public interest he/she has been entrusted by the public authorities or who is under their control or supervision with regard to the performance of that public service".

Practically we have to deal with two definitions that generate a conflict of law between the provisions of the Criminal Code and those of the Public Servants' Statute, in violation of art. 117 of the Law no. 188/1999 which imposes the condition that the criminal or other norm does not contravene the legislation specific to the civil office. The provisions of the Law no. 188/1999 applies fully to the definition of a public servant, and only the exceeding of the limits set by this law can give rise to criminal liability, but only if such overshooting implies such liability. The criminal law can not redefine legal institutions already regulated by laws with superior legal force[13].

Depending on the specifics of the activities carried out, the law distinguishes between categories of public servants, so they benefit

[13] https://www.juridice.ro/507735/definirea-functionarului-public-doua-legi-distincte-incalcarea-standardului-de-claritate-si-previzibilitate-sistemului-national-de-legi.html

from special status those who operate within certain public services established by law, according to the rights and duties conferred by the specific public function. For public servants with special status, the law requires the observance of a special regime in the area of conflict of interest, according to the category from which it comes.

From the administrative point of view, the public servant is in conflict of interest if he/she is in one of the situations provided in Section 4 of the Law no. 161/2003 on certain measures for ensuring transparency in the exercise of public dignities, public offices and business environment, prevention and sanctioning of corruption. Starting from the definition established by the provisions of art. 70 *conflict of interest means the situation in which a person exercising a public dignity or filling a public office has a personal interest of a patrimonial nature that could influence the objectively fulfilling of his attributions according to the Constitution and other normative acts*. Another more complete definition is given by art. 4 lit. e) of Law no. 7/2004 on the Code of Conduct for public servants who present the conflict of interests as being *„that situation or circumstance in which the personal interest, directly or indirectly, of a public servant is contrary to the public interest, such as to affect or threaten its independence and impartiality in taking decisions or fulfilling in a timely and objective manner the duties incumbent on him in the exercise of his public office filled”*.

In an exhaustive interpretation, one discusses what the notion of interest is and what its valences are over the law:

- on the one hand, it is considered that the **the interest is limited to a simple vocation, a possibility that cannot be included in the legal category of rights**, and

- on the other hand, it is considered that the **interest would encompass not only the right itself but also its potential, or vocation**.

In fact, by assimilation of the two values in the notion of "interest", there is practically a confusion between the institution of incompatibilities and that of the conflict of interest. If, in the event of incompatibility, the rights resulting from the legal relationship outside

the job relationship are legal, even if the activity thus performed is incompatible, **in the case of conflict of interest, such presumed "rights" are, in fact, merely personal patrimonial interests, and cannot be considered as subjective rights in any way. These personal patrimonial interests conflict with the public interest. In this respect, Law no. 161/2003 regulates the principle of the supremacy of the public interest**. And Law no. 7/2004 on the Code of Conduct for Public servants, Art. 4 lit. c and d) distinguish between public interest and personal interest. Thus the ***public interest*** represents *„the interest involving the guarantee and observance by the institutions and public authorities of the rights, freedoms and legitimate interests of citizens recognized by the Constitution, the domestic law and the international treaties to which Romania is a party”*, and the ***personal interest*** is treated as *„any material or other benefit, directly or indirectly obtained, for oneself or for others, by the public servant through the use of reputation, influence, facilities, relationships, information to which he has access as a result of the exercise of his public office”*.

In essence, art. 79 para. (1) of the Law no. 161/2003 highlights those situations in which the public servant is in conflict of interest, when:

a) he/she is called upon to resolve requests, to make decisions or to participate in decision-making regarding natural and legal persons with whom it has patrimonial relations;

b) he/she participate in the same commission, constituted according to the law, with public servants who have the status of a first degree spouse or relative;

c) his/ehr patrimonial interests, his/her spouse or first-degree relatives may influence the decisions he/she has to take in the exercise of his/her public office.

The existence of a conflict of interest is conditioned by the exercise of the public office by solving a request, taking a decision or simply participating in a decision favoring the natural or legal person with whom the public servant has a patrimonial relationship. By

patrimonial relationship we mean any kind of legal relationship (civil, commercial, of labor, etc.) that has an economic content. In the first situation, there is no legal relevance for the existence or non-existence of the public servant's patrimonial advantage as a consequence of the exercise of his office. The causal link between the conduct of the public servant in the exercise of his office and the patrimonial relationship between him/her and the natural or legal person benefiting from his action is sufficient. The attitude of a public servant who overrides all personal interest in solving a claim, taking a decision or participating in a decision, is considered to be vice versa to the public interest.

For the rest of the situations provided by law, one should apply the notion of *„spouse or first-degree relative”*. The degrees of kinship and affinity are defined by art. 405 – 407 of Law no. 287/2009, republished, on the Civil Code, as follows:

The degrees of kinship are: first degree – parents and children; second degree – brothers, grandparents and grandchildren; third degree – uncle/aunt and brother nephew; fourth grade – cousins.

The degrees of affinity occur between the spouse and the relatives of the other spouse (in-laws). They are established as follows: first degree – father and daughter/son-in-law; second degree – brothers and sisters-in law; third degree – uncle and wife of nephew from brother; fourth degree – cousins and their spouses.

Equally important is the notion of *„patrimonial interest”* which relates to the patrimonial aspects in a complex way and refers to the nature of the public servant's interest which could lead to his/her lack of objectivity in making a decision and the possibility of anticipating a benefit or disadvantage for himself or his spouse or first degree relatives in the exercise of public office.

The conduct of public servants obliges them to refrain from solving a request, making a decision or taking part in a decision-making , and immediately notifying the direct supervisor. He is obliged to take the necessary measures for the impartial exercise of the public office within 3 days from the date of becoming aware. The infringement of these

provisions may, as appropriate, entail disciplinary, administrative, civil or criminal liability [art. 79 para. (2) and (4) of Law no. 161/2003].

In the case of a conflict of interest, the head of the public authority or institution, at the proposal of the direct supervisor of the public servant concerned, shall appoint another public servant who has the same training and level of experience [art. 79 para. (3) of Law no. 161/2003].

Another problem is the issue of conflicts of interest in the field of non-reimbursable foreign funds. The permanent risk of ineligible expenditure makes it clear that support measures are needed to ensure sound financial management of European funds by both beneficiaries and authorities responsible for managing European funds by introducing measures to prevent the emergence of irregularities in the management of European funds, especially those on conflicts of interest.

Conflict of interest in accessing European funds

As for accessing and implementing projects on European funds, according to GOVERNMENT EMERGENCY ORDINANCE O.U.G. no. 66/2011, authorities in charge of managing European funds and beneficiaries are required, in their work, to develop and apply management and control procedures to ensurethe ***the correctness of granting and using these funds****, as well as observance of principles expressly provided by law, including also the* ***preventing the occurence of conflicts of interest*** *during the entire selection process of the projects to be funded.*

The GOVERNMENT EMERGENCY ORDINANCE O.U.G. nr. 66/2011 establishes a series of rules on conflict of interest for both persons directly participating in the verification/evaluation/approval procedure of the ***applications for funding or programs in a selection procedure****, as well as those involved in the verification/approval/payment process of the* ***reimbursement/payment applications submitted by the beneficiaries****.*

*Extract from the presentation of Mrs. Alexandra Daniela PERCZE – Staff assimilated to judges and prosecutors in the Directorate for Crime Prevention, within the Ministry of Justice at the International Seminar **„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests”** organized by the "Alexandru Ioan Cuza" Police Academy in Bucharest from 11 to 12 October 2018*

The irregularities detected during the implementation of programs/projects with European funding come from three major areas of action: the correct allocation/verification of funds by the authorities managing them; correct implementation of funds by beneficiaries and public procurement. In the field of public procurement, the legislation regulates the conflict of interest situation, establishing the conduct of the personnel during a public procurement procedure. The results presented in the Preamble of CHAPTER I show that the PREVENT system responds positively to the activity of identifying/detecting conflict of interest situations.

Conflict of interest in accessing European funds

*Regarding the stage of implementation of projects with European funds, the regulations on conflict of interest are included in **Law no. 98/2016 on Public Procurement, Law no. 99/2016 on sector acquisitions, Law no. 100/2016 on works concessions and concessions.***

*The **definition** given to this incident of integrity by the legislation on public procurement:*

A conflict of interest means any situation in which the members of the staff of the contracting authority or of a purchasing service provider acting on behalf of the contracting authority who are involved in or likely to influence the outcome of the award procedure have a financial, economic, or other personal interest which could be perceived as an element that compromises their impartiality or independence in the context of the award procedure.

If public servants have been contracted with existing employment

*relationships, they are in a situation of conflict of interest, as public servants can not hold other functions, and **cannot carry out** other paid activities **within public institutions.***
*Where the beneficiary of the post-accession non-reimbursable EU community funding, as well as reimbursable or non-reimbursable external loans contracted or guaranteed by the State, is a private entity, **the public servant may carry out remunerated activities within the project** only if the work carried out within the project implementation team is not directly or indirectly related to the duties performed as a public servant.*

*Extract from the presentation of Mrs. Alexandra Daniela PERCZE – Staff assimilated to judges and prosecutors in the Directorate for Crime Prevention, within the Ministry of Justice at the International Seminar **„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests"** organized by the "Alexandru Ioan Cuza" Police Academy in Bucharest from 11 to 12 October 2018*

In the classification of irregularities found in projects with European funding, the first place is in the field of public procurement, followed by the ones established by the joint guilt of the financing body in the direct relationship with the beneficiaries of financing during the project implementation activity, namely in project management. As a result, the most frequent mistakes encountered in the beneficiaries' practice had mainly causes related to the particularisation of the situations identified in the implementation of the projects to the eligibility conditions set out in the guide, without a thorough analysis of the legal provisions regarding the special status of the public servant. These aspects have in some cases led to criminal liability of staff in cases of conflicts of interest deduced in court.

LEGAL REGIME OF THE CONFLICT OF INTEREST IN THE OBTAINING AND USE OF EUROPEAN FUNDS
GOVERNMENT EMERGENCY ORDINANCE O.U.G. draft on the modification and completion of Government 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

Art.12

(1) The natural persons and/or the legal representatives of the legal entities that participate directly in the verification/evaluation/approval/control, as the case may be, of the applications for financing, respectively verification/ authorization/control/payment of the refund/payment requests, have the obligation to make a declaration on his/her own responsibility obliging him/her to report to hierarchical superiors the situations that pose potential risks of conflicts of interest, according to art. 61 of Regulation (EU, Euratom) No 1046/2018 on the Financial Regulation applicable to the general budget of the European Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision (EU) No 541/2014 and repealing Regulation (EU, Euratom) No 966/2012.

(2) In the event of a conflict of interest situation, the persons mentioned in para. (1) have the obligation to notify in this respect the head of the European fund management authority which will rule on the existence/ absence of a conflict of interest situation and decide, as the case may be, to cease such activities.

Art. 13

(1) In the event of an offence of the official or employee concerned and/or the application of sanctions in the case of the contract in which the competent authority determines in the process of evaluating the grant applications prior to signing the contract or in the verification/authorization/control/payment process reimbursement/payment the existence of one of the situations of conflict of interest unsigned under the conditions of art. 12 par. (2), one shall take the necessary measures to eliminate the circumstances giving rise to the conflict of interest by providing for disciplinary research to determine the existence, as appropriate, of the evaluation or verification/authorization/ control/payment of refund/payment claims.

Art. 14

(1) In the course of a procurement procedure, the legal representatives

of the beneficiaries and the persons directly involved in the acquisition have the obligation to take all necessary measures to avoid situations of a conflict of interest, namely:
a) the persons charged with evaluating tenders/awarding economic contracts may not hold shares, interests, participations in the subscribed capital of one of the tenderers, or be part of the board of directors/ management or supervising one of the tenderers;
b) the beneficiary and its bidders may not be linked enterprises within the meaning of Article 4^4 of Law 346/2004 on the stimulation of the establishment and development of small and medium-sized enterprises with subsequent alterations and completions;
(2) The amounts related to the economic contracts concluded with the non-observance of the provisions of para. (1) are wholly or partly ineligible, depending on the severity.”
The persons responsible for the evaluation of the tenders/award of the economic contracts, the legal representatives of the beneficiaries and the legal representatives of the tenderers are required to submit a declaration on their own responsibility, showing that they are not in any of the situations stipulated in para. 1.

Extract from the presentation of Mr. Mihai IOAN – Head of Office – FESI Coordination Authority, Ministry of European Funds at the International Seminar ***„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests”*** *organized by the "Alexandru Ioan Cuza" Police Academy in Bucharest from 11 to 12 October 2018*

From a legislative point of view, it is necessary to consider the correlation of the legal provisions regarding the conflict of interests in order to be able to determine unequivocally the situations in which it has an administrative or criminal character, since Law no. 161/2003 regulates the conflict of interests only in the case of the first degree relatives, unlike the criminal law that criminalizes the use of the function for favoring some persons and in the case of second degree relatives or in-laws.

Thus, Law no. 193/2017 for the amendment of the Law no. 286/2009 on the Criminal Code establishes at art. 301 para. (1) that **using the office to favor certain persons** represents the *the act of a public servant who, in the exercise of job attributions, has performed an act by which a patrimonial benefit has been obtained for herself, for her husband, for a relative or in-law up to the second degree.* This act is punishable by imprisonment from one to five years and a ban on the exercise of the right to occupy a public office for a period of 3 years.

The provisions of para. (1) shall not apply in cases where the act or decision relates to the following situations:

- issuance, approval or adoption of normative acts;
- the exercise of a right recognized by law or in fulfillment of an obligation imposed by law, subject to the conditions and limits set forth therein.

The legislative interpretation that intervened and the declaration of some wording in the law as unconstitutional led to the subsequent modification of the incidental regulatory framework, following the solutions adopted by the Constitutional Court of Romania.

Decision No. 603/2015 of the Constitutional Court
(Official Monitor No. 845 of 13 November 2015)

It is noted that the phrase "commercial relations" in the provisions of art. 301 para. 1 of the Criminal Code is unconstitutional.
The notion of "commercial relation" is no longer explicitly defined by the legislation in force, depriving of clarity and predictibility the phrase included in the criminal norm that is likely to prevent the precise determination of the constitutive content of the offense of conflict of interest.
It is noted that this lack of clarity, accuracy and predictability violates Article 1 para. 5 of the Romanian Constitution referring to the quality of law and art. 23 of the Constitution which provides for the principle of individual freedom, because the addressee of the law can not order its conduct in relation to a rule of incrimination that does not respect the

quality requirements of the law.

Extract from presentation of Mrs Anda MURGOI – prosecutor at the Criminal and Criminal Investigation Section of the Prosecutor's Office within the High Court of Cassation and Justice, Public Ministry at the International Seminar ***„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests”*** *organized by the "Alexandru Ioan Cuza" Police Academy in Bucharest from 11 to 12 October 2018*

The legislative amendments to the Criminal Code regarding the offense of conflict of interest led to the adoption of a new, more simplified form, under the name provided in art. 301 – *Using the office for favouring certain persons.* Although the imprisonment remains the same (1-5 years), in the initial form the prohibition on the exercise of the right to hold a public office was general, with no references to a certain period of time, but the present variant is delimited in time, disposed over a period of 3 years. The offense has a limited form that punishes only the fulfillment of an act through which a patrimonial benefit has been obtained, not the participation in making a decision by which a patrimonial benefit has been obtained. The scope of the offense has been restricted to the sphere of persons indirectly benefiting a patrimonial benefit, so that the offense is not punished if the patrimonial benefit has been obtained for another person with whom the public servant has been in commercial or employment relations for the past 5 years; or from which he has benefited or benefits from any kind. The crime penalises the public servant when he or she obtains a patrimonial benefit for himself, for his spouse, for a relative or in-law up to the second degree inclusively. "Patrimonial use" means any kind of patrimonial advantage (goods, loans, prizes, free services, promotion in services). The rule of criminality does not require the benefit to be unfair (the employed person does not exist, the employee does not provide remunerated activities), but only that he has actually been obtained through a favorable procedure. As an element of novelty, the provisions do not apply in cases where the act or decision concerns the exercise of a

right recognized by law or in fulfillment of an obligation imposed by law, subject to the conditions and limits laid down by law.

In a constantly changing society, with a public sector that adapts faster or slowlier, conflict of interest will always be a cause for concern. Although a conflict of interest does not ipso facto mean corruption, there is a recognition that the appearance of a conflict between personal interests and the duty of a public servant, if not treated properly, can lead to corruption. The objective of an appropriate conflict-of-interest policy is not simply to ban the public servant's private interests, even if such a method is possible but to integrate the form to support the correctness of decisions taken at the political and administrative level within the administration public, recognizing that an unresolved conflict of interest can considerably diminish the "trust factor" of the citizen in the state institutions.

National Authorities competent in the area of conflict of interest

The **National Integrity Agency (ANI)**[14] is the autonomous administrative authority with legal personality that operates on the national level as a single structure. The purpose of the Agency is to ensure integrity in the exercise of public dignities and functions and to prevent institutional corruption through the exercise of responsibilities in the valuation of wealth statements, data and wealth information as well as patrimonial changes, incompatibilities and conflicts of potential interests there may be certain persons prescribed by law, during the performance of public offices and dignities.

The evaluation activity carried out by the Integrity Inspectors within the Agency shall be carried out on the state of the property existing during the exercise of public dignities and functions, conflicts of interest and incompatibilities of persons subject to Law no. 176/2010, as amended, completing the provisions of the normative acts in force.

[14] https://www.integritate.eu/A.N.I/Organizare.aspx

The **Anti-Fraud Department (DLAF)**[15] is organized and functions as a legal personality structure within the Government's working apparatus and under the Prime Minister's coordination, based on *Law no. 61/2011 on the organization and functioning of The Anti-Fraud Department – DLAF*.

The department assures, supports and coordinates, as the case may be, the fulfillment of Romania's obligations regarding the protection of the financial interests of the European Union, according to the provisions of art. 325 of the Treaty on the Functioning of the European Union. The Department is the contact point of the European Anti-Fraud Office - OLAF within the European Commission. In fulfilling its attributions, according to the law, the Department acts on a basis of functional and decisional autonomy, independent of other public authorities and institutions.

The **National Anticorruption Directorate (DNA)**[16] is a prosecuting structure specialized in the fight against high-rank and medium-rank corruption. It is created as a necessary tool in the discovery, investigation and bringing to court of cases of medium and large corruption. Through its work, it contributes to reducing corruption in support of a democratic society close to European values. DNA, as a structure with clearly defined competences in the area of combating large and medium corruption, was created following a model adopted by several European states such as Spain, Norway, Belgium, Croatia.

The need to set up a specialised prosecuting structure only to combat high-level and medium-level corruption was given by the fact that regardless of the level at which corruption occurs, it is fueled when corrupt individuals holding certain levers have the feeling that they are above the law, that they are intangible and that society does not have sufficient means to prove their criminal activities and to hold them accountable. In order to effectively combat this kind of crime, which is part of the white

[15] http://www.antifrauda.gov.ro/new/regulament-de-organizare-si-functionare-2

[16] http://www.pna.ro/about_us.xhtml

collar crime, a specialized, independent and appropriately resourced institution is needed. The concrete results of the specialized anti-corruption corporation at high level are designed to discourage corruption at all levels.

DNA is an independent entity in relation with the courts, prosecutor's offices, as well as with other public authorities. In relation to community funds, it investigates and sues the causes of European fund fraud based on complaints received from the Department for Fighting Fraud or at Office of Inquiry.

The **Certification and Payment Authority (ACP)**[17] within the Ministry of Public Finance is responsible for ensuring efficient financial management of the non-reimbursable foreign funds received from the European Union as well as from other donor international bodies. As such, the ACP has attributions with regard to the pre-accession funds, the structural and cohesion funds, the European Fisheries Fund and the funds received under the European Economic Area Financial Mechanism.

The **Audit Authority**[18] exerts actions in the field of external audit, which belongs to Romania as a member state of the European Union. It is organized and functioning for the non-reimbursable pre-accession funds granted to Romania by the European Union through the PHARE, ISPA and SAPARD programs, the Structural and Cohesion Funds, the European Agricultural Guarantee Fund, the European Fund for Agriculture and Rural Development, Fisheries, as well as for the funds to be granted in the post-accession period.

The Audit Authority is an operationally independent body in relation with the Court of Accounts and the other authorities responsible for the management and implementation of non-reimbursable Community funds. In the territory there are regional structures organized in the counties where the agencies, the Managing

[17] http://www.mfinante.gov.ro/acp.html

[18] http://www.curteadeconturi.ro/AutoritateAudit.aspx?categ=3

Authorities and/or the intermediary bodies managing the Community funds operate. The Audit Authority is the only national authority competent to carry out external public audit, in accordance with Community and national legislation, on the above funds; may also perform external public audits on other categories of funds, and the regulations governing those funds will also provide for the provision of the necessary resources.

In accordance with the provisions of Community and national legislation, with internationally accepted audit standards, the Audit Authority performs system audit and audit of operations.

The **Management Authorities**[19] are responsible for the efficient, effective and transparent use of the funds from which the operational program is funded. They organize in the smallest detail the negotiations with the European Commission on the operational program it manages and ensures the correlation of the operations under the program with the other programs financed from structural instruments under the coordination of the Authority for Coordination of Structural Instruments. They set up the working procedures and draw up the applicant's guides for the calls for proposals, ensuring the evaluation and selection criteria for the projects for the managed operational program.

They attend annual meetings with the European Commission to review the progress of implementation of the operational program managed, informs the Monitoring Committee of the observations of the European Commission, and collaborates with the Authority for the Coordination of Structural Instruments and the Certification and Payment Authority to take the necessary steps to resolve the comments.

In carrying out their own objectives, they have control structures organized for this purpose within them, or may delegate activities for the detection of irregularities and the establishment of budgetary receivables to intermediary bodies operating within public institutions.

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19 http://www.fonduri-ue.ro/index.php?option=com_content&view=article&id=45:organizare&catid=9: minister&Itemid=111

CHAPTER III. SIGNIFICANT SITUATIONS THAT DETERMINE INCOMPATIBILITIES AND CONFLICTS OF INTERESTS IN PROJECT MANAGEMENT

Case studies: Romania, Lithuania, Greece, Portugal

Although the legislation of the Member States differs according to the economic, social, cultural and geographical space of each country, the habits and traditions existing among the population, the rules adopted at national level in the prevention and fight against corruption are, in essence, starting from the basic rules established at European level. At first glance, in the sphere of corruption, the conflict of interest could also occur, but after a thorough analysis it can be noticed that the two concepts are not identical. Corruption usually involves agreement between at least two partners and bribery by paying and receiving an advantage that is often in cash. Instead, conflicts of interest arise when a person has the opportunity to prioritize his or her private interests at the expense of his professional duties. This type of situation, identified at the level of the three Member States (Lithuania, Greece and Portugal) is to be analyzed in the following.

In the sense of the ***Law on the Adaptation of Public and Private Interests to the Public Service*** **of Lithuania**, *the conflict of interest is defined as the situation in which a person in the civil service fulfills his official obligations and carries out a certain action (part of the official duties, decision, resolution, etc.) which is not only related to the direct duties of the person, its private interest*. Lithuanian law refers to the link between conflict of interest and corruption, such as previous nepotism, clientelism – political relations based on power and decision-making procedures, as well as service obligations built under the patronage of friendships. The purpose of the law is to adjust the private interests of the people employed in the public service and to protect the public interests of the community, thus creating guarantees that the holders of public offices must make decisions only in terms of public

interests, ensuring the impartiality of the decisions taken and preventing the occurrence and the spread of corruption in the public service in Lithuania. The categories of people serving the public service are multiple, ranging from state politicians, state officials and public servants to people working in state and municipal enterprises, in institutions that are entrusted with administrative powers, people who are employed in units and associations which are funded from the national budget and the Lithuanian local funds and which have the powers conferred by the state.

The definition of conflict of interest comprises the situation in which a person has to perform a certain action in the exercise of his/her job attributions, but that action refers not only to his/her duties but also to his/her private interest. The term "decision" used in the law refers to any act of a person filling a public office. As an example, a person who is a public servant, fulfilling duties or performing a mission participates in the activity a working group, committee, issues orders, represents, mediates, approves documents, etc. All these actions in the sense of the law are equivalent to the decition. If a public servant enters into a situation of conflict of interest and does not leave it, i.e. accepts or participates when one makes a decision about his/her private interest, the public servant violates the obligation to avoid conflicts of interest, which for public servants becomes formal and mandatory as an imperative of the law. Thus, in the given situation it is irrelevant whether a person, a situation of conflict of interest, treated his/her spouse's business properly – whether or not all of the procedures provided for by the law, were observed whether or not any benefit was received from it.

A private interest is the economic or non-economic interest of a person in a public office (or the interest of a person close to the latter) that could affect the decision-making process in the performance of his/her official duties corresponding to the public office he/she occupies. The situations in which the private interest of a person employed in the public office is above the public interest may be limited by the adoption of measures of public transparency.

Tools to prevent conflict of interest

Declaration of private interests (gifts)

A public servant, as well as a person who can apply for a public office, must declare his/her private interests by submitting a declaration of interests.

The statement contains the following information about the person concerned and his/her spouse, cohabitee or partner: 1) name, surname, personal number, social security number, place of work (job) and position; 2) the legal person the participant of which is either the spouse, the co-owner or the partner; 3) individual activities as defined in the Law on Personal Income Tax; 4) membership and obligations towards enterprises, bodies, associations or foundations, except for membership of political parties and organizations; 5) gifts received in the last 12 calendar months (except for gifts received from close persons) if the value of these gifts exceeds 150 euro; 6) information on concluded transactions or other transactions valid for the last 12 calendar months, if the value of such transaction exceeds EUR 3000; 7) close people or other people they know or data that might be the cause of a conflict of interest.

The statement shall be submitted within one month of the election, appointment or nomination. If the information on the private interests of a person making a statement, the spouse or the partner provided in the statement changed, the person submitting the statement will adjust the statement within 30 calendar days from the date change of data. If new circumstances arise that might cause a conflict of interest, the person who filed a statement must adjust it immediately but no later than 7 calendar days from the occurrence of these circumstances.

Extract from the presentation of Ms. ***Sandra KAZIUKEVIČIŪTĖ****, Anti-Corruption Assessment Specialist within the Special Investigation Service of Lithuania at the International Seminar* ***„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests"*** *organized by the "Alexandru Ioan Cuza" Police Academy in Bucharest from 11 to 12 October 2018*

The rules for the adaptation of public and private interests also apply to situations identified in the management of projects financed by European funds. Data and information are uploaded electronically to a computer program, after being made public. The obligation to update the data remains with the person in charge of the public service whenever there are situations in which such changes occur.

Tools to prevent conflict of interest

Public Disclosure of Privat Interests Statements
The self-exclusion obligation occurs when a person in a public office is forbidden to participate in the preparation, examination or decision-making or otherwise influence the decisions that could lead to a conflict of interest.
"Cooling" period - limitations on the conclusion of employment contracts

After the official separation from the public office, a person may not, for a period of one year, represent natural or legal persons in relation with the institution in which he/she held the position, before the activity cessation, he/she also may not represent natural or legal persons in relation to other central or local institutions in matters that have been attributed to the official position. He/she is not entitled to enter into transactions with the institution where the person was last employed.

The control procedures may be exercised by:
The head of the institution or representatives authorized by the head of the institution in which the person concerned is employed
Head of the Official Ethics Commission
State Tax Inspectorate
Law enforcement institutions
Institutions performing audit and control functions
The society

Other measures and periodic evaluation of the system:
Policy on conflict of interest; Regular message; Guidance; Assistance, consulting; Meeting procedures; Periodic evaluation of the system.

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The Constitution of Greece sets out specific rules on incompatibilities and conflict of interest in public and private sector positions, including executive offices in local government. The conflict of interest was recognized by the Greek government as a matter to be addressed in the context of public administration reform. As part of the commitments made under the Memorandum of Understanding on Economic and Financial Policy, the Ministry of Finance adopted a code of conduct on conflict of interest and the declaration of interests for its own staff, including the tax administration. The Code of Conduct provides express provisions on conflict of interest and wealth statements for public servants in the tax public administration.

Based on a national anti-corruption action plan, effective mechanisms have been developed to prevent, detect and eliminate conflicts of interest and incompatibilities for all categories of public servants by implementing measures for public administration bodies at all levels . Moreover, the action plan provides for the establishment of a system for reporting conflicts of interest within the public administration.

The perpetuation of conflicts of interest in time and space may lead to loss of economic operators' confidence in the public procurement system and discourage honest operators in participating in public tendering procedures. ***The Greek law defines the conflict of interest*** as being *the situation in which the impartial and objective execution of the contract by the contractor is compromised on grounds related to family life, emotional life, political or national affinity, economic interest or any other joint interest of the contracting authority or a third party related with the object of the contract*. A wide range of situations where there may be a potential conflict of interest may be covered by this definition.

Examples

The spouse of an official of a contracting authority responsible for monitoring an invitation to tender works for of one of the candidates.

A person is a shareholder in a company. This company participates in a tendering procedure in which that person has been appointed a member of the evaluation committee.

The head of a contracting authority spent a holiday week with the general manager of a company bidding in a tender procedure announced by that contracting authority.

An employee of a contracting authority and the general manager of one of the tenderers have competences in the same political party.

Extract from the presentation of Mr. ***Konstantinos PAVLIKIANIS****, member of the General Secretariat against Corruption and representative of AFCOS Greece transmitted as a supporting element in the project team documentation activity*

The Ministry of Economy and Development of Greece represents the state authority with competence in the coordination of the European funds management activity at national level, ensuring the implementation of a management and control system based on the specific architecture of the operational programs corresponding to the requirements of Regulation (EU) 1303/2013, for the period programming period 2014 – 2020. The national management and control system represents in a unitary way the interdependent administrative authorities, which have a specific organizational structure and develop individual activities with the objective objective of sound financial management of resources (economy, efficiency, effectiveness) being made up of all the Authorities/

Bodies that assume management, certification, control and coordination skills, in accordance with Regulation (EU) 1303/2013, their organizational structure and individual competencies. The system proposes operational correlation between authorities/bodies and compliance with the principle of separation of functions, based on normative acts and working procedures for the implementation of operational programs.

The 2014 – 2020 management and control system is common to all operational programs funded by the ERDF, the ESF and the Cohesion Fund under the Investment for Development and Jobs objective. The Special Institutional Support Service (EYTHY) of the General Secretariat for Public Investment functions as a service responsible for designing and monitoring the implementation of operational programs, providing assistance to officers working in Special Services and Managing Authorities. Operationally provides a communication tool of the *Helpdesk* type where questions can be addressed, clarifications and explanations are provided for the proper functioning of the management and control system. Specifically, users may ask questions about the implementation of the management and control system of operational programs and clarify some legal issues that arise during the management and implementation of programs and projects with regard to the maintenance of applicable national and Community rules.

Combating fraud in structural actions

Prevention and mitigation of fraud in general, as well as in the specific context of structural actions, is considered a crucial issue for the Greek authorities. The issue has been included in the provisions of the EU General Regulation 1303/2013 for the 2014 – 2020 programming period. Article 72 "General Principles of Management and Control Systems" includes a provision for the prevention, detection and correction of irregularities, including fraud. In addition, under Article 125 "Functions of the Managing Authority", the Managing Authorities should establish effective and proportionate anti-fraud measures, taking into account the identified risks.

In this context, the General Secretariat for Public Investment has developed a "National Strategy to Combat Fraud for Structural Actions", which was presented to the European Anti-Fraud Office (OLAF).
This national strategy is based on four pillars: Prevention – Detection – Response – Continuous Improvement and has the following objectives:
- promoting and establishing an ethical and antifraud culture;
-promoting effective cooperation between competent national authorities;
- promoting effective cooperation with external stakeholders - in order to increase transparency;
- strengthening the management and control system for structural actions in the 2014 – 2020 programming period.

The strategy includes a multi-annual action plan translating objectives into operational activities. Under this Action Plan, the General Secretariat for Public Investment has developed a Declaration of Anti-Fraud Policy in Structural Actions that highlights zero tolerance of fraud and sets out the basis for the actions to be implemented. In addition, an electronic brochure "Prevention of fraud in structural actions" has been developed as a communication tool that will help raise awareness among special services staff and beneficiaries by broadly spreading the message against fraud.

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Throughout this process, it is necessary to use a fraud risk self-evaluation tool that should be used periodically as it can identify process risks, working methodology, and countermeasures proposed. The system must reflect antifraud objectives and culture, and it is necessary to describe how they are translated into the roles and responsibilities of staff at different levels of organization. In order to solve the cases identified in practice, roles appropriate to the specialists must be

allocated and responsibilities must be clearly defined, distinct and documented in such a way that everyone involved knows who is responsible for each aspect of management, its role, scope and level of reporting/supervision/cooperation (who decides, what decides and when).

Determining the processes to be covered by the working procedures and determining how these processes should be controlled is a key factor in developing and implementing an effective fraud prevention and detection system. The best way to raise awareness of staff can be through training. The system cannot function properly unless proper training is provided to raise awareness of the human resource. The attitude of the staff towards the whole process is usually the determining factor in the judgment of the success or failure of implementing a project. Sensitization is related to understanding, encouraging and eventually changing the mentality. Education, information, good internal communication and ensuring active participation of workers, ensuring adequate resources and a clear division of responsibilities (elements set up by the system itself) are the main tools to be used to achieve results. Training should be conducted on a regular basis and address a range of issues such as conflict of interest definition, anti-fraud policy and ethical behavior, roles and responsibilities to be met, how to prevent suspicious situations and reporting obligations, including the use of IT tools .

Once the system is in place, continuous monitoring of situations must be ensured which, in addition to confirming correct implementation, may lead to early detection of situations.

Prevention techniques focus on reducing opportunities for fraud by implementing a robust internal control system that, combined with a structured risk assessment, will focus on effectively reducing the risk of fraud and corruption.

The management of the checks should be thorough and the relevant on-the-spot controls, based on the risk analysis and ensured by adequate coverage. The likelihood of detecting potential frauds will increase if checks are more scrupulous.

It is necessary to ensure regular monitoring of key process elements, which can have a significant impact on fraud, and therefore it is necessary to collect, record and process data. For example, it is important to monitor certain risk indicators marked as "red flags," which may show the possibility of a suspicious activity in time.

The ARACHNE instrument proposed by the Commission or another alternative instrument can be used in this case because it is based on a set of risk and alert indicators so that a Service can identify the projects or beneficiaries at greatest risk.

Follow-up of anti-fraud measures: monitoring the implementation of the measures adopted must also be a continuous process.

Monitoring changes in activities as changes to system processes can lead to taking into account new parameters and to reassessing risks and measures.

A key element in preventing and detecting fraud is to establish appropriate mechanisms to facilitate reporting of fraud suspicion and possible system failures in itself, ensuring cooperation with competent authorities (Audit Authority, Investigation Authorities and Anti-Corruption Authorities).

In this context, it is important to ensure that things are understood, who can make relevant reports and who, what are the procedures to be followed, and what evidence should be pursued, all done in complete safety and confidentiality.

The reporting mechanism feeds activation appropriately and in a timely manner.

When identifying a weakness in the system, the Management Authority or the National Coordination Authority should take the necessary corrective action.

In the event of fraud detection and reporting, the case should be transmitted to relevant national investigation and/or corruption authorities and OLAF should be informed accordingly.

In the situation of a case report drawn up after a complaint, a specific complaint procedure is foreseen before it is submitted for further investigation.

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În Portugal, by Law no. 54 of 4 September 2008 a new independent administrative entity was set up bearing the name of Council for the Prevention of Corruption, organized within the Court of Accounts, with competence at national level in the field of preventing and combating corruption. According to its field of activity, the Council for the Prevention of Corruption has approved Recommendation no. 5 of November 7, 2012 under the name *„Managing conflicts of interest in the public sector"*.

The Recommendation comes with a set of regulations addressing conflict of interest and measures to prevent the risks associated with these situations, leaving it up to managers and governing bodies within Portuguese public entities to establish or apply prevention measures in conflict of interest situations in their organizations.

The definition of conflict of interest is given by the occurrence of a conflict between the public duties and the private interests of a public servant. These situations need to be identified and managed, and when they obviously compromise the job attributions they constitute abuse, corruption or even criminal offense. From the category of private interests that may be the basis of potential conflicts of interest, economic interests, direct personal benefits, private competitor activities, political party membership, links with interest groups, family interests, negotiation

procedures, and links with persons involved in trials. As a result of the conflict situation created, it may produce: family favoring, political, economic, or other interests, disclosure of confidential information, use of privileged information, use of service facilities for personal or family benefit, position abuse and subsequent professional facilities, inadequate tenders, failure to comply with honesty with regard to the costs borne by the public body etc.

In a public intervention in 2018, the President of the Court of Accounts and the Council for the Prevention of Corruption in Portugal stated that one of the main factors related to fraud and corruption is the conflict of interest[20] which generates major negative effects between public office and private activity.

The conflict of interests is recognised as one of the main factors associated with fraud and corruption practices. Any practice of this kind generates an overlap between the specific interests of the public official (or third parties such as family members or other persons with whom he/she is related by friendship) over the general interest, which is not accepted. For this reason, conflicts of interest are considered to misrepresent expectations of what should be good and appropriate public management. The November 2012 Recommendation on Conflict of Interests in the Public Sector and the Study conducted at the end of 2017 on how these measures were accepted by public entities highlighted the need to deepen action in the field. One of the central ideas that the Council has tried to clarify *(as well as other international organizations such as the OECD and the UN)* is that there is sufficient doubt on the part of the public servant to avoid conflicts of interest. These can be defined as the presence of divergent or convergent interests in the context of the same problem or procedure.

However, since the exercise of public offices – whatever they may be – must comply with the fundamental principle of protection of the general good, any situation in which the particular interest of the official

[20] https://www.dn.pt/portugal/interior/o-conflito-de-interesses-e-um-dos-principais-fatores-associados-a-fraude-e-corupcao-9454799.html

– the person in charge of public offices or third parties – may be mistaken with that general interest that naturally can generate a conflict of interest.

The adoption of rules and principles of conduct, transparency, publicity and rigor of public interest registers that help to clarify the lines of separation between the general interest and the private interests of the public servant will always be positive. For this reason, the mentioned measures and possibly others that can be considered contribute to improving the quality of public management and public service by reducing possible situations of conflict of interest. Irrespective of existing measures, it will be important for each concrete situation to be assessed on the basis of determining factors, in the sense of perceiving whether or not there is a conflict of interest. Public distrust in the public system creates a general social perception of these issues. There is a natural tendency to start from a public suspicion in a concrete case - and often the suspicion is not confirmed - assuming that all situations involving people with the same social status are similar.

On the level of public offices, the management of Portuguese public institutions has adopted measures to control and prevent corruption risks and related public sector offenses, in line with the 2017 recommendation addressed to law enforcement bodies on the permeability of the law to the risks of fraud, corruption and related crimes. The law provides for limitations on the exercise of certain public offices and conditions for switching to private activities. In public management, it is considered necessary to set up a "*transparency portal*" that would allow public entities to disclose actions meant to prevent and manage potential situations encountered in the field of conflicts of interest[21]. The problem arises when those exercising public offices allow their personal or family interests to be mixed with the general interest they have to assure due to their official duties. The Portuguese regulatory framework is clear about

[21] https://www.publico.pt/2017/09/14/politica/opiniao/conflitos-de-interesse-na-gestao-publica-1785216

the imperative need to remove any doubt as to the existence of conflicts of interest.

The Constitution of Portugal states that *„public administration pursues the public interest while respecting the rights and interests of citizens (...) while respecting the principles of equality, proportionality, justice, impartiality and good faith, and that public servants, other state agents and other public entities are exclusively in the service public interest”*. In addition to the principles set out in the constitutional text, Portugal has various legal instruments and other management tools that regulate conflicts of interest, in particular for political functionaries and for all public sector employees. Among the different rules laid down in these instruments, the definition of so-called "periods of disgust", especially after the end of the exercise of political functions, would highlight the need to present declarations of interests at the beginning and end of the public office and the requirement for applications license for cumulating functions.

It also provides for the obligation of each employee to invoke a reason whenever he/she has to intervene in administrative procedures related to his/her own interests or to third parties with whom he/she has family, friendship, collaboration. The 2012 Recommendation on Conflict of Interests Management has helped to strengthen the effective implementation of these measures. This set of legal instruments provides no doubt as to the desideratum to be met by the person in charge of a public office, thus protecting fundamental values and principles such as integrity, impartiality, fairness, good faith, loyalty, competence, quality of public service and transparency.

However, there are doubts, and the Corruption Prevention Board has distributed a public-sector questionnaire on the basis of which, in 2019, it will finalize an inquiry into how to manage and prevent conflicts of interest in taking action which are required in this area. Similarly, the Court of Accounts of Portugal, in the framework of the European Organization of Similar Entities (EUROSAI), conducted studies on the ethics of its own audit staff and the exchange of knowledge and good

practices on the ethics and integrity of staff in public organizations. Conclusions have led to the idea that the issue of conflict of interest in public management has, in essence, an ethical character. It relates to the integrity and ability of each to adopt behaviors that unequivocally reflect the values of culture and collective experience. The same *„transparency portal"* can ensure the publicity of ethical codes of conduct that a public servant applies to the prevention and management of potential situations that may arise. The need to establish ethical conduct for public servants comes amid the findings made by the Council regarding the lack of codes/manuals of ethics/ conduct in the public sector. The survey of 468 public entities found that a quarter (25.4%) of the bodies do not have *„specific measures"* to manage conflicts of interest and the vast majority (88%) admitted that it did not take measures to prevent these situations *„in the exercise of public offices , for the following period"*[22].

In the context presented, the Council for Prevention of Corruption is concerned with the development of programs and projects at national level for the implementation of professional ethics and professional deontology measures in the Portuguese public system.

Projects on the prevention of corruption risks

- *Management and prevention of corruption risks – Education on ethics and integrity (civic education);*
- *Studies and analyses in the field (decisions of criminal investigations, court decisions, audit reports, mass-media and other relevant information);*
- *Mapping of risk areas in public management/public services (Risk Areas 2018);*
- *Recommendations (for public management/public administration);*

[22] https://www.jornaldenegocios.pt/economia/funcao-publica/detalhe/quase-metade-dos-organismos-nao-tem-codigo-de-etica

- *Instruments for managing and preventing the risks of corruption and related crimes in public services – 1200 public entities have developed and adopted these instruments;*
- *Evaluation of corruption risk management tools (visiting institutions, cooperation with audit bodies, Online surveys and surveys, etc.);*
- *Managing conflicts of interest in public life;*
- *Training in the field of ethics and integrity in public life - cooperation with the Portuguese National Institute of Administration (training for high-rank and medium-rank public managers);*
- *Training on policies, strategies and instruments for managing and preventing the risks of corruption in public administration.*

Tools for quality improvement and risk prevention

- *Ethical codes for public offices (institutional values);*
- *Clear laws, rules and norms (what needs to be done);*
- *Code of conduct (action indicators according to values);*
- *Best practices (How to proceed – how to enforce laws, rules and norms in daily concrete cases);*
- *Risk management policy - mapping of risk areas (incorrect / bad practices and corruption) – adoption of control and prevention measures (risk management and prevention tools).*

Extract from the presentation of Mr. ***António João MAIA****, representative of the Portuguese Corruption Prevention Council at the International Seminar* ***„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests"*** *organized by the "Alexandru Ioan Cuza" Police Academy in Bucharest from 11 to 12 October 2018*

The route to investigate a situation of conflict of interest identified on the level of the EU Member States: Romania, Lithuania, Greece and Portugal

Romania	Lithuania	Greece	Portugal
The following entities may identify irregularities and formulate suspicions about the existence of a possible conflict of interest situation to the National Integrity Agency (ANI): DLAF, Public Procurement National Agency, Grant Beneficiaries, Intermediary Bodies, Management Authorities, Certification and Payment Authority, Audit Authority, Court of Accounts, National Council for Settlement of Complaints,	*The Official Ethics Commission (COEC) carries out the oversight of public servants and carries out corruption prevention activities, with competence for administrative verification activities to detect potential conflicts of interest.* *COEC, after identifying such situations, may further forward referrals to the Criminal Investigation Service within the Ministry of the Interior as*	*Investigation of potential conflicts of interest identified in European funded projects lies with the General Secretariat for Combating Corruption within the Ministry of Justice, Transparency and Human Rights, which transmits the result obtained in the Management Authorities and Control checks for the establishment of irregularities. Subsequently*	*The Council for the Prevention of Corruption shall verify the conflict of interest situations in the projects financed by the European Union at the request of the General Inspectorate of Finance or at the request of any other authority or person. OLAF's Contact Point in Portugal is the General Finance Inspectorate which, as in the other Member States, is responsible for legislative, administrative*

Court of Accounts of the European Commission, European Commission, OLAF, any natural person. *ANI analyzes / investigates the alleged conflict of interest situation and may further notify the Criminal Investigation Bodies, in this case the National Prosecutor's Offices or the DNA.* *The National Prosecutor's Office / DNA conducts its own investigations into suspicions of fraud and sends files for settlement to the Courts of Justice. Suspicion of fraud becomes fraud only after justice has given a final ruling in this respect.*	*AFCOS Lithuania.* *In its own affairs, AFCOS Lithuania conducts specific investigative activities by requesting assistance to national authorities and other structures of the Ministry of the Interior.* *AFCOS investigations are conducted on the basis of a selection process, with responsibility in this respect, having a specialized unit within the institution, which expresses an opinion on which the Director – General decides whether to initiate control.*	*the irregularities report is sent to the Ministry of Finance for implementation.* *If the Report contains suspicions of fraud, AFCOS Greece sends the case directly to specialized Prosecutors in the fight against corruption, to competent resolution.* *If the situation so requires, AFCOS Greece informs the European Commission of ongoing investigations through OLAF in order to avoid duplication of investigations.*	*and operational coordination of activities to protect the financial interests of the European Union, for liaison between national authorities and OLAF and the Commission's notification of frauds and irregularities. In case of suspicion of fraud in the matter of conflict of interest, this becomes fraud after the case has been resolved by the court.*

Case studies

1. *Statement of the Ministry of Regional Development and Tourism – Directorate for Control and Verification of the Use of Community Funds (DCVFC) regarding the possible existence of a conflict of interests. The beneficiary of the project is the County Council (CJ). The Financing Contract is concluded in 2009, aiming at the rehabilitation and modernization of a network of 50 km of county roads. Funding Source: European Regional Development Fund (ERDF). Public procurement procedure - open national tender. Selected entrepreneur: "C" Commercial Company S.A. The value of the public procurement contract is 45 million lei (the equivalent of approximately 4.5 million euros). Date: 14.09.2009. Constructor: S.C. "C" S.A. Materials to be made available:*

- ***quarry stone*** *(as set out in the tender specifications and the tender);*
- ***ballast*** *(nomination, after bidding, of a ballast supplier).*

Order of commencement of the work: 01.10.2009. On 19.10.2009 S.C. "C" S.A. requests the approval of the CJ beneficiary for the ***replacement of the supplier*** *of ballast nominated initially with another, namely* ***S.C. “F” S.R.L.****, with an economic motivation being invoked. Approval from the site engineer is obtained. On October 22, 2009 – S.C. "C" S.A. requests the approval of the CJ beneficiary to modify (replace) the material –* ***exchange of quarry stone with ballast stone.*** *In support of this request, it presents test reports - the source of the material –* ***S.C. “F” S.R.L.*** *Obtain approval from the Designer and Design Engineer. Documents drawn up at the CJ level (where the new material provider is nominated,* ***S.C. “F” S.R.L.****) are:* ***REPORT*** *signed by the project coordinator,* ***approved and signed by the President of the CJ (County Council) and an ADENDUM to the works contract, signed by the president of the CJ.***

As a result of DLAF's verifications, it was found that S.C. “F” S.R.L. *was made of* ***A - associate 50%*** *and* ***B – associate 50%****, where* ***A – the son-in-law of the president of the CJ****, being* ***married to his daughter****, and S.C. “F” S.R.L. has provided the aggregate mill project worth approx.* ***2.000.000 lei*** *(approx. 450.000 euro). Given that:*

• The President of the CJ signed documents based on which S.C. "F" S.R.L. was accepted as a material provider in the project,

• In-law relationship I degree between the President of the CJ and co-member A of S.C. "F" S.R.L., acquired through marriage with the daughter of the President of the CJ,

• indications regarding the meeting of the constitutive elements of the offense provided in art. 253[1] paragraph 1 of the Penal Code (the form in force at that time), the Control Notification sent to the Prosecutor's Office attached to the Court of Appeal, the Ministry of Regional Development and Tourism and OLAF for the purpose of ordering the necessary measures regarding the existence of the conflict of interests.

Extract from the presentation of Mr. ***Gabriel TURCU****, Counselor at The Anti-Fraud Department at the International Seminar* ***„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests"*** *organized by the "Alexandru Ioan Cuza" Police Academy in Bucharest from 11 to 12 October 2018*

2. *One presents the notification of the National Integrity Agency about indications of the possible existence of a conflict of interest with regard to Mr OG as a public servant with special status, employed by the Ministry of Internal Affairs (MAI), in considering the dual quality of Project Manager and at the same time expert within the same project, during his job relations with MAI during the course of the project, until the termination of the job relations with the Ministry of Internal Affairs, according to the conventions, respectively the contracts concluded by it, the person had both coordination, verification and control duties of the members of the project implementation team, as well as specific quality attributions expert.*

By the provision of the legal representative of the public institution, the person concerned has been designated both as project manager and expert, in this sense the civil contract concluded establishes the task of the public servant with special status, both the tasks of coordination, verification and control of the team members of the implementation of the project, as well as tasks specific to the quality of

the expert, which are also found in the job description, annex to the said document.

In the present case, aspects related to the ineligibility of inadequate wages/salaries of the expert involved in the implementation of the project having job relations with the public institution in which he is employed as a public servant of special status were raised. This was, for verification, the attention of the National Integrity Agency, The Anti-Fraud Department and the Intermediate Body, the latter as the authority managing the European funds.

The amount of financial correction applied is about 200.000 lei (about 45.000 euros).

***3.** There is a suspicion of irregularities verified by the Intermediate Body, in the capacity of authority managing the European funds, about the existence of a conflict of interest and incorrect remuneration of an expert involved in the implementation of the project.*

On the basis of the suspicion of irregularities, there is the Control Note on the investigations carried out by DLAF which, following the documentation carried out, concluded that there is evidence of a possible conflict of interest in the exercise of the legal representative of a public institution by Mr TL as a result of the participation and remuneration for the activity as an expert, within the project carried out at the level of the public institution he is leading.

From the documents verified by DLAF and the other institutions involved, the legal and labor relations between Mr TL, as representative of the public institution and the quality of the expert in the project, on the basis of which he was remunerated in the project.

In view of the fact that, as legal representative of the public institution, Mr TL has signed notifications, decisions, appointing a project expert, payment documents, etc., as well as irregularities in contractual relations with the same employer, it was considered that Mr TL, as the legal representative of the public institution, could not have an objective and impartial attitude in his work as an expert in the project, a case falling into conflict of interest situations.

Ineligible expenses related to the salary expenses paid to Mr TL, as an expert in the project financed by European funds, amount to approx. 50.000 lei (about 11.000 euros).

4. *On January 15, 2018, Mr D. filed a declaration on personal responsibility as to the absence of a conflict of interest situation as a member of the Board of Directors of an Intermediate Body, attending in this capacity the Management Authorities meetings.*

A year later, on 10 January 2019, the Greek Anti-Fraud Office (AFCOS) received a complaint that Mr D. provided services remunerated to State Aid beneficiaries of the Management Authority while he was a member of the Management Authority representing it in committee meetings. The AFCOS agency in Greece immediately informed the Managing Authority and the Institution Assistance Authority.

Following an investigation, it was found that on May 14, 2018, Mr D. resigned from the position of member of the Management Authorities Committee and since then he has not provided any services to the Authority. In addition, Mr D. was never appointed as an assessor in shares, did not verify and did not accredit acts. However, the proposals submitted by the companies to which D has provided remunerated services have been re-examined to investigate whether there is a benefit of these companies or any distortion of the process.

The final conclusion pointed out that all procedures were followed without any irregularity or suspicion of fraud.

Extract from the presentation of Mr. ***Konstantinos PAVLIKIANIS****, member of the General Secretariat against Corruption and representative of AFCOS Greece submitted as supporting element in the project team documentation activity*

5. *Using the sampling of the monetary units (MUS), the Audit Authority conducted an investigation into the beneficiary of the project*

„Restoration – Rehabilitation of construction and environmental installations”.

The audit found that: Certification of legal conditions (dated 17 April 2013) for the activity of an asbestos demolition company granted to A.A. S.A., found that Z.Z .:
(a) measures the exposure of workers to asbestos fibers;
(b) will be the independent lab to measure the concentration of asbestos fibers in the workplace.

On June 28, 2016, B.B. S.A., in order to participate in the tender for subproject 1, has entered into a private agreement on the granting of special technical and professional capacity loans to the company Z.Z.
B.B. S.A., after the auction, became a Contractor of Subproject 1 and on December 19, 2016, signed a contract with Beneficiary R. for "Technical and Scientific Support for the Restoration and Rehabilitation of Construction Facilities and the Environment”.
The subproject 1 contracting (on December 19, 2016) took place one year after signing sub-contract 2 (concluded on 16 December 2015). In order to carry out the necessary measurements in the meantime, the Subproject 2 consortium cooperated directly with Z.Z.
To prove this cooperation, copies of the company's invoice to the consortium and a copy of the consortium's check and the statement of account were provided to the audit team.
From the above, it follows that Z.Z., between December 2015 and December 2016, had a mixed involvement in the implementation of the project as follows:
1. Entity associated with the environmental protection technique (resulting from the EPT compliance certificate), which cooperated with the consortium contractor.
2. Entity associated with the environmental protection technique, which

cooperated with the contractor consortium 1 (19/12/2016).
3. These measurements are basically the delivery of Subproject 1 and this process was chosen as an alternative until contracting Subproject 1.
In conclusion, while Z.Z. carry out operations to secure the beneficiary whose payment was foreseen for Subproject 1, this cost was charged to the consortium due to the delay in subcontracting.
4. Body associated with B.B. SA, which signed on 28 June 2016 a Private Liability Agreement for the award of loans for technical and professional capacity in order to participate and ultimately become a tenderer in the tender for the technical and scientific support of the operation and the beneficiary (signing a contract on December 19, 2016) within Subproject 1, while Sub-Project 1 measurements already had been made, paid by the contractor.

For Z.Z. the following could affect the impartial exercise of its official duties:
1. Violation of the principle of transparency, due to working relationships with three different bodies (EPT, contractor, beneficiary) involved in different parts during project implementation.
2. The conflict of interest between the "public tasks" (subproject 1 for the technical and scientific support of the beneficiary) and the "private interests" (subproject 2 in support of the contractor) for ZZ, depending on the moment of implementation from the operation, assumes different roles both the beneficiary (which is the controlling entity) and the contractor (which is the controlled entity).
3. Equality of treatment and/or non-discrimination of privileged information and, possibly, distortion of competition in Subproject 1 due to a preexisting relationship within the same action and subject (sampling and measurement).
In view of the above, in line with the OLAF Practical Guide on "Identifying conflicts of interest in procurement procedures for structural actions” – ***a conflict of interest in the public procurement procedure that is not adequately addressed has an impact on the regularity of the procedures. This leads to a breach of the principles of transparency,***

equal treatment and/or non-discrimination that a public contract must comply with in accordance with Article 102 of the Financial Regulation.
For violation of the principies of transparency, equal treatment and/or non-discrimination, a flat-rate financial correction of 10% of the total amount of audited and declared costs of Subproject 2 (ie € 3,500,000), in accordance with the Financial Correction Decision established by the Audit Authority .
The Managing Authority should reduce by 10% the other Sub-project 2 declared costs other than those audited by the Audit Authority, notify the relevant Audit Authority actions and declare the eligible costs of Controlled Subproject 2 reduced by the above percentage (10%).
Given that Subproject 1 expenditure has not been audited in the course of these verifications, it appears that any financial correction regarding the issue of conflict of interest should also be incurred for Subproject 1 expenditure. After examining this issue, the Management Authority will continue the financial corrective actions, informing the Audit Authority accordingly.

The case was notified to OLAF through IMS.

Extract from the presentation of Mr. ***Konstantinos PAVLIKIANIS****, member of the General Secretariat against Corruption and representative of AFCOS Greece submitted as supporting element in the project team documentation activity*

CHAPTER IV. WAYS TO SOLVE INCOMPATIBILITIES AND CONFLICTS OF INTEREST IN PROJECT MANAGEMENT

The result of the experience gained by accessing European funding sources in the previous financial period has determined in the public system in Romania a strategic and predictable approach from the beneficiaries of financing. If initially the projects were accessed as a challenge for beneficiaries to obtain European funding to solve specific problems, then this activity was carried out in a centralized form, starting from the needs identified at their level during the programming period and obtaining results integrated in the implementation phase. Thus, each project contributes to the achievement of a major objective of the program under which funding has been awarded, thus generating an integrated system of results. At strategic level, major projects with priority impact in the priority areas of action that will contribute to the improvement of the current administrative system.

The strategic planning of a project is carried out at the level of the beneficiary on the basis of its own procedures and methodologies for identifying the sources of financing by elaborating in an organized version of the project idea, according to the conditions of accessing the funds stipulated in the regulations / guides. A project ranges from the start-up to the completion of several stages including a series of steps taken at the level of the Contracting Parties to the agreement / order / financing contract.

We identified four major milestones during a project: Elaboration, Evaluation, Implementation, Verification, which should be administratively managed by both parties. Thus, the applicant for funding at the design stage must take into account and comply with the current legislation on incompatibilities and conflict of interest. In the same vein, the authority financing the project has a number of constraints established in the project evaluation process, with priority being given to the provisions of **Section 2 – Rules on conflict of intereste** of ***OUG 66/2011 on the prevention, detection and sanctioning of irregularities in***

obtaining and using European funds and/or national public funds related to them, with subsequent alterations and completions.

In the case of awarding the funding, based on the favorable response obtained as a result of the completion of the evaluation phase, the provisions of the agreement/order/financing agreement that contain a distinct section in its content regarding the conduct of the parties regarding incompatibilities and conflict of interest intervene. The implementation phase of the project is the sole responsibility of the grant beneficiary, sometimes intervening the responsibility of the granting authority for project monitoring. The activity verification of the implementation of the project falls within the exclusive competence of the authority financing the project, in compliance with the legal provisions on conflict of interest, required by OUG 66/2011, to be completed in accordance with the provisions of the grant contract/order/contract and the provisions national legislation on incompatibilities and conflict of interest. The transparent and objective attitude of the applicant at the stage of drafting the project on incompatibilities and conflict of interests is mainly circumscribed to the activity of setting up the team, with the general rules applicable to public servants. In the regulation/guide for accessing European funds, the funding applicant finds details on the setting up of the project team, often of an indicative nature, usually referring to the categories of mandatory staff, the requirements for occupying the positions in the project, the way of replacing the their, etc. **There are no situations that could lead to incompatibilities and conflicts of interest that should be avoided by the eligible applicant at the time of the project team**. These issues remain in the applicant's analysis and responsibility, in accordance with the rules of organization and functioning of the public institution, the legal status of public servants and the applicable normative framework for ensuring transparency in the exercise of public offices, preventing and sanctioning corruption.

The way in which the project team is formed influences the overall management of the activities carried out during the

implementation phase. That is why the way of setting up the project manager and team members is particularly important, taking into account the existing constraints for the public servant. By way of exception, the current legislation permits the public servant to participate in the project team without any incompatibility with the basic function he/she occupies. There are some situations that may occur at the stage of setting up the project team as a result of the nomination of some public servants holding leading positions in the public institution that can generate interpretations and why there are no suspicions of incompatibilities and conflicts of interest. **As a rule** these situations also remain in the project implementation stage if they have not been identified by the sponsor during the project evaluation but may also intervene later in the project. **The causes that can generate such situations** in the evolution of a project may be diverse, which is why we are trying to exemplify the most important ones without limiting them only:

✓ The lack of a set of rules corresponding to the sources of financing containing information necessary for the potential public beneficiaries, at the stage of writing and implementing the projects with European financing, regarding incompatibilities and conflicts of interest;

✓ Defects of the project budget on the basis of a pre-established guide in direct expenditure and investment expenditure;

✓ The staff shortage on the level of the public institution can cause the personnel to be mistaken in certain positions in the project team;

✓ The lack of human resources stability and fluctuations in personnel leads to the frequent replacement of the members of the project team;

✓ Expression of personal intentions or interests lacking transparency and objectivity in determining the composition of the project team from the governing bodies of the institution;

✓ Applying certain provisions and conditions set out in the Regulation/Financing Guide to the detriment of the general legislation applicable to public servants;

✓ Lack of clarity, correlation and systematization of normative acts, misinterpretation of the law and frequent changes in legislation in the field of remuneration;

✓ The positive feedback received from the Funder regarding the replacement of a member of the project team in a supposed situation of incompatibility found later may generate new situations up to the moment of the finding;

✓ The possibility offered by law to the public servant to perform duties in other areas of activity in the private sector which are not directly or indirectly related to the duties exercised, according to the job description, under certain conditions, may generate at the level of the project incompatibility and conflict situations of interests;

✓ Providing the public office in the project for a representative of the private sector may lead to incompatibility or conflict of interest.

These causes can lead to situations of incompatibility and conflict of interest in the project management activity, regardless of the stage at which they occur. Starting from the idea that there is a legal framework for regulating situations of incompatibility and conflict of interest in the process of evaluating/verifying the applications for financing/ reimbursement related to the activity of managing the European funds and the carrying out of the public procurement procedures, it is necessary to establish some rules for grant beneficiaries at the stage of project implementation.

If in the field of public procurement there is the PREVENT system used in public procurement award procedures, irrespective of the source of funding, in order to prevent conflicts of interest, there are no such instruments in project management available to beneficiaries financing from the perspective of situations that may lead to incompatibility and conflict of interest. Prevention in relation to these situations must be

carried out before occurrence and falls under the responsibility of each public servant, the legal representative of the institution and the project manager, so as not to affect the implementation of the project, the team and implicitly the funding through irregularities found later.

The capacity achieved in the projects is compatible with the public office if it is done properly **art. 94 para. 2[2]** of **Law no. 161/2003**, which states that *„the public servant who is designated by administrative act to be part of the project team financed by post-accession non-reimbursable Community funds, as well as external loans contracted or guaranteed by the repayable or non-repayable State, is not incompatible"*. Under these circumstances, one shall apply the provisions of **art. 16** of ***Law no. 153/2017 on the remuneration of staff paid out of public funds***, which establishes the way of granting the salary rights for the activity performed in projects financed by European funds.

By administrative act *„the staff of the institutions and/or public authorities nominated in project teams funded by European non-reimbursable funds shall benefit from the increase of basic salaries, job remuneration/salary, bonuses up to 50%, irrespective of the number of projects in which is involved. This increase applies in proportion to the actual time allocated to the activities for each project and is only granted if staff costs are eligible for reimbursement from European funds".* The activities provided by the staff of the institution or public authority nominated in the project teams are those set out in the approved activities schedule as well as those derived from the beneficiary's obligations towards the donor authority and are adequately reflected in the job descriptions in accordance with the legal provisions in the force.

The inclusion of the attributions in the job descriptions is made in accordance with the measures for ensuring the transparency in the exercise of the public offices provided by the Law no. 161/2003 and the applicable internal management and control system. Equally important are the obligations assumed by the beneficiary by signing the order/agreement/ financing contract. Deviations from established rules in the field may lead to instances of incompatibility and conflict of interest for public servants.

Except the procurement procedures where most such situations were identified, according to reports by the National Integrity Agency, from 2017 to date in this area being taken administrative measures to prevent such situations, the next activity generating the of situations is the creation and modification of the project team.

The most frequent situations encountered in the management of projects with European funding have as a guesswork the main reasons given above. Although it is necessary to analyze individual cases individually, we present the following situations that could lead to incompatibilities and conflicts of interest in project management, without presenting a general and binding interpretation of the law.

We all know that the relationship between the sponsor and the beneficiary of public funding is established on the basis of the grant contract/order/contract. As a rule, the standard form of this contract includes provisions on the legal status of incompatibilities and conflicts of interest, as determined by the contracting parties. By way of example, conflicts of interest represent, in the case of contracts funded by the European Social Fund *„any situation which prevents the contracting parties from having a professional, objective and impartial attitude, or performs the activities provided for in the contract in a professional, objective and impartial manner on grounds of family or personal life, political or national affiliations, economic interests or any other interests. The above mentioned interests include any advantage for the person concerned, the spouse, relatives or in-laws up to the second degree including”*.

As it can be seen, the definition is broad and comprehensive, and contains in its content elements referring to the conflict of interest, which are encountered in the provisions of Law no. 161/2003. The obligations in this respect are correlated for the parties to the contract, which are bound *„to take all due diligence to avoid any conflict of interest or incompatibility as defined by the Romanian and European legislation in force and to inform each other in a timely manner about any situation that gives rise to or is likely to give rise to such a conflict”*. It

can be noticed that in addition to the situations expressly provided for by law, any instances of incompatibilities and conflicts of interest that may arise during the course of a project must be considered.

The issue of incompatibilities and conflict of interest concerns all parties involved in the execution of this contract, starting from the partners, subcontractors and employees of the financing beneficiary, to the employees of the contracting authority (the financier). The sanction applied in case of non-compliance with these obligations is very severe, thus, the Contracting Authority *„reserves the right to verify that the measures taken by the Beneficiary are appropriate and to require the Beneficiary to take additional action, if necessary, to avoid a conflict of interest or incompatibility or to terminate the rightful contract without delay, without the intervention of an arbitral tribunal / court and without the fulfillment of other formalities, except the submission to the Beneficiary of a simple notification of the termination of the contract, in the event of a conflict of interest or incompatibility”*.

In these circumstances, we consider that preventing such situations becomes more important than identifying and sanctioning them, and the financing beneficiaries must take all the necessary measures in order to execute in good conditions the contractual provisions. Some activities require prevention from the grant applicant even from the project writing phase, these measures being particularly important for the project management activity at the implementation stage. On the basis of the identified situations, we propose, in the following, to present a **set of rules** which should be considered, at the level of the Beneficiary (public institution), in the stages of project design and implementation, **to prevent and avoid situations of incompatibility and conflict of interest**:

- *Establishment of the analysis team and establishment of the composition of the project team at the stage of its elaboration, at the level of the public institution, from which a legal counselor/specialist with legal studies is obligatory;*

- *Analysis of the project idea from the perspective of the scope of the intervention, the aim and objectives proposed, the type of activities and the results referring to the specific applicant's eligibility, the categories of staff and their status, the necessary functions in the project and the responsibilities set at the project team (Logical matrix of team establishment – see the explanations given in the Guide);*
- *Identifying the organization and functioning of the public institution, the structures, the departments and the categories of public servants, their public offices and the job descriptions, in relation to the responsibilities established in the project, eventual incompatibilities or conflict of interest that may arise in connection with the public function and the ultimate determination of the tasks foreseen in the project;*
- *Filling a single position within the project team by the public official nominated by an administrative act, according to the competences acquired during the occupation of the public office and the specific activities carried out, corresponding to the job description;*
- *Avoiding situations in which, at the same time as the direct subordination of the project team members to the project manager, there is a report (to the basic function) of direct subordination of the project manager towards one of the team members;*
- *Avoiding situations in which the legal representative of the institution, also having the capacity of authorising officer, is nominated, under certain conditions, by an administrative act (excluding the issuance of an administrative act by his or her own person) as Project Manager (see explanations presented in the Guide);*
- *Prohibiting the establishment of a project team on the basis of kinship and affinity relationships of the type spouse, first-degree relative or in-law that may exist between the manager and the members of the project team, under certain conditions, on the basis of contractual relationships concluded in the project;*
- *Prohibiting the appointment of a public servant in the project team if the activity carried out within that team generates a situation of incompatibility or conflict of interest with the public function he / she*

occupies;

- *Prohibiting the conclusion of an individual fixed-term employment contract with a public servant within a project financed by European non-reimbursable funds, carried out at the level of the same employer with whom the public servant has job relations;*
- *Prohibiting the participation in the public servant as a project manager in the direct award of a public procurement contract within the project to an economic operator with whom he/she has a contractual relationship outside the job relationship, even if his/her field of activity for which is remunerated is not directly or indirectly connected with the duties exercised on the basis of the job description relating to the civil service;*
- *Prohibiting the exercising of a function in the private sector, outside the job relations, which has as its object the attributions exercised within the project carried out at the level of the institution, according to the public function, as a member in the project team, designated by administrative act by the head of the unit.*

The situations presented are indicative and represent only a part of the cases that can be identified in practice, providing support to all those interested in preventing and avoiding situations of incompatibility and conflict of interest. Each case must be analysed separately, depending on the rules governing the organisation and operation of the beneficiary requesting the funding, the status of the staff involved in the project implementation, the eligibility rules established by the sponsor, the rights and obligations of the parties arising from the grant contract/agreement and last but not least, the national and European legislation to which we must report. Identifying these situations in a consumed form generates a major impact on the financial management of the project as a result of applying the GOVERNMENT EMERGENCY ORDINANCE O.U.G. no. 66/2011 *on the prevention, detection and sanctioning of irregularities in obtaining and using European funds and/or national public funds related thereto, with subsequent alterations and completions.*

CHAPTER V. LESSONS LEARNED FOR THE 2014-2020 FINANCIAL PERIOD. HOW TO EFFECTIVELY IDENTIFY AND REPORT INSTANCES OF INCOMPATIBILITIES AND CONFLICTS OF INTEREST

„A goal without a plan is just ... a desire."

Antoine de Saint – Exupery

An essential role in the implementation of projects with non-reimbursable external funding is the initiator and/or the beneficiary, the authority managing the funding program and the national and European institutions responsible for project audit and control.

In general, the project cycle management addresses considers monitoring as being a milestone in project implementation, characterized by tracking the stage of achievement of the activities, the achievement of the goal, objectives and indicators assumed, as well as the concrete modalities of budget execution. The implementation of a project mainly aims at carrying out planned activities in the chart, organizing and carrying out public procurement procedures, maintaining the rules on eligibility of expenditure on a permanent basis, and ensuring human, logistic and financial resources throughout the project.

In its evolution, the project starts from an idea of improving a state of facts that once defined evolves and becomes a project proposal. It is very important that the need that has generated the idea of a project is among the needs that it has proposed to solve the non-reimbursable financing. In order to have sustainable projects it is necessary to start from real needs that meet the financing requirements. The maturity of the project is defined in the implementation phase, based on the consistency with which the general management of the project is approached, organized on the three levels: human resources (team), financial, risks. Risk management is circumscribed to project management activity, with a twofold purpose: on the one hand,

risk management seeks to identify likely events that may have an undesirable impact on results, and on the other hand, it refers to the prevention/ correction decision.

The risks associated with project management can be divided into several categories:

- *Organisation risks*: lack of internal working procedures/unclear work procedures, insufficient staff, poor organization of human resources etc.;
- *Operational risks*: non-registration in the accounting records, inappropriate archiving of supporting documents etc.;
- *Financial risks*: unsecured payments, non-detection of financial risk operations, estimation of costs without market testing etc.;
- *Legislative risks*, generated by legislative changes/changes;
- *Structural, managerial risks*: reorganization, change of the legal representative of the beneficiary, resignation of the project manager etc.

The project manager has the role of continually assessing the preoccupation of the project team members to identify risks, prevent their occurrence and correct their effects. To this end, the project manager should pay attention to at least the following activities: identifying risks, identifying identified risks, keeping risk records in the risk register, preparing the action plan to reduce or eliminate identified risks.[23]

Risk management

Risk management is the process of identifying, measuring, assessing risk, followed by developing strategies for managing the risk itself.
Most of the risks occur during the implementation phase.
Examples of risks at the time of conception of the project idea: non-harmonization of project objectives with those of the financing program;

[23] http://www.fonduri-ue.ro/images/files/studii-analize/35292/Ghid-bune-practici_revizie-II-Septemebrie-2015.pdf

target groups chosen wrongly; erroneous budget construction; unquantifiable benefits; project team without the qualifications or experience required by the sponsor; the fluctuation of the people within the project team and the management staff of the beneficiary institution. Risk management in projects involves going through the following processes:

- *Risk management planning*
- *Risk identification*
- *Qualitative risk analysis*
- *Quantitative risk analysis*
- *Planning the risk response*
- *Risk monitoring and control*

***Financial risk**: It is frequently encountered in projects which, while complying with all the funding provider's instructions for budgeting, are based on a faulty financial forecast where the necessary resources are undervalued, resulting either in the impossibility of the project or in a negative balance thereof .*

Risk acceptance; Risk prevention:

✓ *If a project activity leads to serious consequences, avoiding is the best policy*

Routine supervision of risk

✓ *Preparing the contingency plan*

Risk mitigation

✓ *Finding ways to reduce the probability of a risk*

Risk transfer

✓ *Controlling the risk by transferring it to an external supplier*

Learn from risks

✓ *Not all risks are bad. Risks can also open a gateway to new opportunities.*

Extract from the presentation of Ms. ***Nela BĂDĂUȚĂ****, Head of Service – Fiscal Administration National Agency within the Ministry of Public Finance at the Internațional Seminar* ***„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests"*** *organized by the Police Academy „Alexandru Ioan Cuza" in Bucharest from 11 to 12 October 2018*

Risk monitoring and control is recommended twice a year and involves: tracking identified risks, identifying new risks, ensuring compliance with the Action Plan to eliminate/mitigate identified risks. Risk management is important in the project management economy because inappropriate risk management inevitably leads to the occurrence of irregularities/nonconformities that may affect the achievement of objectives. Avoiding these unpleasant situations in the synoptic of a project can be done through intensive monitoring and periodical analysis of the resources, activities and results of the project, good communication at the level of the project team and beyond, we could even say at the level of the institutions responsible for the use funds and capitalizing on the progress of the project. Together with the project management team and the management of the public institution running the project becomes responsible for its implementation, because at the level of the authorizing officer is granted *„Payment sign off",* i.a. all the financial operations carried out in the project are validated and accepted for payment.

Responsibilities of Authorising Officers

Authorising Officers have the obligation to commit expenditure within the limits of commitment credits and to use the budget credits only within the limits of the approved provisions and destinations, for expenditures strictly related to the activity of the respective public institutions and in compliance with the legal provisions.

The Authorising Officers are responsible, according to the law, for:

- *engage, liquidate and approve expenditures within the limits of commitment credits and allocated and approved budget credits;*
- *revenue generation;*
- *commitment and use of expenditure within the limits of commitment appropriations and budget appropriations on the basis of sound financial management.*

Preventive financial control, internal audit

Preventive financial control and internal audit are exercised over all operations that affect public funds and / or public patrimony and are exercised in accordance with legal regulations in the field.
The comitting, liquidation and authorization of the expenditures from the public funds are approved by the authorizing officer and their payment is made by the head of the financial-accounting department / the person responsible for the payment.
Expenditure is charged and authorized only with the prior pre-audit of its own preventive financial control and the preventive financial control delegated, as the case may be, according to the legal provisions.

Extract from the presentation of Ms. ***Nela BĂDĂUȚĂ****, Head of Service – Fiscal Administration National Agency within the Ministry of Public Finance at the Interntional Seminar* ***„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests”*** *organized by the "Alexandru Ioan Cuza" Police Academy in Bucharest from 11 to 12 October 2018*

Project monitoring is done by both the grant beneficiary and the donor, allowing them to identify potential problems before or immediately afterwards. Monitoring is the source of lessons learned for the rest of the project implementation and/or other projects of the same type. This is a project implementation management tool.

Organising effective meetings is one of the determining factors in the overall success of projects. *Periodic meetings* allow for proper roll-out and achievement of goals, analysis of work schedule, elaboration of detailed work plans and assignment of tasks, development of constructive working relations between project team members and between partners, if applicable.

The objectives of each meeting vary according to when it is placed in the life cycle of the project. The first and last meeting are key events and focus on particular objectives, while the mid-term meetings have more global objectives. *The initial meeting* aims at the meeting of the project team, agreeing the work plan according to the calendar of

activities, assigning the tasks, agreeing the targets and intermediate deadlines, establishing the evaluation strategy, confirming the contractual arrangements between the leader and the different partners, if any. *Interim meetings* aim to monitor the progress of the project activities, analyze the project's progress in relation to the objectives, monitor the project budget and financial-accounting procedures, review the work plans and make adjustments, if necessary, review the evaluation strategy, discuss the progress reports , discussing reimbursement requests, proposing to amend the contractual provisions through notifications and additional documents for the further implementation of the project. *The final meeting* sets the final analysis and review of the work plan, the final evaluation, the recognition of merits and the contribution of the project team, the discussion of the project closure strategy and the final report.

Progress reports constitute a tools meant to monitor the manner and the stage of accomplishment of the proposed activities as well as the stage of the financial implementation of the project. They are based on the model provided by the sponsor and are transmitted at the timeframes set out in the grant contract. The Progress Report presents the "photography" of the project at some point and presents the steps to be taken further to achieve the proposed results. These are checked by the financier who has a clear picture of the project, the difficulties encountered in implementing it and may propose appropriate corrective actions.[24]

The beneficiary of a European-funded project has the obligation to ensure unrestricted access by the national authorities responsible for verification, control and audit, the European Commission services, the European Court of Auditors, the specialized service of the European Commission – the European Anti-Fraud Office – OLAF , as well as The Anti-Fraud Department – DLAF, if they perform on-the-spot checks/

[24] *Idem,* http://www.fonduri-ue.ro/images/files/studii-analize/35292/Ghid-bune-practici_revizie-II-Septemebrie-2015.pdf

audits/audits and/or request statements, documents, information. Financing agreements clearly stipulate this obligation for Structural Instruments Beneficiaries.

Failure to comply with these obligations leads to the restoration of the entire amount received for project implementation: the non-reimbursable financial assistance co-financed by European funds, the co-financing allocated from the state budget, as well as the financing of the value added tax, if any, as well as interest and penalties related.

On-site verification of the Certification and Payment Authority

*They aim at the **analysis of certain documents,** such as: application for funding and financing contract; economic contracts and additional documents, documents related to award procedures; documentary evidence of payments, etc.*
*One selects a sample, of minimum **15%** of the value of the costs of the contracts/projects included in a declaration.*

The final results of the checks include:
Non-inclusion of potentially ineligible expenditures in payment applications to C.E., Preparation and transmission of CA to C.E., based on administrative and on-site checks,
Preparation and submission of annual accounts to C.E.,
Signaling to Management Authority / A.M. the deficiencies identified and the request to take measures at the level of AM to remedy them.

Effects of suspicions of irregularities/fraud in statements of expenditure/ payment applications/annual accounts:
***Suspicions of irregularities –** expenditures are not included/deducted from statements of expenditure/payment applications until the AM's statement is completed,*
***Suspicions of fraud** - Expenditure on economic contract / project level **is not included in the statement of expenditure/payment application** to the E.C., until the investigation of the case is completed; GEO 66/2011, as amended, art. 19,*

At the end of each accounting year, ***the expenses related to suspicions of fraud are withdrawn*** *from the certified expenses (2014 – 2020 programming period), regulated by C.E. in EGESIF_15_0018-02 of 09/02/2016, for Member States on the preparation, examination and acceptance of accounts.*
In relation to the beneficiary – costs must be recovered,
In relation to C.E. - expenses affected by confirmed irregularities/frauds already declared are withdrawn from the accounts of the current accounting year.

The following measures are required:
A unified understanding of the relevant legislation and the financial impact of suspicions of irregularities/fraud on the declaration/ certification of expenditures at C.E .;
"Isolation" of the financial impact by restricting the area of suspicion whenever possible;
Rapid completion of the activity of irregularities finding/fraud investigations for projects/contracts with European funding;
A better collaboration and institutional communication by organizing regular meetings/workshops.

Extract from the presentation of Ms. ***Lucica TARARA****, General Director of the Certification and Payment Authority within the Ministry of Public Finance at the International Seminar* ***„Effective Systems for Prevention of Fraud with European Structural and Investment Funds. Theoretical and practical aspects of avoiding situations of incompatibility and conflict of interests"*** *organized by the "Alexandru Ioan Cuza" Police Academy in Bucharest from 11 to 12 October 2018*

Although it officially begins with signing the grant contract, the project implementation must be seen as a continuation of the preparation process. The funding beneficiary must make sure that it fulfills its obligations by designating a responsible implementation team. Beyond a series of project management elements, in general, and the regulatory and procedural framework applicable to projects funded by non-reimbursable external funds, it should be noted that there is no standard solution to ensure the success of a project. Each management team has to fix those

elements that correspond to the nature, size of the project and to ensure the best possible correlation of the tasks of those involved.

The approach way of the verification and control institutions related to potential incompatibility and conflict of interest situations for projects with external funding is quite different compared to the manner of verifying the use of national funds. Hence the reluctance of many grant beneficiaries to access projects financed by non-reimbursable foreign funds as long as the Romanian state should address the verification procedures in a more consistent manner, including addressing the desirability of providing support to prevent such situations, irrespective of the origin of national or European funds, and ultimately it is also public money.

As a result of the research, the present Study intended, and we believe, succeeded in applying a complementary and integrated approach to the development of the administrative capacity of public beneficiaries in the implementation of European funded projects to prevent situations that may lead to incompatibilities and conflicts of interest in the project management activity.

The scientific contribution of the material can be oriented towards **five major action lines:**

- The transposition into National Guidelines of a set of rules on incompatibilities and conflicts of interest identified at the level of projects with non-reimbursable external financing applicable to public offices and dignities,

- Strengthening the capacity of ANI to act preventively by developing public policy programmes/inexpensive instruments on incompatibilities and conflicts of interest applicable to public offices and dignities and DLAF Romania applicable to projects with non-reimbursable external financing,

- Strengthening the coordination/cooperation capacity between the monitoring structures of projects with non-reimbursable external financing in relation to the beneficiaries of financing, with a view to preventing incompatibility and conflict of interest situations that may arise during the implementation of the projects,

- Increasing transparency on all levels of management on projects implemented with non-reimbursable external funds, by setting up and implementing a National Register of Evidence of Incompatibilities and Conflicts of Interest,

- Developing collaborations and exchanges of experience and information on prevention between public authorities and funding recipients but also between them and the civil society in general and on a line of verification of the situations identified between them at the level of the EU Member States and OLAF,

based on the arguments resulting from the content of the Comparative Study, grounded on the data and information processed, as well as the documentation and discussions with representatives of the authorities with tasks and competences in the field of the correct management of European funds, the control and prevention of fraud on the national level.

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The suggestions above are, in the author's opinion, only several priority action directions aimed at orienting the public funding beneficiaries and the funds allocated to this type of intervention in order to strengthen the administrative capacity to implement European funds, fully observing the European interests. resources contributing considerably to Romania's development process. Specific recommendations have been formulated to strengthen interinstitutional cooperation with a view of early identification and preventing the risks that may arise in the implementation process, useful for public funding beneficiaries in avoiding situations that may lead to incompatibilities and conflicts of interest in project management, integrated both in the content of this Study and in the content of the Practical Guide, both publicly available in electronic format for all interested entities/stakefholders.

ANNEXES
USEFUL CONTACTS – EUROPEAN INSTITUTIONS COMPETENT IN THE FIELD

European Anti-Fraud Office
Address: OLAF - European Commission Rue Joseph II, 30, 1049 Brussells
Telephones: 32-2-298.82.51/32-2-299.62.96
E-mail: OLAF-FMB-SPE@ec.europa.eu
Online form for notifying a potential fraud to OLAF: https: //fns.olaf.europa.eu/cgi-bin/disclaimer_cgi?p=q&lang=en

European Court of Accounts
Address:
12, Rue Alcide De Gasperi L-1615
Luxembourg
Telephones: +35.243.981
Fax: +35.243.93.42
Formular on-line de contact:
https://www.eca.europa.eu/ro/Pages /ContactForm.aspx
Website: www.eca.europa.eu

Court of Justice of the European Union
Address:
Palais de la Cour de Justice
Boulevard Konrad Adenauer Kirchberg
L-2925 Luxembourg
Telephones: +35.243.031
Fax: +35.243.03.26.00
On-line contact form:
https://curia.europa.eu/jcms/jcms/T5_5133/
Website: www.curia.europa.eu

EUROJUST
Address:
Johan de Wittlaan 9
2517 JR The Hague
The Netherlands
Telephones: +31.070.412.50.00
On-line contact form:
http://www.eurojust.europa.eu/visits/ contact/ Pages/contact-form.aspx
Website: www.eurojust.europa.eu

EUROPOL
Address:
Eisenhowerlaan 73
2517 KK The Hague
The Netherlands
Telephones: +31.703.025.000
On-line contact form:
https://www.europol.europa.eu/contact-us/request-visit
www.europol.europa.eu

EUROPEAN PROSECUTORS' OFFICE
Address: Council of the European Union
(until the administrative establishment of the headquarters)
Rue de la Loi/Wetstraat 175
B-1048 Brusells/Brussel
Belgique/België
Telephones: +32.228.161.11; Fax: +32.228.169.34
E-mail: press.centre@consilium.europa.eu
www.consilium.europa.eu

BIBLIOGRAPHIC RESOURCES

EUROPEAN REGULATIONS

1. Treaty on the Functioning of the European Union (TFUE - consolidated version), published in the Official Journal of the European Union of 26.10.2012;

2. Regulation (EU, Euratom) 1046/2018 of the European Parliament and of the Council of 18 July 2018 on the Financial Regulation applicable to the general budget of the Union amending Regulations (EU) 1296/2013, (EU) No. 1301/2013, (EU) No. 1303/2013, (EU) No. 1304/2013, (EU) No. 1309/2013, (EU) No. 1316/2013, (EU) No. 223/2014, (EU) No. 283/2014 and Decision no. 541/2014 / EU and repealing Regulation (EU, Euratom) 966/2012; Title IV, CHAPTER 1 - 6;

3. Regulation no. (EC) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Regulation (Euratom) Council Regulation (EC) No 1074/1999;

4. The Interinstitutional Agreement (IIA) of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, cooperation on budgetary matters and sound financial management;

5. Final Technical Report no. SWD (2018) 551 of 18.11.2018 accompanying the Report from the European Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism;

6. Recommendation no. 10/2000 of the Committee of Ministers of the Member States on the code of conduct for public servants adopted by the Committee of Ministers on 11 May 2000;

7. Management of conflicts of interest in public service, Guide elaborated by the Organization for Economic Cooperation and Development (O.E.C.D.), 2003;

8. United Nations Convention Against Corruption, United Nations - New York, 2004.

NATIONAL LEGISLATION

1. Law no. 193/2017 for the amendment of the Law no. 286/2009 on the Penal Code, with subsequent alterations and completions;

2. Law no. 287/2009, republished, regarding the Civil Code, with subsequent alterations and completions;

3. Law no. 188/1999 on the status of public servants, with subsequent alterations and completions;

4. Law no. 78/2000 on the prevention, detection and sanctioning of corruption, with the subsequent amendments and amendments;

5. Law no. 7/2004 on the Code of Conduct for Public servants, with subsequent alterations and completions;

6. Law no. 161/2003 on certain measures for ensuring transparency in the exercise of public dignities, public offices and business environment, preventing and sanctioning corruption, with subsequent alterations and completions;

7. Law no. 176/2010 on integrity in the exercise of public offices and dignities, with subsequent alterations and completions;

8. Law no. 184/2016 regarding the establishment of a mechanism for prevention of the conflict of interests in the procedure of awarding the public procurement contracts;

9. Framework Law no. 284/2010 regarding the unitary payment of the personnel paid from public funds, with subsequent alterations and completions;

10. Law no. 61/2011 on the organization and functioning of the Anti-Fraud Department - DLAF, with subsequent alterations and completions;

11. Law no. 153/2017 on the remuneration of staff paid out of public funds, with subsequent alterations and completions;

12. GOVERNMENT EMERGENCY ORDINANCE O.U.G. no. 66/2011 on the prevention, detection and sanctioning of irregularities in the obtaining and use of European funds and/or national public funds related to them, with subsequent alterations and completions;

13. GOVERNMENT EMERGENCY ORDINANCE O.U.G. no. 64/2009 on the financial management of structural instruments and their use for the Convergence objective, with subsequent alterations and completions;

14. GOVERNMENT DECISION H.G. no. 875/2011 approving the Methodological Norms for the application of the GOVERNMENT EMERGENCY ORDINANCE O.U.G. no. 66/2011, with subsequent alterations and completions;

15. GOVERNMENT DECISION H.G. no.738/2011 for the approval of the Organisation and Functioning Regulation of DLAF;

16. GOVERNMENT DECISION H.G. no. 583/2016 on the approval of the National Anticorruption Strategy 2016 – 2020, the sets of performance indicators, the risks associated with the objectives and measures of the strategy and the sources of verification, the inventory of institutional transparency measures and the prevention of corruption, evaluation, as well as the standards for the publication of public interest information;

17. Code of Conduct to avoid incompatibility and conflict of interest situations by staff involved in managing programs funded by European non-reimbursable funds;

18. DLAF activity reports for the period 2013 – 2017;

19. Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials, (https://wcd.coe.int/ wcd/ViewDoc.jsp ?id=353945&Site=CM);

20. Managing Conflict of Interest in the Public Office, (http://www.oecd. org/dataoecd/17/23/ 33967052.pdf);

21. http://www.eurojust.europa.eu/Pages/languages/ro.aspx;
22. https://www.europol.europa.eu/ro/about-europol;
23. https://ec.europa.eu/anti-fraud/about-us/mission_ro;
24. https://www.eca.europa.eu/ro/Pages/MissionAndRole/Structure.aspx;
25. https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_ro;
26. https://www.consilium.europa.eu/ro/policies/eppo;
27. https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:C2018/418A/01&from=EN;
28.https://www.juridice.ro/507735/definirea-functionarului-public-doua-legi-distincte-incalcarea-standardului-de-claritate-si-previzibilitate-sistemului-national-de-legi.html;
29. http://www.legal-land.ro/infractiunea-de-folosire-functiei-pentru-favorizarea-unor-persoane;
30.http://reteaformare-aplvs.ro/wp-content/uploads/2015/07/Manual-Managementul-financiar-al-proiectelor1.pdf;
31. https://www.integritate.eu/A.N.I/Organizare.aspx
32. http://www.antifraud.gov.ro/new/regulament-de-organizare-si-functionare-2
33. http://www.pna.ro/about_us.xhtml
34. http://www.mfinante.gov.ro/acp.html
35. http://www.curteadeconturi.ro/AutoritateAudit.aspx?categ=3
36. http://www.fonduri-ue.ro/index.php?option=com_content&view=article&id=45:organizare&catid=9:minister&Itemid=111
37. https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_ro
38. https://ec.europa.eu/info/sites/info/files/technical-report-romania-2018-swd-2018-swd-2018-551_ro.pdf
39. https://www.dn.pt/portugal/interior/o-conflito-de-interesses-e-um-dos-principais-fatores-associados-a-frauds-e-corrupcao-9454799.html
40. https://www.publico.pt/2017/09/14/politica/opiniao/conflitos-de-interesse-na-gestao-publica-1785216
41. https://www.jornaldenegocios.pt/economia/funcao-publica/detalhe/quase-metade-dos-organismos-nao-tem-codigo-de-etica
42. http://www.fonduri-ue.ro/images/files/studii-analize/35292/Ghid-bune-practici_revizie-II-Septemebrie-2015.pdf

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