

International Conference on Conflicts of Interest Prevention, Tools and Measures:

Functional incompatibilities and relevant sanctions at central and regional level

Tirana, Albania 20-21 January, 2011

Chronology of conflict of interest main Spanish regulations



	Top officials (Central Government)	Local councilors (all Spain)	Public employees (all administrations)				
1982			Law on Incompatibilities: regularized thousands of double jobs				
1983	Law on incompatibilities of <u>top officials</u> : declaración sobre causas de posible incompatibilidad						
1984			Law on incompatibilities of <u>public</u> employees: only one job in the public sector; private jobs: allowed if not a threaten to independence				
1992	Law on administrative procedures: obliges to abstain to any official or employee with interest in the issue or relationship or close friendship with those involved						
1995	Law on incompatibilities of <u>top officials</u> : creates activities register (disclosed) and assets register (reserved)						
2000		<u>Local councilors</u> obliged to declare activities and assets					
2005	Code of Good Governance of <u>top officials</u> : derived from OECD recommendations						
2006	Law on conflicts of interest of <u>top</u> <u>officials</u> : creation of Office of Conflicts of Interest						
2007			Basic Statute of the <u>Public Employee</u> : contains a code of conduct				
2009	Decree developing 2006 Law on conflicts of interest of <u>top officials</u>						

Incompatibilities of Members of the Government

(More responsibility/accountability to more power)

More risk from contacts between public and private sector derived from public procurement, subcontracting, privatisation processes

Principle of <u>exclusive dedication to the post</u> (no representative functions other than the parliamentary mandate or any other deriving from his/her post, nor professional or business activity)

Exceptions:

- MPs of a regional parliament (only **one** salary)
- Member of a local corporation (**two salaries** but dedication to the administration full time and to the local c. part time)
- Research or counseling for specific projects and limited period of time
- Private activities that do not compromise the impartiality of the civil servant (explicit list of activities that they cannot perform)

Incompatibilities (Catalonia)

- ► The President of the Catalan Government cannot perform any other task or public activity besides the ones steaming from his post or MP of the Catalan Parliament
- ▶ <u>Senior officials</u> in the service of the Government of Catalonia
 - Full and exclusive dedication
 - One salary
 - ▶ Prohibition to work **for two years** in private activities where they have intervened directly in the fulfilling of their functions or for a company relating to the private sector (revolving door)

Preventive measures

Incompatibilities regulation prevent the factor of CoI and appearance of conflict of interest (Wife's Caesar effect)

- *Hearings* by the Parliament of the senior candidate to take up an office in the government from an Assessment Commission
- Public Agencies: Office of Conflict of Interests/Anti-Fraud Office Of Catalonia
- Declaration of Activities and Assets (need to be effectively checked) from the Public Official (and relatives?)
- The declaration is published at the Official Gazette (Public Office is Public Trust)



BOLETÍN OFICIAL DEL ESTADO



Núm. 249 Jueves 15 de octubre de 2009 Sec. III. Pág. 87324

Cargo: Ministro de Asuntos Exteriores y de Cooperación.

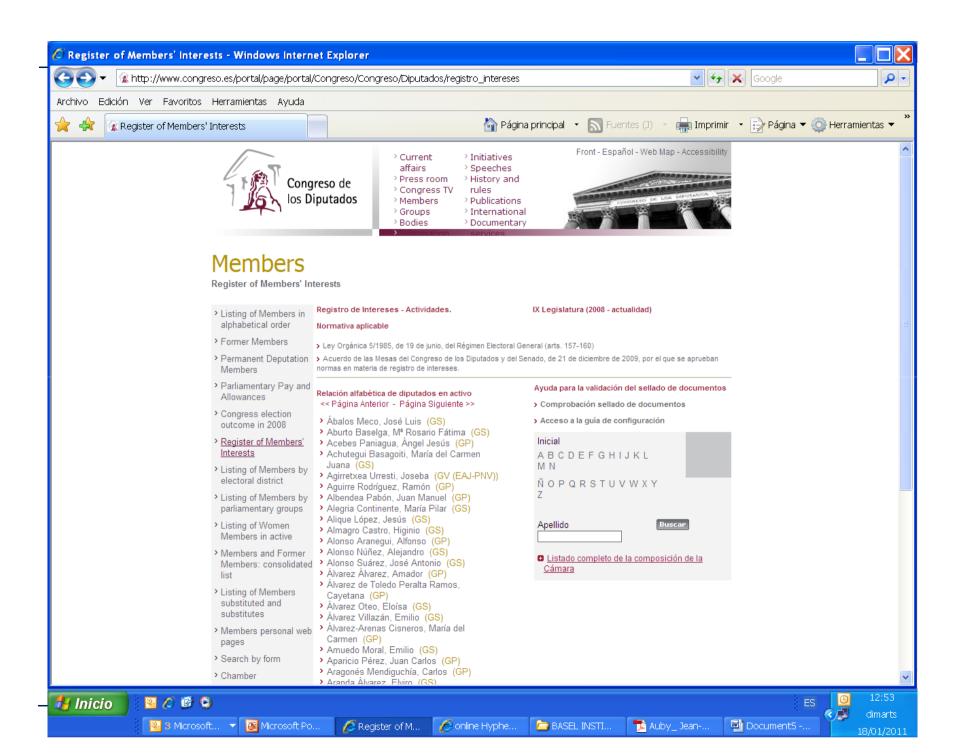
Nombre: Miguel Ángel Moratinos Cuyaubé.

- I. Activo:
- 1. Bienes inmuebles (según valor catastral): 284.978,37 €.
- 2. Valor total de otros bienes: 100.000 €.
- 3. Total: 384.978,37 €.
- II. Pasivo: (Créditos, préstamos, deudas, etc.):

Cargo: Secretario de Estado de Hacienda y Presupuestos.

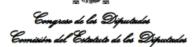
Nombre: Carlos Ocaña y Pérez de Tudela.

- I. Activo:
- 1. Bienes inmuebles (según valor catastral): 416.029 €.
- 2. Valor total de otros bienes: 161.871.78 €.
- 3. Total: 577.900,78 €.
- II. Pasivo: (Créditos, préstamos, deudas, etc.): 356.198,07 €.



Website publication of conflict of interests-MP's

IX LEGISLATURA



Ábalos Meco, José Luis Diputado por Valencia. IX Legislatura G.P. Socialista (GS) Fecha de alta: 21 de abril de 2009 Activities , A) Public Posts B) Posts to which he has renounced Concejal del Ayuntamiento de Valencia. Fecha de la renuncia: 30.11.2009 Miembro del Consejo de la Empresa Municipal de Fecha de la renuncia: 30.11.2009 Miembro del Consejo de Administración de la Entidad Fecha de la renuncia: 30.11.2009 Metropolitana de Transportes C) Benefits/Aids (2) Benefits considered compatible

D) Teaching activities considered compatible

Sanctions

	Why?	Santions applied	
Declaration of Assets and Interests (From very serious to minor irregularity)	 For non complying with the incompatibility rules Presentation of false data or documents Non declaration of activities or goods, after warning Omission of data Late declaration 	 Declaration of non compliance with the law and publication in the Official Gazette Removal from Office Non perception of a compensative pension If there is grounds for other responsibilities the file is passed to the Legal Department of the Government or the Public Prosecutor Office Cannot take up Public Office between 5-10 years for very serious offences 	
Other irregularities	• Working after two years leaving Office in the Public Sector in an area directly related to his previous Public Post	■If the company still is employing the former senior Official, this non compliance is published at the Official Gazette and the company is banned for contracting with the Public Sector for 2 years ■Minor Offences are fined with a warning	
Recent Sanctions	None. One disciplinary proceeding opened and shelved. One lawsuit from an Internet Users Association against the Ministry of Culture (admitted by the Courts)		

Sanctions at a local level

- ▶ Dissolution of town Councils by Royal Decree of the Council of Ministers for non compliance with their constitutional obligations
- ▶ Has been applied once: by Royal Decree 421/2006, 7th of April the Town Council of Marbella was dissolved for very serious illegalities/corruption perpetrated by their local elected representatives.



Final questions

— Is Conflict of interests corruption or "petty corruption"?

— Criminal law is the most adequate instrument for regulating conflict of interest?

— Should we regulate outsourced services of the administration?

— Could there be a conflict between public interests?





Thank you for your attention

Marisa Miralles Legal Advisor Oficina Antifrau de Catalunya http://www.antifrau.cat/ mmiralles@antifrau.cat