

**CONFLICTS OF INTEREST
AND INCOMPATIBILITIES
IN EASTERN EUROPE**
ROMANIA, CROATIA,
MOLDOVA

Authors

Laura Ștefan, Expert Forum (EFOR), Romania

Septimius Pârnu, Expert Forum (EFOR), Romania

Munir Podumlijak, Partnership for Social Development, Croatia

Cornelia Cozonac, Journalistic Investigations Center, Moldova

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Foreword

Conflicts of interest and incompatibilities constitute one of the most important challenges to the establishment of rule of law in South East Europe. Successfully tackling these phenomena is a key issue in the relationship between the countries in the region and the European Union.

Romania has been an EU member state for six years, Croatia will be admitted in the very near future, and the Republic of Moldova is making progress towards closer ties with the European Union. Therefore, in Bucharest, Zagreb and Chisinau alike, legislation was adopted geared at fighting corruption and at ensuring the integrity of public officials. Yet there is still a gap between legal provisions and the implementation thereof. In this context strong and independent bodies that have the right and the duty to check public officials' assets and possible incompatibilities are of extreme importance.

Romania's National Integrity Agency has served as an effective watchdog for several years and its work has been continuously praised in the progress reports of the European Commission under the Cooperation and Verification Mechanism. ANI can without any exaggeration be called a benchmark institution. In the Republic of Moldova the National Integrity Commission has been set up. So has the Conflict of Interest Commission in Croatia.

These institutions are not and will never be "everybody's darling" In fact they have and will have powerful enemies, also among certain segments of the political elites, who will try to limit the scope of the competencies and actions of these institutions.

Therefore, a strong civil society that insists on transparency and accountability, that supports such institutions, is essential in ensuring the durable success of efforts to prevent conflicts of interests and incompatibilities.

The present study represents an important contribution in this respect. The authors of each country study provide a realistic picture of the state of play in the fight against corruption in Romania, the Republic of Moldova and Croatia. They offer valuable insights into strengths and weaknesses of institutions and mechanisms employed to combat conflicts of interests and incompatibilities.

I therefore sincerely hope that this study will find its way into the cabinets of politicians and experts and that the lessons provided herein will be translated into better policies and track records.

Thorsten Geissler
Director of the Rule of Law Program South East Europe
Konrad Adenauer Stiftung

A comparative view

For many years corruption was not a topic for political action in Romania, Croatia and Moldova. Though opinion polls and international organizations were warning about the importance of this phenomenon, the illegal benefits obtained by people who found themselves in positions of power through corruption blocked for many years all initiatives to address the issue. Things started to change only when countries decided to move towards integration into the European Union thus accepting the standards in terms of rule of law.

The first wave of reforms focused on building a comprehensive legal framework to cover the “traditional” forms of corruption – bribery, peddling in influence, abuse in office – and the institutional mechanisms able to enforce this legislation. Romania has set up the National Anticorruption Directorate, a model structure that included prosecutors, police officers and specialists and has investigated and brought to justice tens of parliamentarians, ministers and ex-ministers, mayors and other important public officials. Croatia has established USKOK, a prosecution structure in charge with organized crime and corruption, which is mirrored by a specialized police force and by specialized courts to hear these cases. Moldova has the Anticorruption Prosecutors' Office tasked with investigation of corruption offences. The clear option towards specialization of police officers, prosecutors and judges (only in Croatia) has shown results. Corruption investigations are quite laborious and use extensive work force and resources. As corruption is not an aim in itself, but rather a mechanism to obtain or cover other illegally obtained benefits, corruption investigations often include an organized crime or an economic crime angle. Specialization allows investigators to concentrate on obtaining results in this complicated area of law.

The second wave of reforms included the introduction of wealth and interests statements for public officials (in Romania different statements exist – for wealth and interests – while in Croatia and in Moldova only one statement is submitted). These statements serve two main purposes: the control of unjustified enrichment and the control of conflict of interests. In Romania both aims are covered by the law, while in Croatia the legislator has opted to address only the control of conflicts of interests.

Vivid political debates accompanied this initiative with almost the same counter-arguments being invoked in all three countries. The Constitutional Courts have played an important role in this field as in all countries the laws were several times invalidated and therefore required several interventions from the legislators to address the problems identified by the Courts.

One of the most problematic decisions was to determine if the submitted statements should be public or not. This decision has a significant impact over the effort of building trust among the citizens for the public officials. While in the initial stage the statements were confidential, the argument of transparency won in time and most of the information is now public – Moldova is lagging behind in terms of real access to the statements because even if they are by law public, in practice various barriers are put in front of journalists and ordinary citizens when they ask to see them. Romania, on the other hand, has set an example by putting all the submitted statements online on www.integritate.eu. The information contained in the statements includes assets and liabilities of the official and his/her family. An interesting debate regarded how much of this information should be publicly available.

An exemption from publication was made for the concrete address of immovable property for reasons related to the respect of privacy of public officials. The information exists fully in the submitted statements, but it is not made public for everyone to see.

Another important decision refers to the persons that should submit these statements: in Romania almost all employees working for the state submit these statements, while Croatia has decided to only cover the top officials. The statements are submitted yearly and at the beginning and the end of the official mandate. This periodic submission allows for comparisons to be made between wealth and interests of public officials at different moments in time. Subsequent statements are also useful because they allow ex-post checks into suspicious activity of public officials, as most of the problems are not identified at the moment when the deed is committed, but later on.

The most protracted decision referred to the establishment of a control mechanism for conflict of interests because of enormous resistance from the political establishment. Constant insistence from Brussels joined by advocacy efforts from civil society within the respective countries helped promote this reform agenda. The first policy issue was to decide if there should be a unique control system for the three branches of government or a different one for each branch. In Romania, the National Integrity Agency is charged with controls of conflict of interests for the legislators, the judiciary and public officials in the executive branch, while in Croatia the judiciary should deal internally with conflicts of interests. In fairness at present only Romania has a functioning control mechanism that has produced results in practice. In Croatia and Moldova the set-up of the institutional mechanism is still on-going.

Sanctions are another point for debates – the impact of conflicts of interests on public budgets is still not very well understood. Contracts concluded in conflict of interests sometimes amount to millions of Euros, while the sanctions provided by the legislation most of the times refers only to fines and disciplinary penalties. Only in Romania the law provides for the possibility to ask the courts to invalidate the contracts concluded while in conflict of interests, but even here there are significant problems in practice to actually obtain the annulment of contracts and the recuperation of unduly paid benefits. Lenient sanctions such as warnings or fines lack the deterrent effect over the illegal conduct of public officials thus not stopping the detrimental practice. Some countries – Romania and Belgium – have incriminated “conflict of interests” as a criminal offence in the Criminal Code when the benefits obtained through the illegal conduct are significant.

The position of the European Commission towards the problem of conflict of interests has been built during the past ten years, starting with the negotiations for European accession of Romania. One of the conditions to be fulfilled before accession as decided at the conclusion of negotiations in 2004 was that Romania establishes an efficient control over conflict of interests that allows for the application of deterrent sanctions. However it was only in 2007 that the law was adopted in Parliament with the National Integrity Agency starting to operate in 2008. A benchmark used for post-accession monitoring under the Cooperation and Verification Mechanism focuses also on the proper functioning of the control mechanism with good track-record of sanctions applied in practice. In the case of Croatia similar requirements have been raised during the pre-accession period, but the set-up of the

Conflict of Interests Commission dragged behind for years (with the appointment of the members of the Commission in the end of January 2013). Track-record of sanctions would be almost impossible to achieve before mid-2013 (the potential accession date of Croatia to the EU). Under these conditions it would be advisable to establish a post-monitoring mechanism to ensure that progress in this field continues after accession. In the case of Moldova under the Visa Dialogue process issues pertaining to the control of conflict of interests are also discussed.

The current report discusses in details the evolution of the public policy on conflicts of interests in three countries – Romania, Croatia and Moldova – analyzing also the impact of the international agenda in this field. The overall conclusion is that reform in this sensitive field would have been impossible without the help from the international conditionalities because of the huge resistance from the establishment. Conflicts of interests are a very profitable area of undue conduct and not very well understood within the society at large. This is why pressure from the European Commission has to be constant and continue through the years until a significant track-record of sanctions is established and reform in this field becomes irreversible. Accession to the European Union should not be a stopping point for the reform process, but just a landmark that requires a change in the legal basis for the monitoring mechanism. The lessons learnt in the case of Romania should be used for all other countries – anticorruption is not an area where reforms happens overnight, this is why monitoring should continue even post-accession.

I. The formation and evolution of the anticorruption agenda

Ever since the middle of the '90s Romania's international efforts were directed towards joining NATO and the European Union, an aim accomplished in 2004 and 2007 respectively. Rule of law and a democratic system scored high on the list of reforms demanded from Romania by the international community as pre-conditions to its international ambitions. Under those circumstances all governments declared their commitment to fight corruption – what varied was the transposition of words into practice throughout the years. The commitment of political parties and of public institutions was profoundly influenced by both external circumstances and by internal pressure groups pro or against reform. The European Union was one of the most powerful factors that drove to the development and consolidation of anticorruption mechanisms in Romania. The accession process offered the opportunity to increase the profile of this topic on the Romanian political and public agenda. Internally, the anticorruption initiatives from a few politicians or NGOs supported by a part of the media helped shape, together with the external factors, the legal and institutional anti-corruption framework.

Therefore, there are three main pillars on which the anticorruption mechanisms have been built. The *first one* is based on the external commitments Romania undertook in order to join the European Union. The Cooperation and Mechanism (CVM) helped ensure that the progress made before the accession will not be lost once Romania joined the EU.

The *second pillar* is the internal pressure, led either by reformists within the system or by civil society that succeeded in articulating their demands in the area of anticorruption. The support of the EU for these groups brought about leverage to challenge the *status quo*.

The *third pillar* was the political will. Until the beginning of the 2000s not much was done in terms of concrete steps in the area of anti-corruption. Between 2000 and 2004 some important pieces of legislation were passed, but no concrete results were to be seen. It was only after 2004 that additional efforts started to generate visible results, which, in turn, made politicians uneasy.

First stage: 1996- 2000

The first stage refers to the '90s and the early 2000s, when most of the efforts were concentrated on building legislation and institutions, without visible effects. Romania was seen as a country vulnerable to corruption and there was no real debate about this issue. Freedom House reports had shown that Romania and Bulgaria faced serious corruption problems¹.

A few anticorruption measures were taken during this period. In 1996 statements of wealth for public officials were introduced (Law 115). However, the procedure was very opaque and mostly unusable. The statements were kept in sealed envelopes and opened only if a complaint regarding differences between the declaration and the real wealth existed. The content of the statement was also far from being comprehensive – it took subsequent changes to make this a real tool in the fight against corruption.

¹ *Nations in Transit* reports 2000 and 2001

The European Commission was dissatisfied with the situation and remarked in its reports that there were real concerns about corruption in Romania.

Second stage: 2000- 2007

It was the second stage, beginning with the early 2000s that realities started to shift slowly. In 2001, the Government initiated the first National Corruption Prevention Program that aimed to fight against corruption and to reform the state. Its purpose was to assess the degree of corruption and build prevention systems for the public administration, judiciary, private sector and politics.

Under the pressure of the European negotiations, the Government pushed a series of laws on the public agenda that generated anticorruption instruments. Legislation regarding wealth declarations, conflicts of interest and party financing entered into force (Law 161/2003), but according to the European authorities the results were rather shallow and represented just a window-dressing exercise. Other two laws were passed, one regarding freedom of access to public information (Law 544/2001) and one on decisional transparency (Law 52/2003).

A significant step was the creation of a specialized prosecution office competent to investigate high-level corruption in 2002. The added-value of this institution is that it was staffed not only with prosecutors, but also with police officers and specialists, all selected by the chief prosecutors and under his/her full command while working there. However, success did not come over night and in the beginning the EC criticized it for focusing only on petty corruption, avoiding to look into big corruption scandals presented in the media. Romania was a country with corruption, but no corrupt politician was taken to court. For instance, in 2000, Law 78 regulated corruption acts, therefore the legal framework existed.

Change came about with the appointment of a NGO leader as minister of Justice in 2005, strongly supported by Mr. Traian Băsescu, the President of Romania. Ms. Monica Macovei enjoyed the trust of Brussels, but not the support of most Romanian politicians. Most of them viewed in Ms. Macovei a risk factor due to her will to challenge the *status-quo* by envisaging equality before the law, including for influential decision-makers. The tensions increased steadily with the improvements in the performance of the judiciary leading to the expulsion of Ms. Macovei together with the Democratic Party from the government coalition in 2007.

Ms. Macovei replaced the management of the specialized prosecution office which under the new manager – Mr. Daniel Morar – started investigations into high-level corruption cases, including against ministers, parliamentarians, mayors and other categories of people seen until then as untouchables. Of course the start of real criminal investigations against top-level people was received with significant unease by those targeted by the investigation. The first indictment of a member of the Romanian Parliament resulted in a challenge before the Constitutional Court as to the constitutionality of the legislation establishing the specialized prosecution office. The Constitutional Court found that in order to keep the competence of investigating members of Parliament, the specialized prosecution office had to be placed

directly under the control of the General Prosecutor, thus losing a bit of its independence. Should have been maintained as a wholly separate body, the specialized office would not have been competent anymore to look into cases of ministers and members of Parliament. A decision was made to give up some of the independence in favor of keeping the competence over high-level corruption and thus the Anticorruption Prosecutor’s Office was transformed into the National Anticorruption Department and later into the National Anticorruption Directorate. The NAD still enjoys operational independence and has its own budget.

As shown above, the combination of internal and external factors led to the development of anticorruption policies. Until 2007, new wealth and interest declarations were introduced and a law for the National Integrity Agency was enacted, as a requirement of the EU, through the Cooperation and Verification Mechanism (CVM). The newly created mechanism – unique for Romania and Bulgaria – had been introduced to monitor the evolution of post-accession reforms ensuring:

the accountability and efficiency of the judicial system and law enforcement bodies, where further progress is still necessary to ensure their capacity to implement and apply the measures adopted to establish the internal Market and the area of freedom, security and justice².

Under these conditions, four benchmarks have been agreed upon for Romania (Decision 2006/928/CE of 13th December 2006):

- Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.
- Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.
- Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption.
- Take further measures to prevent and fight against corruption, in particular within the local government.

The following table³ shows the evolution of the conditionality on integrity, regarding the National Integrity Agency:

Commission’s demands about NIA	Date (regular EC reports)
Establishing an independent agency to verify the statements regarding personal wealth	May 2006
Establishing an integrity agency “with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken”	October 2006

² COMMISSION DECISION of 13/XII/2006, establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption http://ec.europa.eu/enlargement/pdf/romania/ro_accompanying_measures_1206_en.pdf

³ Cristian Ghinea, Laura Ștefan, “EU approach to Justice Reform in Southeastern and Eastern Europe”, Bucharest, 2012, p. 79

"Demonstrate the effectiveness of the National Integrity Agency"	June 2007
Assure the legal and institutional stability of the anticorruption network	June 2007

During this period Romania witnessed a stronger reaction from the politicians who started to feel endangered by the anti-corruption institutions. As opposed to the first stage described above, the stakes started to get high. Attempts to dismantle the NAD were frequent and strong opposition towards the adoption of a law on NIA existed. The Constitutional Court declared unconstitutional several essential and politically sensitive laws, such as the one that regulated the collaboration with the communist regime⁴. After this, it was the turn of the Parliament to act as a defender of those under investigation.

Third stage: 2007-2012

In 2007, the National Integrity Agency was created, after a fierce debate in Parliament and within the Government. It took more than ten years from the adoption of statements of wealth to also set-up a controlling mechanism for them. The institution started to work in the autumn of 2007 and showed its first results in 2008. Since 2007, it has faced permanent legislative, budgetary and political attacks.

The major setback has been the decision of the Constitutional Court in 2010 that invalidated parts of the law. This constituted a significant blockage, as it affected the activity of the institution severely and drew the attention of European and international bodies, which criticized the decision. Even if the Agency has been supported by some politicians, civil society and parts of the media, its scope has been severely limited, especially regarding wealth control.

The legislative instability and frequent amendments have affected the capacity of NIA to function properly. Also, frequent conflicts between the Agency and the Parliament have been recorded. Moreover, the level of implementation of sanctions is low.

In 2012, after five years of monitoring, the CVM report shows that NIA and NAD are functioning institutions, that the High Court of Cassation and Justice has taken steps to tackle key high-level corruption cases. Internal anticorruption measures of some government agencies are welcomed. However, the Commission shows that there are issues regarding the mechanisms of fighting against corruption and fraudulent public procurement, putting reforms into practice, unifying the legal practice regarding corruption cases. The EC also criticized the recent assault against rule of law and the interventions of political actors against the legal system and Constitutional Court.

The results included in the CVM reports have other significant side effects. Corruption has been brought into discussion of other areas of European negotiations on either the Schengen accession or use of the European funds. Problems regarding the rule of law in

⁴ Senator Dan Voiculescu – a proven collaborator of the former secret police – contested the role of the National Council for the Securitate Archives (CNSAS) as an institution that has the power of producing verdicts and Sergiu Andon - another member of the Parliament – challenged the law before the Constitutional Court which declared some essential articles unconstitutional. Sergiu Andon himself was subsequently declared incompatible in 2012, as he activated as a lawyer in a corruption case and was dismissed from Parliament.

Romania determined some of the member states articulate criticism and finally block the accession into the Schengen area. Also, multiple controls and audits have shown that serious problems such as corruption, mismanagement and lack of transparency characterize the administration of European funds. Conflicts of interest were seen as the main problem for the suspensions of payments and raised even the spectrum of a total freezing of funds. Recently, in September, EC President Manuel Barroso urged the Romanian Government “to take the immediate measures necessary to improve the administrative capacity and public procurement rules”⁵.

At the end of January 2013, the Romanian Government approved a Memorandum sent by the NIA according to which a system of ex-ante verification of conflicts of interest regarding public procurement from European funds would be developed. This involves legislative modifications and the development of an IT system that will prevent and identify situations that determine conflicts of interest. Therefore, the NIA would report to the contracting authorities the situations.

II. Legal framework

The **wealth statements** entered into force in 1996 and in 2003 the process became more transparent, as the public institutions were obliged to upload them on their websites. Detailed information regarding assets, vehicles and savings were added to the form. Also, the statement was extended to include the family of the subject. In 2005, debates in Parliament in order to change the templates of the forms were heated. Some of the parliamentarians tried to significantly alter the templates proposed by the government through an emergency ordinance, but the governing coalition managed to pass the proposed version⁶.

Legal provisions regarding **conflicts of interest** are included with their administrative form in a series of laws such as 161/2003, 188/1999, 96/2006, 7/2004, 393/2004, 144/2007 and 176/2010 but there is also a definition of the crime of conflicts of interest in the Criminal Code since 2006. As a comparative view, Romania, like Poland, Bulgaria and other recently integrated members states mostly have very detailed disclosure requirements, while others require much less or even on a voluntary basis (Sweden)⁷.

As a member state of the Council of Europe, Romania has to take into consideration *Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials*⁸, including provisions on conflicts of interest.

⁵ Statement following the meeting between President Barroso and Prime Minister Ponta, http://europa.eu/rapid/press-release_MEMO-12-675_en.htm, 17/09/2012

⁶ OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, 2011, <http://dx.doi.org/10.1787/9789264095281-en>

⁷ C. Demmke/M. Bovens/T. Henökl/K. van Lierop/T. Moilanen/G. Pikker/A. Salminen, *Regulating Conflicts of Interest for Holders of Public Office in the European Union. A Comparative Study of the Rules and Standards of Professional Ethics for the Holders of Public Office in the EU-27 and EU Institutions*, 2007,

http://ec.europa.eu/dgs/policy_advisers/publications/docs/hpo_professional_ethics_en.pdf

⁸ [http://www.coe.int/t/dghl/monitoring/greco/documents/Rec\(2000\)10_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Rec(2000)10_EN.pdf)

The **administrative** sphere is smaller and defines conflicts of interest as

the situation in which the person that exercises a public dignity or position has a personal interest of a patrimonial kind that could influence the fulfillment of the duties, specified by the Constitution or other bills with objectivity⁹.

Still, the potential or actual beneficiaries of a conflict of interests are defined separately for the public positions or mandates covered by the law.

GRECO reports in 2005 and 2007 criticized this definition since it referred to financial interests only and did not cover enough categories of public officials¹⁰. So did a Freedom House report commissioned by the Ministry of Justice that noted that the definition should be extended and the state should "empower one agency with monitoring and enforcing public integrity".¹¹

The legislation was amended accordingly and it is now more comprehensive. Apart from civil servants, it covers members of elective bodies, the President and the members of the Government, judges and prosecutors, members of public national councils and commissions, board managers or members of local or national interest bodies or where the state or local government is the main or a significant shareholder, leaders of trade unions or candidates to public elective positions. The latter category is obliged under the electoral law to hand in wealth and interests statements.

All the above-mentioned categories have the obligation to hand in wealth and interest statements at the beginning of the mandate and in no more than 30 days from its end. Also, yearly, the subjects have to hand in or renew their declarations, no later than on the 15th of June.

Moreover, the **Criminal Code** refers to conflicts of interests from a wider perspective and the definition of the crime is broader than that of a misdemeanor. Under criminal law beneficiaries of conflicts of interests can also be second degree relatives as well as people and companies with which the public official has had working or business relationships in the past five years (the provision is not to be found in the administrative law). This may be considered as a deviation of the legal system as the administrative definition should apply to more subjects and to more deeds.

For **the magistrates** there are specific incompatibilities and conflict of interest provisions, specified in Law 303/2004, the Statute of Magistrates. The legislation states that these positions are incompatible with any public or private office, excepting some educational positions. Conflicts of interests are also covered by the law. Prosecutors and judges must refrain from any judicial activity that could create a conflict of interests between their own interest and the public one, excepting the cases where they declare a potential conflict to the leadership of the institution and the conflict is considered not to be harmful.

⁹ Article 70, Law 161/2003. Note that this law is a general one and the definition can also be found in the special legislation - it such the legislation on local elected officials, on the Senate, on public servants.

¹⁰ GRECO reports [www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2\(2005\)1_Romania_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2(2005)1_Romania_EN.pdf) / [www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2007\)9_Romania_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2007)9_Romania_EN.pdf)

¹¹ Freedom House, *The Anticorruption Policies of the Romanian Government*, 2005, www.just.ro/Portals/0/Lupta%20impotriva%20coruptiei/Documente/Audit%20SNA/FH_Audit_EN_16_031.pdf

Annual statements for declaring that the husband/wife, relatives and affinity related persons until the 4th degree exercise judicial, investigative activities or criminal investigations and their workplace. Also, they must declare their collaboration/lack of collaboration with the Security services and they cannot work for the current security institutions. Moreover, they are not allowed to join political parties or to express political opinions.

A series of **incompatibilities** regarding the President and the members of the Parliament and Government are set through the Constitution, revised in 2003. Law 161/2003 sets a general framework for conflicts of interests and incompatibilities. The Code of Conduct for Civil Servants (Law 7/2004) provides for incompatibilities and rules of conduct for civil servants.

Apart from the general legislation, special procedures exist for the Parliament that refer to rules of conduct, conflicts of interests, incompatibilities and dismissal mechanisms (Law 96/2006, Statute of deputies and senators) Also, the Regulations of its two Chambers contain legal references on conflicts of interests, wealth s and incompatibilities. Their parallel existence created legal conflicts regarding jurisdiction that will be explained below.

The lack of clear provisions and political interference within the legal procedure is shown in the case of Mr. **Mircea Diaconu**, member of the Parliament that reached the attention of the European Commission. In the beginning of the mandate, Mr. Diaconu asked the Legal Commission of the Senate – that is not legally entitled to set verdicts - if the fact that he also works as theatre director is considered to be an incompatibility and the senators replied that this is not problematic. Still, in 2011 NIA has evaluated him as incompatible. While the senator contested the decision, the High Court confirmed the decision issued by NIA. By law, a senator should lose his mandate if found incompatible, however the Senate refused to vote for his dismissal (23 senators voted for his revocation, 32 against and 10 abstained in the plenary session). This voting configuration also reflects the decisions taken in the Legal Commission that voted against the dismissal.

Furthermore, as the Senate supported Mr. Diaconu and refused to put into practice a decision of the High Court, the Superior Council of Magistracy complained to the Constitutional Court and asked to solve this constitutional conflict and take required measures. The Constitutional Court ruled that a conflict of powers exist and gave precedence to the decision of the High Court stating that the Senate cannot perform the role of legal actor and therefore cannot interfere with the decision of the High Court¹². In December 2012, Mr. Diaconu resigned.

Also note that Mircea Diaconu has also been indicted for conflicts of interests on five charges as he granted contracts as director of the theatre to his wife that worked in the same institution.

The situation gets complicated, as the CVM report released in July 2012 included references to "the adoption of procedures regarding the resignation of Members of Parliament with

¹² Decision no. 972 /21.11.2012

final decisions on incompatibility, conflict of interests and high-level corruption"¹³. Also, the Commission commented on this decision, through its speaker, Mr. Mark Grey that "it is important for Romania to demonstrate its commitment to the rule of law. The Senate decision comes in contradiction to EU recommendations so we'll have to further follow this case"¹⁴.

Recently, the Parliament has modified the Statute of the Deputies and Senators and produced legal changes to incompatibilities, conflicts of interests and immunities. The biggest challenge was related to immunities, as the initial project included a provision that stated that the prosecutors must bring evidence in front of the Parliament if they aimed at lifting up the immunity of a member of the Parliament. The proposal has been withdrawn due to public pressure.

Still, the law introduces provisions related to conflicts of interest, stating that if there is final and irrevocable decision of a court regarding a member of the Parliament, an interdiction can be put in order to limit his/her access to the works of the Chamber of which he/she belongs.

Although initially, the law proposal contained provisions stating that a member of the Parliament could lose her/his mandate if NIA produces a report that confirms the state of incompatibility and the subject does not contest it in court or if there is final and irrevocable court decision that confirm an unjustified wealth and a state of incompatibility, the final version, sent to the President did not contain these aspects.

NIA has gained some attribution according to the modification brought to the law – not as many as in the initial form – but its power is still limited when it comes to the Parliament, which tends to play the role of a legal interpreter.

The latest CVM report, published in January 2013¹⁵ underlined some of these issues. Firstly, it reminds of the responsibility of the politicians, especially those in leading positions to act properly and with integrity. It also refers to the fact that NIA's decisions have not been put into practice and senior officials did not resign.

Secondly, the Commission states that clearer procedures should exist in the Parliament regarding integrity issues. Regarding incompatibilities, the report states that "it is also important to clarify that ANI remains the sole authority tasked with the verification of potential incompatibilities of elected and appointed officials".

III. Institutional set-up

¹³ Report on Progress under the Co-operation and Verification Mechanism in Romania, http://europa.eu/rapid/press-release_MEMO-12-569_en.htm

¹⁴ *Romania Senate Decision Worries EU*, <http://www.balkaninsight.com/en/article/romania-s-senate-decision-worries-eu>, 31 Oct. 2012

¹⁵ Brussels, 30.1.2013, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Romania under the Co-operation and Verification Mechanism

With Law no. 144/2007 the National Integrity Agency became the main institution that controls documents and performs inquiries regarding conflicts of interest, incompatibilities and wealth statements.

The role of the Agency is to verify wealth and interest statements, control the filling-in on time of the statements, assess the failure to follow legal provisions regarding conflicts of interest, incompatibilities and wealth and act according to the law if necessary and formulate complaints to the criminal investigation bodies if there is evidence or solid clues regarding the existence of such activity.

As shown above, before 2007 there was no institution with attributions of controlling and centralizing the information and conducting inquiries. In order to unify all the instruments, a draft law was approved by the Government in July 2006 and was adopted by the Senate in May 2007. According to the memorandum, the purpose of the law was to create a unique and independent authority that would have permanent activity¹⁶. Its purpose was to verify the wealth obtained during the public mandates, dignities or positions, conflicts of interest and incompatibilities.

The legislative process was a rough one, characterized by continuous political confrontations. Politicians, but not only, denounced the toughness of the law, as one of the roughest in the EU, the extended role of the inspectors, that should not perform investigations, but rather apply penalties (some members of the Parliament commented that the attributions of NIA would overlap other institutions).

The legislative project, proposed by the Minister of Justice, Ms. Monica Macovei was heavily modified during the debates in the Chamber of Deputies, especially in the Legal Commission (mostly due to interventions proposed by UMDR – Hungarian minority party - Conservative Party, Social Democratic Party and România Mare Party – nationalist party), that reduced the role of the NIA to a simple verifier of statements, without the possibility of controlling wealth and incompatibilities¹⁷. Also, modifications included that Church representatives should be taken out from public scrutiny and the results of inquiries should be declared secret.

The project was sent back to the Commission for further discussions after harsh debates in the plenary, due to the fact that the parliamentarians did not agree with a significant number of articles. The final vote has shown a collaboration of all the parties in the fight against anticorruption: the modified law that produced a rather formal institution was approved with 251 votes for, five against and one abstention (two members did not vote).

The EU monitoring report, published in September 2006 has shown that there is not enough political willingness to pass a valid law through the Parliament¹⁸.

¹⁶ <http://www.cdep.ro/proiecte/2006/600/10/6/em616.pdf>

¹⁷ According to the declarations of the members of the Legal Commission, NIA should not be operative. Members of the above mentioned parties cried out the unconstitutionality of the law, as well as its harshness. Some of them compared the institution with the former National Assembly, the supreme communist forum.

¹⁸ Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, http://ec.europa.eu/enlargement/pdf/key_documents/2006/sept/report_bg_ro_2006_en.pdf, p. 35

Moreover, the European Commission put pressure on the Romanian authorities¹⁹ that tried to soften or even annul the law and underline the importance of its adoption until the EC report, at the end of 2006. The Senate, under the pressure of the European Commission through President José Manuel Barroso and under media and civil society's stress, recovered some of the cancelled attributions of the Agency. The paradox is that those parties that proposed the amendments returned to some of the original provisions, due to presumptive political negotiations, that were debated in the mass media.

GRECO report in 2007 referred to the NIA as

an ambitious approach to deal with the control of assets and economic interests of public officials. The NIA seems to have all the ingredients needed and GRECO very much hopes that the NIA will be in a position to fulfill its function in a determined and credible manner²⁰.

The structure of the National Integrity Agency

The structure of the institution includes a **President**, ranked as state secretary and a **vice-president**, ranked as state sub-secretary that are appointed by the Senate (initially by the President), for a four year mandate, through a competition organized by the National Integrity Council (NIC). The latter has also the attribution of proposing to the Senate their removal from office. They do not perform operative functions, but rather strategy and representation attributions.

The process of naming the first president was a tough one, as not candidate passed by the procedures organized by the National Integrity Council. In March 2008, Mr. Cătălin Alexandru Macovei was named President of the Agency - initially vice-president - through a Government ordinance after two unsuccessful contests organized by the NIC that did not produce any viable candidate. Due to these issues, the Agency was not functional for a significant period of time, the lack of a President also affected the hiring procedures and practically the Agency did not work.

A new management has been approved by the Senate in March 2012. Horia Georgescu – former General Secretary - was validated as President with 72 votes for, 24 against and nine abstentions. Bogdan Stan was named vice-president with 75 votes for, 19 against and 12 abstentions.

The **General Secretary** coordinates functional activities according to the NIA structure, collaborates with other institutions, represents the institution in certain conditions and contributes to the development of public policies.

¹⁹ Olli Rehn, the Enlargement Commissioner sent a letter in December 2006 asking the prime minister to intervene within the Senate, so that the "mutilated" version of the law, approved by the Chamber of Deputies would not be passed. Also, underlined in a interview for BBC the importance of NIA for the accession. Also Commissioner Franco Frattini (Justice and Internal Affairs) reacted and asked political parties to support the voting of the law.

²⁰ GRECO report, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2007\)9_Romania_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2007)9_Romania_EN.pdf)

NIA works with a General Direction, comprising the Integrity Inspection (with 6 services), the Judicial, Control, Public Relations and Communication Direction and an Economic Direction, but also with compartments and services²¹. The Agency works with **integrity inspectors, public servants and contractual personnel**.

The inspectors are the core of the investigative procedure, have operational independence and are appointed through a competition or an examination. They carry out data processing, assessment, report elaboration and sanctioning attributions. The inspectors assess wealth statements, documents and information regarding the existing wealth, but also patrimonial modifications that occurred during the exercise of a public position, conflicts of interests and incompatibilities, for the duration of the public mandate and for three years after its ending.

The distribution of cases for the integrity inspectors is random and the redistribution of the files can be done only in some precisely defined cases, including: incompatibility, conflict of interests, the motivated request of the inspector, suspension from the activity and so on.

The inspectors work closely with the Litigation Department, part of the Judicial, Control, Public Relations and Communication Direction that represents and defends the Agency in court and in relation to other institutions and persons.

The backbone of the Agency's work is **the Electronic Management Integrated System of Assets and Interest Statements** (*Sistemul Informatic de Management Integrat al Declarațiilor de Avere și de Interese - S.I.M.I.D.A.I.*) that contained on 10 December 2010 a number of 89.592 documents, afferent to the Integrity Inspection works. One year later, the number of the documents went up to at 197.782.

For external visibility, a web portal was created, where declarations, evaluations and cases are published (www.integritate.eu). By the end of December 2011, a total of number of 2.585.583 declarations have been uploaded. During electoral periods, the declarations of the candidates are posted on-line. The Agency is currently working on a project that would permit wealth and interest statements to be uploaded on-line.

The maximum number of employees is legally limited to 200, but the threshold has never been reached. The hiring procedures were blocked in 2007 and in the beginning of 2008. The first employees were detached from other institutions, such as Ministry of Economy and Finances, Ministry of Interior, Ministry of Labour or National Agency of Public Servants.

The insufficient staffing was one of the permanent issues remarked and focused by the European Commission. The first inspectors have started their activity in April 2008. In July, the Commission benchmarked as positive the personnel evolutions, but mentioned that the low salaries could affect the quality of the operative personnel's' work²².

*Occupied positions (2007-2011)*²³

²¹ Services: IT, Human Resources, Secretariat; Compartments: Internal public audit, General Registry

²² Supporting document accompanying the report from the Commission to the European Parliament and the council. On progress in Romania under the Co-operation and Verification Mechanism, {COM(2008) 494 final}, Brussels, 23.07.2008,

²³ According to NIA Strategy for 2011-2014, www.integritate.eu/UserFiles/File/StrategiaANI_2011-2014/StrategiaANI_Combatere&PrevenireAveriNejustif&ConflicteInterese&Incompatib.pdf

Year	2007	2008	2009	2010	2011	Sept. 2012
<i>Administrative personnel</i>	21	65	59	55	54	47
<i>Integrity inspectors</i>	-	53	57	42	33	35
<i>Total</i>	-	118	116	97	87	82

Positions, planned within the budget constantly remained unoccupied due to lack of funds, unattractive salaries or governmental policies that blocked hiring, started in 2010 as austerity measures. This fact affected the capacity of optimal work for the institution and in the past two years the figures went down.

The number of inspectors – the backbone of the institution - also became smaller and in 2010 and 2011 the numbers descended to almost 60% of those in 2008, a worrying fact taking into consideration that 2012 has been an electoral year, with two elections (local and parliamentary). As a comparison, the figures went down from 53 in 2008, also an electoral year with two ballots to 35 in 2012.

If we report to the quantity of files an inspector has to deal with, in September 2012, a number of 101 cases can be reported while in December 2011 each servant had to deal with 139 cases. As illustrated, the number of cases is too high and this could be an issue if we talk about performance and quality in the investigative process.

Monitoring and control

The work of the Agency is monitored by the **National Integrity Council (NIC)**, a representative structure, under the control of the Senate. The Council is composed of representatives of all the groups that are subject to verification: members of all parliamentary groups from the Senate, Ministry of Justice and Finances, representative organizations of the administrative-territorial units, public servants, magistrates' organizations and civil society. The structure is led by a President elected through the secret vote of 50%+1 of the members and meets in public meetings on a monthly basis or whenever is necessary.

The role of the Council is mostly to organize the procedures for hiring or dismissing the president and vice-president, ask and debate activity reports, formulate recommendations regarding the Agency's strategy, analyze the external audit report regarding the activity of the NIA, sends a yearly report to the Senate regarding the activity of the Agency. The Council has also the important task, of assuring the integrity of the Agency's employees.

In practice, a continuous tension existed between the NIC and the Agency. Through GEO 49/2007 the powers of the Council have been strengthened. In 2009, the CVM report²⁴ drew the attention regarding pressures that were put upon the Agency in order to take certain

²⁴ Brussels, 12.2.2009, INTERIM REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Romania under the Co-operation and Verification Mechanism

decisions, even if the legislator included an article that regulated the need for political neutrality while working within the Council.

The first procedure for nomination of members, in June 2007 proved that the parties did not select appropriate candidates, but rather controversial or inexperienced figures – even if in the beginning the Council had even a greater role in assuring the functioning of the institution, due to the lack of management. Some of them acted against the interests of the institution they represented. For instance, in September 2008, Alice Drăghici, the representative of the Conservative Party and the lawyer of former MP Șerban Brădișteanu, prosecuted for bribery and whose wealth was being evaluated by the NIA put pressure on the integrity inspectors in order to block the investigation related to his assets. Horia Georgescu, the General Secretary stated that Alice Drăghici threatened the personnel that if the case reached the court, problems would occur – subsequently, a scandal was raised around the management of the institution, including criminal intimations at the prosecutor's office²⁵.

The interim report in March 2010 stated that the role of the NIC as a control organ of the NIA has not been effectively exercised²⁶. Also, in 2010, the Commission underlined that ambiguities in the legislation determined the lack of ability of the institution to act as an "interface between ANI and politics and was not able to shield the agency from political accusations and promote its development"²⁷.

In 2011²⁸ the NIC was still under supervision, due to the fact that the legal provisions have not been altered, although the EC produced such a recommendation. The question was whether the structure was effective in supervising NIA's performance and ensuring its proper functioning and development. The institution was criticized for not supporting NIA in ensuring a sufficient budget and did not protect the Agency from political attacks.

In 2011, the NIC adopted an operational procedure through which it guarantees the independence of the NIA, at the written or verbal request of the Agency. The President may decide, by consulting the members to support or not the NIA. This procedure has been used recently, when decisions of NIA and of the High Court of Cassation and Justice that established incompatibilities for two MPs (Sergiu Andon and Florin Pâslaru) were ignored by the Legal Commission of the Deputy Chamber. The Council asked for the implementation of the decisions – Sergiu Andon lost its mandate, but Florin Pâslaru is still a member of the Parliament.

The way any works is monitored and evaluated by an external independent audit. According to the law, the auditor is selected through a public procurement procedure. The report, prepared in the first three months of the year and presented to the Council

²⁵ Cristian Ghinea, *op. cit.*, p. 123

²⁶ Brussels, 23.3.2010, INTERIM REPORT FROM THE EUROPEAN COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Romania under the Co-operation and Verification Mechanism

²⁷ Brussels, 20.7.2010, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Romania under the Co-operation and Verification Mechanism

²⁸ Brussels, 20.7.2011, SUPPORTING DOCUMENT Accompanying the REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Romania under the Co-operation and Verification Mechanism ROMANIA: Technical Update, (COM(2011) 460 final)

shall necessarily include recommendations on the fulfillment of managerial duties, efficient organization, conduct and communication, the taking of responsibilities by the Agency's leadership, as well as recommendations on the need to reduce or, as applicable, to increase the number of the Agency positions.

Legislative evolutions and setbacks

Legislative initiatives and appeals to the Constitutional Court were used by politicians in order to dismantle anticorruption initiatives. The initial regulation, Law 144/2007 has been modified three times²⁹ and republished in 2010, due to a decision of the Constitutional Court. Subjects that were under the investigation of the integrity inspectors sent the law to the Constitutional Court in order to remove certain categories of officials that are targeted by the provisions, but the requests were rejected. Between 2008 and 2010, nine unconstitutionality exceptions were denied and one was partially admitted. Another complaint against the law was rejected by the Court in 2011³⁰.

In the case of the republished act, Law no 176/2010 there are five decisions of the Court regarding the raised unconstitutionality exceptions. One of them was raised by Andras-Levent Máté, a parliamentarian under inquiry for approving his wife's hiring within his parliamentary office and was overruled. Other similar cases aimed at Oana Niculescu-Mizil, Ștefănescu Tohme, Sonia-Maria Drăghici, Mihai Radan, Stelică Iacob Strugaru and for all of them NIA sent the files to the Prosecutor's Office for potential breach of the Criminal Code for conflicts of interests.

NIA was tagged as a parallel justice instrument, built for political means. Visible scuffles with the Agency were initiated by elected officials constantly, both at local and central level, mostly by those who were under inquiry. The tensions grew during electoral periods.

In 2011, Deputy Árpád-Francisc Márton (UDMR) proposed the elimination of wealth statements for candidates, the Agency's attribution of asking information from public institution regarding the assessment of wealth or the on-line publication of statements. The comments were proposed during the debates for a legislative project initiated by Mr. Tudor Ciuhodaru that included among other provisions the obligation to declare the studies and professional background³¹. The law was redrawn.

Mr. Árpád-Francisc Márton, as well as his colleague Andras Levente Mate proposed amendments to the law for modifying the Criminal Code and aimed at limiting the list of subjects that can be prosecuted and to soften significantly the criminal definition of conflict of interests.

Mr. Cătălin Macovei declared that some of the parliamentarians produce amendments to the legislation to foster their personal interests - in order to defend themselves from the inquiries and that all parties are hostile to the anticorruption institutions³². President Horia

²⁹ Through GEO 49/2007 (rectified), GEO 138/2007 and Law 94/2008 that determined the republication in the Official Gazette in 3rd August 2009

³⁰ According to the Chamber of Deputies website, www.cdep.ro/pls/legis/legis_pck.htm?act?ida=72290&pag=2

³¹ Mr. Ciuhodaru's project can be read on the Chamber of Deputies website, www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=12202

³² Cătălin Macovei: ANI nu va mai avea nici măcar rol de bibliotecă!, www.rfi.ro/articol/stiri/politica/catalin-macovei-ani-nu-va-mai-avea-macar-rol-biblioteca, 13th Oct. 2011

Georgescu also declared that the pressures might rise during elections, coming from all parties³³.

The turnover was Decision no. 415/14 April 2010³⁴ of the Constitutional Court that changed the working mechanism of the institution. The decision was provoked by the contestation of the former member of Parliament Șerban Alexandru Brădișteanu - that was being investigated by NIA for a significant difference between wealth and revenues³⁵.

This kind of tactics has previously been used for other two laws. One of them regulated the functioning of the National Anticorruption Prosecutor's Office and the other one, the National Council for Studying Security's Archives. Severe mutations of the legislation were produced for both laws as unconstitutionality exceptions have been raised by MPs that were under the lens of the respective institutions. If NAP was transformed into the National Anticorruption Directorate, the other institution's attributions were seriously reduced.

The Constitutional Court has acknowledged the contested jurisdictional character of some of the activities carried on by the NIA inspectors such as leading inquiries and asking for the confiscation of unjustified assets and motivated that this attribution overrides the justice system, breaching the separation of powers. The Court declared as unconstitutional the competence of asking for the confiscation of unjustified goods and the violation of the principle of proving the guilt. Another contested aspect was related to the obligation of publishing assets declarations on the website of the institutions or the Agency's webpage and the decision indicated that violates privacy, therefore is unconstitutional.

The European authorities criticized the decision stating that it eliminates "the control of dignitaries' and officials' accumulation of wealth whilst in public office" and it is a setback from the current achievements³⁶.

The new law proposal eliminated in its first version significant provisions, such as the obligation of candidates to send statements or provisions regarding the criminal prosecution for false statements – subjects could modify their declarations without being considered a criminal deed if the change was done before the notification by the responsible authority³⁷. Also, the public statements would have had a more reduced form compared to the personal ones and the prescription term from the end of the mandate would have been just one year.

President Băsescu refused to promulgate the law – due to the reasons mentioned above - and sent it back to the Chamber of Deputies that modified it and passed it to the Senate that eliminated once again some of these provisions. The President sent a complaint to the Constitutional Court that declared the law unconstitutional.

³³ Horia Georgescu: *Presiunea asupra instituțiilor de combatere a corupției va crește în campania electorală*, www.gandul.info/politica/horia-georgescu-presiunea-asupra-instituțiilor-de-combatere-a-corupției-va-crește-in-campania-electorală-9468451, 02.04.2012

³⁴ Constitutional Court decision, www.ccr.ro/decisions/pdf/ro/2010/D0415_10.pdf

³⁵ NIA press release, <http://www.integritate.eu/1230/section.aspx/1119>

³⁶ Brussels, 20.7.2010, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Romania under the Co-operation and Verification Mechanism

³⁷ Also see OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, 2011, <http://dx.doi.org/10.1787/9789264095281-en>

The decisions of the Chambers raised the indignation of the international community and Romanian civil society. Still, the new law was passed through the Parliament in August 2010, after four months of debates and included the issues requested by the President.

The working mechanism was rearranged by Law no. 176/2010, where the key amendment was the replacement of the term 'ascertains' (*constată*) with 'assesses' (*evaluează*). Under the new legislation the process of wealth assessment, is the following:

- The complaint can be initiated by any person or by the President of the Agency or by an inspector, *ex officio*
- The case is distributed randomly to an integrity inspector
- The inspector can document its investigation firstly through public sources and only after informing the person that it is under assessment can ask for more information from other institutions or persons, that are obligated to answer in at most 30 days
- The person that has been identified to have significant differences between incomes and declared assets³⁸ is invited to present a point of view and can be legally assisted by a lawyer
- With the acceptance of the evaluated person, an extra-judicial expertise can be performed at his/her own expense in order to clear all the aspects. The inspector can ask the court in whose jurisdiction the subject resides for an expertise on the Agency's expense
- After the previous procedures or after 15 days - if the evaluated person did not present any point of view – if the difference is still identified, the inspector will proceed with a assessment report, that contains: a descriptive part of the facts, the expressed point of view (if exists), the evaluation of the possible differences and conclusions
- The report is sent in five days after its finalization to the evaluated person and if necessary to the fiscal, disciplinary or criminal bodies and also to the commission for the verification of assets, specified within Law no 115/1996
- If the information is not confirmed, a report is produced that is also sent to the subject

One of the main amendments brought to the system by the Constitutional Court is that the ascertainment report produced by the inspectors is no longer sent directly to the court, but the assessment report is sent to a Wealth Investigation Commission, attached to each of the Appeal Courts (that existed since 1996). NIA sends the evaluation report and the Commission proceeds to investigation. The members can vote through majority, within three months from the date of referral to submit the case to the Court of Appeal if evidence is found against the subject, can dismiss it if the origin of goods is justified or can refer it to the competent Prosecutor's Office, whether the acquisition of goods whose origin is unjustified represents an offense.

³⁸According to article 18: "By significant differences, in the meaning of the present law, is the difference of more than EURO 10,000 or its equivalent in lei between the wealth during the dignity/the exercise of public positions and the revenues from the same period"

The procedure is similar for incompatibilities and conflicts of interests, with the exception that the report is not sent to the Commission, but to the body that can proceed to trigger disciplinary proceedings.

The report may be contested by the subject of the evaluation within 15 days. If it is not challenged, responsible bodies for disciplinary procedures will take necessary measures and also, the annulment of the documents or decisions taken while in conflict of interests or incompatibility can be asked to the administrative courts.

The ascertainment of a conflict of interests or incompatibility forbids the subject to occupy a public position comprised within the law – with the exception of the electoral ones – for three years from the dismissal or end of the mandate. If it is no longer in office, the prohibition applies from completion of assessment or definitive and irrevocable decision of the court confirming one of the two states.

Budget

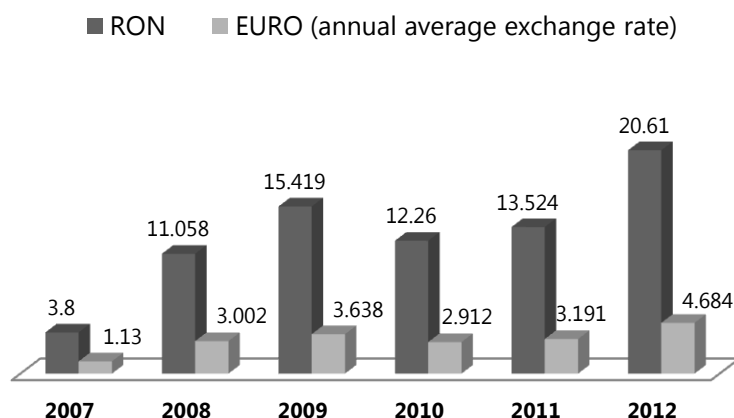
The Agency is financed through the state budget, voted by the Parliament.

The Commission drew the attention in the July 2008 report that not enough funds have been budgeted for training and personnel. The situation might have a negative impact on the qualitative functioning of the institution. Next year³⁹ a visible evolution is noted that reflects the institutional development. The budget was sufficient for the operational needs and for the procurement of a data processing system, which was already delayed.

The budget has been a tool that permitted political parties to influence the activity of the Agency. For instance, in 2011, MP Petru Lakatos (UDMR) proposed a lowering of the budget with 2,567 mil. RON (almost 0,6 ml Euro) that would be redirected to the Romanian Academy. Although the Parliament agreed, the sum was given back, as the reduction has been widely criticized. Note that Petru Lakatos was being assessed by Agency for unjustified wealth. The NIA obtained a court decision to assess the wealth of the former Member of Parliament, as he did not allow the expertise⁴⁰.

³⁹ Brussels, 22.7.2009, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Romania under the Co-operation and Verification Mechanism

⁴⁰ While Petru Lakatos considered that the institution does not have results and concluded that no further funding is necessary, Horia Georgescu, General Secretary stated that the initiative is directed against the institution. Note that the inspector that assessed the situation quit the case. Mr. Lakatos quit the Parliament and currently is councilor for the Court of Accounts.



NIA budgets 2007-2012 (in millions, with final rectifications)

The European Commission⁴¹ reported at the beginning of 2011 that due to budgetary cuts, the finances destined to NIA have also been lowered, but the Interim Report of February 2011 included references regarding the need for a better financing. NIA' initial budget was lower than the one in 2008 and considered as insufficient for the functioning of the institution. Therefore, the Government increased ANI's budget in May, but not with the expected sums⁴².

During the parliamentary debates for 2012 the budget, Andras Mate (UMDR) proposed a series of amendments in the Legal Commission and tried to limit the institution's budget to 5%, claiming the debts of the institution, specified in a report published by the Court of Accounts, due to an inquiry over the NIA. The initiative was supported by the opposition also (social democrats, conservatives and liberals), but the budget was finally approved without these amendments.

The National Integrity Council reacted and drew the attention regarding the impact that the reduction of the budget will have on the optimal functioning of the Agency, but also on the evaluation of the European Commission within the Cooperation and Verification Mechanism. Also, the Council remembers that the funds are needed as parliamentary and local election will take place in 2012.

Institutional track-record

NIA was defined by some public actors as an institution that does not work properly and does not produce results. Others recognize the effectiveness of the institutions. Still, an objective way of evaluating its performance is by presenting figures that reflect the results of the Agency's work.

⁴¹ Brussels, 18.2.2011, INTERIM REPORT FROM THE EUROPEAN COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, On Progress in Romania under the Co-operation and Verification Mechanism

⁴² NIA requested 1.759.000 Euro and received 643.189 Euro

Recent declarations of NIA's President, Horia Georgescu show that 20-30 MPs have "issues" with the law and are currently waiting for court decisions⁴³. Also, other figures show that "during the 2008-2012 parliamentary term, it discovered 42 lawmakers had conflicts of interest or had amassed dubious wealth"⁴⁴. In 2012, NIA announced that more than 15 MPs have breached the legislation regarding conflicts of interest both administratively and criminally⁴⁵.

On a wider perspective, the activity of the Agency for the past few years looks as follows according to the activity reports⁴⁶:

- **4 cases irrevocably won** in Court involving wealth confiscation (Law 144/2007) and six cases out of 24 sent to the Court by the Commissions (one won by NIA in first instance and six pending). On the new law, 176/2010, out of 24 potential cases, just six cases were sent to court and give are still pending.
- **April 2008 – September 2012: 147 conflicts of interests cases** (60 administrative and 87 criminal). Of the 58 cases of administrative conflicts of interests (after 2010), 51 have reached the courts (14 have been won in first instance by NIA and 24 are still pending). Of the 81 criminal cases, 69 are pending at the prosecutor's office, 10 have been closed and 2 have been sent to the court.
- **2008-2012: 378 incompatibility cases:** 159 are definitive, 155 contested in court, 53 still contestable and 11 canceled by the court. From the number of 123 cases that reached the disciplinary bodies, on 51 cases the subject resigned or ended the mandate before the report reached the disciplinary commission, 31 persons before the commission reached a decision and 11 were dismissed.
- **2008-2012 – 316 cases sent to the criminal investigation bodies:** 4 sent to the court, 130 pending and for 182 no prosecution was started. Most of them refer to false statements and criminal conflicts of interests. Mircea Mariana, mayor of Cernavodă is the first case of prosecution that was sent to the court for false statements.
- **2008 – 2012 - 1.551 complaints against administrative fines:** of 1.384 judged cases, 82% were won by NIA

Most of the files are closed due to the fact that the complaints are not proven, enter the jurisdiction of other institutions or their terms of prescription have passed. For example, between September 2010 and September 2012 a number of 3.405 files have been opened, but 3.044 have been closed on one of the reasons above.

The above-presented statistics show that even if the Agency produced results challenges still exist in other parts of the system. A significant number of cases were stopped in courts or by prosecutor's offices. A relevant statistics refers to cases sent to criminal investigation bodies,

⁴³Horia Georgescu: 20-30 de parlamentari au probleme cu Legea ANI, www.mediafax.ro/politic/horia-georgescu-20-30-de-parlamentari-au-probleme-cu-legea-ani-10273610, 2 Nov. 2012

⁴⁴Romania anti-graft agency says faces political intimidation, www.euronews.com/newswires/1725166-romania-anti-graft-agency-says-faces-political-intimidation, 12 Nov. 2012

⁴⁵NIA press release, www.integritate.eu/1784/section.aspx/2487

⁴⁶July- September 2012 report, http://integritate.eu/UserFiles/File/Rapoarte/RaportActivitate_ANI_Iul-Sep2012.pdf

of which for 182 cases no prosecution was started. In 114 cases, the bodies have established the lack of criminal intent, for 41 that there was a deed, but does not represent a social danger and in 22 cases the investigation established that there is no deed.

Also, one significant issue is the recovery of goods or funds that can be considered as a prejudice due to decisions taken in a state of conflict of interests or incompatibility. Even if contracts are annulled by courts, the prejudice can hardly be recovered. On the other side, from the wealth control activities little money returned to the state budget.

An analysis initiated by the Agency at the local level (89 institutions) between September 2011 and February 2012 involved verifications for a number of 190 local and county councilors for incompatibilities and conflicts of interests. The results are worrying, as 78 councilors have been identified with legal issues, as it follows:

- 37 county councilors and 41 local officials breached the legal provisions on conflicts of interests and incompatibilities
- Nine cases regarding administrative conflict of interests
- 33 cases of indications regarding a potential criminal conflict of interest
- 75 cases of incompatibility
- 16 potential cases of false declarations
- 1 case of potential case of crimes assimilated to corruption

As an overall figure, the total value of patrimonial advantages obtained by the 78 councilors is 37.952.350 Lei (approx. 8.510.000 Euro)⁴⁷.

The institutional track record shows that in the past five years, the NIA produced evaluation reports for officials from both small communities and large municipalities or county councils, which shows the extension degree of the issue. The figures demonstrate that there are worrying statistics within the local administration created by multiple reasons: lack of knowledge, inefficient system of legal assistance (the designated person within local institutions for handling integrity matters may not have the required specialty and skills), lack of interests for good governance from the officials' side.

Collaboration between institutions

Courts and disciplinary bodies

In July 2009, the Commission's report remarked that the Agency was operational and delivering good results regarding the declarations of wealth that would be improved once the integrated IT system would be completed. "A certain preventive effect" was assured by the follow-up of the missing wealth declarations through administrative fines or even court cases⁴⁸.

The report also remarked the fact that "no information is available on the follow up of the cases referred to prosecutors or to disciplinary bodies". Although most of the cases in court

⁴⁷ Press release, 15.06.2012, http://www.integritate.eu/UserFiles/File/comunicate/2012-06-15_Comunicat_78Consilieri_ConflictIntereseAd-tiv&Penal&Incompatibilitate.pdf

⁴⁸ Brussels, 22.7.2009...

refer to fines, the initial results regarding more fundamental cases reported to the objectives of the institution are promising, but decisions regarding confiscation of wealth needed to be taken.

In March 2010, the Commission saw an “encouraging track of record” for the second half of 2009, with the courts confirming two unjustified wealth in two cases (still, subject to appeal) and other four cases pending. The report also remarks a significant number of cases sent to the prosecutors’ office and to institutions for disciplinary follow-up.

Further observations were brought by the July report, which underlines the progress regarding the institutional consolidation and the substantial raise of the investigative activity. Following the Commission recommendations, the Agency had taken steps to better monitor cases the institution had submitted to judicial or disciplinary bodies. Still, open questions remained regarding the promptitude of action from disciplinary bodies and the leniency of some disciplinary sanctions that have been applied. Another concern aimed at the celerity of proceedings before prosecutors, mostly regarding the delays in the administrative investigations produced by the criminal files that occur. Overall, all these technical issues may be secondary reported to the new legal framework.

Although the **Wealth Investigation Commissions** were already set up since 1996 (although their real activity can be subject to debates), their activity was generally criticized after 2010, as it complicated the process of confiscating wealth.

The CVM report⁴⁹ noted that even if the NIA improved its methodology and the efficiency of investigations, there were issues regarding the follow-up by relevant institutions, as few sanctions (and most of them dissuasive) have been applied as a result of NIA’s findings. The report marks that Commissions rule *de facto* as trial courts and the procedure delays the judicial decision making process and also duplicates the role of the Appeal Courts.

Also, the law should be amended as to permit the NIA to appeal decisions from the Investigation Commissions. The report expresses worries regarding the low number of cases regarding unjustified assets confirmed by courts in first instance.

Still, there are some exceptions. Vlăsceanu Gheorghe Codruț was the Chief Commissioner of a service that released fraudulently drivers’ licenses for a significant number of persons in Arges County. The High Court confiscated almost 460.000 Euro. The official was also sentenced to imprisonment for receiving bribes (14 years).

Daniel Zidaru, a Police Sub-commissioner was involved in the same case and the Court decided after almost two years the confiscation of 61.650 Euro and 9.980 Lei.

Recently, the Agency has managed to return 551.000 Euro to the budget after it filed a complaint to the Pitești Court of Appeal in order to recover the sum from the two policemen, in 2009.

⁴⁹ Brussels, 20.7.2011...

Important to be mentioned in this case is the fact that the **National Anticorruption Directorate** collaborated with the NIA, as it had no possibility to verify significant sums of money identified during searches and asked the Agency to assess the situation. As the subjects declared that the money came from weddings, an administrative investigation that compared incomes and expenditures and included investigations of bank accounts, goods and other elements coming from the assets declarations led to the confiscation of the money by courts.

The third subject, Dan Vele, the former administrator of the institution that managed the properties of Braşov Municipality was the first case that had to return almost 130.000 USD to the state. As he has not declared assets, the National Anticorruption Prosecutor's Office intimated the Appeal Court in 2001. In 2010, the case has been taken over by the NIA and the Prosecutor's Office and after four delays, in 2011, the High Court finalized irrevocably the case.

National Anticorruption Directorate

As already mentioned, the confiscation of wealth in Argeş is an example of cross-institutional collaboration. Another significant case, in which the Agency collaborated with the NAD is **Şerban Alexandru Brădişteanu**, senator between 2000 and 2004. In 15th of September 2008, the Agency intimated the court in order to confiscate 3.595.333 Euro (judges considered 4 ml. Euro a sum too large to be a bribe) and 500.000 USD, gained unjustified during his mandate. As the verification process has shown an unjustified difference between his wealth and revenues, the Agency requested the ascertainment of the absolute nullity, annulment of the procurement contract of 11.385.889, 58 Euro and of the patrimonial benefits resulted from it.

Şerban Brădişteanu was involved in a medical equipment procurement, in which he, as the Chairman of the Evaluation Commission for an auction organized by the Ministry of Justice attributed contracts from public funds with glaring violation of the legal provisions. The senator discretionary attributed contracts for two firms, producing a prejudice of 9,1 ml Euro, for which he might have received a bribe of almost four million Euro. The NAD started its own inquiry for bribe and abuse of office.

Şerban Brădişteanu managed to block his trial in 2009, by challenging the law to the Constitutional Court (as described above). In 2010, he invoked the new regulations (Law 176/2010) and asked the Wealth Investigation Commission to take into consideration that the law states that retroactive inquiries can be started in at most three years from the end of the mandate. The NIA rebutted stating that the procedures were based on the provisions of Law no. 144/2007 that did not specify any term. The case is still pending at the Bucharest Court of Appeal.

Mr. Brădişteanu is also currently prosecuted for favoring the offender, in the case of the former Prime Minister Adrian Năstase, who tried to avoid incarceration by attempting to commit suicide.

Another case of collaboration between the two institutions is the member of the Parliament **Sergiu Andon**. His case brought another novelty, being the first Member of Parliament that was dismissed for incompatibility. Sergiu Andon was a deputy (Conservative Party) in whose case the Agency was intimated by the NAD regarding a potential state of incompatibility. In June 2009⁵⁰, the Agency ascertained that Sergiu Andon was in incompatibility, as he was lawyer in a corruption cause (the law forbids this kind of activity).

Andon contested the report, but in April 2011, the Agency won at the Bucharest Court of Appeal. The trial was held in 2010 and 2011 due to an exception of unconstitutionality raised by the deputy. The High Court of Cassation and Justice rejected Andon's appeal against the decision of the first court with a final and irrevocable decision in April 2012.

A decision from the Legal Commission (Chamber of Deputies) was taken only at the beginning of September 2012. In May 2012, the NIA asked the Parliament to dismiss Andon from his public position⁵¹. A similar request was also sent in July⁵². As the Legal, Immunities and Disciplinary Commission within the Chamber of Deputies refused to apply the decision of the Court, the Agency asked the NIC to action as a guarantor of its independence. The Council sent a request of applying the decision by the Parliament⁵³. The Commission approved the end of Sergiu Andon's mandate on 3rd of September and a number of 220 deputies voted for, 5 against and 11 refrained.

European funding

The alarm-signal has been used by the European authorities frequently, mostly in the past year regarding misuse of funds. The European audits have shown that there are issues related to conflicts of interests, illegal spending and preferential contracting.

NIA representatives declared in October 2012 that conflicts of interests with European funds are even at "epic levels" and even if collaboration protocols have been signed with the management authorities, the number of complaints is insignificant⁵⁴. The problems are the same as those remarked in the national public procurement system.

Recently, two ministers have been evaluated for conflicts of interests, Ioan Nelu Botiș and Vasile Cepoi. **Ioan Nelu Botiș** was the head of the Ministry of Labour, Family and Social Protection and was involved with his wife, Adina Lidia Botiș in an enquiry regarding the illegal use of European Funds. Ms. Botiș was expert and as administrator of a firm rented a space for the project with that specific company. The Agency sent a complaint to the National Anticorruption Directorate for using or presenting false documents or statements that results in the illegal diminishing of the European Communities' budget or the budget they administer. An investigation was also on the way for breaching the Fiscal Code.

⁵⁰ NIA press release, <http://www.integritate.eu/1100/section.aspx/814>

⁵¹ NIA press release, <http://www.integritate.eu/1830/section.aspx/2662>

⁵² NIA press release, <http://www.integritate.eu/1852/section.aspx/2739>

⁵³ NIA press release, <http://www.integritate.eu/1852/section.aspx/2748>

⁵⁴ *Directorul ANI: Fenomenul conflictelor de interese privind fondurile UE a atins proporții epice*, www.adevarul.ro/actualitate/eveniment/Directorul-ANI-Fenomenul-conflictelor-UE_0_794920573.html, 19th October 2012

On the other side, Nelu Botiș's case was sent to the NAD for breaking provisions regarding criminal conflict of interests. He was both minister and head of an institution that was part of the project. Mr. Botiș resigned.

The other minister is **Vasile Cepoi**, that worked together with his wife on a project whose partner was the institution led by himself. Mr. Cepoi resigned also, but became councilor for the prime minister.

Due to issues identified during audit missions by the European Commission, the institution suspended the funds for transport, regional and economic development programmes due to "serious deficiencies" in Romania's management and control systems. The issues occurred in relation to public procurement, sound financial management and prevention and detection of fraud and conflicts of interests⁵⁵. The payments were blocked, but further funds were threatened with suspension.

IV. CONCLUSIONS

As the recent history has shown, integrity has been difficult to be built all over Eastern Europe, after the fall of communism. The regime had printed in the behaviour of societies a way of thinking and acting that has to do more with group interests and division of civic rights between the leading class and ordinary citizens. Transparency and accountability have been replaced with private interest oriented policies, from which the *nomenclature* has been the main beneficiary.

The first years have been more of an experiment for some states, including Romania, in which the rule of law has been built very slowly, with a visible opposition from the ruling parties. The political class kept its privileges and did not show openness towards the idea of public interest.

Romania is a visible example of what means a difficult rebuilding of the state. As shown before, the '90s brought transparency and responsibility in a limited manner. The lustration failed without any doubt and the legislation and practice regarding public integrity was not setup easily. A proof is the fact that wealth was declared formally, as no real access or control was exercised.

The first glimpses of what integrity and transparency means appeared in the beginning of 2000, when legislation that aimed at fighting against corruption and lack of integrity in the public space entered into force. Also, the first dedicated institutions that had the purpose of inquiring over corruption cases appeared in the same period, as until then, the jurisdiction was given to the regular prosecutor's offices that did not have the necessary capacity of investigating high level corruption cases.

Still the issue that must be raised is related to the origin of all these changes. As shown above, most of them were driven by the accession process that did not start right before

⁵⁵ EU Commission to block development funding for Romania, www.reuters.com/article/2012/10/25/eu-romania-funds-idUSL5E8LPCXU20121025, 25th October 2012

2007, but much earlier. The entire process must not be seen exclusively as a series of decisions taken by the European Union, but rather a combination of outside incentives or even pressures, combined with the local factors. Politicians – the major internal factor – seemed to support, at least formally, these decisions, but came to act visibly against those institutions, laws and practices when they began to operate against personal or group interests. Still, as there are members of political parties that acted against institutions such as National Anticorruption Directorate or National Integrity Agency, there are politicians – from all parties – that supported the evolution of anticorruption and integrity policies and practices.

Even if the reforming process aimed at the entire public administration, the most active to protect their interests were the members of Parliament, as they had the necessary mechanisms and instruments at their disposal to act, mostly through legislative initiatives, budget cuts or additions and control over the Government.

The Constitutional Court proved to be a key player in essential decisions, as it turned over a series of relevant laws and the working mechanisms of some institutions. The Court had a serious impact on the legislation and therefore the attributions of NAD, NIA and the Council that had the purpose of investigation the collaboration with the former Security services. The Court proved to be a powerful instrument taking into consideration the high number of initiated unconstitutionality exceptions, but mostly due to the effects of its decisions that drastically reduced the role of the institutions.

On the other side, by having a rather non-vocal population that does not trust public institutions – the Parliament is one of the least trusted institutions – and that is not oriented on supporting anticorruption policies, the civil society proved to be an active ally or commenter of the decision makers that promoted such initiatives. Either by public positions that vocalized support or criticized contested decisions or even by putting their expertise to the growth of the institutions (through trainings, for example), a few relevant NGOs proved to contribute to the development of the system.

If we take a wider look, the European conditionalities, included in the Cooperation and Verification Mechanism contributed significantly to the development of the anticorruption system in Romania and were built over previous efforts required by the European authorities. Even if the outside benchmarking is criticized by a part of the Romanian public opinion, the political events that took place after 2007 reflect the fact that Romania still needs to be monitored by the European Commission, as the reports reflected the current situation of the state and asked for improvements.

MOLDOVA



I. The anticorruption agenda

Moldova, a country with a poor corruption record, has been trying to impose changes on that front since 2009 when democratic elections changed the country's leadership after eight years of Communist rule. Fighting corruption was set as a priority both in government programmes and in most partnership agreements with international institutions such as the EU, UN, NATO and the Council of Europe, but there are not likely to be major changes in the country as the most important institutions for fighting corruption — the National Integrity Commission (NIC) and the National Anticorruption Centre (NAC) — are yet not fully operational.

One of the most important events at the beginning of this year was undoubtedly the anticorruption legislation review campaign generated by the approval of the law establishing the NIC passed by the Moldovan Parliament. In May, additional legislation set up the NAC, which was based on the former Centre for Combating Economic Crime and Corruption (CCECC). These anticorruption measures were the result of the 2011–2015 National Anticorruption Strategy approved on 27th July 2011 that recognized the limited effectiveness of anticorruption policies that had been promoted in the past and suggested strengthening legal mechanisms and establishing rigorous parliamentary scrutiny in this regard. Although a number of anticorruption laws already existed in Moldova, enforcement has been limited which was obvious to anyone who studied the relationship between the business and political environments. The authorities therefore decided that a new legal framework repealing existing provisions and adding new ones would boost the campaign and would provide the recognition so important in their relationship with European bodies. These changes and additions were a response to the increasingly frequent signals from civil society and international bodies and institutions about the alarming level of corruption in the country.

According to the latest report on human rights presented by the U.S. State Department, governmental corruption is still the most serious problem in Moldova. This is also a concern for the Council of Europe. Although progress has been made in adopting legislation for judicial reform and fighting corruption, Moldova lags behind in terms of enforcement and eliminating the risk of political deadlock in the Constitution. These are the conclusions of PACE reporters who visited Moldova in October 2012.

Regionally, Moldova also continues to be a country with a high level of perceived corruption; the costs for the country's prosperity are huge as poverty, difficulty in attracting foreign investment and economic stagnation are directly related to the perceived levels of corruption. Data from the latest study conducted by Gallup sociologists suggest that of former Soviet republics, Moldova has the highest level of perceived corruption in business, which ranged from 28% in Georgia to 87% in Moldova. Perceived corruption in Moldovan is in fact higher than the world average. According to Transparency International, Moldova ranked 112 among 178 countries in terms of perception of corruption in 2012.

Against this background, there has been a general attitude of governmental reluctance and lack of determination to implement strong measures to curb corruption. The problem got worse year after year and now affects all government levels and pervades all political parties

and circumstances in Moldova, which makes it difficult to implement the measures required to reduce it. Therefore analysts have in most cases been skeptical regarding the effective application of anticorruption legislation.

II. Foreign Relations

Anticorruption has long been on Moldova's foreign relations agenda and was separately addressed as part of promoting and evaluating reforms. The importance paid to this field was and is continuously highlighted through specific statements in the documents of cooperation with the Council of Europe, EU, NATO, the UN and other international bodies Moldova is part of. Most external evaluations of the implementation of democratic reforms in Moldova expressly stated the need to increase the number and efficiency of anticorruption efforts. Over the past 10 years, all governmental programmes have included chapters on combating corruption and the priorities established earlier materialized into a 2004 National Anticorruption Strategy, implemented through four consecutive action plans from 2005–2009. The new 2011–2015 strategy is based on Moldova's commitment to international anticorruption conventions it has ratified, namely the UN Convention against Corruption, ratified in 2007 and the Council of Europe's civil and criminal conventions on corruption ratified in 2003. The recommendations of the Council of Europe Group of States against Corruption (GRECO) that so far has assessed Moldova's anticorruption system in three evaluation cycles were taken into account when developing the new strategy. The fulfillment of GRECO recommendations has been included in all EU-Moldova action plans since 2005 and is currently one of the commitments undertaken by Moldova under the EU-Moldova visa regime liberalisation dialogue.

Moldova's integration into the European Union is a national priority from the economic, social, political and administrative points of view. To that end, the implementation of European standards in these fields is an important requirement for achieving the objectives set out. The problems of conflicts of interests and of incompatibilities are cornerstones for a modern public administration. Citizens' expectations for the proper conduct civil servants are very high, but change is very difficult. In 2012, Moldovan authorities have failed to meet two of the EU priority requirements for visa liberalisation: the creation of the NIC and reforming and transforming the CCECC into the NAC. Although the NIC was to start its operations on 1 March 2012 and the NAC on 1 October 2012, neither institution was functioning at the end of October.

The need to intensify efforts to fight corruption has always been a pre-condition in Moldova's negotiations with its European partners on implementing action plans under the European Neighbourhood Policy and the agreements between the EU and Moldova on visa facilitation. An action plan on the visa regime liberalisation dialogue was signed on 16 December 2010 and establishes the preparatory process for granting visas for Moldovan citizens travelling to the EU countries, but it is subject to advancing reforms in several fields including the fight against corruption. In the second evaluation phase of the implementation of the dialogue, the following measures were included:

- "Implementation of legislation preventing and combating corruption, ensuring the effective functioning of the independent anticorruption authority; developing ethical

codes and anti-corruption training designed mainly for civil servants involved in law enforcement and the judiciary;”

- “Implementation of relevant UN and Council of Europe and GRECO recommendations in the above-mentioned fields.”

To fulfill these measures, the national programme adopted by the government sets out, *inter alia*, “Putting in place a mechanism for implementing Law 16-XVI dated 15 February 2008 on conflicts of interests by developing a draft law on the Ethics Commission (the current National Integrity Commission), its structure and its mode of operations.”

The creation of the NIC was an announced anticorruption “event” that had been awaited in Moldova for almost eight years since the adoption of the first anticorruption policy document - the 2004 National Anticorruption Strategy. The implementation of the law on conflicts of interests envisaged the creation of this commission four years ago.

Creating effective mechanisms for reporting on and controlling the assets and personal interests of civil servants in Moldova is an ongoing recommendation of GRECO, and fulfilling GRECO recommendations and strengthening anticorruption efforts is a condition that exists in all bilateral agreements signed by Moldova and the EU. Assessing Moldova’s commitments towards the EU will be conducted in two consecutive stages: verifying the existence of the legal and political framework and verifying the effective implementation of the legal framework.

To implement the visa dialogue, the Moldovan Government adopted Decision 122 of 4 March 2011, which established a mechanism for implementing the law on conflicts of interests by developing a draft law on the Ethics Commission, its structure and mode of operations through the second semester of 2011. In April 2011, the government submitted a package of legislation for creating the Ethics Commission to the Parliament. The commission’s responsibilities would cover income and assets statements, declarations of personal interests and conflicts of interests.

Moreover, in the summer of 2010, a package of draft laws was prepared to improve the situation and GRECO was informed in October 2010. The Supplement to Moldova Compliance Report for GRECO contained the following statement: “GRECO welcomes the new draft law on establishing a control mechanism for conflicts of interests and stating assets. Meanwhile, because the draft has not been adopted or implemented yet, GRECO cannot conclude that the control system has been implemented effectively.” This failure of implementation is one of the grounds for Moldova’s ongoing monitoring by GRECO.

III. Conflicts of interests and incompatibilities

Conflicts of interests

Resolving issues regarding conflicts of interests and statements of assets in Moldova is hampered by the fact that Moldovan legislation is inconsistent and leaves room for interpretation and exceptions. The definition of conflicts of interests in Moldovan legislation is general, without identifying situations where a conflict is clearly unacceptable for public

institutions and public authorities. When developing policies and practices on public job integrity, not all relevant European regulations were taken into account, especially when the EU has established complex definitions. These practices are not reviewed periodically as they are in EU and OECD member states. Due to this, regulations for declaring wealth are less restrictive in Moldova than in most post-socialist countries that have joined the EU, its ethics and integrity standards are low and there are no monitoring and control mechanisms. At the same time, there is a scant political will for effectively addressing these problems.

The Moldovan anticorruption legal framework has considerably expanded in past years with the adoption of important laws such as Law 16-XVI on conflicts of interests, Law 25-XVI of 22 February 2008 establishing the Code of Conduct for Civil Servants, Law 90-XVI of 25 April 2008 Preventing and Combating Corruption, Law 239-XVI of 13 November 2008 on transparency in decision making and Law 271-XVI of 18 December 2008 on the verification of public office holders and candidates for public office. These much-awaited laws had delayed effects in the first years of their enactment mainly due to a lack of clear mechanisms for application. While the mechanism for declaring assets introduced in 2003 produced the expected impact, the legislation on controlling conflicts of interests and declaring personal interests for civil servants has had no impact so far as the mechanism for declaring and verifying assets has not been implemented even four years after its development. A legal framework was adopted, but a template for the disclosing interests was not presented and the creation of the Ethics Commission was put off for four years during which time the law was virtually unenforceable.

Even though - regardless of party affiliation - politicians always officially declare their determination to fight corruption at all levels, in practice too few statements have been formalized and implemented and no steps have been taken to establish clear control mechanisms. Our analysis in retrospect is that Moldovan authorities have always operated in half measures as evidenced by the considerable delays in adopting regulatory measures for controlling conflicts of interests and assessing the wealth of dignitaries and civil servants.

- Adopting a template for declaring personal interests and the mechanism for the Ethics Commission to control and enforce the law on conflicts of interests were delayed for almost four years.
- The mechanism for declaring assets introduced in Law 1264/2002 was finally improved after a delay of almost ten years.
- The first commitment to create NIC was included in 2005 Action Plan for the National Anticorruption Strategy and the fulfillment of this commitment took seven years.

A conflict of interests is a situation in which a dignitary who holds public office has a personal interest in assets that could affect his/her unbiased performance of his/her duties under the Constitution and other laws. Although a conflict of interests is not corruption in the traditional meaning of the term, there is increasing recognition of the fact that the emergence of conflicts between personal interests and public duties of civil servants can lead to proper acts of corruption if not addressed properly.

Conflicts of interests and the duty of civil servants/dignitaries to declare their personal interests was regulated through the law enacted in 2008 which states that civil servants

have the duty to identify conflicts of interests by 1) initially and periodically declaring personal interests and 2) immediately reporting the occurrence of a conflict of interests. The NIC law introduced a form for declaring personal interests and clarified the status and powers of the body responsible for monitoring the implementation of the law. Declarations of personal interests must be submitted within 15 days from the date of employment, mandate or validation of appointment as appropriate and must be updated annually by 31st March. A declaration of personal interests shall be submitted in writing using the form approved by NIC and shall indicate a) all remunerated professional activities; b) founder or management functions, management, audit or control positions held in non-profit organizations or political parties; c) association or shareholder status in an economic organization including on-lending institutions, insurance companies and financial institutions and d) relations with international organizations.

Law 181 of 19 December 2011 amended a part of the legislation including the law on conflicts of interests and came into effect on 1 March 2012. That law changed the deadline for submitting declarations of personal interests and asset statements to 31 March. The law also states that declarations of personal interests shall be submitted to the persons in charge of collecting them in the institution that keeps a register and who will issue a written receipt for them.

The law further states that within 15 days of any changes, declarations of personal interests must be updated. Similarly, entities declaring their personal interests are required to immediately inform in writing (but no longer than 3 days after finding out) the head or the hierarchically senior body of the following:

- his/her close personal interest in a decision that s/he has to make or which s/he must participate in, or an action s/he should take while performing his/her job-related duties;
- his/her close personal status as founder, shareholder, partner, member of the managerial board or member of the audit commission of a legal entity (commercial or non-commercial) if such person has received from a public organization operating assets, including cash, loans guaranteed by the state or a local government authority or a public purchase order.

Any person who deems his/her rights damaged due to a conflict of interests and disagrees with the decision of the public organization or a responsible person has the right to complaint to the court. The information contained in declarations of personal interests is public and can be provided upon request.

According to the law on conflicts of interests, personal interests must be declared by public office holders and their office staff; by civil servants including those with special status; by managers of administrative authorities (of public institutions) under a central specialized body, state or municipal enterprise; by companies and financial institutions with majority state capital and by other categories as well. Below is the list of institutions in which dignitaries, officials and others must declare their personal interests:

- Presidency of Moldova;
- Parliament of Moldova;

- Government of Moldova;
- Autonomous Territorial Unit of Gagauzia;
- Constitutional Court;
- Supreme Council of Magistracy;
- Supreme Court;
- Courts of Appeal;
- Courts;
- Prosecution Office;
- Centre for Human Rights;
- Court of Auditors/Accounts;
- Security and Information Service;
- Central Election Commission;
- Audiovisual Coordinating Council;
- National Financial Market Commission;
- National Commission on Integrity;
- National Bank of Moldova;
- National Agency for Energy Regulation;
- National Regulatory Agency for Electronic Communications and Information Technology;
- National Agency for Protection of Competition;
- State Protection and Security Service;
- National Centre for Personal Data Protection;
- Civil Service Centre;
- Academy of Sciences of Moldova;
- National Council for Accreditation and Attestation;
- State Special Courier Service;
- National Health Insurance Company;
- National Social Insurance House;
- State Archive Service;
- Supervisory Board of the National Public Broadcasting Company "Teleradio-Moldova";
- Local public administration;
- Central public administration;
- Central specialised public administration authorities and other administrative authorities;
- Administrative authorities (public institutions) under the central specialised body;
- Other authorities established by Moldovan President, Parliament and Government;
- State or municipal enterprises;
- Companies with majority state capital;
- Financial institutions with total or majority state capital;
- Institutions in the state education system;
- Institutions in the public health system.

The law also provides that personal interests must be declared by those empowered to make decisions on state-owned property or the property of territorial-administrative units including decisions on funds or who are entitled to decide on the use of such goods and by persons who are not civil servants but to whom the state temporarily delegates any of those powers.

The law on conflicts of interests defines personal interest *as any material or non-material interest derived from personal needs or intentions; from activities that may otherwise be legitimate for a private individual in relationship with close persons or legal entities regardless of the type of property and from personal relationships or affiliations with political parties with non-profit organizations and international organizations and preferences and commitments arising from them as well.*

As for close persons, the law provides that they are to be considered first degree relatives and relatives up to the third degree, namely:

- spouses;

- persons related by blood or adoption (parents, children, brothers, sisters, grandparents, grandchildren, uncles, aunts);
- persons related by affinity (brother-in-law, sister-in-law, father-in-law, mother-in-law, son-in-law, daughter-in-law).

If, after reviewing the legality of administrative statements/issues or legal statements produced by certain persons in public positions it is established that they received benefits from a situation of conflict of interests, the head of the public organization will notify the prosecution office or the court. The accountability that arises will be determined by the severity and consequences of the acts committed and can range from disciplinary/administrative liability up to criminal liability (protectionism, abuse of power or abuse of service, excessive abuse of power or of position). If a conflict of interests is established, a person who deems his/her rights are affected due to a conflict of interests and disagrees with the decision of the public organization or responsible person is entitled to appeal it in court. If the civil servant provided incorrect data in the declaration of interests, s/he is likely to become the subject of a criminal investigation for misstatements. The accuracy of the information in declarations of personal interests is controlled by the NIC and, upon request, by the bodies empowered by law to verify that information.

The administrative statements issued/adopted or legal documents signed by persons in conflicts of interests are void; however, the legislators have protected themselves by establishing that voidance has no legal effect on legislation other standard acts and court documents. Officials are prohibited for one year after the termination of their mandates or employment from using proprietary information or data of organizations audited or inspected.

Moldova's Misdemeanor Code 218 dated 24 October 2008 was amended in 2011 by introducing liability for offenses affecting the work of public authorities. The amendments provided liability for protectionism, failure to declare a conflict of interests, corruption or concealment of an act related to conflicts of interests or for the failure to take the required steps to prevent it and for failure to ensure measures to protect civil servants. Protectionism "in other words, support for solving problems of individuals or legal entities when performing their duties by persons working in a public authority, public institution, state or municipal enterprise or company or in companies with majority state capital not provided in normative acts for whatever reason that does not contain elements of crime" shall be sanctioned by a fine of 100 to 300 conventional units (125 Euros and 375 Euros). The same penalty applies for failure to declare a conflict of interests by a person working in a public authority, public institution, state or municipal enterprise or company or in a company with majority state capital. Concealment of an act of corruption or an act related to it or the failure to take the required steps to prevent it and the failure to take measures to protect a civil servant shall be sanctioned by a fine of 50 to 150 conventional units (60 Euros and 180 Euros).

Personal interests of dignitaries and civil servants arising from public positions they exercise can conflict with private commitments arising from the interests they have in other remunerated professional activities, political parties, non-commercial and commercial entities and international organizations. Many conflicts arise as a result of political factors,

especially political affiliations of civil servants in local government. The political affiliations of central and local government civil servants make them responsible first to the party and party leaders who promote them rather than to the citizens who elected them. Where political factors prevail, conflicts of interests arise such as in distributing or purchasing goods when local leaders take into account the interests of the party or friendship and kinship. Similarly, collusion between mayors and local councilors or district chairs and councilors in administrative-territorial units goes "unnoticed" by persons in charge also due to party-related reasons or to informal relationships and friendship which obviously cannot be eliminated by the current law.

Locally elected representatives produce a conflict of interests if they are in any of the following situations:

- issue administrative acts that would produce a material benefit for themselves, their spouses or their first-degree relatives;
- sign legal documents that would produce a benefit or facilitate a material benefit for themselves;
- issue provisions in exercising their functions that produce material benefits for themselves, their spouses or their first-degree relatives;
- issue provisions in exercising their functions that produce a benefit or facilitate a material benefit for themselves in another function they exercise.

Areas in which most situations of conflicts of interests arise in local government are the following:

- assigning plots of local land for the construction of houses;
- selling construction-related plots of land;
- constructing houses and other buildings for a purpose other than housing;
- obtaining funds and various sources of funding and supplies.

Incompatibilities

While the legislation regarding conflicts of interests requires officials primarily to refrain from making or participating in making decisions that are or may be influenced by their personal interest, in the case of incompatibilities, the law prohibits unconditionally the holding of certain public positions concurrently with others, be they public or private. Examples of incompatibility under current provisions of national law are locally elected representatives who are also civil servants in the Office of the State Chancellery and the chair or deputy chair of a district holding a full- or part-time position by contract or agreement in foreign enterprises or in enterprises, institutions or organizations of any legal form.

Areas of incompatibility for civil servants are covered by a series of legal acts depending on the status of that authority. Incompatibility for the President of the Republic, members of Parliament, prime minister and ministers and judges are set out explicitly in the Constitution and are further developed in relevant legal acts (i.e. Law on Parliamentary Procedural Rules, Law on Government, Law on Courts, etc.). Most instances of incompatibility still occur in local governments, especially during the aftermath of an election.

To ensure the efficient and disinterested fulfillment of the duties of a locally elected representative, the legislature established a list of incompatibilities. Thus, according to Law 768-XIV of 2nd February 2000, the mandate of a locally elected representative is incompatible with that of a member of Parliament; a member of the government; the position of civil servant in the Office of the State Chancellery; the position of civil servant in the administration of a chair of a given district, in departments, divisions and other subdivisions under a given district council, mayor's office or city hall and in other cases as set out by law including those in Law 436-XVI of 28 December 2006 on local government. In addition, the mandate of a councilor is incompatible with that of a council adviser at the same level or that of a council adviser on any level in other tier 2 administrative-territorial units.

In addition to the provisions of Law 768-XIV on the statute of locally elected representatives, the Law on local government sets out the following incompatibilities: district chairs, deputy chairs, governor of an autonomous territorial unit with special legal status, chairs and deputy chairs of peoples' assemblies of autonomous territorial units with special legal status, mayors and deputy mayors may not throughout their mandates hold other paid or part-time positions based on contracts or agreements in foreign enterprises, enterprises, institutions and organizations of any legal form except for scientific, teaching and creative ones. The positions of district chair and deputy chair, mayor and deputy mayor are incompatible with the position of a councilor.

A locally elected representative who holds an incompatible position is expected to either resign from it or to give up the mandate within 30 days of the occurrence of the incompatibility. If the representative does not comply with the rules, the council of which he/she is a member or that elected him/her will decide at their next meeting to withdraw the mandate of the representative. If they fail to adopt a decision, the withdrawal of the mandate will be decided in court on the initiative of the State Chancellery.

If incompatibility of positions is established for a mayor, it usually occurs immediately after the elections and shall be settled through the resignation of the mayor from the previously held position. If the incompatibility is not solved within the period provided by law, the mayor shall be removed from office without conducting a local referendum based on a definitive court judgment initiated by the State Chancellery or at the request of interested persons.

Law 199 of 16 July 2010 on the statute of persons with public positions stipulates rules regarding incompatibilities. Elected officials are not entitled to perform any other paid activities except teaching and scientific work. This provision shall not apply when the Constitution or special law regulating the work of a dignitary contains provisions on incompatibility of a specific nature of that dignitary or provisions on a similar situation.

The current legislation does not provide sanctions for local councils that do not review the terms provided by law in cases of incompatibility or that do not withdraw the mandate of a locally elected representative who holds an incompatible position at the request of the representative who is in such a situation.

IV. Enforcement Mechanisms

In Moldova, the statements of interests are verified by the NIC that consists of five members with equal rights appointed by the Parliament with a majority vote, for a five-year term. A member of the commission may serve only one term. The proposed representation of the commission is three candidates from the majority party in Parliament, one candidate from the opposition and one civil society candidate openly and transparently selected by the Parliamentary Committee on the Judiciary, Appointments and Immunities from the list of candidates proposed by public associations. The administration of the NIC is composed of 26 civil servants and contract staff who perform ancillary activities.

The NIC aims to implement a mechanism to verify and establish standards for statements of income, personal interest and property for dignitaries, judges, prosecutors, civil servants and persons in some management positions as well as a mechanism for resolving conflicts of interests according to principles of legality, impartiality, independence, celerity, the right to defense and good governance. Law 180 on NIC of 19 December 2011 entered into force on 6 January 2012. NIC exercises the powers assigned to it by Law 1264-XV of 19 July 2002 and Law 16-XVI on conflicts of interests.

The Chairperson that is appointed by Parliament from the members who have not held a senior official position leads the NIC. The Speaker nominates the Chair after mandatory consultations with parliamentary factions. The Chairperson shall be assisted by a deputy appointed by her/him and elected by a majority vote of deputies on the proposal of the chair. In the absence of the chair, the deputy chair will temporarily fulfill his/her responsibilities.

The Chairperson, deputy chair and members of the NIC are public dignitaries. Anyone who has at least seven years of work experience, a flawless reputation and no political affiliation may be appointed as a member of the NIC. Another special requirement is that s/he must not have worked as an agent or employee of the intelligence service since 1991 and cannot have been and is not an agent or operative collaborator, including undercover agent, informant or collaborator of the intelligence services. Proof of fulfilling these requirements is based on an affidavit.

The Chair of the NIC exercises the following attributions:

- leads, organizes, controls and is liable for operations;
- appoints civil servants to the NIC administration; amends, suspends and terminates their service under the law; hires staff for the NIC administration based on contracts; amends, suspends and terminates their labour relationships;
- resolves under current law issues related to pay rises and bonuses;
- approves the Commission's regulation and structure;
- approves the Commission's internal regulations;
- approves the model of work passes;
- applies disciplinary sanctions under the law against civil servants and commissioned staff of the NIC administration;
- organizes in-service professional training for civil servants of the NIC administration in a systematic and planned manner;
- presents report of the Commission to the Parliamentary plenum for the expired calendar year and uploads it on the website;
- approves the instructions on how to fill in income statements and declarations of ownership and personal interests.

A commission member is not entitled to practice any other paid activity except for scientific, educational or creative pursuits, to be a member of any political party or to reward and receive money or other undue benefit contrary to the legitimate interests of society and the state, to disclose data or information to which he/she has access otherwise than under Law 982-XIV of 11 May 2000 on access to information.

A commission member's mandate shall end in resignation, revocation, expiration of term, reaching retirement age or death. The termination of a member's mandate shall be established by Parliament in plenum adopting a decision in which it notes the reason for termination. The decision on termination shall be adopted by Parliament with the majority of elected deputies.

The commission operates based on regular meetings convened weekly, or when appropriate in extraordinary meetings convened on the initiative of the Chair or of at least two members. Commission meetings are deliberative and are held in the presence of at least three members. The Chair may decide to hold a closed meeting if it is necessary to safeguard state or commercial secrets or other secrets protected by law. The NIC shall adopt decisions by a majority of members appointed. Members who vote against can record their opinions in the minutes of the meeting.

The NIC adopts statements on findings and approves the minutes on verification procedures. A definitive statement on findings is a formal, enforceable document for the subjects concerned. When establishing an offense, the Chair, deputy chair and members of the NIC shall draw up minutes on the offense in accordance with the Moldovan Code of Misdemeanors. The NIC shall prepare summons as prescribed by civil procedural laws.

The NIC shall conduct an inspection regarding conflicts of interests or incompatibility off-site or upon notification by individuals or the legal entities concerned. Inspections, including those occasioned by media publications, shall be conducted based on the inspection minutes approved by the NIC. An inspection shall be initiated by the NIC when subjects required submitting statements have not submitted them within 30 working days after the deadline. Complaints submitted by individuals or legal entities shall be examined by the Commission within 30 working days of the date of receipt.

If after an inspection the NIC finds that a person had issued/adopted an administrative act, signed a legal document, made a decision or participated in a decision contrary to the law on conflicts of interests or if that person was or is in a state of incompatibility, shall approve a statement establishing the state of conflict of interests or incompatibility. The person shall be made aware of that statement not later than five working days from the date of its adoption. The person can appeal the statement in administrative court within 15 days of the date s/he was made aware thereof.

The statement establishing the state of conflict of interests or incompatibility remains definitive if not appealed, or is definitive on the date when the final judgment remains irrevocable following an appeal. After a conflict of interests is thus established, the NIC shall notify the competent court to annul the act, legal document or decision that caused it. The notification shall also be filed in court if the person responsible no longer holds that position.

After the final statement remains definitive, the NIC shall inform the competent authorities to hold the person responsible liable through disciplinary measures or, as appropriate, through termination of his/her mandate, employment or service.

NIC operations are funded from the state budget established by the government in the Budget Law.

Although according to the law, the NIC was to start its operations as of 1 March 2012, it was not functioning as of the writing of this study (October 2012) because the ruling Alliance lawmakers had not decided on a candidate for chair, so basically asset statements and declaration of interests have not been verified in 2012. While some institutions have submitted statements twice under the old law, most of them were waiting for the NIC to start operations and have not submitted their statements nor made them public. As mentioned above, it took four years to create concrete mechanisms (currently only legislative) for controlling conflicts of interests in Moldova. Of concern is that the ruling Alliance lawmakers have been inexplicably delaying the start of NIC operations as well as the appointment of the NAC director thus jeopardizing efforts to prevent and combat corruption.

V. Impact

It is natural for the public to ask itself to what extent declarations of conflicts of interests have been effective in Moldova over the past four years. As mentioned above, dignitaries and civil servants have not complied with the law and have failed to declare their personal interests due to the fact that the original law provided that declarations were to be submitted using the form approved by the Ethics Commission which did not exist until 2012. Apparently, officials have failed to declare their personal interests due to the lack of a body empowered to verify the declarations and a form through which to do so. Nevertheless, officials in good faith could have submitted free-form declarations to the persons authorized by law to collect them. The lack of a special body to verify the declarations does not prevent submitting them but only affects the likelihood of getting them to the NIC. According to the findings of the survey conducted by Transparency International, in 2011 in Moldova, declarations of personal interests were also ignored by officials in four specialized central government authorities and in their subordinate agencies.

The few declarations submitted by officials in an ad-hoc manner were the ones submitted during the "Interests at Sight" campaign conducted by the Independent Press Association and the Anti-corruption Alliance in 2011. The press thus holds these officials accountable while it is impossible to hold the officials accountable who failed to declare their interests or who declared them improperly.

Transparency International conducted a study in 2010, which suggests that the law on conflicts of interests is regularly violated and that civil servants are not punished for failure to declare conflicts of interests. The results of an opinion poll conducted in 16 institutions, including several ministries, suggested that most civil servants are not familiar with the notion of conflict of interests. Thus, 12% of respondents stated that a conflict of interests would be a "conflict between civil servants" and another 20% stated that civil servants were entitled to make decisions notwithstanding a conflict of interests. In addition, over 80% of

the officials interviewed acknowledged that they had not submitted their declarations of interests. "We have found out disturbing things related to enforcement mechanisms. In fact, no progress has been made. Only a few authorities have subdivisions that monitor compliance with the law on conflict of interest and the code of conduct. The officials interviewed said they did not have and would not have any personal interests if their salaries were decent but that we all realize that everyone has personal interests; it is natural," said Yana Spinei, Transparency International Moldova.

Another study conducted by IDIS Viitorul Institute suggests that the legislation is not only vague, but that it is also misapplied. A year after local elections, more than 20 district chairs, deputy chairs, mayors and deputy mayors were still holding other part-time positions incompatible with their positions as civil servants. Experts concluded that the vague legislation and its misapplication left room for local conflicts of interests that very often had been overlooked both by regulatory agencies and mass media.

Despite the fact that by law a local elected representative within 30 days of the validation of the mandate must give up any other position held that is incompatible with his/her status, the Central Election Commission (CEC) found 54 cases of violations at the beginning of 2012. To date, 22 of them remain unresolved more than one year following the elections, suggests a study conducted by IDIS Viitorul entitled "Conflict of interests and incompatibilities in local government institutions."

Most conflicts of interests occur when assigning plots of land for the construction of houses and when selling land for construction but also occur in cases of obtaining funds and other financial resources. It is, however, difficult to cast light on those cases because public office holders often have their firms registered under the names of distant relatives as IDIS Institute experts discovered. The law stipulates that it is the representatives of the State Chancellery who are to check if there are any conflicts of interests in decisions made locally; however, the mechanism for declaring conflicts by civil servants is a rather formal one, and the phenomenon is deeply rooted. A study conducted by the same organization confirmed the existence of a large number of cases of incompatibilities of dignitaries and civil servants in local government. According to the answers given by respondents, most cases involved civil servants in local government. Thus, one in five respondents said that civil servants knew of cases where the local government authorities held other positions and were carrying out other activities. Comparatively, fewer respondents said they were aware of such situations among local or district councilors (13 percent) or among mayors and deputy mayors or chairs and deputy chairs of districts (11 percent).

On the other hand, according to the data of the General Investigative Division of the Prosecutor's General Office of Moldova, inspections have revealed a huge number of cases of incompatibility of employment in public positions when local government leaders were concurrently holding other positions and were carrying out other activities, including management positions in private companies. In addition, many local civil servants were working concurrently in central government divisions. For example, the deputy mayor of Bujor Village, Hincesti District, was also customs inspector at Leuseni where the deputy mayor of Leuseni Village was working too. The deputy mayor of Neagra Village was concurrently cadastral engineer in the mayor's office, and the deputy mayor of Cioara Village

was concurrently secretary of the local council. Such violations were recorded in 40 cases involving mayors, deputy mayors, chairs and deputy chairs of districts. Prosecutors forced them to take the required steps within the timeframe established by law.

CEC examined decisions of local councils in terms of compliance with the legal provisions on incompatibility after the local elections held on 5 June 2011 and established that some local councils did not examine elected representatives' positions by the legal deadline while others lifted the mandates several months later or sent incomplete supporting documents for awarding the councilor's mandate.

Law enforcement bodies did not conduct any investigations on conflicts of interests until 2012. Hitherto fore, criminal prosecutions had been conducted for abuse of office or of duties and not under the law on conflict of interests. The CCECC replied to a request for information stating, "Cases related to conflicts of interest or undeclared interests by senior officials, civil servants and local government representatives have not been examined since the enactment of the law on conflicts of interest." Unlike CCECC, the Anticorruption Prosecutor's Office is currently managing two criminal cases related to conflicts of interest.

The reaction of civil society

In an appeal made public in mid-October, several civil society organizations blamed politicians in Chisinau for stagnation in preventing and combating corruption in Moldova. "The NAC and the NIC are the main institutions responsible for fighting corruption. Effective anticorruption policies are impossible without ensuring the operations of those institutions," the appeal stated and further noted that in December 2011 Parliament voted the NIC into law stating that it would be operational as of 1st March 2012, and in June 2012, Parliament appointed the NIC members but has not yet appointed a Chair. The document also notes that in 2012, Parliament adopted the law through which the NAC was to be created as of 1 October 2012 as the legal successor of the CCECC. In September 2012, the candidate for NAC Chair was selected based on a public contest; however, the Parliament has not confirmed his office yet.

The signatories of the appeal—Resource Centre for Human Rights (CReDO), Institute for Human Rights (IDOM), Centre for Investigative Journalism and Association for Participatory Democracy (ADEPT) - claim that the entire political establishment—Liberal Party, Democratic Party, Liberal-Democratic Party of Moldova—and the opposition Communist Party of Moldova, independent MPs and MP groups are responsible for the delays and for undermining the ability of state institutions to fight against corruption. "The non-operation of NAC and NIC are deviations from the plan for European integration," states the appeal. "The LP leader claims the NIC chairmanship, insisting on having his representative appointed, given the fact that the option is dictated by political and departmental interests. Some factions and political groups in Parliament are influencing the voting for the NAC chair trying to pressure the candidate, insisting on appointing their representatives to the NAC chairmanship," the appeal says stating further that they have witnessed serious cases of political interference with NAC and NIC independence that are inadmissible examples of the politicization of the two institutions. Promises of depoliticization and the provisions of the Governance Programme have been ignored, and the commitments made during the

European integration process have been compromised.

According to the authors, adverse consequences of the delay are grave. From 1 to 15 October, NAC was *de jure* unable to function and to investigate cases of possible corruption. Over 200 employees were prevented from carrying out their duties and the situation could last for an uncertain period of time. Meanwhile, the institution is under unreasonable pressure; employees are thrown into uncertainty when performing their jobs, and almost 6,000 NAC staff days have been wasted. Society has likely lost the chance to prosecute tens if not hundreds of corruption cases. Direct costs are more than 0.2 million Moldovan lei while losses and indirect costs (corruption that could have been prevented) can reach tens of millions of Moldovan lei. The worst is that during this period preventive voices have been silent and corrupt behaviour in both the public and private sectors has been encouraged.

The non-operation of NIC for more than six months had adverse effects on the state's ability to fight corruption in the public sector. The 5 appointed members and 21 employees-to-be would have been able to examine over 20,000 asset statements and declarations of personal interests of civil servants in 2012. Instead, hundreds if not thousands of cases of conflicts of interests will not be established causing serious harm to society by continued trading of influence, abuse of office, corruption and decisions for personal and political benefit. The delay creates a legal gap for mandatorily submitting asset statements and declarations of personal interests and conflicts of interests for 2011 and their verification in 2012.

Inaction increases the costs and adverse effects on society. The magnitude of the danger of corruption cannot be tolerated. Under such circumstances, politicians embracing the European integration agenda appear ridiculous and lose their integrity and legitimacy. The signatories of the appeal have demanded that the Parliament promptly accept the nominee of civil society for the NIC chair, the only candidate selected through a competitive and transparent procedure with a reputation appropriate for this position. In addition, they asked Parliament to decide on the voting for the selected NAC chair at its first plenary session without putting any political pressure and not interfering in the NAC director's ability to freely elect his/her deputies.

The signatories of the appeal have asked the Prosecutor's Office to start an investigation of potential cases of political influence and interference in the operations of the NIC and NAC and to provide an assessment of the situations that have led to the non-functioning of those institutions. Civil society representatives have also asked the European Commission to take action on the lack of progress and to ensure that NIC and NAC begin operations. Without these interventions, the effectiveness of technical assistance provided to Moldova may be compromised.

Case studies

Over the past years, Moldovan investigative journalists have looked into several cases in which dignitaries made decisions involving a conflict of interests, protectionism or trading interests. Although some cases were widely publicized, they didn't have the expected impact on law enforcement bodies that should have initiated investigations. Many cases occurred during elections when localities whose mayors were elected from the lists of the Communist

Party in power at that time were favoured by receiving certain state benefits, but also during the distribution, for example, in Rezina of the wheat for sowing provided to Moldova as humanitarian aid.

(i) Marian Lupu pardoned Leonid Balan

In 2010, four months after he took the office of Acting President, Marian Lupu, leader of the Democratic Party, pardoned the leader of the Rezina Democratic Party, Leonid Balan, who had been convicted of several violations on alienating assets of former agricultural cooperatives in Hlinoiaia. Mr Balan, the former village mayor, was pardoned by a decree, the first of its kind since Mr Lupu took office. It was Leonid Balan who heavily financed the election campaign of the Democratic Party in 2010. After his pardon, he was promoted to chair of Rezina District, though his candidacy was not accepted in the end. He was featured in several media investigations conducted by the Investigative Journalism Centre, especially due to the fact that although he had been convicted in a final judgment stating he had no right to hold management positions for five years, he continued to be mayor, although local advisors declared a no-confidence vote in him.

Nevertheless, the mayor paid himself a salary and bonuses on top of that for one year. Even though this case was very much publicized in Chisinau media, no action has been taken. Cristina Cojocar, a lawyer at the Center on Analysis and the Prevention of Corruption, said that the Acting President's decree was immoral. "It's a classic case of a conflict of interest. Even though the President is the only person who can pardon someone, Marian Lupu should have refrained from doing so as it was one of his party colleagues, especially now when we are in an election campaign". Other lawyers interviewed said the acting President's decision was unconstitutional. Prosecutors have started to investigate the chair of Rezina District and other decision makers on the district council; however, no decisions on convictions have been made so far. None of the state structures has taken a position on the case.

(ii) Judge Nina Cernat

The integrity and honesty of Supreme Court Justice Nina Cernat came under the spotlight of law enforcement bodies thanks to a journalistic investigation. On 1 August 2012, Adevarul journalists published a comprehensive article suggesting that Ms Cernat lived in the luxurious housing complex "City of Tales" in Chisinau. The house was registered to the magistrate's mother-in-law Ana Rusu aged 80 who won a case in the first instance after suing the construction firm for late completion. The company was ordered to pay damages of 25 million Moldovan lei. In August 2012, the execution of the judgment was suspended due to a dispute in court. The company manager said that Ana Rusu's claim was exaggerated and that the prescribed period for suing the company had already expired in 2008. Before going to the Court of Appeals, the company representatives complained to the Superior Council of Magistracy (SCM) on 14 July 2011. Victor Velicov, company director, claimed in his petition that Judge Nina Cernat who lived in the building was behind the dispute and that the penalties could bankrupt his company. Velicov stated in his letter that the applicant, Ana Rusu, was Nina Cernat's mother-in-law. The SCM replied to the petitioner that the allegations of Judge Cernat's interference in settling the case of her relatives were not true; however in 2012, the day after the first part of the investigation was published in Adevarul,

Justice Minister Oleg Efrim asked the Prosecutor General's Office to verify the information, "...to ensure that there was no case of disguised ownership of property." Shortly thereafter, the Prosecutor General's Office started a criminal investigation.

(iii) Conflicts of interests and incompatibilities at Chisinau City Hall

Adevarul newspaper recently wrote that 27 percent of the new advisers of the Chisinau Municipal Council (CMC) were involved with companies in the capital that were operating under city hall contracts in everything from construction to transport and food. Adevarul journalists found that 14 of the 51 locally elected representatives in Chisinau were directors of companies with contracts with city hall. For example, one adviser owns several mini-bus and bus routes, another owns a company providing maintenance for elevators in the capital, another has a network of tobacco kiosks and companies run by a councilor build trolleybus stops and manufacture road signs and plaques for architectural monuments. The mayor and the City Council have not yet taken a position on the case but have discussed another case of incompatibility and established that two of the mayor councilors, Oleg Cernei and Vaceslav Bulat who were also municipal advisers, should choose one position or the other as councilor to the mayor was not compatible with municipal advisor. At the following CMC meeting the two resigned from their positions as mayor's councilor.

(iv) Ex-minister Molojen

Ex-minister of Information Technology Vladimir Molojen was subject to criminal investigations by the Anticorruption Prosecutor's Office from 2008 to 2011 when he served as a minister and later as the head of Registru State Enterprise, an institution under the ministry he led when he entered into illegal contracts with an advertising company whose founders were his wife and son. About 2.6 million Moldovan lei for advertising services went into accounts belonging to Vladimir Molojen's family through the advertising company Altent-Com during the three years. This is when the company had a monopoly on the production of passports and other documents and did not have to pay anything for advertising services. Molojen is accused by prosecutors for abuse of office and negligence of duties. We do not know if the criminal prosecution took into account the fact that he had made decisions while in a conflict of interest and therefore the contracts with the given enterprise should be deemed void. In July 2012, the case under which Molojen and another decision maker of the institution he led were investigated was filed in court. No decision on this case has been made yet.

(v) Minister of Health Hotineanu

Ziarul de Garda newspaper published several investigations about the fact that companies that were associated with the daughter of Health Minister Vladimir Hotineanu, currently the chairman of the Parliamentary Committee for Health, had laundry services contracts with all Chisinau hospitals. There has been no reaction to date. Recently, the journalists of the newspaper returned to the subject and found that it was a quite profitable family business. The current leadership of the Ministry of Health took no action to check whether the former minister had any influence in favouring his daughter's company. It is certain that no statements of interest have been submitted.

Cases under investigation by the Anti-corruption Prosecutor's Office

1. A mayor of a Chisinau suburb appointed his son as deputy mayor who then made decisions for two years. A criminal case has been filed.
2. The head of Moldsilva hired his daughter who was a student. During the time when her salary was paid by the state enterprise, she was studying in Romania and was not in Moldova. A criminal case started on 4 October 2011 that has not been concluded as yet.

I. The anticorruption agenda - when did it start, who started it and why

The history of the fight against corruption in Croatia

Anti-Corruption in Western Balkan countries has started as a part of the Stability Pact "Package", first as initiative in Cologne, Germany in 1999 that was reconfirmed on 30 July 1999, at Summit meeting in Sarajevo. Stability Pact has included a variety of international stakeholders at the time; WB Countries, EU Member States and International organizations⁵⁶:

Table 1: Stability Pact Members and signatories:

Countries of the region	Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Moldova, Montenegro, Romania, Serbia and Former Yugoslav Republic of Macedonia
EU	All EU member states at the time (1999) – EU 15 and European Commission
Other Countries	Canada, Japan, Norway, Russia, Switzerland, Turkey, USA
International financial institutions	World Bank, International Monetary Fund (IMF), European Bank of Reconstruction and Development (EBRD), European Investment Bank (EIB), Council of Europe Development Bank (CEB)
Regional intergovernmental initiatives	Black Sea Economic Co-operative Initiative (BSEC), Central European Initiative (CEI), South East European Co-operative Initiative (SECI) and South East Europe Co-operation Process (SEECOP)

On 16 February 2000 Stability Pact adopted SPAI (Stability Pact Anti-Corruption Initiative) that is the first policy guiding instrument in relation to anti-corruption efforts for most of the former Yugoslav countries including Croatia⁵⁷.

As key international players were part of the Stability Pact including the financial institutions that most of the WB countries have depended on, the Anti-Corruption, as many other aspects of the human rights protection and so called Democratization process, became part of conditionalities to access necessary international assistance as well as to become part of the Euro-Atlantic Integration Process such as EU and NATO membership. Although the WB countries were overwhelmed by corruption, there were no national/local initiatives to address such problem through partial or comprehensive national policies prior to that. This thesis is confirmed in the text of the first Anti-Corruption Program and Action plan for Republic of Croatia (2001/2002) which states that *"political commitment for fight against corruption is, as well, based on international obligations of the Republic of Croatia."*⁵⁸

Aside from access to financial assistance and Euro-Atlantic integrations, conditionality in terms of fight against corruption was introduced through the diplomatic support of the so-called international community (e.g. EU Member States and USA), that were signatories of the Stability Pact Agreement. These were the first steps that initiated and guided fight against corruption in Croatia, as well as in Southeastern Europe Region.

⁵⁶The Stability Pact for Southeastern Europe.[online] Available from: <http://www.stabilitypact.org/about/default.asp> [Accessed 12/09/12]

⁵⁷The Stability Pact for Southeastern Europe. [online] Available from: <http://www.stabilitypact.org/anticorruption/default.asp> [Accessed 12/09/12]

⁵⁸Ministry of Justice, Governance and Municipal Self-governance of the Republic of Croatia (2001)*National program for Fight against Corruption, National Action Plan*. pp. 4/5 [pdf] Available from: http://korupcija.radoholik.info/stuff/Nacionalni_program_za_borbu_protiv_korupcije.pdf[Accessed 12/10/12].

In the first phase of the Stability Pact, the main task of the countries from the region was the implementation of international legal instruments in their national legal framework. This has pushed Croatia into signing and ratifying the UNCAC (United Nations Convention against Corruption) with Palermo Protocol (Convention on Transnational Organized Crime), Convention on Money Laundering Search, Seizure and Confiscation of Proceeds of Crime and other formal instruments.

Adoption of legal instruments has furthered the obligations of the countries in terms of establishment of institutional framework for fight against corruption. Croatia has established in 2000-2001 USKOK (Office for Suppression of Organized Crime and Corruption) within the State Prosecutor's Office, Police Department for Fight against Economic Crimes and Corruption within the Ministry of Interior, and Department for the Suppression of Money Laundering within the Ministry of Finance⁵⁹. On 1 December 2000 Croatia joined. Parliamentary Commission for the Resolution of Conflict of Interests was established in 2003.

In 2000 – 2012 there have been three phases in development of anti-corruption agenda:

In **phase 1** of the development of anti-corruption agenda (2000 - 2005), the focus was more on the establishment of initial legal and institutional framework. Laws on Right to Access the Information (NN 172/03)⁶⁰, Suppression of Conflicts of Interest in the Exercise of Public Office (NN 163/03)⁶¹ as well as Public Procurement Law (NN 117/01) were adopted. Law on Suppression of Money Laundering was amended 4 times (NN 67/01; 114/01; 117/03; 142/03); Criminal Law was amended five times (50/00; 129/00; 51/01; 111/03; 190/03) and the Law on the State Judicial Council was amended twice (NN 129/00 and 150/05). The first set of institutions for implementation of such laws was established and the first Anti-Corruption Strategies and Action plans were adopted across the Western Balkans.

Second phase (2004/2005 – 2008/2009) focused on further development of legal and institutional framework, as well as capacity building of the established institutions. The above-mentioned first set of laws was further improved together with some other related laws: Law on Suppression of Conflicts of Interest was amended 5 times in that period (NN 94/2004; 48/2005; 141/2006; 60/2008; 38/2009) as well as the Criminal Code (NN 105/04; 84/05, 71/06, 110/07, 152/08); Public Procurement Law was amended three times (NN 92/05; 110/07 and 125/08)⁶² as well as Criminal Proceedings Law (NN 152/08 and 76/09)⁶³. In line with the improvement of the legal framework, the Law on Financing of Political Parties⁶⁴ was adopted (2006), as well as the

⁵⁹ Ministry of Justice, Governance and Municipal Self-governance of the Republic of Croatia (2001) *National program for Fight against Corruption, National Action Plan*. pp 4/5/6 [pdf] Available from:

http://korupcija.radoholik.info/stuff/Nacionalni_program_za_borbu_protiv_korupcije.pdf [Accessed 12/10/12].

⁶⁰ Right to Access the Information Act. Official Gazette No: 172/03. Available from: <http://narodne-novine.nn.hr/clanci/sluzbeni/307079.html> [Accessed 07/09/12].

⁶¹ Act on Suppression of Conflict of Interest in Exercise of Public Office. Official Gazette No: 163/2003. Available from: <http://narodne-novine.nn.hr/clanci/sluzbeni/306927.html> [Accessed 06/09/12].

⁶² Public Procurement Act. Official Gazette No: 92/05, 110/07, 125/08. Available from: <http://www.sfzg.unizg.hr/download/repository/file1226p1.pdf> [Accessed 06/09/12].

⁶³ Criminal Proceedings Law. Official Gazette No: 152/08, 76/09, 80/11, 91/12. Available from: <http://www.poslovni-savjetnik.com/propisi/kazneni-postupak-i-kazneni-zakon-kazneni-postupak/zakon-o-kaznenom-postupku-urednicki-procis> [Accessed 06/09/12].

⁶⁴ Law on Financing of Political Parties. Official Gazette No: 1/07. Available from: http://www.transparency.hr/dokumenti/zakoni/Financiranje_politickih_stranaka.pdf [Accessed 06/09/12].

Law on Judicial Trainees and Bar Examination (adopted in 2008, amended in 2009)⁶⁵; Law on Courts was amended four times (150/05, 16/07, 113/08, 153/09)⁶⁶, Ethical Codes were developed, adopted, and amended in numerous institutions across the national and municipal administration⁶⁷ (NN 49/2006; NN 134/2008). Civil Servants Code was amended three times (NN 92/2005; 107/2007; 27/2008). The Law on Civil Servants and Employees in Local and Regional Government was adopted (NN 86/08) and Law on Public Prosecution was amended 6 times (NN 58/06; NN 16/07; NN 20/07; NN 146/07; NN 76/09; NN 153/09). In terms of the institutional framework, the National Council for Monitoring Anti-Corruption Strategy Implementation (Parliamentary body/2006) was established, Government's Committee for Monitoring the Implementation of Measures for the Suppression of Corruption (established in 2008) and Ministry of Justice's, Autonomous Sector for the Suppression of Corruption (2008). The USKOK Courts (Regional Courts) were established in four regions (Zagreb, Osijek, Rijeka and Split)⁶⁸. Technical assistance and capacity building actions were implemented in the judiciary, national and municipal level public administration.⁶⁹ Second phase was among other documents, guided by the second round of the Anti-Corruption Strategies and Action plans (adopted in 2006).

The **third phase** in the development of anti-corruption agenda (2009-2012) focused on efficiency and accountability of the established institutional framework, as well as the impact of the adopted legal and policy framework. It was mostly guided by the adoption of the third round of the National Anti-Corruption Strategy and Action Plan (adopted in 2008 and amended in 2010). The new strategy and action plan is in progress of adoption⁷⁰. Conflicts of Interest Prevention Act was amended three times (NN 92/2010, 26/2011 and 12/2012)⁷¹; New Public Procurement Law was adopted (NN 90/2011)⁷²; Law on Financing Political Activities and Election Campaigns was Adopted (NN 24/11)⁷³ and amended (NN 61/2011)⁷⁴; Law on Right to Access the Information was amended four times (NN 144/10; 37/11; 77/11)⁷⁵; Criminal Proceedings

⁶⁵Law on Judicial Trainees and Bar Examination. Official Gazette No:84/08, 75/09. Available from:

<http://www.zakon.hr/z/187/Zakon-o-vje%C5%BEbenicima-u-pravosudnim-tjelima-i-pravosudnom-ispitu>[Accessed 06/09/12].

⁶⁶Law on Courts. Official Gazette No:150/05, 16/07, 113/08, 153/09, 116/10, 122/10, 27/11, 57/11, 130/11. Available from:<http://www.zakon.hr/z/122/Zakon-o-sudovima>[Accessed 06/09/12].

⁶⁷Ministry of Justice - Autonomous Sector for Fight against Corruption (2010)*Analysis of implementation and impact of measures from anti-corruption action plan.* [pdf] Zagreb: Ministry of Justice. Available from:<http://www.antikorupcija.hr/Default.aspx?sec=508>[Accessed 06/09/12].

⁶⁸Dnevnik.hr (2008)*USKOK Courts begin to work starting next year.* [online] 27th November. Available from:<http://dnevnik.hr/vijesti/hrvatska/uskocki-sudovi-kreću-s-radom-pocetkom-godine.html>[Accessed 06/09/12].

⁶⁹IBID

⁷⁰Ministry of Justice Republic of Croatia (2012) *Draft Action Plan for the Anti – Corruption Strategy.* [pdf] Zagreb: Ministry of Justice. Available from: <http://www.mprh.hr/novi-akcijski-plan-uz-strategiju-suzbijanja-korupc>[Accessed 12/09/12].

⁷¹The CoI - Conflict of Interest Prevention Act. Official Gazette No: 26/11, 12/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_03_26_547.html [Accessed 06/09/12].

⁷²Public Procurement Act. Official Gazette No: 90/2011. Available from: <http://www.javnabavava.hr/userdocsimages/userfiles/file/ZAKONODAVSTVO%20RH/ENGLESKI/ZAKONI/Public%20Procurement%20Act-OG%2090-2011.pdf>[Accessed 25/09/12]

⁷³Law on Financing Political Activities and Election Campaigns. Official Gazette No:24/11. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_02_24_495.html[Accessed 25/09/12].

⁷⁴Law on Financing Political Activities and Election Campaigns. Official Gazette No: 24/11, 61/11. Available from: <http://cadial.hidra.hr/searchdoc.php?query=&lang=hr&annotate=on&bid=i4qdCP%2b%2fHuUfoVgdee7tAQ%3d%3d>[Accessed 25/09/12].

⁷⁵Right to Access the Information Act. Official Gazette No: 172/03, 144/10, 37/11, 77/11. Available from: <http://narodne-novine.nn.hr/clanci/sluzbeni/307079.html>[Accessed 07/09/12].

Code was amended twice (80/11 and 121/11)⁷⁶ ; as well as the Criminal Code (NN 57/11; 125/11)⁷⁷; Civil Servants Law was amended 5 times in this period (NN 34/11; 49/11; 150/11; 34/12; 49/12)⁷⁸; Law on State Judicial Council was amended three times (NN 116/10; NN 57/11 and NN 130/11); Law on Public Prosecution was amended three times (NN 116/10; NN 145/10; NN 57/11); The Law on Civil Servants and Employees in Local and Regional Government was amended (NN 61/11). In terms of institutional framework, Law on Courts was amended five times in this period (116/10; 122/10; 27/11; 57/11; 130/11)⁷⁹; Police USKOK (Police Department for Suppression of Corruption and Organized Crime was established in 2009)⁸⁰; ethics commissioners were appointed in the public administration and trained about relevant topics⁸¹. Aside from technical and capacity building activities, Ex Prime Minister Ivo Sanader, as well as 4 ministers in his government were arrested and prosecuted in this phase of the anti-corruption agenda development.⁸²

The size of the corruption phenomenon and its main corruption behaviors

The First National Program for Suppression of Corruption with an Action Plan from 2001⁸³ has stated that key problems related to corruption in Croatia are state capture, judicial capture, and lack of the political responsibility and accountability. According to the 2007 BURA assessment of the state of corruption in Croatia (multi-level assessment based on the public experience and perception)⁸⁴, the perception of citizens is that most corrupt sectors in Croatia are political parties, health care and public administration. The TI Global Barometer in 2010 indicated similar problematic areas: Political Parties, Judiciary and Representative Bodies (national and local

⁷⁶Criminal Proceedings Law. Official Gazette No: 152/08, 76/09, 80/11, 91/12. Available from: <http://www.poslovni-savjetnik.com/propisi/kazneni-postupak-i-kazneni-zakon-kazneni-postupak/zakon-o-kaznenom-postupku-urednicki-procis>[Accessed 06/09/12].

⁷⁷Criminal Code. Official Gazette No: 57/11, 125/11. Available from: <http://cadial.hidra.hr/searchdoc.php?query=%22Zakon+o+autorskom+pravu%22&searchTitle=on&resultdetails=basic&lang=hr&resultoffset=0&annotate=on&bid=QQRf6ftdvOiMAzXLf5015g%3D%3D>[Accessed 25/09/12].

⁷⁸Civil Servants Law. Official Gazette No: 92/05, 142/06, 77/07, 127/07, 27/08, 34/11, 49/11, 150/11, 34/12, 49/12. Available from: <http://narodne-novine.nn.hr/default.aspx>[Accessed 14/09/12].

⁷⁹Law on State Judicial Council. Official Gazette No:116/10, 57/11, 130/11. Available from:<http://www.zakon.hr/z/122/Zakon-o-sudovima>[Accessed 25/09/12].

⁸⁰Ministry of Interior, Police Department for Suppression of Corruption and Organized Crime.[online] Available from:<http://www.policija.hr/159.aspx>[Accessed 25/09/12].

⁸¹Ministry of Interior (2012) *Workshop on Combating Corruption and Professional Ethics*. [online]19th September. Available from: <http://www.mup.hr/23488.aspxn>[Accessed 10/10/12].

⁸²State Attorney(2012) [online] Available from: <http://www.dorh.hr/PodignutaOptuznicaProtivIve> [Accessed 12/09/12]; State Attorney(2012) [online] Available from: <http://www.dorh.hr/PodignutaOptuznicaUPredmetuFimiMedia> [Accessed 12/09/12]; State Attorney(2012) [online] Available from: <http://www.dorh.hr/PodignutaOptuznicaProtivOkrivljenog> [Accessed 12/09/12]; State Attorney(2012) [online] Available from: <http://www.dorh.hr/DonesenNoviNalogOProsirenju> [Accessed 12/09/12]; State Attorney(2012) [online] Available from: <http://www.dorh.hr/PodignutaOptuznicaUPredmetuPlaninska01> [Accessed 12/09/12]; State Attorney(2012)*Procurement of the Patria Trucks*. [online] Available from: <http://www.dorh.hr/PodignutaOptuznicaProtivBerislava>[Accessed 12/09/12] (Sentenced in first degree to 4 years of prison for Rončević, 2 years of prison for Bačić); *Slobodna Dalmacija, 2010*. VERDICT - Rončević four, Bačić two years of prison – they have to return 10 million HRK; Rončević: *I expected an acquittal*. *Slobodna Dalmacija*, [online] 06 December. Available from: <http://www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/123325/Default.aspx> [Accessed 12/09/12]; *Damir Polančec in the case Spotlights in the case sentenced to 15 months in prison and return of illicit gain of 500.000 HRK*. (*Verdict: October 2010*); State Attorney(2012) [online] Available from: <http://www.dorh.hr/PodignutaOptuznicaUPredmetuManager> [Accessed 12/09/12]; State Attorney(2012) [online] Available from: <http://www.dorh.hr/PodignutaOptuznicaProtivBivsegMinistra> [Accessed 12/09/12]; State Attorney(2012) [online] Available from: <http://www.dorh.hr/PodignutaOptuznicaUPredmetuPlaninska01> [Accessed 12/09/12].

⁸³National Program for the Fight against Corruption with an Action Plan. Official Gazette No: 34/2002. Available from: http://korupcija.radoholik.info/stuff/Nacionalni_program_za_borbu_protiv_korupcije.pdf[Accessed 04/09/12].

⁸⁴Partnership for Social Development(2007) *BURA assessment of the State of Corruption in Croatia*. [online] Available from:<http://www.psd.hr/hr/?content=page&kat=24>[Accessed 25/09/12].

parliaments and assemblies) indicated as most corrupt.⁸⁵ The 2012 Integrity Assessment, conducted by the Partnership for Social Development on a sample of 10 municipal governments has indicated that challenging areas of the governance at municipal level in Croatia are Conflicts of Interest, Information Management (access and management of public documents) and Human Resources Management (appointments and employment procedures).⁸⁶ The two researches implemented by the Partnership for Social Development (PSD) in the field of conflicts of interests, have shown that bribery is the least of problems related to corruption in Croatia, having the conflicts of interests related issues and influence peddling way more damaging in the overall picture than bribery *per se*⁸⁷.

The 2012 World Bank WGI – Control of Corruption Indicators sets Croatia on a scale from 0 to 100 somewhere around 60.⁸⁸ 2011 Freedom House Corruption Ratings for Croatia are exactly the same as where Romania and Bulgaria are (around 4 on the scale from 0 to 7; 7 being the worst)⁸⁹.

This indicates that the situation in Croatia has the basic characteristics of state capture. The corrupt political system is generating corrupt and inefficient judiciary and administration that is limited in its efforts to reform and/or suppress corruption.

Strategies and approaches to corruption in the Republic of Croatia are not designed to tackle specific issues. They are rather general documents and actions closely linked to international political agenda (e.g. EU accession process) in order to satisfy the checklists.

II. The importance of the EU influence (or of other stake-holders) in promoting the anticorruption agenda. Benchmarks / conditionality / access to funds

As stated in Chapter 1, the overall political will to tackle corruption is closely linked to the international political agenda, starting from the Stability Pact Anti-Corruption Initiative (SPAI) and continuing through the EU Accession Process. In 2001 Croatia has signed the Stabilization and Association Agreement with the EU.⁹⁰ As the EU Commission as well as EU member states and international financial institutions were part of the Stability Pact Initiative (as explained in Chapter 1 of this report), the conditions applied to financial assistance from the signatories of the pact and overall anti-corruption agenda have continued as previously set within the Stability Pact Agreement. The specific EU related conditions and acceleration of the anti-corruption activities in Croatia are tied to ending the process of accession to the EU of Bulgaria and Romania (2004/2005). The EU has noticed that corruption issues may be an obstacle to the

⁸⁵ Transparency International (2010) *The TI Global Barometer in 2010*. [online] Available from: <http://ebookbrowse.com/globalni-barometar-korupcije-2010-hrvatska-ppt-d112140747> [Accessed 25/09/12].

⁸⁶ Partnership for Social Development (2012) Research findings within IPA ACRIP (Anti-Corruption Response in Public Procurement) project. *Integrity assessment in 10 municipalities*. [power point]

⁸⁷ Found during the EU CARDS "Civil Society Anti-Corruption Response" – Podumljak, M. (2009) *Why the bribery is not our biggest problem*. Zagreb: Partnership for Social Development; Partnership for Social Development (2011) *BACCI: Balkan Anti-Corruption Civic Initiative Croatia, Bosnia and Herzegovina, Republic of Serbia*. Zagreb: Partnership for Social Development.

⁸⁸ Partnership for Social Development, 2012. IMAN Project: *Corruption, Public Procurement, and Economic Crisis, Interrelations and Trends* (September).

⁸⁹ *IBID*

⁹⁰ Ministry of Foreign Affairs Republic of Croatia. *The Ratification of the Stabilization and Association Agreement* [online] Available from: <http://www.mvep.hr/ei/default.asp?ru=228&sid=&akcija=&jezik=2> [Accessed 25/09/12].

implementation of the EU *acquis* in the member states and therefore the list of requirements in negotiations with Turkey and Croatia was expanded introducing Chapter 23⁹¹ in negotiations.

EU accession process does not have anti-corruption benchmarks directly related to funds except in the area of management of the Pre-accession Financial Assistance. However, the Stabilization and Association Agreement, Conditions for the opening and closing of the negotiations do have benchmarks related to fight against corruption. Chapter 23, Judiciary and Fundamental Rights, the “new” chapter that was applied to Turkey and Croatia negotiations, have provided the EU Commission with the necessary tools to address benchmarking in this area and widely use it, which is visible in country's legislative and institutional response in the table in *Annex 1*.

From the table it is clear that EU negotiation process as well as the continuum of international political agenda in fighting against corruption correlates with the changes in the country's legal and institutional framework. Numerous changes in legislation and establishment of the specialized anti-corruption institutions and bodies have marked more than a decade of fight against corruption that clearly correlates with the international policy making and EU accession process.

III. Where do conflicts of interests and incompatibilities fit in the anticorruption agenda

III.1. Conflicts of interests and the Croatian legislation

III.1.a. Criminal Code

The Croatian Criminal Code does not penalize conflicts of interests or incompatibilities *per se*. Chapter 25 of the Croatian Criminal Code - Criminal Offences Against Official Duty - regulates the punishable conduct of public authority or judiciary representatives in a variety of corruption related offences.⁹² Article 338 is the only article that partially addresses conflicts of interests (nepotism):

An official person in a governmental body or unit of regional or local self-government who, for the purpose of acquiring pecuniary gain in his private business or the private business of members of his family, abuses his office or official authority by giving preferential treatment in a competition, or by giving, obtaining or contracting jobs shall be punished by imprisonment for six months to five years.

⁹¹ Main Administrative Structures Required for Implementing the Acquis (2005) [online] Available from: http://ec.europa.eu/enlargement/pdf/enlargement_process/accesion_process/how_does_a_country_join_the_eu/negotiations_croatia_turkey/adminstructures_version_may05_35_ch_public_en.pdf [Accessed 25/09/12]; Utrecht School of Governance, 2008. *Catalogue of promising practices in the field of integrity, anti-corruption and administrative measures against organized crime in the EU* [online] Available from: http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Publicaties/Downloads/EU_Catalogus.pdf [Accessed 25/09/12].

⁹² Criminal Code. Official Gazette No: 57/11, 125/11. Available from: <http://cadial.hidra.hr/searchdoc.php?query=%22Zakon+o+autorskom+pravu%22&searchTitle=on&resultdetails=basic&lang=hr&resultoffset=0&annotate=on&bid=QQRf6ftdvOiMAzLf5015g%3D%3D> [Accessed 25/09/12].

III.1.b Conflict of Interest Prevention Act

The Conflict of Interest Prevention Act⁹³ regulates matters related to conflicts of interests and incompatibilities at political (representative) level and high level executive branch of government (elected and appointed officials).

According to the general provisions of the Act, Article 1:

The law regulates the prevention of conflicts between private and public interest in public office, the filing and contents of a report on the financial situation, the process of checking the data from these reports, the period of duties for public officials under this Act, selection, composition and jurisdiction of the Commission for the Resolution of Conflicts of Interest and other issues of importance to the prevention of conflicts of interest.

In the legal provisions of Conflict of Interest Prevention Act, five articles (7, 16, 17, 18 and 20) are dealing with issues that are related to prevention of conflicts of interest.

Article 7 "forbids the use of official position to influence decisions of the legislative, executive or judicial power to achieve personal profit or related person, a privilege or a right, entered into a transaction or otherwise favor themselves or a related person".

Articles 16, 17, and 18 are regulating the official's relationship (transfer of ownership and participation of related legal persons in public procurement) to companies where he/she has ownership or holds a decision-making position. Article 20 regulates obligations of the Law and restrictions for the official after the termination of service (1 year after). The rest of the legal provisions, aside from provisions regulating the organizational structure of the commission, almost exclusively deal with the property of public officials: *Declaring property; Checking of declarations of assets and Sanctioning of the false declaration of assets*. Most of the sanctions in the Law, as well as monitoring and reporting mechanisms are tied to the declaration of assets and not to conflicts of interests *per se*.

In terms of sanctioning conflicts of interests, according to Article 42 of the Law, for violation of the above-mentioned conflicts of interests related Articles 7, 16, 17, and 18, the Commission may sanction the official with reprimand; suspension of payment of net monthly salary in the amount up to maximum approximately 5.300 EUR (payment in monthly installments for period of one year – meaning maximum of app. 440 EUR per month for a period of one year); and public disclosure of the commission's decision. For the violation of Article 20 (obligations after termination of service) official may be fined up to approximately 6.500 EUR and the company that employs such official may be fined with up to 150.000 EUR, while the natural person that acts on behalf of the legal person the sanction is up to approximately 6.500 EUR.

In cases where officials have violated the law in terms of the declaration of assets, he/she can be sanctioned with the proposal for dismissal to the relevant body (Article 46) and call for resignation (Article 47). Neither of such articles is enforceable if the official rejects the decision of the Commission.

The Conflict of Interest Prevention Act deals also with property of the officials, though it does not include any technical provisions to empower real checks of the wealth status of those covered by the law (this function could be transferred to the Ministry of Finances or other tax

⁹³Conflict of Interest Prevention Act. Official Gazette No: 26/2011. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_03_26_547.html [Accessed 06/09/12].

and financial institutions). The instruments for declaring and monitoring actual interests of the officials are insufficient and weak with no public control or participation in the process, which is in contradiction with the General Administrative Procedure Act and/or Criminal Proceedings Code according to which public body has to act upon the citizens' request for procedure, or upon citizens' report on suspicion of crime.

Sanctions for conflicts of interests are minor, limited to financial fines and reprimand, or "publishing of the Commission's decision" and they do not represent any serious obstacle to producing conflicts of interests. The Law does not clearly regulate differences between incompatibilities and conflict of interests, or apparent, potential and actual conflict of interests. Documents, decisions and acts produced under conflicts of interests are not annulled by the decision of the Commission and therefore the overall damage that can be done under conflicts of interests is irreparable.

The Conflict of Interest Prevention Act covers the following categories of officials:

President of the State; Members of the Parliament; Prime Minister and Ministers in Croatian Government; President and members of the Constitutional Court of Republic of Croatia; Governor, Vice Governor and Deputies of the Governor of the Croatian Central Bank; Ombudsman (all of them); Secretaries of the Croatian Parliament, Croatian Government, Constitutional Court, and Supreme Court; State Secretaries; Heads of the State Administration Organizations; Heads of the State Bureaus; State Treasurer; Chief State Inspector; Officials in the office of the President of the Republic appointed by the President; Heads of all state Bureaus, Agencies, and Directorates that are appointed by the Government; Chief and Deputy Chief of the General Staff of the Croatian Armed Forces; Defense Inspector General; Commanders and Deputy Commanders of Croatian Armed Forces and Support Command, the Director and Deputy Director of the Croatian Military Academy, and the Commander of the Croatian Coast Guard; President and members of the State Election Commission; Presidents and Board members of State Owned Companies; County Governors and the mayor of the City of Zagreb and their deputies; Mayors, municipal mayors and their deputies; Members of the State Commission for Control of Public Procurement Procedures; Members of the Parliamentary Commission for the Resolution of Conflict of Interest; The provisions of the Prevention of the Conflict of Interest Act as well apply to the holders of the duties as officials appointed or confirmed by the Croatian Parliament, appointed by the Croatian Government and Croatian President.

However, the Act does not cover county and municipal assemblies nor other persons that decide or participate in deciding in public interest and that are not directly appointed by the Parliament, Government or President of the State. It also does not cover judiciary.

III.1.c.1. Civil Servants Act

The provisions of the Civil Servants Act⁹⁴ apply to civil servants in the state administration, judiciary and penal bodies; professional service of the Croatian Parliament, professional service in the Office of Croatian President, professional services and offices of the Croatian Government, professional service of the Croatian Constitutional Court, the Ombudsman's professional service, the State Audit Office and other bodies set up to carry out the civil service (national authorities). Civil Servants Act does not apply to municipal administration.

Civil Servants Act addresses conflicts of interests, incompatibilities or prevention and suppression of corruption related issues in Chapter II of the Act: *Principles of Conduct of Public Servants* (Articles 15; 16; 17; 18; 25; 27) as well as in the Chapter III of the Act: *Conflict of Interest* (Articles 32; 33; 34; 35; 37)

⁹⁴Civil Servants Act. Official Gazette No: 92/05, 142/06, 77/07, 127/07, 27/08, 34/11, 49/11, 150/11, 34/12, 49/12. <http://narodne-novine.nn.hr/default.aspx> [Accessed 01/10/12].

According to the Civil Servants Act, conflict of interests related situations may be treated as minor breach of duty (Article 98.8) or severe breach of duty (Article 99.4; 99.9; 99.11; 99.13). In this act, as well as in other acts there is no specific legislative separation between incompatibilities and conflicts of interests, or apparent, potential and actual conflicts of interests. Sanctions for conflicts of interests as for other breaches of duty as prescribed in the Civil Servants Act may vary from the reprimand, affect on the servants salary and career advancement, to payment of damages and termination of service.

According to the Civil Servants Act, reporting on the potential conflict of interests as well as decisions related to potential conflict of interests is regulated as written without prescribed form. As a tool to ensure the implementation of the Act, an additional legal instrument was adopted – Law on Register of Public Service Employees (NN34/11)⁹⁵. The Register according to both laws (Civil Service Act and Law on Register) shall contain the personal file of every civil servant in the country that among other data includes declarations on potential conflicts of interests and disciplinary measures taken against her/him. Quality monitoring of the potential and actual conflict of interests, as well as other aspects of the human resources management in public administration, highly depends on the existence of such instrument. However, although the Law on the Register of Public Service Employees has been adopted at the beginning of 2011, the register still does not exist and it is not expected to be fully operational at the end of 2013.⁹⁶

III.1.c.2. The Law on Civil Servants and Employees in Local and Regional Government (NN 86/08 and 61/11)

This Act regulates the entry into service and rights, duties and responsibilities of officers and employees in the administrative departments and agencies of local (regional) self-government, as well as other issues of importance for the realization of rights and duties of officers and employees. In terms of management of conflicts of interests and ethics, the Law on Civil Servants and Employees in Local and Regional Government addresses a variety of related issues. In article 32, the Act states that superior officers and heads of the departments in the municipal government are responsible for the work of their employees.⁹⁷ Article 38 regulates incompatibilities in the exercise of duty, although it does mention the conflict of interests:

Officer may be, outside of regular business hours, upon prior written approval of the head of the governing body, self-employed or work for someone else if this is not in contradiction with his/her official duties, and if no other special law prescribes otherwise and only if the secondary employment does not represent a conflict of interest or an obstacle in the performance of his/her official duties or harm the reputation of the public service.

Approval in the related cases is given by the mayor or prefect (head of the municipal government department). Therefore, in such situations the Act regulates the activity of the public servant "outside of duty" and not while exercising the duty, which in fact leaves conflicts

⁹⁵The Law on Register of Public Service Employees. Official Gazette No: 34/11. Available from: <http://www.zakon.hr/z/457/Zakon-o-Registru-zaposlenih-u-javnom-sektoru>[Accessed 25/10/12].

⁹⁶Tportal.hr(2012) *Austro-Hungarian Empire had faster counted their officer than Croatia do today!* [online] 14th March. Available from: <http://www.tportal.hr/biznis/gospodarstvo/182082/Austro-Ugarska-je-brze-brojala-sluzbenike-od-Hrvatske-danas.html>[Accessed 25/10/12].

⁹⁷The Law on Civil Servants and Employees in Local and Regional Government. Official Gazette No:86/08, 61/11. Available from:<http://www.zakon.hr/z/259/Zakon-o-slu%C5%BEbenicima-i-namje%C5%A1tenicima-u-lokalnoj-i-podru%C4%8Dnoj-samoupravi>[Accessed 25/10/12].

of interests out of scope of the law. Article 39⁹⁸ forbids the ownership of private companies by civil servant that is in his/hers jurisdiction of work in public administration.

Articles 40 and 41 regulate potential and apparent conflicts of interest situations. According to Article 40, the civil servant at the local level is obliged to report on potential conflict of interests situation to the superior civil servant (prefect, head of the department) while prefects report on their potential conflicts of interests to the head of municipalities and county governments (mayors and county governors) in written.⁹⁹ It is prescribed that the civil servant and/or prefect/head of the department are obliged to report on their business relationships in the last two years that may fall under jurisdiction of the body where he/she is employed; financial interest and/or ownership of companies that may be under administrative jurisdiction of the body where civil servants work; and that civil servants shall report situations in which their spouse, parent or a child are responsible persons or officials in political parties, NGOs and profit companies that may fall under administrative jurisdiction of the body in which civil servants work. The superior officer has to act upon the report and assure that the civil servant is not in charge of work that may represent a situation of conflicts of interests according to this Act.

However, it is not clear if there is a form for reporting and what superior officer is obliged to do with such declaration or if there is any kind of checking the reported data. Such structure of the law indicates that it is not likely that any kind of serious investigation of conflicts of interests will be launched without the report on the breach of law, and who can file the report on the breach of law is even less understandable.

According to Article 41, civil servants at municipal level cannot take part to decision making in situations that may represent a conflict of interest:

Officer cannot participate in making decisions that affect the financial or other interest of:

- a) his spouse or common-law spouse, child or parent;*
- b) natural or legal persons with whom he or she has had formal or business contacts in the last two years,*
- c) natural or legal persons who have in the last five years, financed his election campaign,*
- d) the association or entity in which he is the president, governor or member of the governing board,*
- e) the natural or legal persons to whom he/she is representative, legal representative or trustee in bankruptcy,*
- f) natural or legal persons with whom the employee, his spouse or common-law partner, child or parent have a dispute or their borrower.*

The Act sanctions the breach of regulation of incompatibilities prescribed in Article 39–additional work of the public servant outside the office, and not situations of conflicts of interest unless they fall under some other punishable activities. Offences in relation to incompatibilities are treated as a serious breach of duty and possible sanctions are: fine up to monthly amount of 20% of the salary for a period not exceeding six months; transfer to a lower rank, within the same qualifications; probation to the service termination, and termination of service.

Although provisions in other pieces of legislation that by subject matter fall under the suppression of conflict of interest, the management of data related to interest declaration may prove to be challenging. A significant issue is that the first decision under these special pieces of legislation belongs to prefects and mayors who are not trained to decide upon conflict of

⁹⁸The Law on Civil Servants and Employees in Local and Regional Government. Official Gazette No:86/08, 61/11. Available from: <http://www.zakon.hr/z/259/Zakon-o-slu%C5%BEbenicima-i-namje%C5%A1tenicima-u-lokalnoj-i-podru%C4%8Dnoj-samoupravi> [Accessed 25/10/12].

⁹⁹*ibid*

interest situations regarding their employees. A second issue is that the legal acts that are produced in a conflict of interest do not have to be annulled nor the damage fixed. The majority of conflicts of interests in the employment and appointment procedures as well as information management are completely out of the scope of this act. Therefore, the overall structure to suppress conflicts of interests on municipal level may miss the purpose of containing conflicts of interests. And - most importantly - there is no prescribed sanction for insufficient management of conflicts of interest situations for superior officers, nor sanctions for deciding contrary to the public interest in situations of potential and apparent conflicts of interests.

III.1.d Judiciary

III.1.d.1. Judges

Conduct of Judges is regulated through Law on Courts¹⁰⁰, as well as Law on the State Judicial Council¹⁰¹ and a Code on Judicial Ethics¹⁰². Even though conflicts of interests and incompatibilities are not in focus of neither of those instruments¹⁰³, the substance of the acts and articles represents instruments for prevention and suppression. The Code on Judicial Ethics, Article 8, Dignity of the Bench states that:

.... A judge must avoid any behavior that may create an impression of impropriety to judicial position.... A judge shall not perform any public or private, whether paid or unpaid position, which is not in accordance with the position of the judge..... A judge should not allow his family to undue influence on his actions and decisions in the exercise of the bench..... The judge should not use prestige of the status of the Judge in order to achieve or improve his/hers personal interests, the interests of their family members or anyone else interests..... A judge should not allow his family members, employees of the court or anyone else subordinate to the authority of his judicial duty to accept the gift, loan or service to what the judge in the performance of their duties would lead to action, inaction and omission Judge outside the judicial office shall not engage in giving legal advice or legal assistance..... The judge even after the termination of judicial office, unless it is required by the rules of procedure, shall not act in any capacity in any matter in which he had acted in the exercise of his judicial duties, as in the cases related to the case....

Although the Code on Judicial Ethics is not law *per se*, it is a guiding instrument for decisions of the State Judicial Council¹⁰⁴.

The Law on Courts¹⁰⁵ addresses conflicts of interests and incompatibilities in Articles 92, 94, 95 – 98, as well as in Article 105.¹⁰⁶ Article 92 enhances the institute of impartiality and independence of the Bench; Article 94.1 forbids political party membership; Article 95 regulates

¹⁰⁰The Law on Courts. Official Gazette No: 150/05, 16/07, 113/08, 153/09, 116/10, 122/10, 27/11, 57/11, 130/11. Available from: <http://narodne-novine.nn.hr/default.aspx>[Accessed 27/09/12].

¹⁰¹The Law on the State Judicial Council. Official Gazette No: 116/10, 57/11, 130/11. [Available from: <http://narodne-novine.nn.hr/default.aspx>[Accessed 27/09/12].

¹⁰² Code on Judicial Ethics. Official Gazette No: 131/06. Available from: http://www.vsrh.hr/CustomPages/Static/HRV/Files/KodeksSudackeEtike_2006.PDF[Accessed 27/09/12].

¹⁰³Except in the case of the procedures related to appointment and career advancement of judges. Article 42 - The Law on the State Judicial Council. Official Gazette No: 116/10, 57/11, 130/11. [online] Available from: <http://narodne-novine.nn.hr/default.aspx> [Accessed 27/09/12].

¹⁰⁴The Law on the State Judicial Council. Official Gazette No: 116/10, 57/11, 130/11. Available from: <http://narodne-novine.nn.hr/default.aspx> [Accessed 27/09/12].

¹⁰⁵Please note that for the purpose of this research we have used the latest version of the changes in the law. As the integral text of the law with all changes in the last decade is still not published, the numbers of the articles of the law may change. However, the substance of the articles will remain till the another change of the law is adopted.

¹⁰⁶Law on Courts. Official Gazette No: 150/05, 16/07, 113/08, 153/09, 116/10, 122/10, 27/11, 57/11, 130/11. Available from: <http://www.zakon.hr/z/122/Zakon-o-sudovima> [Accessed 06/09/12].

both conflicts of interests and incompatibilities: Paragraph 1 forbids the trade in influence and use of reputation of the Bench in exercise of judges' rights as citizens; Paragraph 2 forbids the judge to act as a lawyer, public notary or to become member of the supervisory or management board of any legal entity; Paragraph 3 prescribes that:

A judge shall not perform any other service or business that might affect the autonomy, impartiality or independence, or diminish his social reputation, or that are otherwise incompatible with the exercise of judicial functions.

Article 98 regulates the procedure in case of incompatibility:

The incompatibility of service or work with the judicial functions are decided by the court president, the cases related to president of the court – are decided by the president of the higher court, and in the cases related to the President of the Croatian Supreme Court – the Supreme Court Plenum.

The Law on Judicial Council regulates the declaration of assets for judges as well as the verification of declarations of assets¹⁰⁷ and disciplinary measures related to conduct of judges and statement of assets¹⁰⁸. In terms of conflicts of interests and incompatibilities, disciplinary procedures against the judge can be initiated for behavior contrary to principles of the Code on Judicial Ethics; exercise of the service, work or activities that are incompatible with the judicial duty; and for not submitting or submitting false statement of assets to the State Judicial Council. Interests are not declared in the statement of assets, therefore the overall segment of monitoring and preventing conflicts of interests is not a part of the established legal instruments.

For breaching the law, the State Judicial Council may apply the following sanctions:

- a reprimand;
- fine of up to one-third of the salary received in the previous month, for a maximum of six months;
- termination of service (only in extreme cases – not related to asset declaration).

Disciplinary proceedings may be initiated only if there is a reasonable suspicion that a judge has committed a disciplinary offense, by the President of the Court, President of the Higher Court, President of the Supreme Court, Judicial Council and Minister of Justice.

III.1.d.2. Prosecutors

The conduct of public prosecutors is regulated by Law on the Public Prosecution¹⁰⁹, Chapter of the Law related to work of the State Prosecutorial Council¹¹⁰ and Ethical Code of Public Prosecutors¹¹¹. The legal and institutional framework that regulates conflicts of interests and

¹⁰⁷Article 97 of the Law on the State Judicial Council. Official Gazette No: 116/10, 57/11, 130/11. Available from: <http://narodne-novine.nn.hr/default.aspx> [Accessed 27/09/12].

¹⁰⁸Article 62 of the Law on the State Judicial Council. Official Gazette No: 116/10, 57/11, 130/11. Available from: <http://narodne-novine.nn.hr/default.aspx> [Accessed 27/09/12].

¹⁰⁹Law on the Public Prosecution. Official Gazette No:76/09, 153/09, 116/10, 145/10, 57/11, 130/11. Available from: <http://www.zakon.hr/z/140/Zakon-o-dr%C5%BEavnom-odvjetni%C5%A1tvu> [Accessed 27/09/12].

¹¹⁰Law on the State Prosecutorial Council. Official Gazette No: 76/09, 153/09, 116/10, 145/10, 57/11, 130/11. Available from: <http://narodne-novine.nn.hr/default.aspx> [Accessed 27/09/12].

¹¹¹Ethical Code of Public Prosecutors. Official Gazette No: 25/08. Available from: <http://www.poslovnisavjetnik.com/propisi/pravosude-drzavno-odvjetnistvo/eticki-kodeks-drzavnih-odvjetnika-i-zamjenika-drzavnih-odvjet> [Accessed 27/09/12].

incompatibilities follows a similar logic as the one for judges. The difference is that prosecutors do not have immunity from prosecution and that their family members are not covered by regulatory acts on conflicts of interests and/or incompatibilities.

The Ethical Code of Public Prosecutors in its fundamental principles, Article 2.6 addresses the issues of independence and forbids undue influence. However, conflicts of interests *per se* are not addressed. Article 13 forbids the acceptance of gifts and services from the parties in the procedures.

In Article 119, Law on Public Prosecution forbids political party membership and political activities of public prosecutors. Article 120.1 prescribes that public prosecutors shall not use their official position in exercising their citizen rights before the public administration bodies; Paragraph 2 addresses incompatibility issues – public prosecutor cannot be a judge, lawyer or notary public, or be a member of a supervisory, or management board of any profitable entity. Paragraph 3 states that public prosecutors shall not perform any other service or business, which may affect their independence and objectivity or damage its reputation, or is otherwise incompatible with the duty of the public prosecution.

Article 121 regulates management of situations of incompatibility:

For all of the public prosecutors and deputies decides their superior officer, and for Chief State Prosecutor decides Government of Croatia.

Article 137 prescribes disciplinary offenses. Those relevant for suppressing conflicts of interests and incompatibilities are:

- 137.3 Providing service, work or activity that is incompatible with the duty of the public prosecutor;
- 137.6. Behavior or practices contrary to the fundamental principles of the Code of Ethics of Prosecutors and deputy public prosecutors which are harmful to the reputation of the public prosecutors duty;
- 137.8. Not submitting or submitting false declaration of assets to the State Prosecutorial Council;
- 137.9. Activities contrary to Article 119 (political activity).

The legislation on the State Prosecutorial Council regulates the declaration of assets for public prosecutors, the verification of such statements and all disciplinary measures related to conduct of public prosecutors (including issues related to the declaration of assets). The statement of assets does not include the declaration of interests, and - in general - conflicts of interest related issues, aside from incompatibilities, are not regulated. In cases of breach of law, the measures are similar to those for judges:

- a reprimand;
- a fine of up to one-third of the salary received in the previous month, for a maximum of six months;
- a delay in promotion of up to three years;
- termination of service (in extreme cases).

Aside from above-mentioned laws, incompatibilities are as well regulated by other laws such as:

*Act on Election of Representatives to the Croatian Parliament*¹¹², Article 9:

A representative, simultaneously with performing the duty of a representative cannot perform the following offices: Judge of the Constitutional Court of Republic of Croatia, State Prosecutor, or Deputy State Prosecutor, the People's Ombudsman, Deputy of the People's Ombudsman, Prime Minister or Deputy Prime Minister, Minister or other member of the Government of the Republic of Croatia, Deputy Minister, Assistant Minister, Director of a State Administrative Institution, Deputy Director of a State Administrative Institution, Assistant Director of a State Administrative Institution, Secretary General of the Government of the Republic of Croatia, Secretary general of a Ministry, Director of a Government's Office or Government's Agency, the Prime Minister's Chief of Staff, Director of the Office of the Council for National Security, ambassador, general consul, County Governor or County Deputy Governor, Mayor of Zagreb or Deputy Mayor of Zagreb, an active military person, a senior or junior employee in the military forces, a member of a board of directors of a company, institution or non-budget fund which is predominantly in the state ownership, and a director of a legal person that is according to the law obliged to submit reports to the Parliament. Other Mayors can be members of parliament at the same time. During his/her mandate, a representative can accept to fill a post that is according to the provisions of this act incompatible. During the filling of an incompatible post, his/her mandate shall be in suspension, and he/she will be deputized by a deputy, according to the provisions of this Act.

*Public Administration Act*¹¹³, Article 6, paragraph 2 states that public officials cannot simultaneously serve in the legislative power, judicial power nor be members of the representative body of local and district (regional) governments.

*Conflict of Interest Prevention Act*¹¹⁴, Article 12:

Officials that perform public duties and are receiving a salary for the office they hold cannot receive any other salary or other compensation for the performance of public duties, unless otherwise provided by law.

Likewise, Article 13, Paragraph 2:

Officials who professionally perform public duties during their performance cannot receive a fee for making a profit, or to perform other tasks in terms of regular and permanent jobs unless the Commission, upon prior officials request determined that classroom activities do not affect the lawful exercise of public office.

*Act on Election of Municipality Heads, Mayors, County Prefects and Mayor of City of Zagreb*¹¹⁵, Article 9:

While in office, a municipal head, mayor, County Governor and the Mayor of the City of Zagreb and their deputies cannot be the members of the representative bodies of the same or different local, i.e. regional self-government unit. While in office, a municipal head, mayor, County Governor and the Mayor of the City of Zagreb and deputies cannot be: the President of the Republic of Croatia; the President, Vice-president and a member of the Government of the Republic of Croatia; the President, Vice-president and a Judge of the Constitutional Court of the Republic of Croatia, the Governor, Deputy Governor and Vice-governor of the Croatian National Bank; the Auditor General and his/her deputy; the Ombudsman and his/her deputy; a judge; the Chief State Prosecutor and Deputy Chief State Prosecutor or a Public Prosecutor and Deputy; Public Prosecutor; the Secretary and Deputy Secretary of the Croatian Parliament; the Secretary and Deputy Secretary of the Government of the Republic of Croatia; the Secretary General of the Constitutional Court of the Republic of Croatia; the Secretary of the Supreme Court of the Republic Croatia, – the State Secretary; the Ombudsman for children and his/her deputy; the Gender Equality Ombudsman and his/her deputy; an Assistant Minister; a Secretary General, – the Deputy Secretary of State in central state administrative offices; the director, deputy and assistant director of state administrative organizations; the president and vice- president of the Croatian Privatization Fund; the

¹¹² Act on Election of Representatives to the Croatian Parliament. Official Gazette No: 69/03. Available from: <http://www.sabor.hr/Default.aspx?art=16929> [Accessed 05/09/12].

¹¹³ Public Administration Act. Official Gazette No: 150/11. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_12_150_3086.html [Accessed 06/09/12].

¹¹⁴ Act on Preventing the Conflict of Interest. Official Gazette No: 26/2011. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_03_26_547.html [Accessed 06/09/12].

¹¹⁵ Act on Election of Municipality Heads, Mayors, County Prefects and Mayor of City of Zagreb. Official Gazette No: 109/07. Available from: [http://www.izbori.hr/izbori/izbori09files.nsf/0/DBF3D8ACEA36EDC7C12575AC0046F6B4/\\$FILE/Act_on_the_Election_of_Municipality_Heads_Mayors_County_Prefects_and_the_Mayor_of_the_City_of_Zagreb.pdf](http://www.izbori.hr/izbori/izbori09files.nsf/0/DBF3D8ACEA36EDC7C12575AC0046F6B4/$FILE/Act_on_the_Election_of_Municipality_Heads_Mayors_County_Prefects_and_the_Mayor_of_the_City_of_Zagreb.pdf) [Accessed 06/09/12].

director and deputy director of the Croatian Pension Insurance Fund; director, deputy and assistant director of the Croatian Institute for Health Insurance; the Rector and Deputy Rector of a university; the Chief State Treasurer; the chief of the office staff, director of the agency and administration of the Government of the Republic of Croatia; the director of an institute appointed by the Government of the Republic of Croatia; an official in the Office of the President of the Republic appointed by the President of the Republic of Croatia; the director, an official and employee in administrative bodies of the same or different local, i.e. regional self-government unit; a member of the board of directors of a company in which the majority stake is owned by a unit of local, i.e. regional self-government; the director and an employee of an institution founded by a unit of local, i.e. regional self-government.”

A mayor and head of municipality can be Member of Parliament at the same time, except the Mayor of Zagreb.

IV. Enforcement mechanisms

Institutional framework, track record and overall approaches in tackling conflicts of interests

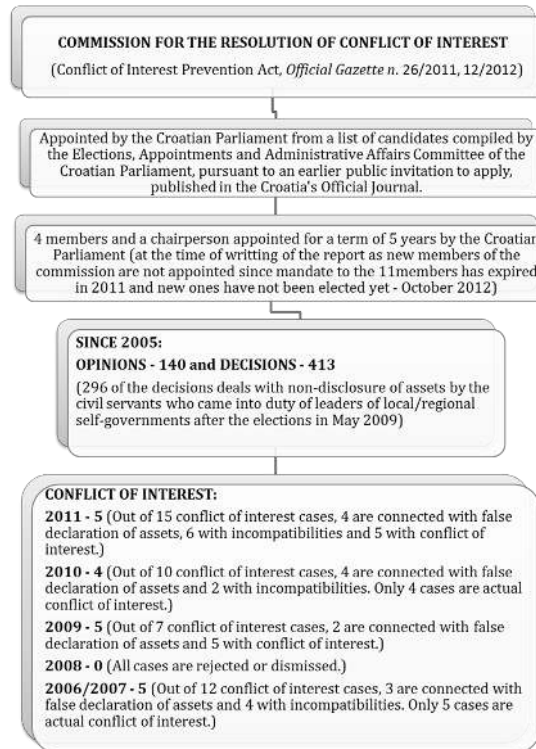
As stated before, each branch of the state (political, judicial, administrative at central and municipal level) has its own legal and institutional framework for suppressing conflicts of interest and incompatibilities. The institutional setup is not synchronized and it does not seem to address the issues of management, prevention and suppression of conflicts of interests. In each branch, conflicts of interests are dealt partially, and even when there are measures that address such situations of the employee/official there are no accountability mechanisms if it is not dealt properly by a relevant body.

IV.i. Institutional framework and challenges in addressing political corruption

Parliamentary Commission for the Resolution of Conflict of Interest

The Commission for the Resolution of Conflicts of Interest was established with the adoption of the first Conflict of Interest Prevention Act in 2003/2004. Until 2008 it had seven members, between 2008-2011 eleven members, and after 2011 changes in the law, now has five professional members that are appointed/employed by the Parliament.

In the first few years members of the Commission were appointed but no actual checks were performed. As it is visible from the table below, procedures suggest that the parliamentary majority still, even after the latest changes in the law, decides on the appointment of the members of the Commission, and decides on the Commission's report. Therefore the appointment and work of the Commission is highly dependent on the political allegiance of the candidates that affects the institutional track record and overall performance.



Starting with December 2011, the Commission could not decide on any cases, as the mandate of the members of the Parliament expired after the parliamentary elections in 2011. Due to the complexity of the Croatian legal system, such cases will probably not be decided ever, or the decisions will not be enforceable. At the same time, the Commission is engaged in training the local and regional representatives on issues related to conflicts of interests (mostly on how to fill-in correctly the statement of assets).

Such situation may represent an incompatibility as the same people decide on the potential conflicts of interests of those trained by them. Some of the Commission's members, e.g. representative of Transparency International Croatia Zorislav Antun Petrović, was contracted by public companies (such as the Croatian Post) management to conduct trainings in such public companies, even if the management structure of the company is covered by the law, and therefore the Commission decides on conflicts of interests. This represents a conflict of interest situation *per se*. Ex Chairperson of the Commission, Professor Deša Mlikotin Tomić was arrested - during her mandate - for bribery in the Index case (taking bribe as professor from students for passing an exam) and sentenced to 14 months in prison.¹¹⁶ All the aspects of the implementation of the Law are indicating that conflicts of interests for state officials goes almost unsanctioned in Croatia, in any event sanctions do not have any deterrent effect.

IV.ii Conflicts of interests regulations in the judiciary

Conflicts of interests in judiciary are regulated by several laws and codes. The legal framework addresses separately (by different laws and codes) the conduct of judges and

¹¹⁶Jutarnji.hr(2010)*Chief mediator 2.5 years, Deša Mlikotin Tomić 14 months of prison*. [online] 1 February. Available from: <http://www.jutarnji.hr/milan-cevid-i-desa-mlikotin-tomic-proglaseni-krivima-za-kupovinu-ispita/527394/>[Accessed 06/10/12].

prosecutors. However, both systems follow the same logic with similar institutional framework.

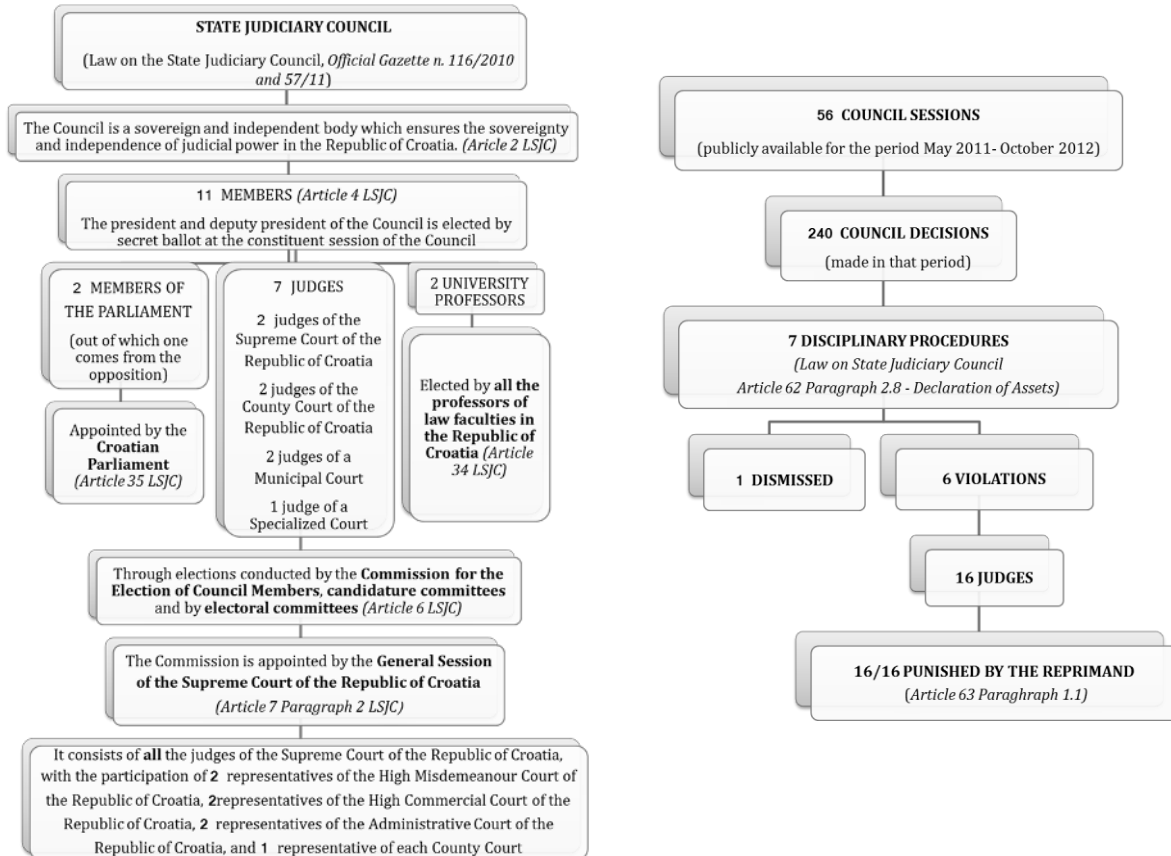
Judges

All aspects of the conduct of judges, including the conflict of interest related cases, are decided by the State Judiciary Council (SJC). SJC has been established since 1993¹¹⁷ and ever since it is a supreme judicial body that regulates the conduct of judges, appointment and career advancement and appointment of the presidents of the courts (jurisdiction and jurisprudence may vary through the history of the State Judicial Council). The State Judicial Council is appointed by the General Session of the Supreme Court and, as it is a self-governing model of judiciary, it is not clear to whom it reports in terms of ruling and acting in conflicts of interest cases.

The Councils decisions are public since May 2011 (since then, a total of 240 decisions). Since that time, there is not a single case in which the SJC has launched procedures related to conflicts of interests nor decided that any of the judges is in conflict of interest. All the decisions that are reported to be related to conflicts of interests are dealing with false or lack of declaration of assets. In a total of six decisions (one decision of the Council covers more than one judge), 16 judges have been found to have breached the Law of SJC (article 68.2.8), and all 16 have been "punished" by reprimand. Such data indicates that the conflict of interest as part of the Integrity of the Bench procedures is neither detectable nor punishable and therefore there is no incentive for the judges to avoid such a state.

Even in the case of statements of assets, as they are not public (only on written request), there is the issue of the quality of control as the SJC is not an agency but council, meaning that executive powers of such institution and capacities to investigate are highly limited. This further indicates the lack of accountability measures for judges and creates the sect of public servants or officials that are in fact above the law and legal remedies.

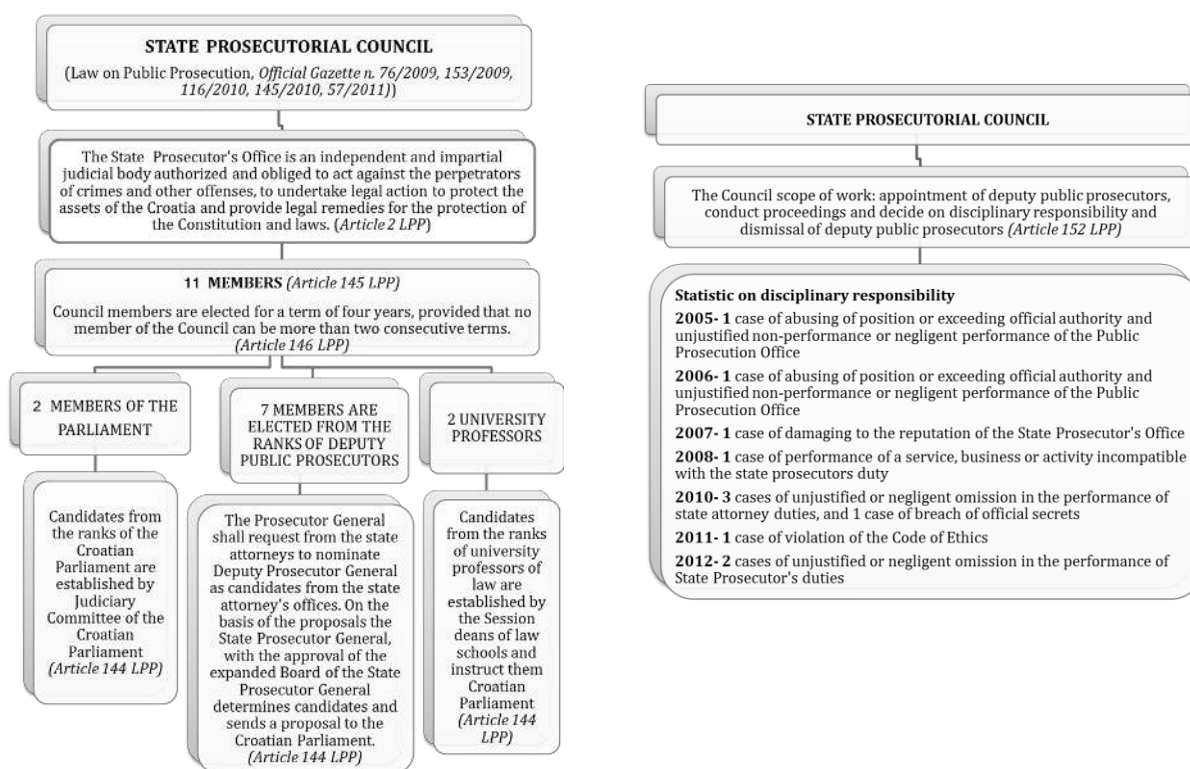
¹¹⁷State Judiciary Council. Available from: http://hidra.srce.hr/webpac-hidra-imnt/?rm=results&show_full=1&f=IDbib&v=IT011798&filter=hidra-imnt[Accessed 06/10/12].



Prosecutors

State Prosecutorial Council (SPC) is appointed by the Croatian Parliament based on the recommendation of the Chief State Prosecutor. As the State Prosecutor is as well appointed by the majority of the Croatian Parliament, based on recommendation of the Croatian Government, State Prosecutor’s Office as well as the State Prosecutorial Council Office are highly dependent on political allegiances of candidates. The appointment, employment and career advancement procedures are controlled by the Chief State Prosecutor, meaning that they can be influenced by the country’s political leadership through the procedures for appointment for the Chief State Prosecutor and Prosecutorial Council.

Between 2005 and 2012 there is no clear data on sanctioning conflicts of interests or even cases related to declaration of assets. In 2008 only one case was decided by the State Prosecutor’s Office and it was related to incompatibility with the State Prosecutor’s duty. Between 2005 and 2012, SPC has issued in total 10 disciplinary sanctions for prosecutors. Such findings indicate that either there are no conflicts of interests in the prosecutor’s service of Croatia, or the relevant body (SPC) is not efficient in detecting, investigating and punishing them. Data on the ruled cases are not clear and therefore public control of the State Prosecutors’ work cannot be exercised.



Source of data: Croatian State Prosecution. State Prosecutorial Council. Releases. [online] Available from: <http://www.dorh.hr/PriopcenjaDOV-a> [Accessed 12/10/12].

IV.iii Conflicts of interests and the public administration

State administration

The Law on Public Administration prescribes that conflicts of interests are dealt by the superior civil servant. The reports on statements of assets and interests have to be submitted to a superior officer. The superior officer decides as well on the situations of potential conflicts of interests, based on the reports of the civil servant. As actual conflicts of interests, or failure to report on potential and apparent conflicts of interests, represent breaches of duty according to the legal provisions, the superior officer is authorized to initiate disciplinary proceedings in such situations. The head of the relevant State administration department decides on the minor breaches of duty. On severe breaches of duty in first degree decides the Civil Service Tribunal and High Civil Service Tribunal on second degree. Both tribunals are appointed by the Government.

Since 2008, Croatia has established a system of ethics commissioners in the public administration. Each public body, department or legal entity is obliged to have ethics commissioners. In theory, the commissioners may be dealing with cases of actual conflicts of interests as the reports of all kind of irregularities are submitted to the ethics commissioner

who conducts administrative investigation on them.¹¹⁸ However, there is no specific authority, task or procedure for ethics commissioners prescribed in the Law and Code of Ethics to deal with conflicts of interests. They are appointed by the head of the public administration body, department or legal entity and they are responsible to the head of the structure that has appointed them.

Local/regional (county) administration

For civil servants at municipal level, there is no separate organizational structure that decides on conflicts of interests. Since the adoption of the Law on Civil Service on municipal level, in cases of severe breach of duty, the County Civil Service Tribunal decides in first instance and the High Civil Service Tribunal (same for state and local administration) in the second one. Procedures may be initiated by the prefect (head of the department), and for prefects by the municipal mayors or county governors. County Civil Service tribunals are appointed by the county parliaments, and for the City of Zagreb, by the Assembly of City of Zagreb. According to the law each city above 35.000 inhabitants can, but does not have to, appoint their own Civil Service Tribunal. County and/or Municipality Tribunals are funded from their budgets. Data related to declaration of the interests are not public.

The Procedures for reporting on potential and apparent conflicts of interests as well as appointment of the prefects (head of the departments) leave organizational structure exposed to undue political influence, highly controlled by the superior officer. As mayors are covered by an entirely different law (Law on Suppression of Conflicts of Interest in the Exercise of Public Duty), it is not clear what, if anything, happens if mayors or prefects fail to initiate procedures before the County Civil Service Tribunal.

As it is visible from the chart below there is no separation between breach of duty related to conflicts of interests or general misconduct.

*Violations of the provisions of the Code of Ethics- Report on filed complaints 2009, 2010 and 2011**

Year	Number of complaints	Unfounded	Abandonment/ Further checks	Initiation of proceedings	Severe violations	Minor violations
2009	416	356	0	19	16	3
2010	275	200	38	37	21	13
2011	272	200	48	24	20	4

Source of data: Ministry of Administration. Civil service. [online] Report on filed complaints 2009, 2010 and 2011 [pdf] Available from: URL <http://www.uprava.hr/default.aspx?id=569> [Accessed 15/10/12].

Number of sentences imposed for serious breach of duty- Report on filed complaints 2009, 2010 and 2011

Year	Severe breaches - number of sentences	Termination of Civil Service	Conditional dismissal from civil	Financial penalties
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¹¹⁸Ministry of Administration Republic of Croatia. *Ethics Commissioners*. [online] Available from: <http://www.uprava.hr/default.aspx?id=12518> [Accessed 06/10/12].

	service			
2009	16	3	6	7
2010	20	5	5	10
2011	53	3	7	43

Source of data: Ministry of Administration. Civil service. [online] Report on filed complaints 2009, 2010 and 2011 [pdf] Available from: URL <http://www.uprava.hr/default.aspx?id=569> [Accessed 15/10/12].

The tables above show that there is disproportion between the number of employees in the public administration (local, regional and state level) and the number of cases related to serious breach of duty reported, initiated and decided. Around 260.000 people¹¹⁹ are employed by the state, regional and municipal administration which represents approximately 6.9% of the Croatian workforce.¹²⁰ For 260.000 employees there are only 272 reports in 2011 on different kind of severe breaches of duty (where conflict of interest cases may be represented, but general misconduct as well) which represents 0,1 % of the total number of employees. Such low frequency of reported assumptions on the breach of duty is not realistic in any kind of system. Out of 53 cases of severe breaches of duty in 2011 that were sent for further proceedings (according to the Ministry of Public Administration reports) only 3 cases or 5,6% of the reported cases have ended with the termination of service. All other cases are dealt with the financial penalties and warnings. However, within those numbers it is not clear whether any of the cases were related to conflicts of interests or some other kind of the breach of duty was the case.

Criminal proceedings related to conflicts of interests (Criminal Code of the Republic of Croatia)

The only reference in the Croatian Criminal Code that directly deals with the conflict of interest is Article 338.

An official person in a governmental body or unit of regional or local self-government who, for the purpose of acquiring pecuniary gain in his private business or the private business of members of his family, abuses his office or official authority by giving preferential treatment in a competition, or by giving, obtaining or contracting jobs shall be punished by imprisonment for six months to five years.

As statistics on crime and actual criminal proceedings are collected on different methodology by the Police department, Prosecutor's Office and courts (there is no integrated case management system) the tables bellow show the overall data collected by separate bodies and with different methodologies.

Reported adult persons, by criminal offences, sex, attempt and type of decision - Abuse in performing governmental duties, Art. 338.

¹¹⁹Dnevnik.hr (2012) *How is this possible? The state hired 10,533 employees during the biggest crisis!* [online] 23 March. Available from: <http://dnevnik.hr/vijesti/hrvatska/u-hrvatskoj-zaposleno-63-129-drzavnih-sluzbenika-i-namjestenika.html> [Accessed 15/10/12].

¹²⁰Croatian Bureau of Statistics (2012) *Labour force in Republic of Croatia: Second Quarter of 2012.* [online] Available from: http://www.dzs.hr/Hrv_Eng/publication/2012/09-02-07_02_2012.htm [Accessed 15/10/12].

Year	Reported	Rejected crime report
2009	2	2
2010	9	9
2011	0	0

Source of data: State Bureau of Statistics. [online] Adult criminal offenders, registrations, prosecutions and convictions 2009, 2010 and 2011 [pdf] Available from: <http://www.dzs.hr/> [Accessed 15/10/12].

Accused adult persons, by criminal offences, sex, attempt and type of decision- Abuse in performing governmental duties, Art. 338.

Year	All	Women	Convicted persons	Terminated criminal proceeding	Judgement of acquittal	Judgement rejecting charges
2009	5	1	2	2	1	0
2010	2	0	1	1	0	0
2011	7	1	0	2	2	3

Source of data: State Bureau of Statistics. [online] Adult criminal offenders, registrations, prosecutions and convictions 2009, 2010 and 2011 [pdf] Available from: <http://www.dzs.hr/> [Accessed 15/10/12].

It is clear that in three years since this article has been introduced in the Croatian Criminal Code, there are 3 convictions for such acts (conflicts of interest) and all of them happened in 2009 and 2010. Such data indicates that prosecutors and police are reluctant in investigating and prosecuting such acts and it cannot represent an indicator in terms of level of conflicts of interest related problems in the country.

Prevention and institution building mechanisms

According to Article 30 of the Conflict of Interest Prevention Act, the Commission is in charge of providing regular training of public servants and conducting reports on their assets. The Commission decides by majority of votes of all members. In 2011 it held 14 workshops in 14 different Croatian counties.¹²¹

The Ministry of Administration is in charge with the education of civil servants. Data on the topics that are directly linked to conflicts of interest issues are not available in their reports; however, taking into considerations the covered topics, conflicts of interest related issues may be addressed.

Implemented activities of the Action Plan- Strategy for human resources in the civil service in the fight against corruption- 2010 and 2011. Development Strategy for Human resources in the civil service for a period 2010 to 2013, was adopted by the Croatian Government in December 2009.

2010	2011
Number of participants	Number of participants

¹²¹ Annual Report of the Commission for the Resolution of Conflicts of Interest to the Croatian Parliament (2012) p.99 [pdf] Zagreb: Commission for the Resolution of Conflict of Interest. Available from: <http://www.sukobinteresa.hr/posi/ws.nsf/wi?OpenForm&1> [Accessed 06/09/12].

Training of trainers in the field of fight against corruption	38	6
Seminar "Combating Corruption - beginners course"	221	0
Seminar "Combating Corruption - advanced course"	37	56
Seminars "Ethical integrity of officers"	240	0
Seminars for officials in local and regional governments in the area of prevention of corruption	0	275

Source of data: Ministry of Administration. Human Resources Development Strategy. [online] Report 2010 and 2011 [pdf] Available from: URL <http://www.uprava.hr/default.aspx?id=11827> [Accessed 15/10/12].

V. Case studies and impact of the legal and institutional framework on the prevention and suppression of conflicts of interests and corruption

Parliamentary Commission for the Resolution of Conflicts of Interest (deciding on conflicts of interest cases):

Year	Public officer found in CoI	Function	Conflict of interest	Sanction	Media coverage	Follow up by media	Follow up by State Attorney
2006	Ivan Čehok	Mayor of Varaždin	Čehok favored a related person in a way that he was involved in decision making on determining the purchase price of land in the City of Varaždin called Ribnjak, once owned by Vesna Cesarec (President of Chamber of economy in Varaždin, Čedomil Cesarec's wife) at twice the price compared to other former co-owners of the same land. ¹²²	Publication of the Commission's decision at the official's expense	✓ 123	✓ 124	✗
2006	Radimir Čačić	Varaždin County Prefect and former Minister of Public Affairs, Reconstruction and	As Chairman of the Council of the Agency for Real Estate Affairs (in his first government mandate 2000-2003), Čačić influenced contracting of works for companies that are associated with him in terms of interests,	Publication of the Commission's decision at the official's expense	✓ 126	✗	✗

¹²²Commission for the Resolution of Conflicts of Interest(2007)Annual Report to the Croatian Parliament for 2006 and 2007. [pdf] Zagreb: Commission for the Resolution of Conflicts of Interest. Available from: [http://www.sukobinteresa.hr/posi/posifiles.nsf/0/D38313940A82911AC125788700489F87/\\$FILE/Izvjesce2006.i2007.pdf](http://www.sukobinteresa.hr/posi/posifiles.nsf/0/D38313940A82911AC125788700489F87/$FILE/Izvjesce2006.i2007.pdf) [Accessed 12/10/12].

¹²³Kirin, A.(2006)Ivan Čehok is in a conflict of interest. Nacional.hr [online] 7 July. Available from: <http://www.nacional.hr/clanak/26417/ivan-cehok-u-sukobu-interesa>[Accessed 12/10/12].

¹²⁴Appelt, H.(2007)Administrative Court: Ivan Čehok guilty for conflict of interest.Jutarnji list [online] 30th November.Available from <http://www.jutarnji.hr/upravni-sud--cehok-kriv-za-sukob-interesa/233908/>[Accessed 12/10/12].

		Construction (currently vice president of the Croatian government)	through the body he was at the helm. ¹²⁵				
2006	Ivan Dabo	Mayor of Novalja	He used his position as a Mayor to influence the decisions of the executive branch of Novalja to favor the interests of related parties Slavko Loncar and Oliver Kocijani in the process of buying and selling land owned by the City of Novalja. ¹²⁷	In the Commission's decision it is not specified what or if any sanction is prescribed to this official.	✓ 128	✓ 129	✗
2006/07	Pavo Klarić	Head of Municipality of Gornji Bogicevci	He used his position to influence the decisions of the Municipal Council of Gornji Bogicevci, enabling his wife to be hired in the governing body of the municipality. ¹³⁰	Publication of the Commission's decision at the official's expense	✗	✗	✗
2007	Ivan Jakovčić	Istria County Governor	Using official position to influence decisions of the executive authority of City of Poreč, Jakovčić bought the property owned by the City of Poreč. Namely, the tender for sale of the property was conducted in 2002, but the purchase agreement was signed and the purchase price for the property was paid 21 months after the contest, in 2004. By acquisition of these privileges, he favored his own private interests. ¹³¹	The Commission's decision does not specify what or if any sanction is prescribed to this official.	✓ 132	✗	✗

¹²⁶Dnevnik.hr(2006)Čačić was in a conflict of interest, Sanader is „clean“. [online] 5 December. Available from: <http://dnevnik.hr/vijesti/hrvatska/cacic-bio-u-sukobu-interesa-sanader-cist.html>[Accessed 12/10/12].

¹²⁵ See Footnote no. 1

¹²⁷ See Footnote no. 1

¹²⁸Dnevnik.hr (2007)Jerkov and Dabo are in a conflict of interest, Posavec is not. [online] 25 April. Available from: <http://dnevnik.hr/vijesti/hrvatska/jerkov-i-dabo-u-sukobu-interesa-posavec-ne.html>[Accessed 12/10/12].

¹²⁹ Appelt, H.(2006)The secret of sale of land to directors of Jadrolinija. Jutarnji list [online] 28 June. Available from: <http://www.jutarnji.hr/upravni-sud--cehok-kriv-za-sukob-interesa/233908/>[Accessed 12/10/12].

¹³⁰ See Footnote no. 1

¹³¹ See Footnote no. 1

¹³² Jutarnji list(2006)Commission for resolution of conflict of interest about Primorac, Jakovčić and Mičić. [online] 27 April. Available from: <http://www.jutarnji.hr/povjerenstvo-za-sukob-interesa-o-primorcu--jakovcicu-i-micicu/146897/>[Accessed 12/10/12].

2008	According to the Commission for the Resolution of Conflicts of Interest' Annual report for 2008, there were no cases of conflict of interest in that period. ¹³³						
2009	Ivica Škrpaca	Head of Municipality of Selca	Using the official position to influence the decisions of the executive authority of the Municipality of Selca, Škrpaca got involved in public procurement procedures for restoring the road to the cemetery and favoured Leo Trutanić, councilor in Selca Municipal Council. ¹³⁴	Publication of the Commission's decision at the official's expense	X	X	X
2009	Leo Trutanić	Councilor of the Municipal Council (Municipality of Selca)	Using his position as holder of public office to influence the decisions of the executive authority of the Municipality Selca, Trutanić influenced the public procurement procedure for restoration of the road to the cemetery in Selca in a way that he favored his own interests and interests of related person Ivan Trutanić. ¹³⁵	Publication of the Commission's decision at the official's expense	X	X	X
2009	Joško Mošić	President of the Municipal Council (Municipality of Selca)	Using the position as holder of public office to influence the decisions of the executive authority in Selca Municipality, Mošić influenced the public procurement procedure for reconstruction of cinema in Selca favoring his wife Renata Mošić. ¹³⁶	Publication of the Commission's decision at the official's expense	X	X	X

¹³³Commission for the Resolution of Conflicts of Interest (2009)*Annual Report to Croatian Parliament for 2008*. [pdf] Zagreb: Commission for the Resolution of Conflicts of Interest. Available from: [http://www.sukobinteresa.hr/posi/posifiles.nsf/0/5681545BC513584EC12578870048A991/\\$FILE/Izvjesce2008.pdf](http://www.sukobinteresa.hr/posi/posifiles.nsf/0/5681545BC513584EC12578870048A991/$FILE/Izvjesce2008.pdf) [Accessed 12/10/12].

¹³⁴Commission for the Resolution of Conflicts of Interest (2010)*Annual Report to Croatian Parliament for 2009*. [pdf] Zagreb: Commission for the Resolution of Conflicts of Interest. Available from: <http://www.sukobinteresa.hr/posi/ws.nsf/wi?OpenForm&1> [Accessed 12/10/12].

¹³⁵ See Footnote no. 7

¹³⁶ See Footnote no. 7

2009	Franco Basiaco	Former Chairman of the City Council Buja	In the tender for the sale of agricultural land owned by Republic of Croatia, he participated as a representative of the public authorities (City Council Buja), which decided on the selection of the winning bidder, being at the same time one of the bidders in this tender. ¹³⁷	The Commission believes that for the identified conflict of interest is not necessary to impose any of the sanctions.	X	X	X
2009	Tonka Ivčević	Mayor of Komiža	She used her position as a mayor to influence decisions of the executive power by participating in decision-making on the acquisition of rights to purchase flats from subsidized housing programs in the City of Komiža, as well as to achieve personal gain as she herself applied for this program. ¹³⁸	Publication of the Commission's decision at the official's expense	✓ ¹³⁹	X	X
2010	Mladen Juranić	Head of Municipality of Punat	Juranić used his official position as president of the Punat Tourist Office to interfere in hiring his own daughter in the same office. ¹⁴⁰	In the Commission's decision it is not specified what or if any sanction is prescribed to this official.	X	X	X
2010	Ivica Škrpaca	Head of Municipality of Selca	Without conducting public procurement procedures, Škrpaca arranged with "County Roads Split" Ltd. a deal of paving roads in Sumartin, whose value is 403.000,00 HRK. ¹⁴¹	Retention of payment of the net monthly salary of 10.000,00 HRK; Publication of the Commission's decision at the official's expense	X	X	X
2010	Tulio Demetlika	Mayor of Labin	Demetlika favored his personal driver in solving housing issues. ¹⁴²	Publication of the Commission's decision at the official's expense	✓ ¹⁴³	X	X

¹³⁷See Footnote no. 7

¹³⁸See Footnote no. 7













¹³⁹Slobodna Dalmacija (2009) *The Mayor signed up for the subsidized housing programs: I am not in conflict of interest, although I am member of Commission*. [online] 26 November. Available from: <http://www.slobodnadalmacija.hr/Split-%C5%BEupanija/tabid/76/articleType/ArticleView/articleId/80634/Default.aspx> [Accessed 12/10/12].

¹⁴⁰Commission for the Resolution of Conflicts of Interest (2011) *Annual Report to Croatian Parliament for 2010* [pdf] Zagreb: Commission for the Resolution of Conflicts of Interest. Available from: [http://www.sukobinteresa.hr/posi/posifiles.nsf/0/FE163EC750F0FFE9C12578870048BAB6/\\$FILE/izvjesce2010.pdf](http://www.sukobinteresa.hr/posi/posifiles.nsf/0/FE163EC750F0FFE9C12578870048BAB6/$FILE/izvjesce2010.pdf) [Accessed 12/10/12].

¹⁴¹See Footnote no. 12

¹⁴²See Footnote no. 12

¹⁴³iPress(2010) *Demetlika about conflict of interest: Why would I resign?* [online] (October, 2010) Available from: <http://ipress.hr/gradovi-i-opcine/labin/demetlika-o-sukobu-interesa-a-zasto-bih-dao-ostavku-10182.html> [Accessed 12/10/12].

2010	Ivan Remenar	Head of Municipality of Rugvica	Remenar embarked on changing the spatial plan of the Municipality after he made a commitment to support Ikea into building the shopping center in the Municipality of Rugvica. ¹⁴⁴	Retention of payment of the net monthly salary of 10.000,00 HRK; Publication of the Commission's decision at the official's expense	 145	 146	
2011	Andrija Juzbašić	Head of Municipality of Bošnjaci	Bošnjaci Municipal Council appointed 7 members of the Commission for the disposal of agricultural land owned by the Republic of Croatia in the Municipality of Bošnjaci. Juzbašić used his position to influence the decision of the Commission so that his 20 year old daughter won the tender and bought the land. ¹⁴⁷	Publication of the Commission's decision at the official's expense	 148	 149	
2011	Željko Kerum	Mayor of Split	Kerum used his position as Mayor and planned for City of Split to contract the company he owned. ¹⁵⁰	Reprimand	 151	 152	
2011	Dražen Barišić	Mayor of Velika Gorica	During his performance of public duty as a mayor, Barišić did not transfer his management rights on the basis of the share in the company to other person. ¹⁵³	Reprimand	 154		

¹⁴⁴See Footnote no. 12

¹⁴⁵Index.hr (2010)*Conflict of interest?! They sanctioned him with 10.000 HRK because he tries to bring Ikea center in Croatia.* [online] 21 October. Available from: <http://www.index.hr/vijesti/clanak/sukob-interesa-kaznili-ga-s-10000-kuna-ier-pokusava-dovesti-ikea-centar-u-hrvatsku/519168.aspx>[Accessed 12/10/12].

¹⁴⁶Tportal (2010)*Ikea is surprised with sanctioning of Head of Municipality.* [online] 21 October. Available from:

<http://www.tportal.hr/biznis/gospodarstvo/92342/Ikea-se-cudi-kaznjavanju-nacelnika.html>[Accessed 12/10/12].

¹⁴⁷Commission for the Resolution of Conflicts of Interest (2012)*Annual Report to Croatian Parliament for 2011.* [pdf] Zagreb: Commission for the Resolution of Conflicts of Interest. Available from:

[http://www.sukobinteresa.hr/posi/posifiles.nsf/0/FD14CEDF7A995FF3C1257A140036F5D3/\\$FILE/IZVJEŠĆE%20Povjerenstva%20za%202011%20%20godinu.pdf](http://www.sukobinteresa.hr/posi/posifiles.nsf/0/FD14CEDF7A995FF3C1257A140036F5D3/$FILE/IZVJEŠĆE%20Povjerenstva%20za%202011%20%20godinu.pdf)[Accessed 12/10/12].

¹⁴⁸Poslovni savjetnik.com(2010)*A sanction of warning to Secretary of State in the Ministry of Economy, Labour and*

Entrepreneurship for the conflict of interest. [online] 15 December. Available from: <http://www.poslovni-savjetnik.com/karijera/opomena-drzavnom-tajniku-u-ministarstvu-gospodarstva-rada-i-poduzetnistva-zbog-sukoba-inter>[Accessed 12/10/12].

¹⁴⁹GlasSlavonije(2012)*Let the State Attorney's Office scan the sewage and home purchase.* [online] 23 October. Available from: <http://www.glas-slavonije.hr/179666/4/Neka-Drzavno-odvjetnistvo---proceslja-kanalizaciju-i-kupnju-kuce>[Accessed 12/10/12].

¹⁵⁰ See Footnote no. 16

¹⁵¹HRT (2011)*Kerum gets warning from Parliament.* [online] 2 February. Available from:

http://www.hrt.hr/index.php?id=48&tx_comments_pi1%5Bpage%5D=6&tx_ttnews%5Btt_news%5D=103664&cHash=205f3ba091[Accessed 12/10/12].

¹⁵²Dnevnik.hr(2011)*Does Kerum understand what the conflict of interest is?*[online] 2 February. Available from:

<http://dnevnik.hr/vijesti/hrvatska/naravno-da-iza-fani-stoji-moj-kapital-ali-tu-nema-sukoba-interesa.html>[Accessed 12/10/12].

¹⁵³See Footnote no. 16

¹⁵⁴ See Footnote no. 30

2011	Željko Kerum	Mayor of Split	Kerum did not fulfill the obligation to respond to the clarification request of the Commission for the Resolution of Conflicts of Interest. ¹⁵⁵	Retention of payment of the net monthly salary of 10.000,00 HRK	✓ 156	✓ 157	✗
2011	Željko Kerum	Mayor of Split	Kerum did not respond to the request of the Commission to clarify the allegations in the newspaper articles that refer to the announcement of entrepreneur Igor Sapunar, Kerum's nephew, that he will build the business and shopping center Koteks Dujmovača (Keri) on Kili, and related matters for changes in the land use, as well as the intention of Fani Horvat, Kerum's unmarried wife, to build a catering facility in the park-forest Marijan. ¹⁵⁸	Retention of payment of the net monthly salary of 20.000,00 HRK; Publication of the Commission's decision at the official's expense	✓ 159	✓ 160	✗

According to the reports there are situations in which the Commission reported cases to the judiciary for further investigation, however as it is visible from the chart above there is no single case in which the Public Prosecutor has started an investigation based on the Commission's report. Out of 342 decisions that could be identified within the Commission's reports since 2006, only 19 or 5.55 % of the decisions are related to deciding on conflicts of interests. All the other cases are related to breach of procedure in declaration of assets (majority of the cases) or incompatibility. Four decisions related to actual conflicts of interest or 1.16% of all decided cases, included fine for conduct, out of which 3 decisions up to 10.000 Kuna (approx. 1.500 EUR) and one decision up to 20.000 Kuna (approx. 2.660 EUR). Three out of four fines for conflict of interest related issues are connected to Željko Kerum, Mayor of Split. As in total he was fined approximately 4.000 EUR which in relation to his property that is valued up to 52 million EUR¹⁶¹ represents less than symbolic decision of the Commission.

¹⁵⁵See Footnote no. 16

¹⁵⁶Index.hr (2011) *Željko Kerum sanctioned with 30.000 HRK for being in conflict of interest*. [online] 2 March. Available from: <http://www.index.hr/vijesti/clanak/zeljko-kerum-kaznjen-s-30000-kuna-zbog-sukoba-interesa/540516.aspx> [Accessed 12/10/12].

¹⁵⁷PortalOko.hr(2011) *Kerum for conflict of interest gets a "slap on the fingers"*. [online] 2 March. Available from: <http://www.portaloko.hr/clanak/kerum-za-sukob-interesa-dobio-packu-po-prstima/0/9215/> [Accessed 12/10/12].

¹⁵⁸See Footnote no. 16

¹⁵⁹See Footnote no. 34

¹⁶⁰Dnevnik.hr(2011) *Because of Fani urgent session*. [online] 2 February. Available from: <http://dnevnik.hr/vijesti/hrvatska/zbog-fani-hitna-sjednica.html> [Accessed 12/10/12].

¹⁶¹Nacional(2007) *Top 50 – The richest Croatians*. [online] 24 April. Available from: <http://www.nacional.hr/clanak/33748/50-najbogatijih-hrvata> [Accessed 12/10/12].

Sanctions for the conflict of interest issued by the Commission since 2005:

Prescribed sanction	Total number
Publication of the Commission's decision at the official's expense ¹⁶²	9
Retention of payment of the net monthly salary of 10.000,00 HRK ¹⁶³	3
Retention of payment of the net monthly salary of 20.000,00 HRK	1
Reprimand ¹⁶⁴	2
The Commission believes that for the identified conflicts of interest is not necessary to impose any of the sanctions	1
In the Commission's decision it is not specified what or if any sanction is prescribed to this official	3

Neither in the annual reports published by the Commission, nor in the published decisions, is it clear on what basis Commission decides "that for the identified conflicts of interest is not necessary to impose any of the sanctions."¹⁶⁵ Onwards, for 3 cases of determined conflicts of interest¹⁶⁶ in the Commission's decisions is not specified what or if any sanction was prescribed to these officials. Taking into consideration other 9 sanctions of publication of the Commission's decision at the official's expense and 2 sanctions of reprimand, the logical conclusion is that in Croatia conflicts of interests pay off. None of these officials had suffered sanctions that are in accordance to the profit they have or could have gained by being in a conflict of interest and decisions and acts of the public body influenced by conflicts of interests remained as well as profits made by them.

Judiciary and other branches of government

As this research shows, the situation is no better regarding the judiciary, as no single case related to conflict of interest of judges or prosecutors is recorded in public reports. Reports of the Ministry of Public Administration on applied sanctions have masked conflict of interest related sanctions with the overall statistics of the disciplinary measures applied in reported cases. The fact that only 0,1% of the public administration employees were reported for misconduct in 2011, together with the findings that there were no reports of the conflict of interest among judges and prosecutors in the last three years indicate that either in Croatian administrative and judicial system there is no conflict of interest or the established legal and institutional framework is not able to tackle the issue.

¹⁶²Article 45; Conflict of Interest Prevention Act. Official Gazette No: 26/2011. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_03_26_547.htm[Accessed 10/10/12].

¹⁶³Article 44; Conflict of Interest Prevention Act.Official Gazette No: 26/2011. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_03_26_547.htm[Accessed 10/10/12].

¹⁶⁴Article 44; Conflict of Interest Prevention Act.Official Gazette No: 26/2011. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_03_26_547.htm [Accessed 10/10/12].

¹⁶⁵ Case of Franco Basiaco (former chairman of the City Council Buja); See:Commission for the Resolution of Conflicts of Interest(2010) *Annual Report to Croatian Parliament for 2009*. [pdf] Zagreb: Commission for the Resolution of Conflicts of Interest. Available from: <http://www.sukobinteresa.hr/posi/ws.nsf/wi?OpenForm&1>[Accessed 12/10/12].

¹⁶⁶Ivan Dabo, Ivan Jakovčić and Mladen Juranić

Media coverage and follow-up of the cases related to the Parliamentary Commission

There were only few articles published that concretely describe what was the actual conflict of interest in particular cases. For example, in Ivan Dabo's case (see table above), there were several articles published about reasonable doubt that he is in a conflict of interest before the Commission has initiated the proceedings.¹⁶⁷ In Ivan Čehok's case (see table above), media started writing about his conflict of interest only after the Commission made the official decision.¹⁶⁸ Željko Kerum and his conflict of interest, being at the same time the Mayor of Split and private entrepreneur, attracted the most attention in media. However, the whole case was reduced to the fact that Željko Kerum does not understand what conflict of interest actually means and it was covered in a very sensational manner.¹⁶⁹

When reporting about Ivan Remenar's case the media presented that he was actually doing the right thing by skipping formal procedures in changing spatial plan of his Municipality „because he put a great effort to ease the long-awaited and long desired arrival of retail chain Ikea in Croatia”.¹⁷⁰ In this case, the Commission was a “bad guy”, which clearly shows the lack of understanding of conflicts of interests in Croatian media and society in general.

Moreover, in most cases, public officers discovered in conflicts of interests do not represent newsworthy information at all. In 12 out of 19 decided cases there was media coverage of the Commission's decision, and in only 7 cases media followed up the report of the Commission and observed the implementation of the sanctions. Three of those decisions were related to one person (Željko Kerum, Mayor of Split) and all of those people remained in their public functions.¹⁷¹ Therefore, there is no relevant public discussion about conflicts of interests in Croatia. Media are very often ignorant in reporting about this topic, which results in selective, sensational and biased way of informing Croatian citizens about the abuse of power and position of public officials. The issue that the Public Prosecutor did not follow up even a single decision of the Commission was never part of the media coverage or follow up of the cases.

Relevance of the EU Accession and the reform of legal and institutional framework for the suppression of conflict of interests

In order to understand the weaknesses of the system, the cases that were not dealt by the Commission or in the case of the judiciary by the State Judicial Council or State Prosecutorial council may tell us more about the system than processed cases. In May 2011 Partnership for Social Development has sent results of the conflict of interest assessment of the 4

¹⁶⁷ Appelt, H.(2006)*The secret of sale of land to directors of Jadrolinija*. Jutarnji list [online] 28 June. Available from:<http://www.jutarnji.hr/upravni-sud--cehok-kriv-za-sukob-interesa/233908/>[Accessed 12/10/12].

¹⁶⁸ Kirin, A.(2006)*Ivan Čehok is in conflict of interest*. Nacional.hr [online] 7 July. Available from: <http://www.nacional.hr/clanak/26417/ivan-cehok-u-sukobu-interesa>[Accessed 12/10/12]; Appelt, H.(2007)*Administrative Court: Ivan Čehok guilty for conflict of interest*. Jutarnji list [online] 30 November. Available from:<http://www.jutarnji.hr/upravni-sud--cehok-kriv-za-sukob-interesa/233908/>[Accessed 12/10/12].

¹⁶⁹ Dnevnik.hr(2011)*Does Kerum understand what is conflict of interest*. [online] 2 February. Available from: <http://dnevnik.hr/vijesti/hrvatska/naravno-da-iza-fani-stoji-moj-kapital-ali-tu-nema-sukoba-interesa.html>[Accessed 12/10/12].

¹⁷⁰ Index.hr (2010)*Conflict of interest?! They sanctioned him with 10.000 HRK because he tries to bring Ikea center in Croatia*. [online] 21 October. Available from: <http://www.index.hr/vijesti/clanak/sukob-interesa-kaznili-ga-s-10000-kuna-jer-pokusava-dovesti-ikea-centar-u-hrvatsku/519168.aspx>[Accessed 12/10/12].

¹⁷¹ Media Coverage

ministries and 5 cities in Republic of Croatia to the Parliamentary Commission in order to initiate official proceedings based on the findings. Report clearly indicated that three ministers (Tomislav Karamarko, ex Minister of Interior, Darko Milinović, ex Minister of Health, Božidar Kalmeta, ex Minister of Transportation and Ivan Šuker, ex Minister of Finance) have been detected to be in potential or actual conflict of interest situations. At the municipal level, Milan Bandić, Mayor of Zagreb was as well detected to be in a situation of the actual conflict of interest.

As there were no actions taken by the Commission nor coverage by relevant national media, PSD (Partnership for Social Development) has launched a large campaign through the alternative media and social networks (Facebook and YouTube) that resulted in over 63.000 viewers of the recorded video material on our findings that in this case focused on the situation of the ex Minister of Interior Tomislav Karamarko. The research has detected that Minister Tomislav Karamarko lacks explanation of his relationship to 5 companies in which he was a co-owner and which often wins contracts related to security issues in public companies and Ministry of Interior where he was minister. All of those 5 companies had dubious contracts with public companies and public procurement contracts with state entities that were under investigation for corruption related offences during the mandate of Tomislav Karamarko as Minister of Police. The research also revealed that Minister Karamarko was the vice president of the basketball club Zagreb, which is financed by companies that are under investigation for corruption during his mandate.

Such alternative information distribution action undertaken by PSD resulted with coverage of the case by national TV and a variety of web portals. When reported that the Commission had knowledge of the case, the institution informed PSD and the public that they never received actual complaint on the case of Minister Karamarko, but that from the information in media they can say that there are no illegalities in such behavior of Tomislav Karamarko.¹⁷² Based on a statement of the Commission, PSD has submitted official complaint in the case of the ex Minister Tomislav Karamarko on September 1, 2011. On September 13, 2011 the Commission sent a letter explaining that the case of Tomislav Karamarko will be dealt according to the Conflict of Interest Prevention Act NN 26/11.¹⁷³ Until today, more than one year after the filing of the report, the Commission did not issue official an decision on the case.

For the judiciary two of the cases have attracted media attention.

In 2009/2010 judge Vesna Žužić was accused to be in a conflict of interest for ruling in a case where "Agricultural Station LTD" company was party. Her husband, one of the Croatian tycoons, Željko Žužić was member of the management board of the company in question. After media revealed the case, the SJC had issued a decision stating that Judge Žužić was not in the conflict of interest. However, it is interesting that in this particular case 9 members out of 11 were present at the SJC meeting. Five out of 9 members of the SJC voted that judge

¹⁷²The Commission for the Resolution of Conflicts of Interest, letter to Partnership for Social Development, Reg No: 711-I-193-01-R/11 from 3 August 2011.

¹⁷³The Commission for the Resolution of Conflicts of Interest, letter to Partnership for Social Development, Reg No: 711-I-203-01-R/11.

Žužić is in conflict of interest and 4 against it. However, 2 missing members were counted as voting in her favor¹⁷⁴ and that has acquitted her from any responsibility in the case.

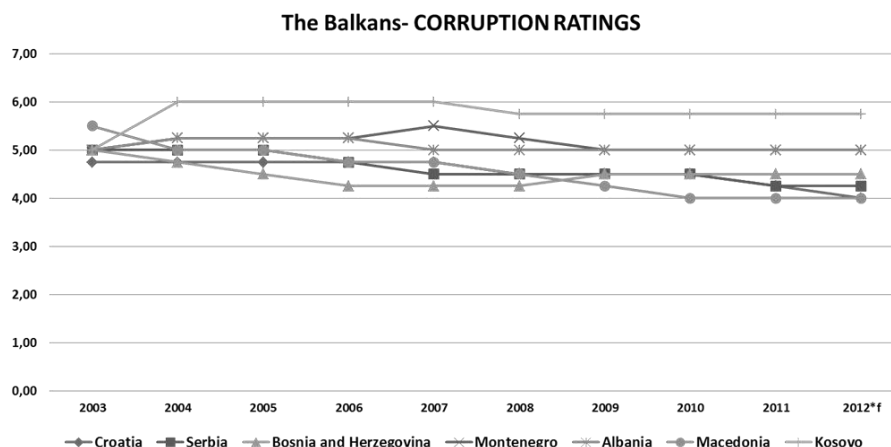
In the second case, in September of 2010 President of the Supreme Court of the Republic of Croatia, Branko Hrvatin, had arranged that 250 judges will be present on consultations with the insurance companies on issues related to the payment of non-material damages in the luxury coast city of Opatija.¹⁷⁵ The dinner, accommodation and honoraria for judges that were lecturing on the event during two days cost approximately 300.000 EUR and the total amount was paid by the Croatian Insurance Companies. The main issue here was that Supreme Court is regulating the official calculations for non-material damage for insurance companies and therefore in such situation was influenced by the insurance companies that have interest in reducing the costs of the non-material damages in their business. Even the case was well covered in the mainstream media in Croatia, SJC never acted upon this information. It is worth mentioning that the General Session of the Supreme Court appoints the members of SJC and that there is no other control over the work of the SJC.

Such cases just illustrate how little the conflict of interest is understood by the system that should prevent it or suppress it and how it is easy to avoid any kind of sanctions even in cases that are representing conflict of interest without doubt.

Such weaknesses of the system have resulted in a variety of negative trends in relation to the fight against corruption in Croatia as well as in terms of public perception toward the corruption and EU Accession process.

As the table below shows, the progress of Croatia in terms of fight against corruption is very limited. Croatia shares index 4, which is exactly the same as Macedonia and very close to the Serbia and Bosnia and Herzegovina. As these Countries are in a different stage of the EU accession, the impact of the EU Accession on countries' performance is not visible on such indicators.

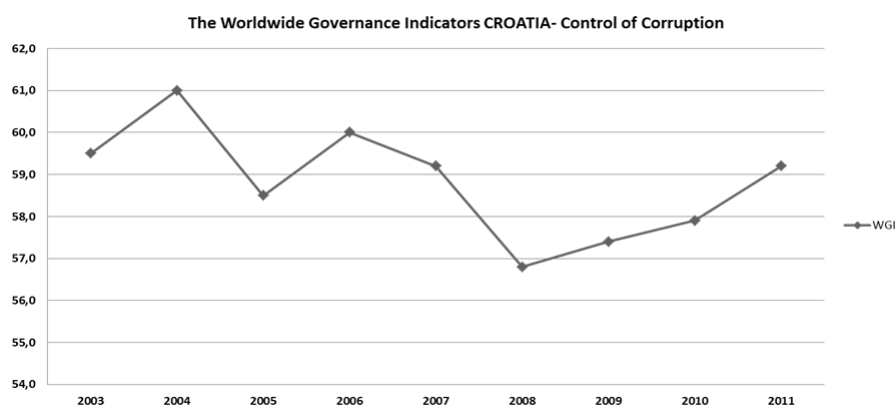
Freedom House Corruption ratings 2003-2012 (0 being the best and 7 being the worst). Source of data: Freedom House



¹⁷⁴Jutarnji.hr(2012) *Judges protected Vesna Žužić although she have judged her husband!?*[online] 28 January. Available from: <http://www.jutarnji.hr/template/article/article-print.jsp?id=520603>[Accessed 12/10/12].

¹⁷⁵Vecernji.hr(2012) *President of the Supreme Court and 250 judges are in the conflict of interest.* [online] 9 September.<http://www.vecernji.hr/vijesti/predsjednik-vrhovnog-suda-250-sudaca-sukobu-interesa-clanak-452015>[Accessed 12/10/12].

World Bank: World Governance Indicators – Control of corruption



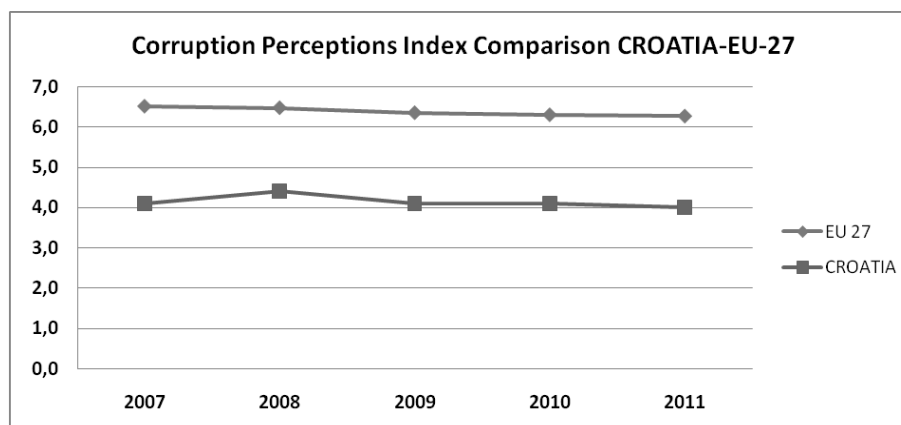
Source of data: World Bank

The Table on World Governance Indicators shows that there is a significant improvement of control of corruption in Croatia since 2008, however, the overall trends show that the control of corruption was better in 2003/2004 than it is today.

The overall citizens' support to the EU Integration has decreased from over 75% in 2001 (SAA Agreement) to 57% in 2011.¹⁷⁶ One of the main issues that Croatian public expects from the EU Accession is the rule of law, as the public perceives that the national political elite is incompetent and reluctant to address it within the national political agenda.

The table below shows that TI Perception Index for Croatia is stagnating since 2007 and that is way below the EU average. Such Index is clearly indicating dissatisfaction of the Croatian public with the impact of the anti-Corruption measures in Croatia.

TI Corruption Perception Index 2007-2011



Source of data: Transparency International

¹⁷⁶Landripet, I. (2012) *Structural relationship among the determinants of Croatian citizens opinions towards Croatia's membership in the European Union*, Doctoral Thesis. Zagreb: Faculty of Humanities and Social Sciences. [pdf] Available from: http://bib.irb.hr/datoteka/580888.Ivan_Landripet_-_Disertacija.pdf[Accessed 12/10/12].

The above-mentioned indicators are clearly showing that the countries' progress did not match the reform objectives. This is also true for Croatia, where the objectives of the EU accession were to have a functional democracy that can deal with the problems of corruption at all levels.

At the same time, the EC progress reports have stated each year since the beginning of the negotiations with Croatia (2005) that "the conflict of interest is not understood at all levels."¹⁷⁷ At a certain level this describes the impact of the EU Enlargement on the anti-corruption agenda of accessing countries so far. The fight against corruption was one of the conditions of negotiation for the Republic of Croatia from the beginning, and yet Croatia has finished the negotiations, but most of the systemic problems related to corruption still exist. EU has invested significant resources in assisting Croatia, in its efforts to suppress corruption. Almost 1/3 of the overall contracted pre-accession funds to Croatia (approx. 110 million EUR) between 2007 and 2011 were related to strengthening the administrative capacities of the country¹⁷⁸, which is directly linked to the administrative reforms and fight against corruption. The rest of the region has similar reciprocity in the contracting of EU funds, as the anti-corruption agenda is a main topic in all the countries of the region.¹⁷⁹ Stagnation and even "recession" in terms of fight against corruption should be the first warning to all the anti-corruption actors that something in the approach and the way we address the problem of corruption should be changed.

VI. CONCLUSIONS

It is clear that all the changes in the legal and institutional framework in Croatia were related to the international political agenda. As stated in the 2011 Report of the Parliamentary Commission for the Resolution of Conflict of Interests, European Commission's monitoring table in Chapter 23 is an important part in guidance of the work of the Parliamentary Commission for the Resolution of Conflict of Interest.¹⁸⁰ Since the beginning of negotiations with the EU in 2005, there were 63 interventions (adoptions and changes of the law) in the relevant legal framework and more than a dozen of organizational structures for implementation of new legislation were established. However, the overall problem in terms of inadequate response to conflicts of interest and corruption remains. Conflict of Interest Prevention Act, as well as other laws are focusing on other issues such as the property rather than conflict of interests *per se*. Insufficient institutional framework without accountability mechanisms and monitoring tools is incapable of addressing the complexity of the conflict of interests issues. Appointment procedures, as well as accountability measures in the relevant institutional framework are prone to political influence and highly depend on political allegiance of candidates (staff) which affect the overall performance of the system.

¹⁷⁷ Partnership for Social Development (2011) *BACCI Balkan Anti-Corruption Civic Initiative Croatia, Bosnia and Herzegovina, Republic of Serbia*. Zagreb: Partnership for Social Development, p.9.

¹⁷⁸ Croatian Government. *Financial report*. [online] Available from: www.vlada.hr/hr/content/download/220981/3245600/.../44.-28.3.pdf [Accessed 09/09/12]

¹⁷⁹ This topic was elaborated during the evaluation of the BACCI project in Zagreb, May 2011.

¹⁸⁰ Commission for the Resolution of Conflicts of Interest (2011) *Annual Report*. [pdf] Zagreb: Croatian Parliament. Available from: [http://www.sukobinteresa.hr/posi/posifiles.nsf/0/FD14CEDF7A995FF3C1257A140036F5D3/\\$FILE/IZVJEŠĆE%20Povjerenstva%20za%202011%20%20godinu.pdf](http://www.sukobinteresa.hr/posi/posifiles.nsf/0/FD14CEDF7A995FF3C1257A140036F5D3/$FILE/IZVJEŠĆE%20Povjerenstva%20za%202011%20%20godinu.pdf) [Accessed 06/09/12].

The EU Accession process has in fact led the process of changing the legal and institutional framework, however the change that is visible in all aspects does not necessarily mean reform. Lack of political will to reform and effectively address the issues related to conflicts of interest that is fueled by the captured media and civil society, has limited powers of the European Union institutions in the attempt to assist reforms in Croatia. Although the introduction of Chapter 23 in negotiations has changed the dynamics of negotiations, it did not meet the expectations of both the EU and the Croatian citizens in a long run. Such results have undermined the support of the Croatian citizens to the EU Accession and have led to the situation in which the decision on the closure of the negotiations is rather political than technical based on the true readiness of the country to effectively fight corruption and implement the EU Acquis.

* *Written and edited by:* Munir Podumljak, *Desk research:* Sandra Gajić, Ana Hećimović, Lea Šušić

Annex 1

	2005	2006	2007	2008	2009	2010	2011	
EU Progress Reports	Regarding the anticorruption policies, there has been a considerable progress in the legislative point of view, but this must now be matched with proactive enforcement, raising measures, yielding demonstrable results.	There has been some progress in the area of anticorruption policy area undertaken and measures. Problems with the uniform implementation of the law and its enforcement persist. Overall, corruption continues to be a serious problem in Croatia that affects various aspects of society. Public perception of corruption has actually deteriorated over the past year. There has been some progress in the fight against corruption, but this issue remains a serious problem. The Law for the Prevention of Conflict of Interest should be widened to ensure that proper sanctions can be applied.	Some progress has been made in the fight against corruption, with further legislative strengthening and first results occurred in some important cases handled by USKOK. However, corruption remains a widespread problem and considerable efforts are still needed. The concept of conflict of interest is little understood.	Most tools are in place to fight against corruption but, given the scale of the problem, these are not being deployed with sufficient vigor.	Anticorruption efforts have produced initial results, but corruption remains widespread and tools are not being deployed with sufficient vigor, especially against political corruption. The concept of conflict of interest remains little understood or willfully ignored across the wider public administration.	Anti-corruption efforts have stepped up with some positive results but corruption remains prevalent in many areas. A track record of effective investigation, prosecution and court rulings remains to be established, especially for high level corruption. Preventive measures such as improved transparency of public spending need to be strengthened. The concept of conflict of interest is still little understood in Croatia, especially at local level.	Anti-corruption efforts have been accelerated with positive results, in particular as regards improved legislation and the strengthening of the relevant authorities. The track record of effective handling of corruption cases needs to be further developed, especially in relation to high level corruption, local level corruption, and including cases related to public procurement and the judiciary. Further experience is needed with implementing the newly adopted preventive legal framework in practice. Full implementation of the system for monitoring and verifying assets statements of public officials and judges, including dissuasive sanctions for noncompliance, needs to be ensured.	
Changes in the national legislation and institutional framework per year	Laws (5 interventions): Conflict of Interest Prevention Act (NN 48/2005); Criminal Code Amended (NN 84/2005); Public Procurement Law amended (92/05); Law on Courts amended (150/05); Law on State Judicial Council amended (NN	Laws (7 interventions): National Anti -Corruption Strategy Adopted; Conflict of Interest Prevention Act amended (141/2006); Criminal Code amended (71/06); Law on Financing of Political Parties introduced and adopted (NN1/07); Ethical Code for Public Servants (NN 49/2006); Judicial Ethical Code adopted; Law on Public Prosecution amended (NN 58/06)	Laws (6 interventions): Criminal Code amended (NN 110/07); Public Procurement Law amended (NN 110/07); Law on Courts amended (16/07); Civil Servants Law amended (107/2007); Law on the Public Prosecution amended twice (NN	Laws (10 interventions): New AC Strategy adopted; Civil Servants law amended (NN 27/2008); Conflict of Interest Prevention Act amended (NN 60/2008); Criminal Code Amended (NN 152/2008); Criminal Proceedings code Amended (152/2008); Public Procurement Law Amended (152/2008); Law on Judicial Trainees and Bar Examination amended (84/2008); Law on Courts Amended (113/2008); Ethical Codes in Public administration amended.	Laws (7 interventions): Law on judicial Trainees and Bar Examination amended (75/2009); Conflict of Interest Prevention Act amended (144/2010); Law on Courts amended Twice (116/2010; 122/2010); Law on SJC amended (NN 116/10); Law on Public Prosecution	Laws (21 interventions): Conflict of Interest Prevention Act was amended (26/2011); New Public Procurement Law was Adopted (90/2011); Law on Financing of Political Activities and Election Campaigns was adopted and amended (24/2011; 61/2011); Free Access to Information Act amended twice (37/11; 77/11); Criminal Code amended twice (57/2011; 125/2011); Criminal Proceedings Code amended twice (80/2011; 121/2011); Civil Servants Law amended three times (34/2011; 49/2011; 150/2011); Law on Courts		

	150/05	<p>Institutions (1): National Council for Monitoring Anti-Corruption Strategy Implementation was established (parliamentary body):</p>	20/07 and NN 146/07	<p>(134/2008); Ethical code for Public Prosecutors Adopted (25/2008); The Law on Civil Servants and Employees in Local and Regional Government adopted (NN 86/08) Institutions (3): Gvt's Committee for Monitoring of Anti-Corruption Measures Implementation established; MoJ's Autonomous Sector for Suppression of Corruption established; USKOK Courts Established;</p>	<p>(153/2009); Law on SJC amended (NN 153/09); Law on Public Prosecution amended twice (NN 76/09 and NN 153/09) Institutions: Police USKOK established (PN USKOK).</p>	amended twice (NN 116/10 and NN 145/10);	<p>amended three times (27/2011; 57/2011; 130/2011); Ethical Code was amended (NN 40/2011); The Law on Civil Servants and Employees in Local and Regional Government amended (NN 61/11); Law on SJC amended twice (NN 57/11 and NN 130/11); Law on Public Prosecution amended (NN 57/11);</p>
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EU Progress Reports for Croatia, 2005-2011

The Rule of Law Program South East Europe of the Konrad-Adenauer-Stiftung is designed as a program to promote dialogue on rule of law issues within and among the countries in South East Europe (Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Montenegro, the Republic of Moldova, Romania and Serbia).

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- **Fight Against Corruption**
- **Coping with the Past by Legal Means**
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Contact info:

Rule of Law Program South East Europe
Konrad-Adenauer-Stiftung e.V.
5 Franzelarilor St
RO – 020785 Bucharest
Romania
Tel.: +40 21 302 02 63
Fax.: +40 21 323 31 27
E-mail: office.rspsoe@kas.de



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