Comparative Study on Conflicts of Interest

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Transparency International – Czech Republic (TI) is a non-governmental, non-profit organisation set up to map the state of corruption in the Czech Republic and actively help to reduce it. TI focuses primarily on advocating systemic change in public administration, legislation and the private sector. In addition to projects that have long focused on specific areas (such as the funding of political parties, the judiciary and organised crime), TI also investigates specific cases and provides legal and educational services.

Comparative Study on Conflicts of Interest for the Ministry of Justice

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The output was developed as part of the project **Strengthening the Fight against Corruption by Increasing General Awareness of the Public Sector Focusing on Judges, Prosecutors and Public Administration**, financed by the EEA Grants 2014-2021 under the Good Governance Programme, and implemented by the Ministry of Justice.

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Assignment

Within the framework of the project ***Strengthening the Fight against Corruption by Increasing General Awareness of the Public Sector Focusing on Judges, Prosecutors and Public Administration***, financed by the EEA Grants 2014–2021 under the Good Governance programme, which is implemented by the Ministry of Justice, Transparency International Czech Republic has been commissioned to prepare an **expert publication – a comparative study** aimed at comparing foreign legislation regulating conflicts of interest for selected public officials, including the decision-making practice of competent authorities, and an overview and summary of examples of good practice in selected countries relating to conflicts of interest.

The intention of the comparative study is to provide information on the legal regulation of conflicts of interest in the individual countries, to summarise and compare that regulation with the situation in the Czech Republic, to provide an overview of examples of good practice in the individual countries and to present a clear summary of the examples of good practice identified.

The comparison of the legal regulation focuses on the instruments that serve to prevent conflicts of interest among elected representatives of the people at the national, regional and local level, members of the government and the heads of central administrative authorities.

In terms of its content, the comparison focuses on the incompatibility of offices due to the fact that certain public functions cannot be performed concurrently (true incompatibility) or due to restrictions on the ownership or economic activities of public officials (false incompatibility). It also focuses on the cooling-off period during which certain activities are prohibited after the end of public office. The comparison also focuses extensively on the reporting obligations of public officials and the degree of transparency regarding the legal and financial situation of public officials. These aspects are compared primarily in terms of the legal force of the legislation, its content, comprehensiveness and enforceability. The legislation is evaluated in terms of how it functions in practice, with a focus on identifying examples of good practice.

The output is intended for public administration employees, especially staff of the Ministry of Justice. The findings will be presented by the implementing body at an international conference on conflicts of interest to be held within the framework of the project.

The countries compared are: **Czech Republic, France, Croatia, Italy, Canada, Germany, Norway, Poland, Austria** and **Spain**.

A copy of the assignment is attached as Annex 1 to this comparative study.

Contents

Foreword

In the course of the development of modern society, state systems have been subject to various democratizing yet wholly opposite tendencies. In the so-called Western world, the concept of liberal democracy and the rule of law has prevailed in governance, with its roots in various eras, from antiquity through the Reformation and the Enlightenment to the various movements of the 1960s. Although we can hardly accept the idea that this concept also constitutes a certain end of history, as – to put it simply – suggested by Fukuyama, many countries all over the world moved towards the democratic rule of law during the 19th and 20th centuries.

The democratic rule of law is, of course, subject to many internal and external pressures of various kinds (economic and social, geopolitical, etc.), and in order to function well and live up to its name, it is necessary to constantly nurture it, to balance various interests and tendencies, and often (within the limits of the law) to resist phenomena that can lead to its demise. Certain phenomena are immediately evident, take a relatively rapid course and have easily imagined consequences (e.g. wars, coups or economic crises). Others are latent, long-term and, at least initially, somewhat abstract for many people. Such phenomena can often serve as a trigger for explicit manifestations and other easily identifiable actions that can, if not directly destroy the democratic rule of law, then at least greatly weaken some of its parameters and benefits for citizens. The state logically regulates such negative influences through legislation, thus supporting its basic premise – equality before the law and the rule of law.

One phenomenon that could typically be classified in the second group is corruption in the broader sense of the word. Although over time and during its existence this has become a somewhat empty concept in the public domain and in election campaigns the fight against corruption is unfortunately at most a moral kitsch (as noted by prof. Bělohradský), as a real threat, corruption has not disappeared.

Corruption takes many forms posing varying degrees of danger to society and is often accompanied by various other phenomena, including wastefulness, non-transparency and conflicts of interest. Besides certain tangible impacts (economic losses), all these phenomena undermine trust in the functioning of institutions (i.e. in the administration of justice, the functioning of elections, the media, and also in sport, etc.).

As mentioned above, the logical defence of the democratic rule of law against such threats is up-to-date, reasonably robust, comprehensible and widely accepted legal regulation, accompanied by other elements such as institutional integrity or a political culture that requires compliance with generally accepted rules even without the threat of direct sanctions.

No comprehensive legislation falls out of the sky; it is always preceded by a certain historical development, is inspired by other countries and areas of law, or is subject to broad social debate. It is no different with conflicts of interest, a phenomenon where the actors sit on two chairs, so to speak, defending not public interests but their own personal ones, or harming one organisation at the expense of the other. A more sophisticated system cannot prevent conflicts of interest from occurring, but trends and new social situations can be carefully monitored and preventive mechanisms can be developed to avoid conflicts of interest in the first place or at least to reduce their adverse impact. For this purpose – drawing inspiration and analysing social trends – international comparison seems to be one of the best methods.

Introduction

Conflict of interest legislation shows some interesting similarities in some respects, while in others the countries compared differ radically. What all the countries have in common is that their legislation was enacted primarily in response to specific cases that highlighted the weaknesses of a system that allowed public officials to abuse their public office and enrich themselves, their businesses, relatives or acquaintances. In most countries, there have been significant shifts in the last ten to fifteen years. In Western European countries in particular, a similar development can be seen: In the 1950s to the 1980s, basic rules on the incompatibility of major public offices were set out either in electoral codes or in specific laws. It appears that for a long time, conflicts of interest were not particularly regulated to the extent covered by this analysis. However, the gradual merging of business and politics led to the adoption of comprehensive and detailed regulations aimed at preventing conflicts of interest, especially after 2010.

What the legal regulations compared also have in common is that the main rules for the incompatibility of public offices are derived from the constitutions and are further elaborated and supplemented in individual laws. Some countries supplement their legal standards with comprehensive codes of ethics, which include procedural procedures and tools for enforcing the established rules. In federations, it is often up to the individual autonomous entities to determine the rules on conflicts of interest within the boundaries set by federal law. This creates considerable variations in regulation at the regional and local levels, even within a single state, and so in these cases each time the analysis focuses on one selected autonomous entity that has been identified as inspirational.

All the legislation compared is based on the fact that bribery or the abuse of power by a public official is a criminal offence. The concept of these offences does not differ between countries and always carries the threat of severe punishment, including imprisonment, for public officials. The level of criminal law is therefore not discussed in detail from country to country, as the substantive legislation of the most relevant criminal offences is almost identical across countries and differs only in the degree of enforcement or in the sensitivity of law enforcement authorities to conduct that occurs in the exercise of public office. The issue of conflict of interest, like other areas of human behaviour, is regulated on a scale ranging from moral norms, enforced by informal social sanctions, through to positive norms, binding rules of behaviour, the violation of which to a certain degree is covered by administrative law sanctions, while specific cases that are of significant intensity are dealt with through criminal law (as a means of ultima ratio). The enforceability of the administrative legal norms regulating conflicts of interest depends on their quality and on the capacity or capabilities of the institutions that enforce them. Moreover, these norms are often imperfect norms, i.e. norms that lack direct sanctions. This approach is taken by many jurisdictions in the knowledge that there are criminal law norms in the relevant legal system that punish misconduct when it meets the appropriate level of intensity, as well as other conditions.

Similarly, the concept of bias in decision-making is similarly regulated across all the legal systems examined. If a public official may, by virtue of their office, issue a decision (typically in an administrative proceeding), they, like other public officials, are bound by the general rules for disqualification from decision-making if they were to have any relationship to the matter under discussion or the parties to the proceeding. The prerequisites for the application of this procedure, including the resolution of this type of conflict of interest, are almost identical in all countries and correspond to the concept of procedural norms (especially the Administrative Code) in the Czech Republic. The only difference in the countries compared is the frequency of situations in which public officials may find themselves and when they would be obliged to apply these rules.

The same applies to the regulation of conflicts of interest in public procurement, where a senior public official may be involved in the procurement process or otherwise influence the selection of a supplier. This regulation is harmonised by European Procurement Directives and the national regulations of the EU Member States merely implement the relevant uniform rules in their public procurement laws.[1]

It should be noted that this analysis focuses primarily on elected officials and, in the case of appointed public officials, only on those who are members of the government or heads of central government bodies or who hold similar positions at the regional or local level. The comparative study does not cover the regulation of conflicts of interest in the civil service or among workers in the public sector. In many countries, there are positions at the most senior civil servant level who are close to ministerial positions – typically secretaries of state, parliamentary or private secretaries. Their status varies from state to state, so this comparison addresses the regulation of conflicts of interest of these officials only when their powers and status are more akin to membership of government.

The assessment of good practice in each country may vary according to the status of the assessor. While detailed regulation may cover all seemingly conceivable areas, it is the actual enforceability of the rules that matters. There seems to be a consensus that the aim is to ensure that there is a real functional means of preventing conflicts of interest; if the rules are only on paper, they are generally meaningless and can even be exploited in political struggles. Therefore, the analysis is supplemented by references to cases of conflict of interest of public officials in the individual countries, which either show that it is possible to hold public officials accountable or, on the contrary, highlight the weaknesses of the system.

The examples of good practice identified are mentioned in detail for each country and an overview is given in a summary table at the end of this study.

Methodological notes

The regulations in each of the countries compared are discussed in detail in the individual chapters. The text is arranged in such a way that the section on the selected country can be read without knowledge of the others. Within each section, the findings are structured uniformly according to the individual measures to prevent conflicts of interest. If a country has chosen to have completely separate regulations for elected and appointed public officials, the descriptions of the individual measures are divided accordingly.

Within the framework of the comparison, the issue of lobbying was also briefly addressed for each country compared, as this is a related regulation that complements the rules set up to prevent conflicts of interest in those countries where lobbying is at least regulated. If the rules on conflicts of interest restrict the secondary activities or property rights of public officials, those restrictions also limit the potential for the abuse of office not only for these officials but also for third parties who are in contact with the officials for various reasons. Therefore, rules for transparent relations between public officials and those who try to influence their decision-making are essential.

For each state, the study deals with the regulation of the so-called *"cooling-off period", i.e. "the prohibition for a certain period of time after the end of a public office to perform work or similar activity in an entity operating within the scope of competence of the public authority in which the public official performed that office (e.g. in an entity that was a bidder for a public contract on which the public official made a decision while in office)"*, as defined by the assignment itself. For the sake of clarity, the Czech equivalent , which translates as "protection period", is used.

1 *A list of the so-called European Procurement Directives can be found together with the corresponding implementing regulations on the website of the Office for the Protection of Competition here: https://www.uohs.cz/cs/legislativa/verejne-zakazky/evropska-unie.html A key provision for preventing conflicts of interest in procurement procedures is Article 24 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, available here: https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:32014L0024&qid=1666681971027*

In the description of the laws and institutions of each country, the original names in the official language of the country are also given to facilitate the traceability of the terms used. If the currency of a country is not the euro, the monetary amounts are also given in rounded conversion into euro at the exchange rate published by the European Central Bank on 1 September 2022[2]. The sections for each country compared are in alphabetical order. The analysis is prepared for the laws applicable as of September 2022.

2 *The data are published by the European Central Bank on its website here: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html*

Czech Republic

General information about the Czech Republic

The Czech Republic is a parliamentary republic with a bicameral parliament. The lower chamber, the Chamber of Deputies, is elected by proportional representation, while the upper chamber, the Senate, is elected by majority rule. The Chamber of Deputies expresses confidence in the government headed by the Prime Minister, who holds executive power. The government is composed of ministers who head the individual ministries or are so-called ministers without portfolio. There are 14 ministries. There are 17 other central government bodies with a similar status to the ministries, but they are not headed by a minister.[3] The head of state is the directly elected president, who, apart from a large number of appointing powers, has more of a representative role.

Territorial self-government has two levels. The higher territorial self-government units are the 13 regions and the City of Prague. In these units, a council is elected, which, on the basis of the balance of power within it, selects a regional board headed by a governor. Local government is made up of over six thousand municipalities, which are divided into three tiers according to the scope of their powers. Municipalities also elect a council, which selects a board headed by a mayor. Small municipalities do not form a board. Large cities can acquire the status of a statutory city and be divided into self-governing districts or wards. The City of Prague is also divided into self-governing city districts.

Basic legal framework

The **Constitution of** the Czech Republic, as part of the constitutional order, i.e. a norm of the highest legal force, sets out the basic requirements for the incompatibility of top public offices.

The key norm is **Act No. 159/2006 Coll., on Conflict of Interest**, which defines public officials and sets out their rights and obligations, which consist of a ban on the performance of certain secondary activities, a ban on obtaining money from public budgets and the obligation to file various types of declarations.

Section 2 of the Conflict of Interest Act lists the **public officials** to whom the Act applies. Officials are divided into two groups. According to paragraph 1, these include MPs, senators, members of the Government, heads of central government bodies, members of the collective bodies of certain central government bodies, the leadership of the Supreme Audit Office, the Ombudsman and his deputies, certain senior officials (especially deputy members of the Government) and then local government representatives. Section 2(2) defines other public officials who tend to be apolitical, i.e. heads and officials of the security forces, organisational units of the state, local government authorities or public companies, if they are authorised to handle funds in excess of CZK 250,000 (EUR 10,000), are directly involved in decision-making in the award or implementation of a public contract, make decisions in administrative proceedings or participate in the conduct of criminal prosecutions.[4]

In its individual provisions, the Conflict of Interest Act specifies which officials within the personal scope of the Act are subject to this obligation. The most significant differences are contained in the regulation of the secondary activities of officials. Only members of the government and heads of central government bodies are subject to the prohibitions on obtaining public funds through public procurement, subsidies and investment incentives. On the other hand, neither MPs nor senators are prohibited from running a business or other form of self-employment.

A certain differentiation of duties also applies to members of local government authorities, but in their case the law makes a distinction between those who perform their duties full time and those who do not. It is also true that higher demands are placed on full-time representatives, as they are financially compensated for the fact that they

3 *Sections 1 and 2 of the Competence Act*

4 *Since these apolitical public officials are not the subject of this analysis, the following text does not touch on them in most cases, although it does refer to all public officials under the Conflict of Interest Act.*

are performing a full-time office in a local government authority instead of their original profession. In some cases, the extent of the powers of the local government in which the official serves is also taken into account.

General definition of conflict of interest

The general definition is set out in Section 3 of the Conflict of Interest Act. It is formulated as a fundamental duty to refrain from any action in which the individual's personal interests may affect the performance of his or her duties. Such a personal interest means an interest which grants a pecuniary or other benefit or other advantage to the public official themself, to a person close to them or to a legal entity controlled by the public official or a person close to them.

If there is a conflict of interest with a personal interest, an official may not put their personal interest ahead of the interests they are obliged to promote and defend. In particular, they must not jeopardise the public interest by using their position or information acquired in the exercise of their office for pecuniary gain or by authorising the use of their name in connection with their office for commercial advertising purposes. In the case of these restrictions, however, it must be borne in mind that these are provisions that apply to all public officials listed in the Conflict of Interest Act and therefore the manner in which they are to be complied with or enforced will vary.

Institutional provision of the conflict of interest agenda

In the Czech Republic, there is no separate specialised body in charge of the conflict of interest agenda. The Ministry of Justice is the administrator of the Conflict of Interest Act,[5] and also performs certain tasks related to this agenda, such as maintaining the Central Register of Declarations. The Ministry of Justice is assisted by a number of public administration bodies, including local government authorities, as so-called support bodies, which supply data on public officials serving in those bodies to the Ministry as the central registration body and inform public officials of their obligations to register in the Central Register of Declarations.[6] Certain sanctioning powers have been granted to municipalities with extended powers, i.e. the municipalities with the greatest range of powers.

Incompatibility of offices – true incompatibility

Elected representatives

Article 21 of the **Constitution** states that no one can be a member of both houses of Parliament at the same time. This incompatibility arises ex *constitutione*, at the moment of election to the office that comes second.[7] The office of MP or senator is incompatible with the office of Member of the European Parliament.[8]

Furthermore, Article 22 of the Constitution stipulates that the office of President of the Republic, the office of judge and other offices provided for by law are incompatible with the office of **MP or senator**. The term judge here means any judge, whether a judge of a general or constitutional court or a judge of, for example, the Court of Justice of the European Union.[9] If a member of parliament or senator assumes any of the aforementioned functions,

5 *Section 11(5) of Act No 2/1969 Coll., on the Establishment of Ministries and Other Central State Administration Bodies of the Czech Socialist Republic*

6 *Section 14a of the Conflict of Interest Act*

7 *A recent example of this is the case of Senator Hlavatý, whose mandate as a senator expired the moment he was elected as a member of parliament. More here: https://zpravy.aktualne.cz/domaci/hlavaty-se-stal-poslancem-a-prisel-o-misto-senatora-v-lednu/r~ce6cdf1ebff011e789880025900fea04/*
In this context, it is important to note that the original mandate ceases at the moment of election, and the newly elected MP or senator cannot choose between these two positions.

8 *Section 53 of Act No. 62/2003 Coll., on Elections to the European Parliament*

9 *BAROŠ, J., HERC, T., JÄGER, P., LANGÁŠEK, T., MAJERČÍK, Ľ., MATOUŠEK, L., MLSNA, P., POPOVIČOVÁ, L., POSPÍŠIL, I., RYCHETSKÝ, P., UHL, P. Constitution of the Czech Republic: Commentary. Article 22, point 10 [ASPI system]. Wolters Kluwer [cit. 2022-10-11]. ASPI_ID KO1_1993CZ. ISSN 2336-517X.*

their mandate as a member of parliament or senator shall cease on the date on which they do so. The sanction for violating these restrictions is the termination of the original mandate of the MP or senator. In order for the office to be terminated, it is necessary that the person concerned actually takes up the office.

Section 5(3) of the Conflict of Interest Act states that the performance of an office in an employment or service relationship is incompatible with the office of an MP or senator if it is an appointed office or an office in which decisions are made in the exercise of state administration at a ministry or other administrative office, at a state prosecutor's office or court, in the security forces, the armed forces of the Czech Republic, the Supreme Audit Office, the Office of the President of the Republic, the Office of the Chamber of Deputies, the Office of the Senate, state funds and the Office of the Ombudsman. At the same time, however, if a member of parliament does not participate in decision-making activities within the framework of their executive powers, this restriction does not apply.

The performance of the offices of an MP, senator or representative of local government authorities is not compatible with the office of the president and vice-president of the Supreme Audit Office[10], the Ombudsman or their representative[11], a member of the Council of the Energy Regulatory Office[12], a member of the Council of the Czech Telecommunications Office[13], a member of the independent control body of the intelligence services[14], a member of the Czech Television Council[15], a member of the Czech Radio Council[16], the financial arbitrator or their deputy[17], the chairman of the Office for the Economic Supervision of Political Parties and Movements[18], the chairman of the Office of Transport Infrastructure[19], the chairman of the Office for Personal Data Protection[20], the director of a regional authority[21] or the director of Prague City Hall[22].

Only MPs and senators may not be members of the Broadcasting Council[23] or the Council of the National Accreditation Bureau for Higher Education[24]. They may also not hold a position as a member of the Board of the Czech National Bank[25], be a member of the Board of the Czech Film Fund[26], a member of the Council of the Institute for the Study of Totalitarian Regimes[27], a member of the Board of the State Cultural Fund[28] and a member of the Board of the Czech News Agency[29].

10 *Section 10 of Act No. 166/1993 Coll., on the Supreme Audit Office*

11 *Sections 2 and 3 of Act No. 349/1999 Coll., the Ombudsman Act*

12 *Section 17b of Act No. 458/2000 Coll., the Energy Act*

13 *Section 107 of Act No. 127/2005 Coll., on Electronic Communications*

14 *Section 12e of Act No. 153/1994 Coll., on the Intelligence Services of the Czech Republic*

15 *Section 5 of Act No. 483/1991 Coll., on Czech Television*

16 *Section 5 of Act No. 484/1991 Coll., on Czech Radio*

17 *Section 6 of Act No. 229/2002 Coll., on the Financial Arbitrator*

18 *Section 19c of Act No. 424/1991 Coll., on Association in Political Parties and Movements*

19 *Section 4 of Act No. 320/2016 Coll., on the Office for Access to Transport Infrastructure*

20 *Section 52 of Act No. 110/2019 Coll., on Personal Data Processing*

21 *Section 69 of Act No. 129/2000 Coll., on Regions*
From the diction of the Act, a systematic interpretation compared to the provisions on the Director of the Prague City Hall implies that a member of the council may not hold this office only in the local authority where they serve as a public official.

22 *Section 81 of Act No. 131/2000 Coll., on the City of Prague*

23 *Section 7 of Act No. 231/2001 Coll., on the Operation of Radio and Television Broadcasting*

24 *Section 83b of Act No. 111/1998 Coll., on Higher Education Institutions and on Amendments and Additions to Other Acts*

25 *Section 6 of Act No. 6/1993 Coll., on the Czech National Bank.*
The provision listing incompatible offices does not explicitly mention the office of senator. This loophole is due to the fact that the Czech National Bank was established before the Senate of the Parliament of the Czech Republic and, unlike other similar cases, has not yet been corrected. However, it is bridged by interpretation.

26 *Section 15 of Act No. 496/2012 Coll., on Audiovisual Works*

27 *Section 7 of Act No. 181/2007 Coll., on the Institute for the Study of Totalitarian Regimes. At the same time, however, the members of this board must not be members of political parties or movements. However, there seems to be nothing to prevent non-partisan representatives from being members.*

28 *Section 3 of Act No. 239/1992 Coll., on the State Cultural Fund of the Czech Republic*

29 *Section 5 of Act No. 517/2002 Coll., on the Amendment of Measures in the UIA System*

Only municipal and county councillors are prohibited from being assigned to perform a profession or service in the municipal or city government or part thereof in which they are councillors, provided that in such position they would be exercising a governmental function relating to the territorial jurisdiction of that municipality or city.[30] Furthermore, regional councillors may not hold a position in a ministry or other central government body.[31]

MPs, senators and full-time representatives may not serve as a member of the Council for Budget Responsibility. MPs and senators may not hold that office for three years after the end of their mandate.[32]

Persons born before 1 December 1971 who hold certain positions of authority in public administration are subject to the **Lustration Act**[33], which stipulates as a prerequisite for holding office that the person in question must not have been a Communist Party official, a member of the State Security, a member of the People's Militia or similar elements of the totalitarian communist regime between 25 February 1948 and 17 November 1989. In October 2022, the Czech government discussed a draft amendment that would extend the scope of the Lustration Act to include members of the government and government deputies.[34] The Lustration Act used to apply to members of the government, but this restriction was lifted in 2015.

Appointed officials

Article 70 of the Constitution states that a member of the government may not hold offices that are by nature incompatible with the performance of the office of a member of the government. The details are laid down by law. While this article does not contain a clear rule on what a member of the government may or may not do, it does establish a constitutional presumption of such a limitation at the statutory level. Mention of the position of a member of the government in relation to other offices at the constitutional level can be found in Article 82 of the Constitution, which stipulates that the exercise of the office of judge is incompatible with any office in public administration.

Cases of the incompatibility of the offices of appointed officials can be found in particular in the individual laws regulating different branches of public authority. Thus, the performance of the office of a member of the government or the head of a central administrative authority is incompatible with membership of the Czech Radio Council[35], the Czech Television Council[36], the Council of the Energy Regulatory Office[37], the Council of the Czech Telecommunications Office[38], and the functions of the President and Vice President of the Supreme Audit Office[39], the Chairman of the Office for Personal Data Protection[40], the Chairman of the Office for the Economic Supervision of Political Parties and Movements[41], the Ombudsman and their deputy[42], the Financial Arbitrator and their deputy[43], membership of the Council of the Czech Film Fund[44], membership of the Council of the State Culture Fund[45], membership of the Council of the Czech News Agency[46] , and the Chairman of the Office for Transport Infrastructure[47]. Insolvency

30 *Section 5 of Act No. 491/2001 Coll., on Elections to Municipal Councils, Section 5 of Act No. 130/2000 Coll., on Elections to Regional Councils*
31 *Section 5 of Act No. 130/2000 Coll., on Elections to Regional Councils*
32 *Section 27 of Act No. 23/2017 Coll., on the Rules of Budget Responsibility*
33 *Act No. 451/1991 Coll., laying down certain other prerequisites for the performance of certain offices in state bodies and organisations of the Czech and Slovak Federative Republic, the Czech Republic and the Slovak Republic.*
34 *The draft amendment is available here: https://apps.odok.cz/veklep-detail?pid=KORNCGKBT55U*
35 *ection 5 of Act No. 484/1991 Coll., on Czech Radio*
36 *Section 5 of Act No. 483/1991 Coll., on Czech Television*
37 *Section 17b of Act No. 458/2000 Coll., the Energy Act*
38 *Section 107 of Act No. 127/2005 Coll., on Electronic Communications*
39 *Section 10 of Act No. 166/1993 Coll., on the Supreme Audit Office*
40 *Section 52 of Act No. 110/2019 Coll., on Personal Data Processing*
41 *Section 19c of Act No. 424/1991 Coll., on Association in Political Parties and Movements*
42 *Section 3 of Act No. 349/1999 Coll., the Ombudsman Act*
43 *Section 6 of Act No. 229/2002 Coll., on the Financial Arbitrator*
44 *Section 15 of Act No. 496/2012 Coll., on Audiovisual Works*
45 *Section 3 of Act No. 239/1992 Coll., on the State Cultural Fund of the Czech Republic*
46 *Section 5 of Act No. 517/2002 Coll., on the Amendment of Measures in the UIA System*
47 *Section 4 of Act No. 320/2016 Coll., on the Office for Access to Transport Infrastructure*

practitioners are then suspended from office on the date on which they began to act as a member of the government or the head of a central administrative authority.[48] The same applies to patent attorneys.[49]

For members of the government only, the incompatibility applies to membership of the Broadcasting Council[50] and the Council of the Institute for the Study of Totalitarian Regimes[51], as well as to membership of the Board of the National Accreditation Bureau for Higher Education[52], membership of the Independent Intelligence Review Body[53] and membership of the Board of the Institute for the Study of Totalitarian Regimes[54].

The incompatibility of offices with membership of the Board of the Czech National Bank is unclear[55], where it is clear that a member of the Board may not be a member of the government, but it is not clear whether another representative of the central administrative authority may be a member. However, the wording of the law implies that no one may be a member if they have a conflict of interest that could jeopardise the independence and impartiality of the performance of their duties as a member of the Bank Board. A similarly ambiguous construction with an unclear conclusion is then applied to the office of a member of the Council for Budget Responsibility[56].

Incompatibility of offices – false incompatibility

Elected officials

The restriction affecting the property of MPs, senators and full-time local government representatives is that a public official who represents the state in the management, supervisory or control bodies of a legal entity in which the state or a local government authority has a share or voting rights, is not entitled to remuneration for that activity, only to reimbursement of their expenses.

Appointed officials

Appointed officials, here members of the government and the heads of central administrative authorities, are considerably restricted in their private activities, in particular by the fact that, according to Section 4(1) of the Conflict of Interest Act, these officials may not engage in business or other self-employed activities, be members of the statutory, management, supervisory or controlling body of a legal entity engaged in business, or be in an employment or other similar relationship, unless it is a relationship in which they are acting by virtue of a public office.

In addition, from 2017, members of the government and the heads of central government bodies are not allowed to receive public funds from subsidies, investment incentives or public procurement. The prohibition also applies to entities in which the official owns or controls more than 25% of the shares. The prohibitions are based on the premise that the conduct in question must not occur, so that enforceability depends on the ability of contracting authorities and providers of subsidies and incentives to ensure that no conduct that contravenes the rules occurs.[57]

48 *Section 9 of Act No. 312/2006 Coll., on Insolvency Administrators*

49 *Section 14 of Act No. 417/2004 Coll., on Patent Attorneys*

50 *Section 7 of Act No. 231/2000 Coll., on the Operation of Radio and Television Broadcasting*

51 *Section 7 of Act No. 181/2007 Coll., on the Institute for the Study of Totalitarian Regimes*

52 *Section 83b of Act No. 111/1998 Coll., on Higher Education Institutions and on Amendments and Additions to Other Acts*

53 *Section 12e of Act No. 153/1994 Coll., on the Intelligence Services of the Czech Republic*

54 *Section 7 of Act No. 181/2007 Coll., on the Institute for the Study of Totalitarian Regimes*

55 *Pursuant to Section 6 of Act No. 6/1993 Coll., on the Czech National Bank*

56 *Section 27 of Act No. 23/2017 Coll., on the Rules of Budget Responsibility. Members of the government are also barred from holding office for three years after leaving the government.*

57 *Section 4b–4c of the Conflict of Interest Act. A detailed analysis of the current restrictions on the business activities of government members, practical problems with their application, planned amendments and the necessary amendments are described in the article: DUPÁK, Jan. Aktuální vývoj v prevenci střetu zájmů veřejných funkcionářů [Current Developments in the Prevention of Conflicts of Interest on the Part of Public Officials]. Soukromé právo [Private Law], 2022/3, pp. 5–11. ISSN 2533-4239. Also published here: https://www.transparency.cz/aktualni-vyvoj-v-prevenci-stretu-zajmu-verejnych-funkcionaru/*

Restrictions on media ownership

According to Section 2(1) of the Conflict of Interest Act, the **prohibition on radio and television broadcasting** under Section 4a of the Conflict of Interest Act applies to public officials. This is a fundamental restriction related to the exercise of these offices, as it directly infringes upon the constitutionally guaranteed right to freedom of enterprise and the right to property. In its ruling of 11 February 2020, Case No. Pl. ÚS 4/17[58], the Constitutional Court confirmed the constitutional conformity of this regulation, which has thus remained part of the legal order. Therefore, like other public officials, elected representatives may not be radio or television broadcasters or publishers of periodicals, nor may they be partners, members or controlling persons of a legal entity that is a radio or television broadcaster or publisher of periodicals. It should be mentioned that a violation of this rule is punishable by two penalties: a fine for fulfilling the facts of an offence under the same Act, and a penalty for breaching the ban on exercising voting rights in a radio or television broadcasting company held by a public official. Violation of this rule would then render the legal act absolutely invalid.

Protection period

For appointed public officials, i.e. in particular members of the government, the chairpersons of central administrative authorities and full-time representatives, the rule is that after leaving office they may not be a partner or act in the bodies of a legal entity engaged in business for a period of 1 year, nor may they enter into an employment relationship with an entrepreneur engaged in business, if that entity has concluded a contract with the state, a body of a local government authority or a legal entity established by law in the 3 years preceding the termination of the office of the public official in question, if the contract was an above-the-threshold public contract and the official in question took a decision on it, even indirectly.[59]

Declaration of personal interest

Under Section 8 of the Conflict of Interest Act, public officials are obliged to **declare their relationship to the matter under discussion** orally during the proceedings of a constitutional or other state or local government authority, as well as during the proceedings of a body of a legal entity established by law, no later than before the vote on the matter is taken. The declaration must be part of the minutes, if they are drawn up.

A similar obligation applies to all (i.e. including part-time) representatives under the laws governing the functioning of local governments.[60] The obligation to declare a conflict of interest arises when the participation of local government representatives in the discussion and decision-making on a particular matter in the bodies of the local government in question could result in an advantage or disadvantage for themselves, persons close to them or persons represented by them. Although the objective of this regulation and the Conflict of Interest Act is the same, the construct chosen to achieve it differs. The Conflict of Interest Act requires that a conflict of interest be disclosed during the proceedings, no later than before the vote on the matter. Local government laws require that conflicts of interest be disclosed prior to the commencement of proceedings. The Conflict of Interest Act introduces misdemeanour liability for breach of this liability, but other laws do not.

Neither of these provisions prohibits a public official from participating in a vote and perhaps even supporting the intent. According to the Ministry of the Interior's methodological statement on the conduct of local government authorities[61], it is the moral and political responsibility of the official to consider the consequences of engaging in voting in a conflict of interest.

58 *Available here: https://nalus.usoud.cz/Search/ResultDetail.aspx?id=110717&pos=1&cnt=2&typ=result*

59 *Section 6 of the Conflict of Interest Act*

60 *Section 83(2) of Act No.128/2000 Coll., on Municipalities (Municipal Establishment), Section 34(3) of Act No.129/2000 Coll., on Regions (Regional Establishment), and Section 51(4) of Act No.131/2000 Coll., on the City of Prague.*
These laws are not the responsibility of the Ministry of Justice, but of the Ministry of the Interior.

61 *Opinion of the Department of Supervision and Control of Public Administration of the Ministry of the Interior No. 8/2011, dealing with the application of Section 83(2) of the Municipalities Act. Available here: https://www.mvcr.cz/odk2/clanek/stanoviska-odk-2011.aspx*

Declaration of activities and assets

Public officials are subject to a relatively broad reporting obligation, according to which they submit **declarations of their activities, assets, income and liabilities** through the Central Register of Declarations[62] maintained by the Ministry of Justice. These declarations are filed jointly and comprise three different types depending on when they are filed. There are thus initial, interim and exit declarations. The initial declaration describes the facts as at the date preceding the date on which the official takes up office. The public official is obliged to file this declaration within 30 days of the date on which the supporting authority (i.e. typically the institution where the public official works) enters the public official's contact information in the Central Register of Declarations. The interim declaration relates to the benefits received during the exercise of an office and is submitted for each calendar year by 30 June of the following year. The official then submits an exit declaration containing data as of the date the office is terminated within 30 days of the date on which the supporting authority entered the termination of office into the Central Register of Declarations.

In substantive terms, under Section 9 et seq. of the Conflict of Interest Act officials are obliged to declare their business and other self-employed **activities**, membership in entrepreneurial legal entities, membership in the bodies of entrepreneurial legal entities, employment and service or other similar relationships, the operation of radio or television broadcasting or publication of periodicals, even if none of the aforementioned facts have occurred.

They shall also be required to declare fully, accurately and truthfully the **assets** they own as of the date preceding the date on which they take up office and the assets they have acquired during their term of office. The declaration shall include immovable property, securities or rights attached thereto, shares in commercial corporations and movable property, depending on which type of declaration is filed. In the case of the initial declaration, movable items are those exceeding the value of CZK 500,000 (EUR 20,000), and in the case of the interim and exit declarations, the movable items are those whose individual value exceeded CZK 50,000 (EUR 2,000), if their aggregate value exceeded CZK 500,000 (EUR 20,000).

It is also obligatory to declare outstanding **debts**. The scope of the information to be notified is again determined by the type of declaration. In the case of an initial declaration, outstanding liabilities exceeding CZK 100 000 (EUR 4 000) in each individual case are notified. In the case of interim and exit declarations, outstanding liabilities must be notified if their aggregate amount exceeds CZK 100 000 (EUR 4 000).

Any monetary **income** or other property benefits, including gifts, are also declared if their amount exceeds CZK 100 000 (EUR 4 000) in a calendar year.

All types of declarations by public officials are available to the public in the **Central Register of Declarations** upon request. The original system of free on-line access with no registration required was abolished as a result of the ruling of the Constitutional Court in Case No. Pl. ÚS 38/17 of 11 February 2020[63] as the court annulled the provision of the Conflict of Interest Act defining the scope of disclosures on the grounds of a violation of the right to privacy. According to the ruling, the problem was not the fact that the declarations were publicly accessible, but the large range of public officials whose data were freely accessible to the public. The amendment to the Conflict of Interest Act effective from 1 July 2022 eventually clarified the method for accessing the Central Register of Declarations, i.e. on the basis of a request.[64] Persons to whom a public official's declaration is provided may use it only to check the public official's compliance with their legal obligations.[65]

The Ministry of Justice randomly selects fewer than a dozen declarations each year for thorough **review**. Access to government databases is used for this purpose, but the Ministry does not have access to tax returns. The Ministry

62 *Available here: https://cro.justice.cz/*

63 *Available at https://nalus.usoud.cz/Search/ResultDetail.aspx?id=111021&pos=1&cnt=1&typ=result*

64 *In the meantime, since the postponement of the enforceability of the Constitutional Court's ruling in 2020, the method for perusing the Central Register of Declarations has been disputable. For a certain period of time, no public access was allowed at all.*

65 *Sections 13 and 14b of the Conflict of Interest Act*

also finds out about failure to comply with declaration obligations through public complaints, primarily through the online tool[66] available in the Central Register of Declarations. There are dozens to hundreds of complaints a year. In the majority of cases, the complaints do not contain facts suggesting that the information reported is incomplete or incorrect, or these facts are not confirmed when checked. However, a certain number of complaints indicate a failure to provide true or complete information and result in an offence notification being sent to the relevant offence authority by the Ministry of Justice.[67]

Acceptance of gifts

There are no rules on the acceptance of gifts by public officials; it may be obligatory to disclose gifts as income or property received in the property declaration.

Regulation of lobbying

Lobbying is not regulated in the Czech Republic. The establishment of lobbying rules has been included among the reforms under Component 4.3 "Anti-Corruption Reforms" of the Czech National Recovery Plan under the European Recovery and Resilience Facility, with an expected completion date of early 2026. Implementation is to be carried out by adopting a draft law on lobbying under the Ministry of Justice.[68]

Enforceability of legislation

In the Czech Republic, the regulation of conflicts of interest is enforced primarily through **misdemeanour liability** under the Conflict of Interest Act. The municipal authorities of municipalities with extended powers are responsible for dealing with offences. Local jurisdiction is determined by the residence of the public official. The unauthorised handling of data obtained from the Central Register of Declarations is sanctioned by the Office for Personal Data Protection.

No ethical rules are set to cover conflicts of interest for top public officials. Codes of ethics are more common at the local government level; they usually include a requirement for the impartial and independent performance of office or the prevention of conflicts of interest.[69] Acting in a conflict of interest in itself, contrary to the general definition, is not punishable. This means that the statutorily prohibited endangerment of the public interest by a public official who invokes their office in matters related to their personal interests or when they grant permission to use their name for commercial advertising purposes is not punishable.

Summary and identification of good practice

To sum up, first of all, MPs and senators may not hold office in a chamber of Parliament other than the one of which they are a member. Furthermore, they may not hold the office of President of the Republic, the office of judge, or any other office prohibited by law. The constitutional consequence of a breach of this obligation is the loss of the office of MP or senator. In addition, MPs and senators are obliged to put the general interest above their own interests when exercising their mandate and are obliged to report conflicts of interest. They can engage in business or other gainful activity almost without restriction, except for owning and operating media. MPs and senators are also subject to quite extensive reporting obligations regarding their assets and income.

66 *Available here: https://cro.justice.cz/verejnost/podnet*

67 *In the first two years since the launch of the Central Register of Declarations, i.e. since 1 September 2017, 49 complaints have been forwarded to the offence authorities.*
Report on the Review of the Regulatory Impact Assessment of Act No. 14/2017 Coll. Ministry of Justice, Conflict of Interest and Anti-Corruption Department. Available here: https://www.justice.cz/documents/2509270/0/Zpráva+o+přezkumu+hodnocení+dopadů+regulace+zákona+č.+14+2017+Sb..pdf/6fe7c3e9-97a8-4b94-9944-334543041c58

68 *More information here https://www.planobnovycr.cz/instituce-a-regulace-a-podpora-podnikani-v-reakci-na-covid-19*

69 *Cf. Code of Ethics for Members of the Plzeň Regional Assembly, available here: https://www.plzensky-kraj.cz/eticky-kodex-clena-zastupitelstva-plzenskeho-kraje*

The status and limitations of local government representatives are very similar to those of MPs and senators. They differ, however, in that their position is not regulated in great detail by the constitutional order itself, so the burden of regulating the resolution of their conflict of interest lies with the legislator. Representatives are divided into two groups: those who hold a full-time office and those who continue in their original occupation. In general, the individual cases of incompatibility of office mentioned above apply to both full-time and part-time representatives, while the restrictions based on the Conflict of Interest Act apply only to full-time representatives. The mayor is always subject to these restrictions, even if they are not exempt from exercising their office as a councillor. The same applies to deputy mayors and councillors in municipalities, which have broader powers.

As mentioned above, members of the Government are, by the nature of their work, very limited in their other activities. The same can be said, albeit to a lesser extent, of the heads of central administrative authorities. The key difference between these two groups is the absence of direct political accountability to the people as the source of state power for the leaders of the central administrative authorities. The Conflict of Interest Act deals with these two groups together; however, other legislation, as demonstrated above, does not, and more often refers only to members of the government or specifies top public officials separately without following any uniform system. The chosen legislative-technical solution of defining public officials across the Czech legal system leads to a considerable lack of clarity in the legal regulation. This may complicate the control and enforcement of these rules, but above all it shows the lack of a coherent concept in the organisation of public administration. The complexity of the system is reflected in the large number of laws that regulate the issue of incompatibility of office.

It can be summarised that members of the government and heads of central administrative authorities are subject to extensive reporting obligations, similar to other public officials. In addition, unlike elected officials, they are subject to significant restrictions on their private sphere, in particular restrictions on their ability to engage in business or be employed.

The rules set are in line with the standard in the other countries compared, but regulation of some key elements (acceptance of donations, lobbying, ethical rules) is still lacking. The Czech Republic is the only country in the comparison that does not have any rules on the acceptance of gifts by top public officials. The set protection period is short and focuses only on a narrowly defined range of activities.

The Ministry of Justice is particularly active in auditing declarations of assets and declarations of activities, liabilities and income. Compliance with the obligation to make full and truthful disclosures is regularly assessed. For example, based on a review of interim declarations for 2020, over 3 000 suspected cases of offences were sent to the local authorities.[70]

The decentralisation of sanction mechanisms to municipalities with extended powers has an adverse impact on the enforceability of legislation. Within the fragmented system, cases of offences against the Conflict of Interest Act constitute an unusual and rare agenda for the individual offence authorities, and may also include leading state representatives or public officials from their region. Officials in municipalities with extended powers may then feel they are expected to make a decision in favour of a public official or may not be able to withstand the actual pressure associated with such a decision, unlike specialised and trained officials in a possible separate body.

The adverse effects of this system are particularly evident in the enforcement of the established obligation to file a declaration of personal interest, which is dealt with by the offence authorities in a rather formal manner and failure to comply is not very actively enforced.

The Czech legislation is above standard only to the extent of limitations on the receipt of public funds by members of the government or the prohibition of control over the media; in practice, however, these provisions are difficult to enforce.

70 *More here https://justice.cz/web/msp/aktuality?clanek=rok-20-2*

France

France, officially the **French Republic**, is a representative democracy with a semi-presidential system of government. It is a unitary state.

The legislature consists mainly of a bicameral parliament made up of the National Assembly (*Assemblée nationale*; the lower chamber composed of directly elected members) and the Senate (*Sénat*; the upper chamber composed of senators elected indirectly by a select committee of local politicians, which may be outvoted in the legislative process by the National Assembly). Responsible to this parliament is the **government**, which is headed by a prime minister appointed by the directly elected president. In the French concept, the government is a broader executive, with most of its work taking place in the Council of Ministers. At the cabinet level, there are also minister delegates (*ministre délégué*), who are assigned to ordinary ministers and are in charge of a specific area.

The Council of Ministers is chaired by the **President of the Republic**, who holds a stronger position in the semi-presidential system due to the power to dissolve the National Assembly, etc. However, it is the Prime Minister's job to implement legislation and direct government action. Depending on whether the President and the Prime Minister are politically aligned, this is either a very capable government or, on the contrary, a limited government[71]. The French system of public administration also includes a number of independent central administrative authorities.[72] They are established by laws that determine how they function, their degree of independence, the way they are staffed and the mechanism for obtaining funds.

In territorial terms, France is divided into 18 regions (*régions*), of which 5 are overseas territories. The regions do not have their own legislatures and are more focused on managing their budgets through their elected regional councils (*conseil régional*). The head of the region is the president of the regional council (*président des conseils régionaux*). The regions are divided into around 100 departments (*département*), which have elected departmental councils (*conseil départemental*), headed by the president of the departmental council, who represents the executive power at that level. Departments are divided into districts (*arrondissement*), which are made up of cantons (*canton*), but these are merely administrative units with no elected representatives. The lowest administrative and self-governing unit is the municipality (*commune*).[73] Nearly 37 000 municipalities are governed by municipal councils (*conseil municipal*), which are directly elected by the citizens and have between 7 and 69 members. The municipal council appoints a mayor (*maire*) from among its members, who is primarily responsible for enforcing the laws of the municipality and ensuring public order. The mayor may have up to several deputies (*adjoint au maire*).

Basic legal framework

The 1958 **Constitution**[74] sets out the basic rules preventing officials in the highest echelons of French politics from holding certain offices simultaneously. However, individual cases of incompatibilities are the subject of special laws for lesser officials. The **Electoral Code** regulates the incompatibility issues for members of parliament.[75]

71 *This is a period of so-called cohabitation, i.e. a situation in which the Prime Minister is from a different part of the political spectrum than the President. Given the semi-presidential system of government practised in France, this situation implies a partial decision-making paralysis in which the president is forced to seek ad hoc support for his agenda. At the turn of the millennium, the experience of the cohabitation of President Jacques Chirac and Prime Minister Lionel Jospin led to the presidential term of office being shortened from seven to five years and to the synchronisation of election terms to guarantee a high chance of the two constitutional actors working together.*

72 *These include the Competition Authority, the Energy Regulatory Commission and the National Commission on Information Technology and Civil Liberties.*
A full list of offices is available here: https://www.hatvp.fr/wordpress/wp-content/uploads/2022/07/Obligations-declaratives-des-responsables-publics_2022.pdf
These bodies are also subject to rules on the prevention of conflicts of interest.

73 *In the case of large municipalities, the situation arises where one municipality is composed of several cantons.*

74 *Available here: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000571356/*

75 *Available here: https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070239/*

The key legislation on conflict of interest issues in France is t**he law on transparency in public life** (*loi relative à la transparence de la vie publique*; also referred to as the "**Transparency Law**")[76], which exists in both ordinary and organic[77] law. This law is the basic provision of the so-called preventive part of the French legislation on conflicts of interest, as its main purpose is to prevent or provide solutions to situations of conflict of interest. Until the adoption of the law in 2013, only repression of possible abuse of conflicts of interest was covered in the form of criminal sanctions. However, due to the principles of its application, this did not cover all cases where conflicts of interest occurred, which led to the adoption of the law on transparency in public life.[78] A reference regulation also tends to be chosen, where a special law, for example, regulating the establishment of a specific administrative office or organisational unit of the state, introduces the obligation of a certain group of addressees to comply with the general regulation on transparency.

Ethical rules play an essential role in French law.[79] The starting point is the **law on ethics and the rights and obligations of public officials** (*loi relative à la déontologie et aux droits et obligations des fonctionnaires*)[80], which, among other things, establishes the position of ethics advisors for public institutions, including local authorities, hospitals or public universities.[81] Ethics advisors are persons who provide officials within the institution in which they work with suggestions on how to deal with or prevent a potential conflict of interest situation. However, the most important cases can be dealt with by the national body dealing with conflict of interest issues, as described below, which can issue an opinion on them.

Prior to the adoption of the Transparency Act in 2013, a conflict of interest was only punishable in cases where the conduct had the characteristics of the relatively broadly defined offence of providing an unlawful advantage (*prise illégale d'intérêt*) within the meaning of Article 432-12 of the **Criminal Code**[82], which covers situations where the impartiality of a public official is compromised as well as abuse of that official's authority. The French system of criminal repression differs considerably from the Czech system, as misdemeanours are dealt with in France as the tripartite of misdemeanours, felonies and crimes, and special courts are competent to deal with them.[83] Thus, criminal sanctions against public officials for breaches of the rules are not rare in France, and criminal sanctions can be applied in serious cases even after the historically established repressive system was supplemented by preventive mechanisms in 2013.

76 *Effective from February 2014. Available here: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000028056315/*
English translation available here: https://www.hatvp.fr/wordpress/wp-content/uploads/2018/01/Act-no.-2013-907-dated-11-October-2013-on-transparency-in-public-life.pdf

77 *In France, an organic law is a law that is ranked between the Constitution and ordinary laws in the hierarchy of legal norms. Besides having a different legislative process (the need for a qualified majority), it is also characterised by a preliminary constitutional review by the Constitutional Council prior to its inclusion in the Collection of Laws. This is a heightened level of democratic and judicial control over these important laws, similar to the Czech Republic's laws under Article 40 of the Constitution.*

78 *The political trigger for the adoption of this regulation was a case where the French Minister for Budget Policy lied about the existence of his hidden bank accounts in Switzerland, which raised suspicions of tax evasion. For more see: https://www.france24.com/en/20130402-ex-france-budget-minister-admits-lying-over-secret-swiss-account-cahuzac-hollande*
The result of this affair was the adoption of the aforementioned legislation and the establishment of a separate office whose main agenda is conflicts of interest.

79 *In France, large private companies are obliged to implement a corruption prevention plan, which includes codes of ethics. This practice is strongly recommended in the public sector. This is based on Article 17 of the Transparency, Anti-Corruption and Modernisation of Economic Life Act (Sapin 2), available here:*
https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000033558666

80 *Available here: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000032433852/*

81 *The details are set out in a decree, available here: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034411018*

82 *Available here: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000044569907*
A robust body of case law has developed over the years on this provision specifying the situations where it applies.

83 *For more on the system of administrative punishment in France, see e.g. the 2017 study by the Czech Parliamentary Institute, available at https://www.psp.cz/sqw/text/orig2.sqw?idd=77480.*

General definition of conflict of interest

The adoption of the Transparency Act in 2013 established a full definition of what constitutes a conflict of interest. It is thus defined in France as a situation in which the private or public interest of an official conflicts with another public interest, in such a way that there are even doubts about the independence and impartiality of that official in the performance of their duties.[84] The statutory provision directly defines the situations in which a public official may find themself in a conflict of interest. This conflicting private or public interest may be direct or indirect, material or moral. It is necessary that such an interest should be in conflict with another public interest, both in substance and in terms of place and time. It is also necessary to assess the intensity of the conflict, which is evaluated precisely by the criterion of doubts about the official's impartiality and independence. In France, unlike in other countries, a situation of other public interest is also grounds for concluding that a conflict of interest exists for a particular official, which is worth noting. Thus, a public official must also take care, for example, not to act to the advantage of another public institution or administrative unit of which they are the head.[85]

Institutional provision of conflict of interest issues

The authority in charge of conflict of interest issues in France is called the **High Authority for Transparency in Public Life** (*Haute Autorité pour la transparence de la vie publique* – HATVP; hereinafter referred to as the "**Authority**"). The institution was established in 2014 as an independent permanent administrative authority that cannot be tasked by the government and is not accountable to it. It is linked to the government through its financial resources, but manages them autonomously[86]. The Authority is accountable only to the Court of Audit (*Cour des Comptes*), which is the supreme audit institution[87], and to Parliament, in particular its relevant committees. The Authority is headed by a thirteen-member Board, which has decision-making power over the activities of the Authority. This body is headed by the president of the Authority, who is appointed by the President of the Republic on the basis of the Constitution.[88] Another six members are elected from the members of the highest courts by their peers, and the remaining six members are appointed by the President of the National Assembly, the President of the Senate and the government as a whole, two candidates each. A gender balance system is observed in the selection of members. Senior members of the Authority cannot repeat their mandate and are themselves subject to the Authority's scrutiny of their own declarations of interests and assets.[89] In total, the Authority has approximately 65 officials who deal mainly with the conflict of interest agenda.[90] However, the Authority is also responsible for overseeing lobbyists and managing their communications; only a minimal part of the Authority deals with this agenda. The Authority is considered a powerful institution in France, which, although not endowed with independent sanctioning powers, has the power to influence political events in the country, as its findings can lead to the media-forced resignation of some members of the government.[91]

84 *Article 2(1) of the Transparency Act*

85 *https://www.hatvp.fr/en/high-authority/ethics-of-publics-officials/list/#prevent-conflict-of-interest-rp*
In practice, however, there are not many situations in which conflicts between two public interests could arise in the exercise of a public official's office, due to the extensive system of incompatibilities. However, even when the Transparency Act was in force, there were previously conflicts of interest mainly involving local councillors who served on national bodies for the benefit of their municipality.

86 *It therefore decides independently how to use the amount allocated to it. For more see: https://www.hatvp.fr/en/high-authority/institution/list/#an-independent-administrative-authority*

87 *This is a kind of analogy to the Czech SAO, but in the case of France it is a hybrid between a court and an administrative authority in institutional terms.*

88 *The current political reality in France is that the president of the Authority is a person of great moral integrity who enjoys the confidence of the general public. The current President (second in line), for example, is a former President of the Court of Audit. More here: https://www.hatvp.fr/la-haute-autorite/linstitution/organisation/le-college/*

89 *Article 19 of the Transparency Act*

90 *HATVP Activity Report 2021, p. 24. Available at https://www.hatvp.fr/wordpress/wp-content/uploads/2022/07/web_HATVP_RA2021_210722_EN.pdf*

91 *For example, in 2021, the minister in charge, Griset, was forced to resign after he was wrongly convicted for errors in his declaration of assets, attention to which was drawn by the HATVP. See more https://www.rtl.fr/actu/justice-faits-divers/condamne-le-ministre-des-pme-alain-griset-demissionne-du-gouvernement-7900104268*

Incompatibility of offices – true incompatibility

The basic source for the incompatibility of offices in France is the Constitution, Article 23 of which states that the office of **member of the government** is incompatible with any other public office at the national level. This means that it is not possible to be a member of parliament and a member of the government at the same time.

There are no legal restrictions on the exercise of other offices or activities for the office of **President**.

Articles LO137 – LO144 of the Electoral Code[92] define the functions that **members of parliament** are not allowed to perform. The cumulative holding of the offices of MP and senator is prohibited.[93] The office of Member of Parliament is also incompatible, in particular, with the office of Member of the European Parliament, substitute Member of the European Parliament or Senator, member of the Economic, Social and Environmental Council, judge, mayor or deputy mayor, chairman or vice-chairman of a regional, departmental or municipal council, other non-elected public office, the exercise of offices entrusted to another State or international organisation, and certain other cases. Article LO297 of the Electoral Code states that these rules also apply to senators.

The incompatibility of office is also regulated for **mayors of municipalities**. The mayor must not also be chairman of a departmental or regional council or a member of the European Commission. They must also not serve on the senior bodies of the European Central Bank or the Bank of France (*Banque de France*).[94] The rules for incompatibilities are numerous and are formulated in a very casuistic way.[95]

Incompatibility of offices – false incompatibility

Article 23 of the Constitution prohibits **members of the Government** from holding any employment or profession in the private or public sphere and from holding any office in economic or other chambers, in addition to holding any other public office. In addition, members of the government are subject to specific regulations under Article 8 of the Transparency Act, which prohibits them from **disposing of** or supervising **financial instruments** while in office. However, they can retain ownership. The scheme chosen by a member of the government to meet this requirement must be submitted to the Authority for approval.

Members of Parliament may not hold senior positions in state-owned companies. In private entities, they are prohibited from holding executive and supervisory positions, not only in business entities but also in listed non-profit institutions. The provision of consultancy services or control of companies focused on such activities is also expressly prohibited. The practice of the legal profession is also restricted. It is expressly forbidden to mention any promotion of a financial, industrial or commercial enterprise in connection with the office.

Public officials are prohibited from **entering into contracts** with state entities, either directly or through shares in controlled companies. Violation of this prohibition constitutes enrichment from a conflict of interest, which may also be considered the criminal offence of providing an unlawful advantage (*prise illégale d'intérêt*). The Authority decides whether certain positions or professions in the private sector are compatible with the exercise of the office, based on Article 23 of the Transparency Act. The offence of providing an unlawful advantage also addresses situations at the local level by explicitly allowing certain acts up to a certain size of municipality and a certain value of the property in question. These include, for example, transfers of movable or immovable property to the mayor or deputy mayor, the acquisition of property for the exercise of their professional activities, etc.

Media ownership is in no way restricted for public officials.

92 *Availablehere:https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070239/LEGISCTA000006148466/#LEGISCTA000006148466*

93 *If elected as a member of parliament, the office of senator shall cease under Article 138 of the Electoral Code.*

94 *Article L2122-4 of the General Code of Local and Regional Authorities. Available here: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000021479406*

95 *Some of the rules go so far as to make it incompatible, for example, for a mayor or deputy mayor in a municipality with a population of over 5,000 to act as a volunteer firefighter in the same municipality. Article 2122-5-1 of the General Code of Local and Regional Authorities, as amended until 27 November 2021, available here: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000021479279*

Protection period

A public official may not, for a period of three years after leaving office, engage in any activity relating to companies with which they have dealt in a position of public authority or over which they have exercised supervision or control. This restriction applies to situations where the official would enter into employment or similar relationships[96], have an ownership interest in the companies concerned or provide consultancy for such companies.[97] If in doubt, the official may seek advice from the Authority. The latter is charged with controlling these situations, also assessing whether the planned employment may constitute personal enrichment for the officials and whether it may harm the interest in the reputation of the public administration and in increasing the level of public confidence in the public administration.[98]

The degree of control over public officials with regard to the professions they later perform varies according to their level of classification. It is most consistent, of course, with ministers and elected officials. The review process is that an official who plans to engage in a particular private activity is required to report that intention to the Authority, which will review whether the planned activity may involve criminal or ethical risks.[99] On the basis of its investigation, it may then prohibit, authorise or authorise with reservations the activity in question, setting specific conditions under which the activity may be carried out.[100] In checking the ethical dimension of incompatibility, the Authority shall monitor whether the planned activity will undermine the dignity and integrity of the official's previous office. Furthermore, the Authority examines whether the performance of that activity would create or reveal a possible conflict of interest at the time the official held the office. The consequence of this measure is that an official may not use their office as preparation for personal retraining or qualification in a particular field. The control of the criminal dimension of a possible conflict of interest in a planned activity is interesting in that it involves the interpretation of the provisions of the Criminal Code by the Authority, and when the Authority concludes that the planned activity must constitute a criminal offence, it prohibits the activity.[101]

Declaration of personal interest

Neither ministers nor ministers in charge can take part in the deliberations of the government because of a conflict of interest. In such cases, the person concerned shall be excluded from the deliberations and the power shall be transferred by decree to another member of the government. All such decrees must be published on the government's website.[102]

Declaration of activities and assets

In particular, elected and appointed officials are subject to regulations on the disclosure of their affairs. According to the law, they are obliged to list the assets they own, including co-ownership shares. If an asset is part of community property held by spouses or registered partners, the reporting obligations also apply to that asset. In addition, officials are required to declare their interests. In France, there are therefore **two types of declarations** required for public officials, namely declarations of assets and declarations of interests.

96 *These situations may include, for example, employment, freelancing or setting up a company.*

97 *Article 23(II) of the Transparency Act*

98 *GRECO. Evaluation Report France, Fifth Round, paragraph 105.*
All GRECO reports on France are available here: https://www.coe.int/en/web/greco/evaluations/france

99 *More information on the HATVP website here https://www.hatvp.fr/en/high-authority/ethics-of-publics-officials/list/#monitoring-revolving-doors-between-the-public-and-private-sectors*

100 *For example, it specifies that a planned consulting firm may not accept as clients persons with whom the official had contact while in office.*

101 *However, these decisions of the Authority can be reviewed by the courts, so the official has the possibility to defend themself against them. However, if they fail to do so, the decisions will become final.*
For more information, see p. 49 et seq. of the Authority's 2020 Annual Report, available here: https://www.hatvp.fr/wordpress/wp-content/uploads/2021/07/HATVP_RA20_EN.pdf

102 *Available here: https://www.gouvernement.fr/registre-de-prevention-des-conflits-d-interets*
The information contained in the register tends to be complete, but in some cases declarations appear with a delay, after the issue has been opened publicly.

Due to the territorial structure of France, this obligation applies to a wide range of **officials**, such as MPs, senators, members of the government, members of the European Parliament, the presidents of regional or departmental councils, the mayors of cities with more than 20,000 inhabitants, high-ranking members of the civil service, advisors to the President, ministers, members of the government, presidents of the Senate and the National Assembly, the directors of various offices (departmental offices, municipal offices, etc.), leaders of state-owned entities and presidents of sports associations.[103] Presidential candidates must also file a declaration. However, the Authority merely publishes them without any substantive review.[104]

The **declaration of interests** shall include the person's identification data, their current professional interests, their professional interests and activities in the last five years, consulting activities in the last five years, information on positions in the management bodies of companies in the last five years, direct ownership interests in companies, the scope of the work activities performed by the partner of the person filing the declaration, volunteer positions potentially generating a conflict of interest, and other positions in public administration held as of the date the person took office, as stipulated in Article 11 of the Transparency Act. The declaration must be filed within two months of taking office or being nominated for office. In the event of significant changes (e.g. new professional activities or the hiring of a new legislative assistant), the declaration must be updated.

The **declaration of assets** includes the personal data of the person filing the declaration, their marital status, a list of the real estate and shares in companies they own, life insurance policies, a list of the bank accounts they hold, movable property with a value exceeding EUR 10,000, motor vehicles, intangible company assets (*goodwill*), other property exceeding EUR 10,000, foreign movable and immovable property, a list of liabilities and other assets listed in Article 4 of the Transparency Act. Generally speaking, a declaration of assets should be exhaustive and is viewed as fully disclosing the assets of a public official. The detailed disclosure of assets is offset by the fact that detailed rules are set for which declarations are published and which are not, or how.

The declaration of assets is **filed** together with the declaration of interests within the same time limit. The declaration of assets itself is also filed upon leaving office, and includes a summary of income while in office. In the event of substantial changes, the declaration of assets must be updated during the term of office.

The Authority is responsible for the **supervision and administration** of the declarations. Both declarations can be completed via a web application after prior registration. The Authority is also responsible for supervising the fulfilment of the above obligations. The Authority checks the factual accuracy of completed declarations, the main criteria being consistency and internal coherence. Cases of suspected incomplete or defective declarations lead to a detailed review. In the case of detailed checks, the Authority receives assistance from the tax administration and other authorities, such as the Anti-Money Laundering Service or the French Anti-Corruption Agency. The level of scrutiny of declarations varies from one public official to another, and is proportional to the position of the individual official.[105]

The **process of checking** a declaration consists of a preliminary check that the information provided is complete and a comparison with the public lists and registers. This check is carried out by the Authority itself, supplemented by an independent external auditor in the case of members of the government.[106] If no defects are found, the check is terminated without a formal output. If irregularities are found, a more in-depth investigation will be carried out

103 *The French Athletics Federation, for example, is established by a law of 1901 and the relevant ministries delegate some of their powers to it under other laws.*

104 *GRECO. Evaluation Report France, Fifth Round, paragraph 115.*

105 *In addition, after the affair involving minister Thomas Thevénoud, the power of the President of the Republic to request that the Authority examine the financial situation of a candidate for a position as member of the government, fast-tracked within twenty-four hours, was introduced in 2017. Trade Minister Thévenoud had to resign shortly after his appointment due to tax irregularities: https://www.france24.com/en/20140904-thevenoud-trade-junior-minister-resignation-tax-cahuzac*

106 *GRECO. Evaluation Report France, Fifth Round, paragraph 120.*

in cooperation with other relevant authorities. In such cases, the person whose declaration is being investigated has the right to comment on the matter and set the record straight. Upon completion of this investigation, the Authority will publish a report on the outcome of the inspection. In the case of the most serious violations, the Authority will then refer the matter to the prosecutor's office, which will decide on possible prosecution for the aforementioned offence.[107]

There are fairly structured rules on which declarations are **published** and which are not. The declarations of interests of members of the government, French members of the European Parliament and local officials, members of the National Assembly and senior representatives of the Authority are available online.[108] The declarations of assets of members of the government are also available online, while the declarations of assets of members of the National Assembly, members of the European Parliament and senior representatives of the Authority are only available at the offices of the prefectures (i.e. the seats of local government authorities). The declarations of other officials are not publicly accessible. This principle is based on the requirements for the content of the declaration in relation to the Authority's position as an independent institution. For most officials, therefore, it is the role of the Authority, not the public, to investigate whether the information contained therein is true and, where appropriate, to seek redress. The principle is based on a decision of the Constitutional Council of France, which, when reviewing the constitutionality of the Transparency Act, concluded the above as the optimal situation where, provided that trust in the Authority is maintained, a balance is struck between the right to privacy and the public interest in knowing the assets and interests of public officials.[109]

Acceptance of gifts

Article 18-5 of the Transparency Act states that public officials have a duty to avoid accepting gifts or other benefits that are of more than negligible value to them. There is no clear prohibition on the acceptance of gifts, for example above a certain amount. Individual public institutions regulate this issue in their codes of ethics.

Some ministries have adopted internal regulations that set a threshold of EUR 150 for the acceptance of a gift. If it is necessary to refuse a gift for diplomatic reasons, it should be made clear that it will be given to the state or a charitable organisation.[110] On the other hand, members of the National Assembly may accept gifts, but must declare them in the public register if their value exceeds EUR 150.[111]

Regulation of lobbying

In addition to conflict of interest issues, the Authority is also responsible for overseeing the regulation of lobbying. In France, this applies to lobbyists themselves, who are required to register in a special register[112]. Their main duties include declaring for which organisation and in which area they lobby and submitting annual reports on their lobbying activities. The Authority has the power to investigate lobbying activities and to check the completeness and truthfulness of the information declared by the lobbyist. A detected violation can result in a warning, the chance that the case will be made public, or a financial penalty or imprisonment.

107 *More information on the Authority's website here https://www.hatvp.fr/en/high-authority/ethics-of-publics-officials/list/#what-are-the-results-rp*

108 *Available here: https://www.hatvp.fr/consulter-les-declarations/*

109 *Decision of the Constitutional Council of 9 October 2013, No. 2013-676 DC. Available here: https://www.conseil-constitutionnel.fr/decision/2013/2013676DC.htm*

110 *For more information see GRECO. Evaluation Report France, Fifth Round, paragraphs 99–101.*

111 *Rule 80-1-2 of the Rules of Procedure of the National Assembly.*
The index is available here: https://www.assemblee-nationale.fr/dyn/donsetvoyages/dons

112 *Available here: https://www.hatvp.fr/le-repertoire/*

Enforceability of legislation

Although the Authority itself does not possess sanctioning mechanisms, conflicts of interest are a risky situation for public officials, as they are at risk of **criminal prosecution** for committing the offence of providing an unlawful advantage (*prise illégale d'intérêt*) under Article 432-12 of the Criminal Code, which carries a penalty of up to five years' imprisonment and a fine of up to EUR 500 000, or twice the proceeds of the crime. A person exercising public authority may (in simplistic terms) commit a criminal offence if they accept or procure an advantage which may compromise their impartiality or independence in connection with their duty to supervise, administer or dispose of property within the framework of their public office. Thus, criminal sanctions could be imposed in the event of failure to comply with a decision or recommendation issued by the Authority. If a public official fails to comply with the obligation to file a declaration and does not heed the Authority's requests in this respect, that failure constitutes a criminal offence punishable by up to three years' imprisonment and a fine of up to EUR 45 000, after less severe remedies.

In addition, Article 432-13 of the Criminal Code provides for a sanction for failure to comply with the Authority's recommendations regarding the **protection period**, which may give rise to the criminal offence of *enrichment from a conflict of interest by failing to comply with the protection period*, punishable by up to three years' imprisonment and a fine of up to EUR 200 000.

In a situation where a conflict of interest is found, the Authority has the **power to propose a solution** to the official concerned to avoid that conflict of interest. This can be ensured on both sides, i.e. both by removing a particular agenda or case and by avoiding private interest. If the official does not comply with the proposed solution and the conflict of interest is not prevented, the Authority may order that the conflict of interest be prevented (with the exception of members of parliament). Failure to obey this order may then lead to the situation being reported to a superior public official (e.g. the chair of an elected body)[113] or, in the case of a member of parliament, to the speaker of the relevant chamber, depending on the rank of the public official.[114] The situation may be made public or the case may be referred to the prosecutor's office, which may prosecute the official for a criminal offence with a penalty of one year's imprisonment and a fine of up to EUR 15 000.[115]

Breaches of the rules on **incompatibilities** can lead to the loss of a Member of Parliament's mandate in serious cases.[116]

Enforceability may be affected by the **system of immunities** for elected public officials, which is not so different from the Czech model.[117] However, the French President has broader immunity, even after leaving office.

In 2021, the Authority received over 15,000 declarations of assets and interests, and after repeated requests for the delivery of the relevant declaration, it eventually referred 55 cases to the prosecutor's office in which the declaration was not delivered. Substantive checks were carried out on approximately 3 000 declarations delivered, with 32 % of declarations being fully in order, 56 % requiring minor additions and 11 % requiring additions or amendments. Eventually, 0.2% of reports were forwarded to the prosecutor's office.[118] During the course of 2021, the Authority issued an opinion on a situation constituting a potential conflict of interest in 307 cases,

113 *Article 22 of the Transparency Act*

114 *Article 135-5 of the Electoral Code*

115 *It is interesting to note in this context that one common conflict of interest is, for example, the professional activity of the official's partner, i.e. a matter independent of the official's will, but which may ultimately lead to some form of sanction. On the nature of the offence and the sanctions, see: https://www.hatvp.fr/en/high-authority/ethics-of-publics-officials/list/#what-are-the-results-rp*

116 *Articles LO151-3 and LO151-4 of the Electoral Code*

117 *GRECO. Evaluation Report France, Fifth Round, para 131; and GRECO. Report on the Implementation of Recommendations for France, Fifth Round, paragraphs 65–70.*

118 *Here it should be borne in mind that these also include misdemeanours, not just criminal offences.*

and in 94% of cases where a public official had requested an opinion on a transfer to the private sphere, the opinion was satisfactory, but in 64% of cases reservations were attached to that opinion. The Authority denied the transfer request in just 6 % of cases.[119]

The way in which the Authority **enforces compliance with the obligations** under its jurisdiction is set up with the aim of ensuring that the obligations are fulfilled, and only if no remedy is possible does a sanction come into play. For example, in the event of failure to file a property declaration, the public official is reminded of their obligation not only through an official notice, but also through emails and phone calls. If the Authority finds that it is appropriate to activate the sanction mechanism, it must then refer the case to the prosecutor's office. The Authority distinguishes between a course of action that is likely to lead to prosecution and one that is unlikely to lead to prosecution.[120] The Authority is considered an open institution. This means that it works closely with some NGOs, from which it receives so-called "qualified submissions".[121]

The Authority itself proposes a number of **improvements to legislation** within its remit. Of particular note is the effort to expand the Authority's investigative powers. At present, the Authority is dependent on the cooperation of state authorities, in particular the Financial Prosecutor's Office, which has the power to request the cooperation of other persons and authorities. This leads to administrative difficulties and, in particular, increases the time needed to examine declarations, which ultimately leads to fewer declarations being examined.[122]

Summary and identification of good practice

France has robust legislation on conflicts of interest, the core of which comprises requirements for transparent information on public officials and the scrutiny of their affairs. To this end, the Authority is established as an independent administrative body in charge of the lobbying and conflict of interest agenda. The Authority has strong powers and is active in the matter, acting independently and cooperating with anti-corruption organisations. The Authority is perceived as an institution in its place, which fulfils its purpose and has not given rise to distrust among citizens or the professional community.[123]

Key elements of transparency and the prevention of conflicts of interest are the declarations of interests and assets that a large number of public officials are required to file. They must provide very detailed information about their circumstances. The declarations are subsequently examined by the Authority, which is also entitled to examine them on their merits. However, not all declarations are publicly available. The disclosure rules are detailed and distinguish between different types of public officials.

The general definition of a conflict of interest is also quite broad and explicitly covers conflicts between two public interests, which is not common in the other countries compared, although the chosen rules for incompatibilities often exclude two public offices being held concurrently. Moreover, France has a very strict system of incompatibilities between offices and secondary activities. The combination of membership of parliament and government usual in other countries is also not possible. The rules are again very detailed and cover a large number of situations. Itis also important to cover transitions between the state and the public sector, where the Authority provides opinions on whether a particular profession or employment can be pursued in such cases. The regulation of lobbying and the related registration obligation can also be assessed as robust and apparently effective.

119 *The Authority publishes a detailed annual report on its activities and issues beyond conflicts of interest, including in English. Available at: https://www.hatvp.fr/wordpress/wp-content/uploads/2022/07/web_HATVP_RA2021_210722_EN.pdf.*

120 *To do this, it provides a clear diagram of how it proceeds in different cases, on p. 41 of the annual report for 2021.*

121 *These are submissions to which it attaches a higher degree of relevance. Such organisations include Transparency International France and Anticor. For more on the concept of open institutions, see: https://www.hatvp.fr/en/high-authority/institution/list/#an-open-institution.*

122 *HATVP Annual Report 2021, p. 149 ff.*

123 *Interview with Patrick Lefas, Director of Transparency International France, available here: https://www.lemonde.fr/idees/article/2022/05/17/patrick-lefas-madame-la-premiere-ministre-osez-etre-la-garante-de-l-ethique-du-gouvernement_6126410_3232.html*

It is also certainly worth mentioning the detail and clarity of the large number of registers, which also help to increase transparency, for example by generating statistics. The Authority itself is open and provides detailed information about its activities on its own website or in accompanying documents not only in French but also in four other world languages.[124]

The rules introduced in the last ten years have significantly advanced the field as a whole. The former system, based primarily on the threat of prosecution, has been supplemented so as to strength prevention. The newly chosen procedures seem to have been set up in such a way that the persistent criminal repression has been linked to compliance with rules increasing the transparency and accountability of public officials. In many jurisdictions, there are often gaps between criminal repression, for which high standards are rightly set for its use, and proper administrative or ethical rules. There is also an extraordinary emphasis on the existence of ethical rules and the persons or departments responsible for ensuring compliance with them.

Although in practice France has not avoided high-profile cases of conflicts of interest in politics, French regulation appears to be very good, not only on paper but also in practice.

124 Available here: https://www.hatvp.fr/en/official-texts/

Croatia

Croatia is a unitary state with a parliamentary system of government. **Legislative power** is exercised by the unicameral parliament (*Sabor*), while **executive power** is largely in the hands of the prime minister and ministers (*Vlada*). The role of the directly elected president is somewhat weaker, focusing on defence and foreign policy. State administration is carried out by 16 ministries, their subordinate offices and other central administrative authorities operating nationwide.

Croatia is divided into 20 **counties** and a separate administrative unit, the City of Zagreb, which is governed by a separate law. Counties are self-governing units at the regional level. Each county has an elected council (*županijska skupština*), which has between 27 and 47 members, depending on the size of the county. The county is headed by a county prefect who, together with his deputy, is directly elected by the citizens and can be dismissed by a referendum.

At the local level, local governments are established in the form of municipalities (*općina*) and towns (*grad*)[125]. **Municipalities and towns** have councils (*obćinsko vijeće*), with between 7 and 47 members, depending on the size of the municipality. Towns are headed by mayors, municipalities by municipal chiefs (*općinski načelnik*). They are directly elected and can be dismissed by a referendum.[126]

Basic legal framework

At the level of the constitutional order, only Article 109(2) of the Croatian **Constitution**[127], which defines the strict incompatibility of offices for members of the government, is relevant to the issue of conflict of interest.

The main Croatian law on conflict of interest is the **Law on the Prevention of Conflicts of Interest** (*zakon o sprječavanju sukoba interesa*).[128] This law applies to the President, members of the government, members of parliament, deputy ministers, county prefects and their deputies, secretaries to ministers, the heads of central administrative offices[129] and a range of other officials at lower hierarchical levels of the state administration, including some local government officials and heads of state-owned enterprises. Currently, 65 categories of public officials are explicitly defined (some with just one member) and the law also applies to other officials appointed by the Croatian Parliament, government or President, except for officials of the armed forces.[130] The Act is coordinated by the Ministry of Justice and Public Administration.

125 *A town is basically the municipality in which the county seat is located, and any settlement with over 10,000 inhabitants if it constitutes a single unit. There are approximately 130 towns and approximately 430 other municipalities.*

126 *Articles 1–6, 18–23, 27–31, 39–44 of the Local and Regional Government Act.*

127 *Available in English here https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text*

128 *Available here: https://narodne-novine.nn.hr/clanci/sluzbeni/2021_12_143_2435.html*
The law has been effective since 25 December 2021, but in fact it is more of an amendment to the earlier law from 2011. The 2011 Act has been amended five times during its lifetime, and a new Act has subsequently been enacted under a legislative technical rule requiring a new Act if more than 50% of the provisions of a regulation are affected by amendments (albeit minor). The law was adopted in a state of legislative emergency, which is a common procedure in the Balkan countries – with reference to the need to implement European legislation – although in some cases compliance with European legislation is not the real reason for amending the law.

129 *Including the State Commission for Public Procurement Control, the Croatian Telecommunications Regulatory Authority, the Croatian Energy Regulatory Agency, the Croatian Agency for Personal Data Protection, the State Election Commission and the public Croatian Radiotelevision.*

130 *Article 3 of the Law on the Prevention of Conflicts of Interest*

The local government system is based on the **Act on Local and Regional Self-Government** (*Zakon o lokalnoj i područnoj (regionalnoj) samoupravi*),[131] which regulates, inter alia, the rolling mandate of members of elected councils. Article 4 of the Law on the Prevention of Conflicts of Interest requires local government councils to adopt codes of ethics containing rules to prevent conflicts of interest and a method for monitoring the application of the code.

General definition of conflict of interest

The law stipulates that when holding a public office, an official has a duty to put the public interest above the private interest. Obliged persons may not use their public duty for their own or a relative's personal benefit. The general clause explicitly distinguishes between potential and actual conflicts of interest. Potential conflicts of interest may affect the impartiality of an official in the performance of their public duties. The actual conflict of interest has affected, or at least may reasonably be considered to have affected, the official's impartiality in the performance of their public duties. The distinction between potential and actual conflicts of interest was only made with the new law of 2021, and this distinction is not very evident in the other provisions, except for the obligation to declare personal interests under Article 9 of the law.

In addition to this general clause, the law expressly provides that citizens have the right to **be informed** of the conduct of public officials in the performance of their duties. In addition, the law contains specific restrictions, such as the prohibition on accepting benefits in connection with the performance of public office, the prohibition on using information obtained in the performance of public office for personal gain, the prohibition on influencing the acquisition of employment, and the prohibition on influencing votes or decisions in one's personal capacity.[132]

Institutional provision of conflict of interest issues

In Croatia, the institution in charge of overseeing conflicts of interest and the related operational agenda is called the Conflict of Interest Commission (*Povjerenstvo za odlučivanje o sukobu interesa*).[133] This is a permanent, independent and autonomous state administrative body with nationwide powers, including over local authorities. The Commission is financed directly from the state budget, which strengthens its independence. The annual budget has been approximately EUR 1 million in recent years.[134]

The four members of the Commission and its chairperson are elected by parliament in a secret ballot for five-year terms, renewable once.[135] Members of the Croatian Parliament vote to elect the chairperson and the individual members from a list submitted to them by the Parliamentary Committee on Elections, Appointments and Administrative Affairs. There are two lists of candidates – for the chairperson and for members –, which must always contain three times the number of candidates.[136] The lists are approved by the Committee on the basis of the applications received, following an assessment of the eligibility criteria for membership of the Commission and subsequent interviews, in which the public may also participate. In addition to the normal conditions for holding office (citizenship, education, integrity), a member of the Commission must have at least eight years of professional

131 *Available here: https://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_19_323.html*

132 *Articles 2 and 6 and 7 of the Law on the Prevention of Conflicts of Interest*

133 *Commission website https://www.sukobinteresa.hr/hr*

134 *This amounts to approximately 7.5 million. HRK (997,000 EUR). GRECO ER 84 and the Commission's Financial Plan for 2022 https://www.sukobinteresa.hr/hr/proracun-povjerenstva/financijski-plan-povjerenstva-za-odlucivanje-o-sukobu-interesa-za-2022g*

135 *Currently, four lawyers, formerly active in public administration, as judges or in the NGO sector, and one psychologist are represented on the Commission's board.*

136 *The method used to elect members of the Commission was changed by an amendment to the Act in 2021. According to the Centre for Democracy and Law Miko Tripalo, the independence of the Commission has been reduced because under the new rules the ruling majority has full control over how these positions are filled, whereas previously it was possible for an opposition candidate to succeed. More on p. 1 of the commentary to the new draft law on the prevention of conflicts of interest, available here: https://tripalo.hr/en/comments-on-the-proposed-new-law-on-the-prevention-of-conflicts-of-interest/*

experience and an excellent work record, and must not have been a member of a political party or held executive office at the state, regional or local level in the last five years. The chairperson and the members of the Commission are considered officials. The Commission's is provided with administrative support by the Commission Office, which is composed of approximately 20 civil servants.[137] Their work is managed by the head of the Office.[138]

Incompatibility of offices – true incompatibility

Article 109(2) of the Croatian Constitution defines the **basic incompatibility of the offices of members of the government**, who may not hold any other office in the private or public sector without the government's permission. This prohibition is further strengthened by the law on the prevention of conflicts of interest, so that members of the government cannot authorise themselves to hold other offices. In Croatia, it is therefore not even possible to hold the office of minister and MP at the same time. If a member of parliament is selected for a ministerial post, they must resign.

The Law on the Prevention of Conflicts of Interest allows public officials to **hold other public offices** only if the exercise of one office automatically follows from the other or if a special law so provides. Similarly, permanent employment is prohibited, unless the Commission grants prior approval on request, if the employment in question does not affect the proper performance of the public office. The Commission's consent is not required for scientific, research, educational, sporting, cultural, artistic and independent agricultural activities, nor for income derived from intellectual property rights or from participation in projects funded by international organisations. However, in these cases, any profit must be reported to the Commission. In the event of a breach of these rules, the Commission may initiate proceedings and may also order the obliged person to cease the activity within a specified period of time.

At the **local government** level, Article 30(3) of the Local and Regional Government Act establishes a rule for members of county, city and municipal councils, according to which the office of a representative is suspended during the performance of another incompatible office and a substitute takes their place (so-called sliding mandate).

Incompatibility of offices – false incompatibility

Public officials may not hold **offices in the management and control bodies of legal entities**, except for offices in the bodies of legal entities in which (in simplified terms) the state or a self-governing unit has interests. No more than two such offices may be held. This exemption cannot be used by the executive officers of local governments (the county prefect, mayor, or chief executive and their deputies). No remuneration shall be paid for the performance of these functions.[139]

A public official **holding more than 5% of the shares** in a commercial company must transfer their rights to issue instructions or orders regarding the business management of the company to another person or a special body (e.g. a trustee) and must not be associated with that person in the exercise of those rights. If such a commercial company enters into a contract with the state, a local government, or corporations established by them, the public official must notify the Commission.

Companies in which the ownership interest of a public official or a person close to that official exceeds 5% may not **conclude contracts with the public authority** in which the public official serves, otherwise such legal acts are considered invalid. This restriction applies for a period of two years after the termination of the public official's office.

137 *The list of staff is contained in the January 2020 Commission Office Organisational Ruleshttps://www.sukobinteresa.hr/sites/default/files/doc/pravilnik_o_unutarnjem_ustrojstvu_ureda_povjerenstva_za_odlucivanje_o_sukobu_interesa.pdf*

138 *Articles 30–47 of the Law on the Prevention of Conflicts of Interest*

139 *Articles 17–18 of the Law on the Prevention of Conflicts of Interest*

The Commission shall publish a list of the business entities to which these restrictions apply on its website. Public authorities must also publish on their websites details of entities with which they are not allowed to enter into contracts. The Commission refers detected violations to the public prosecutor, who is entitled to file a private lawsuit to declare the contract null and void.[140]

Members of **local government** councils must notify the chairman of the council within 15 days of taking office or acquiring a stake exceeding 5% in a business entity. The information is published on the website of the local government authority.

In Croatia, links between public officials and **media companies** are not regulated beyond these limitations.

Protection period

All obligations of public officials under the Law on the Prevention of Conflicts of Interest, in particular the prohibitions on membership in the bodies of commercial companies, direct management of owned companies, entering into contracts with the organisation in which the public official served, and the obligation to file declarations of assets, apply in Croatia for one year after the end of the mandate. In addition, for 18 months it is prohibited to take up a position on the governing bodies of companies with which the institution in which the public official served had business relations. This prohibition does not apply to state or local government-controlled companies, but only in the case of no more than one company.[141]

Declaration of personal interest

Public officials have a duty to declare circumstances that may be considered a potential conflict of interest. Under the law, the declaration must be made in an appropriate manner and at the same time the conflict of interest must be resolved in such a way as to protect the public interest. A public official may not decide on the conclusion of contracts that affect their business interest or the business interest of a person acting in concert with them (e.g. by virtue of control) or that of employers with whom they were employed in the two years prior to taking office.[142]

Declaration of activities and assets

Obliged persons shall file a **declaration of assets** on the prescribed form[143] within 30 days of taking office, within 30 days of leaving office and periodically during their term of office by 31 January each year for the preceding year.[144] The content of the declarations of assets is quite broad. They concern immovable property, movable property of a higher value (over HRK 30,000 [EUR 4,000]) or registered in the public register, business shares, significant cash savings (including cryptocurrencies), debts and income from gainful activities. The manner in which the assets were acquired and the sources of the funds used to acquire them are also disclosed.[145] This information is also provided

140 *Articles 19–20 of the Law on the Prevention of Conflicts of Interest*

141 *Articles 22–23 of the Law on the Prevention of Conflicts of Interest*

142 *The obligation to file a declaration of personal interest has been added under the new 2021 law as Article 9, based on GRECO recommendations. Cf. GRECO. Evaluation Report Croatia, Fifth Round, paragraph 65. GRECO. Report on the Implementation of Recommendations for Croatia, Fifth Round, paragraphs 25 and 30–34.*

143 *The Commission has issued rules setting out the form and content of the form, and the method used to complete it, available here: https://narodne-novine.nn.hr/clanci/sluzbeni/2022_01_8_81.html*

144 *The annual reporting obligation was only introduced by an amendment in 2021. Until then, interim declarations were only made in the event of a significant change in the information provided, which was rare. Cf. GRECO. Evaluation Report Croatia, Fifth Round, paragraph 82.*

145 *Interestingly, during the drafting of the new law in 2021, it was also proposed that transfers of agricultural land acquired through privatisation to building land should be disclosed. Although this case study proposal was not passed, it clearly shows the acute problems Croatians are facing.*

regarding the partner and minor children of the public official.[146] The Commission publishes declarations of assets on its website[147]. The only data not disclosed are wage data, if they are classed as the employer's trade secrets, and the personal data of minors and third parties where there is no public interest in their disclosure. The declarations shall be accessible for 12 months after the end of the term of office.

One of the Commission's main tasks is to **examine** the declarations of assets it receives. This check is carried out in two phases. First, after receiving the return, a prior administrative check is made to ensure that it has been completed in full, and the Commission may then carry out a 'regular check', in which it cross-checks with the competent authorities to ensure that the information provided is true and complete. If the Commission finds an irregularity, it may ask the official filing the declaration to explain or correct it. Suspected cases of corruption are referred to the Office (State Attorney Office) for the Suppression of Corruption and Organised Crime (USKOK). The Commission has IT tools and access to national databases. However, this regular check only applies to a small fraction of officials. According to the 2019 GRECO evaluation report, regular checks were carried out on approximately 50 officials out of 3,500. GRECO also called for the development of a methodology for the selection of audited officials.[148] The absence of rules for the selection of audited declarations of assets may pose a significant risk of abuse of the law.

Acceptance of gifts

As a matter of principle, public officials are prohibited from accepting any **gifts**, whether in the form of money, goods, rights or services, as they may bring the recipient into a relationship of dependence or create an obligation towards the donor. Usual gifts between relatives and friends, as well as state and international awards, are not considered gifts. It is also acceptable to accept a token gift of up to HRK 500 (EUR 66) from the same donor, but such a gift can never be money, securities or precious metals. Any donations in excess of this amount are to be reported to the Commission and become the property of the state.[149]

Regulation of lobbying

Croatia has not yet adopted a law to regulate **lobbying**. Work on the draft law is expected to progress by the end of 2022, following an analysis and public debate. To this end, a working group has been formed consisting of representatives of the state, interest chambers, the non-profit sector and universities.[150] There is now only a voluntary lobby register maintained by the Croatian Lobbying Society, where its members can register.[151]

Enforceability of legislation

If a public official engages in activities incompatible with the Law on the Prevention of Conflicts of Interest, the Commission shall order them to cease such activities within a period of more than 15 and less than 90 days. In the event of a breach of the Law on the Prevention of Conflicts of Interest, the Commission is authorised to impose administrative **fines** ranging from HRK 4,000 to HRK 40,000 (EUR 530 to EUR 5,300). If a public official fails to pay such a fine within the 15-day period, it may be recovered by means of a temporary reduction in the public official's salary, by a maximum of half and for a maximum period of 12 months. The amount of the fine is at the Commission's administrative discretion. Tying sanctions to a public official's salary makes them unenforceable when the individual ceases to be a public official.

146 *Articles 10–13 of the Law on the Prevention of Conflicts of Interest*

147 *https://www.sukobinteresa.hr/hr/izvjesca-o-imovinskom-stanju*
You can also search directly using the "Pretraga imovinskih kartica" field on the right-hand side of the Commission's website.

148 *According to data provided by GRECO from USKOK, criminal proceedings were initiated, indictments filed and judgements handed down against public officials in several cases per year between 2014 and 2018. GRECO. Evaluation Report Croatia, Fifth Round, paragraphs 86, 91 and 100. All GRECO reports on Croatia are available here: https://www.coe.int/en/web/greco/evaluations/croatia*

149 *Article 15 of the Law on the Prevention of Conflicts of Interest*

150 *GRECO. Report on the Implementation of Recommendations for Croatia, Fifth Round, paragraph 22.*

151 *More here https://hdl.hr/en/membership/register-of-cla-members/*

Violations of the ban on entering into contractual relations with public authorities are enforced through misdemeanour liability. An official can be fined up to HRK 50,000 (EUR 6,600) and a legal entity up to HRK 1,000,000 (EUR 133,000).[152]

The Commission may initiate **proceedings** ex officio on the basis of its own findings or a complaint. The complaint[153] must be well-founded and must not be anonymous, but the protection of the identity of the person filing the complaint is guaranteed. The Commission must initiate proceedings on the basis of a proposal by a public official, although no later than 18 months after the termination of the public office, unless the official against whom the complaint is directed has taken up another public office. All proceedings are subject to a limitation period of 24 months from the end of the term of office.[154]

The Commission **decides** at a single instance and its decisions cannot be appealed. However, an administrative dispute can be brought before the Supreme Administrative Court of the Republic of Croatia.[155] The Commission's meetings are open to the public and tend to be well attended by the media. All decisions and opinions are published on the website.[156]

According to the Commission's latest available **annual report**, 36 public Commission meetings were held in 2020, during which 103 decisions not to initiate proceedings, 76 decisions to initiate proceedings and 79 final decisions were issued. Of these 79 final decisions, 72 were convictions; in 4 cases the law was found not to have been violated, and in 3 cases the proceedings were suspended. The Commission dealt with 123 requests for consultation and issued 15 opinions.[157]

If there is any ambiguity about a possible breach of the rules on the prevention of conflicts of interest, the official must seek the Commission's **opinion** on the matter. This must be provided to the official within 15 days.[158]

While the **general statutory definition** of conflict of interest implies a general obligation to avoid conflicts of interest, it is not entirely clear how this is to be done unless it is one of the cases explicitly regulated by law, such as incompatibility of offices. This was criticised by GRECO, which recommended that Croatia issue clear methodological recommendations on how to proceed in specific cases. The enforceability of the general provisions of the Act, i.e. its current Articles 2, 6 and 7, is rendered impossible by the Constitutional Court's decision, which precludes administrative punishment for violations of the general provisions of the Law on the Prevention of Conflicts of Interest that do not meet the criteria of an offence.[159] In the event of a breach of the general rules on the prevention of conflicts of interest, the Commission may only make a finding, but may not impose a penalty. At the same time, it is not possible to overturn a decision of a public official made in a conflict of interest, unless such conduct constitutes a criminal offence. According to GRECO's findings, there are no consequences if a public official fails to provide the Commission with the necessary cooperation.[160]

152 *Articles 53 and 54 of the Law on the Prevention of Conflicts of Interest*

153 *Complaints can be submitted electronically via the Commission's website https://www.sukobinteresa.hr/hr/obrazac-za-prijavu-sukoba-interesa*

154 *Article 41 of the Law on the Prevention of Conflicts of Interest. The majority of proceedings are initiated on the basis of complaints, a smaller number on an ex officio basis, based on the Commission's findings from inspections carried out or information published in the media. Commission Annual Report 2020, p. 26. Available here: https://www.sukobinteresa.hr/sites/default/files/dokumenti_clanaka/godisnje_izvjesce_povjerenstva_za_odlucivanje_o_sukobu_interesa_za_2020._g._s_prilozima.pdf*

155 *Article 45 of the Law on the Prevention of Conflicts of Interest*

156 *Here: http://pretraga.sukobinteresa.hr/public_search*

157 *Commission Annual Report 2020, pp. 23–24.*

158 *Article 8(3) and (4) of the Law on the Prevention of Conflicts of Interest*

159 *The Constitutional Court has described the general provisions of the Law on the Prevention of Conflicts of Interest as the legal and moral standard against which to judge whether a particular act or omission constitutes a violation of another provision of the Law. This has called into question the Commission's practice in several cases.*
Ruling of the Constitutional Court of the Republic of Croatia of 2 July 2019, Case No. U-III-673/2018. Available here: https://www.sukobinteresa.hr/sites/default/files/akti/2019/p-163-16-19-53_1.pdf

160 *GRECO. Evaluation Report Croatia, Fifth Round, paragraphs 65–66 and 92.*

The amendment to the Law in 2021 added Article 9, containing the obligation to declare circumstances that arise indicating the existence of a potential conflict of interest. However, the public official's ad hoc notification obligation is very vaguely worded: the declaration is to be made in an "appropriate manner" and the conflict of interest is to be resolved in a way that protects the public interest. Such general rules can be difficult to enforce and, above all, it is not clear to whom a public official should declare their conflict of interest.[161]

In its 2019 evaluation report, GRECO mentions that it has observed cases where state authorities have refused to provide the Commission with the necessary information to cross-check declarations of assets. For example, the Ministry of the Interior made reference to the rules on classified information. In this respect, GRECO states that the Commission officials have no authority to enter the office in question to verify the information on the spot. GRECO also found that the Commission does not have sufficient staff and technical capacity to carry out its tasks, so it is not in a position to initiate proceedings ex officio.[162]

Croatia has extensive criminal **immunity** for public officials, for which it has long been criticised by GRECO. This has implications for the success of the enforcement of legal obligations, particularly for members of the government whose prosecution must be authorised by the government during their term of office.[163] Members of local government councils are immune as regards voting or expressing an opinion at meetings of those bodies.[164]

Summary and identification of good practice

Croatian conflict of interest legislation seems to be a good starting point for the prevention of conflicts of interest. Compared to many of the other countries under consideration, the legislation is simple and clear, yet does not contain major loopholes that make it unenforceable. The adoption of the new law in 2021 brought some improvements (the addition of the obligation to file a declaration of personal interest under Article 9), but it was also criticized by NGOs.[165]

For the Czech Republic, the Croatian legislation is inspiring not only because of the scope of the situations covered where there is a real risk of abuse of conflict of interest, but also because it shares the same legislative structure and the apparent similar legal mindset of the authors of the Croatian legislation. In Croatia, there is one central norm dedicated to the prevention of conflicts of interest for all public officials. While this does not reflect the common distinction made in other countries between elected and appointed officials as to the scope of their duties, this can be addressed, if necessary, by the personal scope of the various measures in place. The supervision and enforcement of the obligations imposed by law are entrusted to the administrative authority. The general definition of conflict of interest is linked to specific enforceable obligations. It may be estimated that the decision of the Croatian Constitutional Court supporting the need to sanction specifically defined harmful legal actions, rather than violating the general definition of conflict of interest, would also correspond to Czech legal practice.

The existence of an independent central administrative authority can be considered a cornerstone of the Croatian legislation. Looking at its decision-making practice and public profile, the Commission seems to be truly independent of political influences, as it scrutinises or directly punishes even the actions of the most

161 *Cf. the commentary to the new draft law on the prevention of conflicts of interest by the Centre for Democracy and Law Miko Tripalo, p.3.*

162 *GRECO. Evaluation Report Croatia, Fifth Round, paragraphs 88 and 89.*

163 *GRECO. Evaluation Report Croatia, Fifth Round, paragraphs 96 and 97.*

164 *Article 30(2) of the Local and Regional Government Act.*

165 *For more, see the NGOs' statements https://tripalo.hr/en/comments-on-the-proposed-new-law-on-the-prevention-of-conflicts-of-interest/ https://gong.hr/en/2021/12/08/government-of-officials-should-be-held-accountable-for-conflicts-of-interest/*

senior politicians.[166] However, the Commission is struggling with a lack of staff and funding, so it is gradually losing its position under political pressure and becoming less able to investigate misconduct by top public officials.[167] Its ability to enforce its codified obligations is also impaired by the courts' corrections of its decisions, particularly in cases based on violations of the general definition of conflict of interest. With the adoption of the new law in 2021, the parameters for the selection of the Commission's leadership have been partially changed in a way that limits the possible selection of a candidate who is not a favourite of the ruling parties.[168]

From the perspective of the Czech legislation, the much stronger definition of incompatibility of offices, where an elected or appointed Croatian public official is expected to devote themself to one specific office, is particularly inspiring. In this respect, it is interesting to note that at the highest levels, the incompatibility of offices is very strict – it is not even possible to be an MP and a member of the government at the same time – and at the level of local governments, a sliding mandate has been introduced. The ban on serving on corporate bodies also applies to some public officials in the Czech Republic, although the ownership of shares in companies is more strictly regulated in Croatia. The obligation to transfer decision-making rights to other persons and the ban on entering into contracts with the public authority in which the official serves can be considered as positive. It is also important to mention the disclosure of information about companies owned by an official.

The extension of most duties beyond a certain period of time after leaving office allows for oversight of the continued work of the official, which in many cases can be problematic. In addition, the rules governing gifts are quite strict.

166 *For example, in the cases of Finance Minister Zdravko Marić, who was found not guilty, see: https://www.total-croatia-news.com/politics/27832-conflict-of-interest-commission-rules-in-favour-of-finance-minister, decision here: https://www.sukobinteresa.hr/hr/odluke/zdravko-maric-p-193-21-odluka-o-nepokretanju*
or Defence Minister Mario Banožić, who was punished, see:
https://www.total-croatia-news.com/politics/62993-conflict-of-interest-commission-finds-banozic-abused-entitlements, decision here: https://www.sukobinteresa.hr/hr/odluke/mario-banozic-p-269-21-odluka-o-pokretanju
Other notable cases of conflict of interest include the cases of Davor Bernardić, former leader of the main opposition party SDP, who paid a fine for accepting a university degree, and that of Tomislav Karamarko, former deputy prime minister and chairman of the ruling HDZ party, who had to resign because of his ties to the oil company INA, which led to the fall of the government.

167 *Statement of Professor Dario Čepo, Faculty of Law, University of Zagreb, to Transparency International Czech Republic, 14 September 2022 through the Centre for Democracy and Law Miko Tripalo.*

168 *Commentary on the new draft law on the prevention of conflicts of interest by the Centre for Democracy and Law Miko Tripalo, p. 4.*

Italy

Italy is a parliamentary republic. Legislative power is vested in a bicameral **parliament**, with the lower house being the Chamber of Deputies (*Camera dei Deputati*), which is directly elected by proportional representation. The upper house is the Senate (*Senato*). Most members of the Senate are also elected proportionally directly by the citizens, although some members are chosen by the president of the republic. All presidents of the republic are also life members of the Senate after their term of office comes to an end.

In Italy, the **president of the republic** is elected indirectly for a term of seven years. The president's role is to represent the state externally and to be the representative of national unity, although they also have a number of executive powers. They have the right to issue decrees with the force of law. They have the right to dissolve parliament, even of their own volition, although not during the last six months of their term. They appoint one-third of constitutional judges and can elect up to five lifetime members of the Senate. They appoint the prime minister, who is the person most likely to win the confidence of parliament. In Italy, the **government** (*Governo*) is also called the Council of Ministers. The government is headed by its president. The government is the supreme organ of executive power.[169]

Italy has three levels of administrative division. At the highest level, there are 20 **regions** (*regions*), which are divided into normal and special regions. There are five special regions (e.g. Sicily and Valle d'Aosta), which have a higher degree of self-government, guaranteed at the constitutional level.[170] Political representation at the regional level is through the directly elected Regional Council (*Consiglio Regionale*). It elects a regional government (*Giunta Regionale*) and a president (*Presidente*) from among its members. The regions may adopt their own legislation governing the conditions of eligibility and incompatibility, but according to Article 122 of the Italian Constitution these may not conflict with national laws.

The institutional organisation of the hundred or so **provinces** (*province*) is similar to that of the regions, the scope of their jurisdiction being determined by law. They are a manifestation of the tendency of Italian public administration towards decentralisation. The last level comprises the **communes** (*comuni*), of which there are around eight thousand; these are the lowest self-governing unit, corresponding roughly to Czech municipalities with extended powers. The political representation at the commune level is through a directly elected communal council, which elects an executive communal commission headed by the mayor from amongst its members.

Basic legal framework

The sources of regulation[171] of conflict of interest issues in Italy can be divided according to the officials to whom they apply. Elected officials are mainly subject to the Italian **Constitution** (*Costituzione della Repubblica Italiana*)[172], which lays down certain rules on incompatibility of offices.

The Italian legislation is very fragmented (not only) in relation to conflicts of interest; it takes different forms[173] and the content of the individual provisions may overlap or contain gaps.

169 *The regulation of conflicts of interest also affects other senior executive positions that to some extent exercise the powers of members of the government. These are the offices of the Extraordinary Commissioner (commissario straordinario), the Under Secretary of State (sottosegretario di Stato) and Deputy Ministers (Vice Ministro). Where this text refers to the obligations of members of the government under Law No. 215/2004, the information provided also applies to these officials.*

170 *Special regions have exclusive jurisdiction over their territory in the fields of forestry, agriculture and spatial planning. Ordinary regions exercise this administration within the limits of national laws.*

171 *The official collection of laws is available at https://www.gazzettaufficiale.it/home; the laws are available in digital form, and can be searched by number at https://www.normattiva.it/*

172 *Available here: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:costituzione*
Also available in English here: https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

173 *In addition to laws, decrees may also be issued, which are regulations with the force of law issued by the government, that generally enter into force on the date they are issued. However, a decree needs to be subsequently confirmed by Parliament. More information here: https://www.informazionefiscale.it/decreto-legge-decreto-legislativo-differenza*

One of the most important regulations in this respect is **Law No. 60/1953, on Parliamentary Incompatibilities** (*Incompatibilita' parlamentari*).[174] This is complemented by the codes of ethics entitled **Code of Conduct for Deputies** (*Codice di Condotta dei Deputati*)[175] and **Code of Conduct for Senators** (*Codice di Condotta dei Senatori*)[176].

Appointed officials are primarily subject to **Law No. 215/2004, on the rules for resolving conflicts of interest** (*Norme in materia di risoluzione dei conflitti di interessi*)[177]. This legislative distinction is based on the concept of the separation of powers, whereby the Italian legislator, when drafting the relevant legislation, respected the role played by this branch of power in the State and regulated the rules on conflicts of interest for its members accordingly.

The decisive legislation regulating conflicts of interest at the local government level is **Decree No. 267/2000, Consolidated Laws on the Organisation of Local Public Administrative Authorities** (*Testo unico delle leggi sull'ordinamento degli enti locali*).[178]

Italy has the most robust and comprehensive **regulation of conflicts of interest for public employees**, although it is fragmented into a number of regulations. These are Decrees No. 39/2013, No. 62/2013, No. 165/2001, No. 50/2016 and Laws No. 241/1990 and No. 190/2012. Across these rules, there are sometimes rules that apply to high levels of executive power. The regulation concerning appointed officials is more effective and consistent than that concerning elected officials. The core of the regulation of conflicts of interest of elected officials, i.e. Law No. 215/2004, does not distinguish between individual appointed officials, but treats them as one category.

In Italy, a form of incompatibility also arises from the **Criminal Code**, Article 29 of which stipulates that where an offender is sentenced to an unconditional prison term exceeding five years, they are also banned from holding public office for life. In the case of an unconditional prison sentence of between three and five years, that ban applies for a period of five years. Furthermore, Legislative Decree No. 235/2012 stipulates that persons sentenced to an unconditional prison term of more than two years for enumerated offences may not stand for elected positions as members of parliament or remain in such positions if convicted. Decisions on the application of this provision are taken by the relevant chamber of parliament.

General definition of conflict of interest

Conflicts of interest are not defined centrally, but Article 3(1) of Law No. 215/2004 contains the following definition: *"A conflict of interest arises when a holder of a governmental office participates in the passage of a law or similar act, including the preparation of a draft, or omits to act on their incompatibility, or their action or omission has a concrete and preferential effect on the property of that official, their spouse or relatives within the second degree of consanguinity, or companies they control, and the public interest is harmed."* However, because of the personal scope of this law, this definition cannot be applied universally.

Institutional provision of conflict of interest issues

In Italy, there is no single centralised office in charge of conflict of interest issues. Partial powers are thus exercised by individual institutions or their commissions, committees or management.

The role of the **Chamber of Deputies' Advisory Committee on the Conduct of Members** (*Comitato consultivo sulla condotta dei deputati*) is to oversee compliance with codes of ethics and other rules of conduct for members.

174 *Available here: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1953;60*

175 *Available here: https://www.camera.it/application/xmanager/projects/leg18/attachments/conoscerelacamera/upload_files/000/000/336/original_codice_condotta_deputati.pdf*

176 *Available here: https://www.senato.it/istituzione/il-regolamento-del-senato*

177 *Available here: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2004;215*

178 *Available here: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2000;267*

The Commission is composed of four members from the Bureau of the Chamber of Deputies and six members appointed by the President of the Chamber. In the Chamber of Deputies and the Senate, incompatibility issues are dealt with by election committees.

In Italy, a separate **National Anti-Corruption Authority** (*Autoritá Nazionale Anticorruzione*, hereinafter **"ANAC"**) has been established[179]. However, rather than being a special office in charge of conflict of interest issues, the ANAC is an anti-corruption agency whose areas of competence include the outsourcing of state power, the public procurement register and privatisation issues.[180] As regards conflicts of interest, the ANAC is primarily an advisory body for public authorities, which may consult it on their internal rules and policies. In addition, it is responsible for monitoring compliance with the rules on incompatibilities in public administration, and it is endowed with inspection powers for this purpose. The ANAC also has the power to add its opinions to the internal rules concerning the application of the rules on conflicts of interest and incompatibility of offices. [181]

Another relevant institution is the Competition Authority (*Autoritá garante della concorrenza*), which monitors the implementation of the rules on the incompatibility of offices of executive officials and has the power to supervise situations in which such officials or their relatives would use knowledge acquired in a conflict of interest for personal enrichment.

The issue of conflict of interest is partly dealt with by the **Authority for Communications Guarantees** (*Autoritá per le garanzie nelle comunicazioni*), which is tasked with overseeing balanced media content.

The reason why certain powers relating to conflicts of interest are vested in the Competition Authority and the Authority for Communications Guarantees is because of their institutional independence. At the time of the discussion of Law No. 215/2004, which enshrined the powers of these authorities in relation to conflicts of interest, the establishment of a special body to be occupied by the Parliament was also considered. This solution was eventually abandoned, among other reasons, because the level of institutional interdependence between the government and parliament is so high that the control mechanisms, which usually require a parliamentary majority to be activated, then fail completely.[182]

Incompatibility of offices – true incompatibility

General prohibitions

The prime minister, ministers and members of parliament may not hold positions as **heads** of state and local government, directors of state bodies and organisational units, management positions in state administration at all levels (national, municipal, local), or as chairpersons or statutory bodies of state-owned corporations.[183]

Leadership positions in **health care companies**[184] may not be held by the prime minister, ministers, deputy ministers, or an official in a government body that exercises oversight or supervision over those entities.

179 *ANAC website https://www.anticorruzione.it/-/conflitto-di-interessi*

180 *GRECO. Evaluation Report Italy, Fourth Round, point 2.*
All GRECO reports on Italy are available here: https://www.coe.int/en/web/greco/evaluations/italy

181 *A more detailed description of the ANAC's powers is available here: https://www.anticorruzione.it/documents/91439/2246461/ANAC+Tasks.pdf/560ea10b-2308-4877-d60b-6e3242eca017?t=1657887576910*

182 *FABBRINI, Sergio. Conflict of Interest in Italy: The Case of a Media Tycoon Who Became Prime Minister (2001–2006). p. 205. In: TROST, Christine; GASH, Alison L. (eds.). Conflict of Interest and Public Life. Cambridge University Press. Cambridge: 2008. ISBN 978-0-521-88412-5. Available here: https://www.researchgate.net/publication/292350835_Conflict_of_Interest_in_Italy_The_Case_of_a_Media_Tycoon_Who_Became_Prime_Minister_2001-2006*

183 *Articles 11(1), 12(2), 13(1) and 14(1) of Decree No. 39/2013*

184 *Aziende sanitarie locali. These are public entities managing health service providers, including some hospitals, at the local level. They are filled by the political decision of the local elected bodies.*

The positions referred to in the previous two paragraphs are also incompatible with officials of local and municipal **self-governing authorities**, if those authorities fall within the same territorial jurisdiction or if the municipality in question exceeds 15,000 inhabitants.

Parliamentary level

The basic rules on incompatibility of offices derive from the Constitution, Article 65 of which stipulates that no one may be a member of the Chamber of Deputies and the Senate at the same time. Article 65 also foresees the adoption of more detailed legal provisions regarding other incompatible positions. Such regulation is therefore directly constitutionally mandated and does not constitute unreasonable interference with the right of access to an elected body. The law also stipulates that the office of the President of the Republic is incompatible with membership of parliament[185] and that membership of parliament is incompatible with membership of a regional council. It is common practice for members of the government to be members of one of the chambers of parliament. This possibility is directly derived from Article 2 of Law No. 215/2004. Under Article 98 of the Constitution, if a civil servant becomes a member of parliament, they may not be promoted, except on the basis of seniority.

Law No. 60/1953 stipulates that members of parliament may not hold any **position in the public or private sphere** if such positions are filled directly by or at the will of the government. However, this rule does not apply to positions in the fields of culture, religion, charities, business associations and organisations and positions in academia if these are filled through and at the will of the academic administration. At the same time, a special law may provide that this rule does not apply to specific positions.

Persons who hold office as mayors, presidents of higher self-government authorities, diplomats, judges and any directly elected position in municipalities with a population of more than 5,000 inhabitants are not allowed to be elected to parliament.

A specific regulation prohibits members of parliament and members of the government from holding any office in the legislative or executive bodies of **a country other than Italy**, including at the local level.

In addition, members of parliament may not act as directors, chairpersons, auditors, liquidators, managers and legal or other advisers in companies or associations which exercise state administration or which receive a state contribution for their operation.

Where a member of parliament holds any other office in public administration, a public corporation, a bank of national importance, a company partly exercising public administration[186], companies partly or wholly owned by the state, or private companies contracting with the state or parts of the state, including local authorities, they may not receive **remuneration** for that office (Article 2 of Law 1102/1948). This does not apply to academic and study activities or to cases specifically provided for by law, such as remuneration for membership of committees of inquiry.

Government level

Members of the government have their main task, which is to promote the public interest. This also implies rules on the incompatibility of their office with any other position in public administration. Similarly, members of the government may not be members of the governing bodies of public law companies.[187]

185 *Article 84 of the Constitution*

186 *For example, collecting franchise fees.*

187 *Articles 1 and 2 of Law No. 215/2004*

incompatibility of offices – false incompatibility

Parliamentary level

Members of parliament may hold other employment and receive remuneration for it, provided that the company in which they are employed does not collude or otherwise cooperate with the state. However, they must comply with all other rules regarding their potential conflicts of interest, such as refraining from accepting gifts (described below). If an official also holds other employment, greater emphasis should be placed on the application of these rules.[188]

Under Law No. 60/1953 members of parliament are prohibited from serving in the banking **sector** if the main interest of the company in which such an official would serve is the provision of financial services, with the exception of cooperative banks. It is also prohibited to practice advocacy or in any other way promote or assist business relations and the dispute resolution of private companies with the state.

Government level

Members of the government may not be members of the governing bodies of public law companies, be members of the governing bodies or management of companies established for the purpose of business, and may not be employed or self-employed.[189]

Local level

City council members responsible for planning and building shall not engage in any professional activity in the construction industry within the territorial jurisdiction of the body in which they serve. Mayors, chairpersons of territorial councils, members of territorial councils and controllers may not hold any office in companies subject to the jurisdiction of the authority of which they are members. Similarly, they may not provide consultancy services to such companies.[190]

Regulation of media ownership

According to Article 7 of Law No. 215/2004, the task of the Authority for Communication Guarantees is to ensure that media owned by a member of the government, their partner and relatives up to the second degree ensure that the principles of objectivity of media content are respected, and to prevent the granting of political benefits to such an official. To this end, the Authority may issue opinions proposing solutions to the situation. In the event that the proposed solutions are not implemented and complied with and the situation remains unsatisfactory, the Authority may also impose sanctions. In addition, the Authority will report each case of violation and provide a detailed description of the case to the speakers of both houses of parliament [191]

This issue is an example of how the state authorities have tried to respond to a new situation as yet unforeseen at the legislative level. This situation was the rise to power of media mogul Silvio Berlusconi in the early 1990s. Until 2004, Berlusconi was able to influence both his own media and the state-owned media from his position as prime minister. This experience has led to a new concept of conflict of interest in Italy: it is not only a situation in which a person uses public resources and decision-making to promote private interests, but also a situation in which a person uses specific private resources to promote their own political interests. It is particularly interesting that, according to the 1957 law, Silvio Berlusconi should not have been a public official at all, as he received public contributions for some of his companies' activities. However, in light of the political situation, parliament decided to interpret the law against its meaning, by applying it only to the executive management of companies, not to their

188 *For more see: https://osservatoriocpi.unicatt.it/cpi-archivio-studi-e-analisi-perche-il-lavoro-dei-parlamentari-e-considerato-un-part-time#_ftn1*

189 *Article 2 of Law No. 215/2004*

190 *Article 78(3) to (6) of Decree No. 267/2000*

191 *The Authority issued a decision to sanction, among others, RTI television, owned by then Prime Minister Silvio Berlusconi, for unbalanced broadcasting content. Decision No. 675/11/CONS of 30 November 2011 is available here: https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=/asset_publisher/view_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=663047&_101_INSTANCE_FnOw5lVOIXoE_type=document*

shareholders. This political reticence, caused by Berlusconi's strong political support, led to six attempts to pass a conflict of interest law between 1996 and 2003, none of which were successful.[192]

Protection period

In Italy, there is no restriction on **members of parliament** engaging in any activity after their mandate ends.

On the other hand, **members of the government** are not allowed to hold any position in public administration or in organisational units of the state for a period of one year after leaving office (Article 6 of Law No. 60/1953). According to Article 2(4) of Act No. 215/2004, the same applies to public law companies as well as private companies whose business is closely related to the area in which the official in question was active in the exercise of their office.

Declaration of personal interest

Law No. 215/2004 orders members of the government to abstain from participating in the decision-making process if it is a matter in which they have a private interest or in which their partner or any of their relatives up to the second degree have a private interest.[193]

Local government representatives may not participate in discussions or votes on matters in which they or their relatives up to the fourth degree have a personal interest in the outcome.[194]. There is an exception to this rule for regulations of a general nature, such as zoning plans. However, this exception does not apply where such general regulation has a direct and immediate effect on the specific private interests of the official concerned or a relative, again up to the fourth degree, as provided for in Article 78 of Decree No. 267/2000.

Declaration of activities and assets

The filing of declarations of activities and assets is regulated to varying degrees by Laws No. 13/2014, No. 441/1982, No. 96/2012, Decrees No. 162/2019, No. 149/2013, Legislative Decree No. 33/2013 and Decision No. 241/2017.

Parliamentary level

Members of parliament file declarations on the basis of Law No. 13/2014 and the codes of conduct of the chambers establishing the duty of transparency. Declarations are filed annually with the president of the chamber on a paper form. In the event of changes, the declaration of assets must be updated and must also be submitted at the end of the mandate. Oversight of compliance with these measures is entrusted to the Chamber of Deputies' Advisory Committee on the Conduct of Members, which is tasked with investigating possible violations of these rules and reports violations either to the president of the Chamber of Deputies or to the relevant authorities. It is endowed with investigative powers and, with the consent of the president of the Chamber of Deputies, may make use of external specialists. In the event that this committee finds a violation of the rules of conduct, it will be published on the website of the respective chamber and reported and possibly discussed at the plenary.

According to Law No. 441/1982, the declaration contains rights in rem to immovable property, movable property registered in the relevant lists, shares in companies, positions of directors or auditors in companies and the affidavit "I swear on my honour that this declaration is true." It is also accompanied by a copy of the declaring official's most recent tax return and a summary of income and expenses for the election campaign, including non-financial obligations and transactions. If the official agrees, the declaration also includes the same information for their partner and relatives up to the second degree.

192 *FABBRINI, Sergio. (2008). Conflict of Interest in Italy: The Case of a Media Tycoon Who Became Prime Minister (2001–2006). 10.1017/CBO9780511611490.010, pp. 189, 202–205.*

193 *GRECO. Evaluation Report Italy, Fourth Round, point 48.*

194 *This therefore means a cousin. Italian legislation often penalises relatives in this way, and much more distant ones than in other countries, showing the adaptation of legislation to local conditions corresponding to a different perception of gender and family society.*

Government level

In the case of members of the government, the obligations regarding declaration are regulated by Article 5 of Law No. 215/2004, which stipulates that a member of the government is obliged to file the declarations within thirty days of taking office. The declaration is filed with the Competition Authority and includes information on any incompatibilities that may remain at the date the official takes up office, including media ownership. Within the next 60 days, a member of the government is required to report information about their assets, including business holdings in companies. This information must include information on assets and holdings in the three months preceding the assumption of office. The declaration is also filed with the Authority for Communications Guarantees, which is responsible for overseeing the media, and thus checks assets associated with this area. In the event of any changes, the government member must update the declaration within 20 days. These declarations are also filed by the spouse of a member of the government and their relatives up to the second degree. The competent authorities have thirty days from the date the declaration is filed to check them.

The **publication** of the declarations of assets of members of the government and members of both houses of parliament is mandated by Law No. 13/2014, but they are not always easy to trace. The documents are available on the profiles of the individual legislators.[195] At the local level, declarations of assets are usually published on the websites of the relevant public authorities.

Acceptance of gifts

The provisions of Article 4 of the Rules of Conduct for Members of Parliament stipulates that **members of parliament** may not accept gifts worth in excess of EUR 250 given to them in connection with their official representations and appearances on behalf of parliament. The term gifts does not include transactions related to the reimbursement of travel expenses or other fees by third parties, although these must be accepted in a transparent manner.

In Italy, there is no specific regulation on the acceptance of gifts for the most senior **executive officials**, but there is a regulation applicable to civil servants. This regulation, adopted by Presidential Decree No. 62/2013, is also applied by an internal regulation to the senior staff of ministries and government offices, but not to members of the government themselves. The core of this regulation is that public officials may not accept gifts worth more than EUR 150, and in any event may not accept any gifts from the parties to proceedings in which they are involved.

Regulation of lobbying

Since the end of the Second World War, there have been over fifty legislative attempts to enshrine the legal regulation of lobbying in Italy. However, none has yet been approved. In the last five years, lobbying in the Chamber of Deputies has only been partially covered, with lobbyists (and former MPs) having to register in a lobbyist diary if they represent individual or collective interests. However, even the legislators themselves consider the rules in place to be weak. Similar regulations have also been adopted in several regions and by the Ministry of Agriculture.[196]

Enforceability of legislation

Article 7 of Law No. 60/1953 stipulates that MPs who hold another position which, according to the rules on incompatibility of office (see above), they are prohibited from holding, must leave one or the other position within 30 days of taking office. The competent **electoral committee of the Chamber of Deputies or the Senate** is responsible for overseeing and supervising the rules on incompatibility of offices, but the case must

195 *List of members here: https://www.camera.it/leg18/28, in this particular case here: https://www.camera.it/leg18/921?shadow_deputato=307410&par=true&lib=false&cod=1*
List of senators here: https://www.senato.it/leg/18/BGT/Schede/Attsen/Sena.html
in this particular case here: https://www.senato.it/leg/18/BGT/Schede/Attsen/00032707_docpatr.htm

196 *GRECO. Evaluation Report Italy, Fourth Round, paragraphs 68–70. GRECO. Second Report on the Implementation of Recommendations for Italy, Fourth Round, paragraphs 32–34.*

be referred to it by the presidency of the relevant chamber (Article 8 of the same law). Article 9 then states that it is the responsibility of every person to ensure compliance with this regulation. There is therefore no specific sanction mechanism and in practice it is more of a moral rule. The same applies to the rules based on the codes of ethics of both chambers.

Decree No. 39/2013 on **incompatibilitie**s also contains a sanction mechanism whereby appointments of officials in violation of the provisions of this decree are null and void (Art. 17). Those officials whose appointments have been declared invalid are then responsible for the economic consequences of their decisions. Another sanction that may be used is to order the termination of one of the mutually incompatible positions within 15 days of receipt of the notice of incompatibility under Article 19 of this Decree. The **National Anti-Corruption Authority** (ANAC) is responsible for overseeing compliance with these rules, and is given inspection powers for this purpose. On the basis of a petition from the Civil Service Division of the Government Office or on its own initiative, the Authority may suspend the appointment process of a public official, issuing a statement of justification for its action at the same time as the suspension. If the institution under review wishes to proceed with the appointment, it must deal with that statement of justification.[197]

In relation to incompatibilities, the **Competition Authority** is empowered under Law No. 215/2004 to investigate situations in which there is an incompatibility of office and, in the event of misconduct, to recommend to the relevant (usually superior) authority that the official be removed from the position. It may also recommend abandoning an activity or leaving a position that is incompatible with the given office. It may also request the removal of an official from professional lists (for example, the list of lawyers). The competent authorities have an obligation to comply with the recommendations of the Competition Authority.

In the event that an official fails to comply with the conditions set out in the resolutions of the Competition Authority or the **Authority for Communications Guarantees**, they may be guilty of a **crime** under Article 328 of the Italian Criminal Code. It is the responsibility of these institutions to alert the law enforcement authorities to the possible commission of a crime and to provide them with supporting documents. If such a situation arises, they are obliged to inform the presidents of both houses of parliament.

Italian MPs enjoy **immunity** that roughly corresponds to the Czech system of immunity and indemnity. Criminal prosecution, except for cases where an official is caught in the act, is therefore only possible with the consent of the chamber of which the official is a member. Criminal sanctions have in some cases been rendered impossible by the rules set for the statute of limitations or the decriminalisation of certain acts.[198]

Summary and identification of good practice

Italian conflict of interest regulation is highly chaotic, fragmented, complex and difficult to understand at all levels and in all respects. Moreover, in political reality, some rules are not enforced or are directly denied, which raises questions about the overall enforceability of the rules set. Doubts also arise in relation to the rather unclearly defined competences of supervisory institutions. Insufficient consolidation of the legal regulations, existing gaps in legal norms or, on the contrary, overlapping norms make the whole system of preventing conflicts of interest very opaque, and therefore the purpose of such regulation is not fulfilled to a large extent.

The most comprehensive provision is Law No. 60/1953 on incompatibilities of legislators. Although this was an innovative regulation in its time, it does not meet the today's requirements for legislative support for efforts to influence the activities of legislators. However, the newer regulations are being caught up by their described lack of conceptuality. The current situation is the result of an overlap and a combination of incremental changes, which

197 *The procedure is described in more detail in the methodology of the National Anti-Corruption Authority for assessing incompatibility of offices, available here: https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital Assets/anacdocs/Attivita/Atti/determinazioni/2016/833/del.833.2016.linee.guida.pdf*

198 *GRECO. Evalquation Report Italy, Fourth Round, paragraphs 76–79.*

furthermore lack coordination between the national and local levels. Several attempts have been made in recent years to improve this situation, but so far to no avail. One major shortcoming is still considered to be the almost total lack of regulation of lobbying, which makes it impossible to clarify relations between the state sphere and private companies with their own interests. Questions are also raised by the apparent movement of some former ministers into the private sphere[199], which reveals a lack of coverage of *therevolving door* phenomenon.

According to the ANAC chairman[200], the biggest problem with the regulation of conflicts of interest in Italy lies in the inconsistency of the chosen regulation, which works well for civil servants, but has only a limited impact on senior executive officials, through referential powers across the legislation.

In general, regulation of conflicts of interest in Italy is stricter and more advanced in the case of appointed officials. This is based on the notion that the decisions of the highest branches of executive power branch have a direct impact on the activities of the administration as a whole, and thus have the greatest potential to influence its outcomes. Although more emphasis is placed on this area, the regulation described also contains gaps and is sometimes unenforceable.

Although the question of the enforceability of the set rules would have to be addressed first, the Italian regulation may be inspiring in some sub-measures. One interesting example is the restriction banning members of parliament from holding positions in the public or private sphere if those positions are filled directly by or at the will of the government (this does not apply to certain cultural and other institutions), or if those companies receive a state contribution for the exercise of state administration. Also of definite relevance are considerations of a ban to prevent legislators from operating in the banking sector, practising advocacy or mediating business relations between private companies and the state, as these are activities that are risky from the perspective of a potential conflict between public and private interests. By far the most sophisticated of the countries compared is the regulation of ownership of media companies by politicians, which reflects a clear incentive to respond to a particular event.

199 *These include former Economy Minister Pier Carlo Padoan, who after leaving his post as minister served for two years in the Chamber of Deputies before resigning and joining the board of directors of UniCredit bank. More here: https://www.editorialedomani.it/idee/voci/il-caso-padoan-insegna-la-proposta-sul-conflitto-di-interessi-va-cambiata-d7qxdbwi*
A comparable case is that of the former Minister of the Interior, Marco Minniti, who also served as a member of parliament and member of the House Foreign Affairs Committee after his ministerial engagement, and who also resigned after more than two years to take up a position as director of a newly established foundation owned by a company involved in the defence and aerospace industry, in which the state has a minority stake through the Ministry of Economy. More here: https://lavialibera.it/it-schede-508-renzi_arabia_minniti_conflitto_interessi_porte_girevoli

200 *Available here: https://www.cnr.it/sites/default/files/public/media/amministrazione_trasparente/altri_contenuti/audizione_25_giugno_2019.pdf*

Canada

Canada is a constitutional monarchy with a federal system. The formal **head of state** is the British monarch[201], whose representative in Canada is the Governor General[202]. The Governor General holds a largely ceremonial position. He is appointed by the British monarch at the recommendation of the Canadian government.[203] His main duties include summoning parliament, giving royal assent to individual regulations, appointing the prime minister and exercising other sub-powers conferred by law.

The federal **legislative power** is exercised by the parliament, which consists of the monarch[204], the House of Commons, elected directly by the citizens through a majority system in single-member electoral districts (ridings), and the Senate, whose members are appointed on a territorial basis by the Governor General at the recommendation of the prime minister.

Executive power is constitutionally vested in the British monarch, but the constitutional convention of good government is that those who have the confidence of parliament should rule. Based on a complex chain of legitimation[205], the executive branch in Canada is effectively represented by the Government of Canada (the Cabinet), headed by the Prime Minister and the Ministers of the Crown. The Canadian government is also made up of junior ministers (Ministers of State). The government as a whole is then responsible for the political direction of the country, and in practice ensures the adoption of the appropriate legislation. The territorial composition of Canada is also respected when the government is formed.[206] The government is accountable to the House of Commons.

As a result of its federal structure, Canada's executive branch of government is fragmented into a multitude of provincial, territorial and national authorities with overlapping areas of responsibility. Given Canada's governmental structure, a distinction must be made between the federal and provincial levels.

Canada is divided into **provinces**, which are given a significant, if variable, degree of autonomy. The provincial level then follows the federal level in its systematics. The province is thus headed by a Lieutenant Governor, whose powers and status are similar to those of the Governor General at the federal level, although with limited territorial jurisdiction. Legislative power in the provinces is vested in a directly elected legislative assembly. A provincial government is selected from that assembly, headed by its president. Given that conflict of interest prevention regimes vary by province, this analysis looks in detail at the provincial-level regulation in **Quebec** in a separate section.

201 *Despite its formal association with the United Kingdom through a common head of state, Canada is an independent country with its own distinct legal system. However, this is not true of the Canadian constitutional order, which is intertwined with the British one. These are provisions relating to the head of state, together with some constitutional conventions derived from the (unwritten) British constitution.*

202 *The official languages of Canada are English and French, which can be used interchangeably in contact with all government institutions. Each institution has an official name in French, but for the sake of clarity only the English version is given.*

203 *However, British constitutional practice does not normally allow the monarch to disregard such a recommendation, as in the case of the appointment of the British prime minister.*

204 *Historically, the monarch represented by the Governor General, nowadays just the Governor General. His importance in the legislative process lies in the granting of what is known as the Royal Assent for a law to come into force.*

205 *Articles 9, 11 and 13 of the Canadian Constitution*

206 *The territory represented by the given minister is listed in their personal profile on the government website, e.g. here: https://www.canada.ca/en/government/ministers/anita-anand.html*

In Canada, **local governance** is also guaranteed. However, this is subject to provincial legislation. Thus, there are ten local government systems in Canada,[207] which are not even internally uniform. The level that is the same across the provinces[208] is called the municipality. There are approximately 4,500 municipalities in Canada that are governed by elected councils. Their powers vary, although they tend to be linked to matters of everyday concern to citizens.

Basic legal framework

The Canadian Constitution[209] sets out a basic barrier to the electability of senators to the House of Commons. Furthermore, there are some incompatibility rules in the Constitution concerning the provincial level of public administration.[210]

In addition, conflict of interest issues are addressed in regulations corresponding to Canada's territorial divisions. At the **federal level**, there are three key pieces of legislation concerning the three main groups of public officials. Appointed officials, i.e. members of the government, parliamentary secretaries, senior staff of ministries, deputy ministers and senior officials of other central government departments (separate oversight bodies, e.g. for transport safety or judicial administration) and separate agencies under ministries, the heads of royal companies[211], members of supervisory committees and employees of ministries are subject to the provisions of the **Conflict of Interest Act**.[212] Article 3 of the Conflict of Interest Act states that *"the purpose of adopting this Act is to establish clear conflict of interest and post-employment rules for public office holders, minimize the possibility of conflicts arising between the private interests and public duties of public office holders and provide for the resolution of those conflicts in the public interest should they arise, and facilitate interchange between the private and public sector under clearly defined conditions."*

The **Conflict of Interest Code for Members of the House of Commons** (**"House of Commons Code"**)[213], which forms Annex No. 1 to its Standing Orders, applies to members of the House of Commons. Senators are subject to the **Conflict of Interest Code for Senators** (**"Code for Senators"**)[214], which is very similar in nature and content to the **House of Commons Code**, differing only in its procedures and institutional arrangements. Both codes state in their introduction that their main purpose is *"to maintain and enhance public confidence in members of parliament and in their integrity, and generally to increase the confidence that the public has in their parliament as a branch of government"*. Other purposes of these codes are to show the public that MPs put the public interest above their own, and to make the whole decision-making system transparent so that *"the public can be the judge of the actions of the legislator"*. At the same time, the purpose of these codes is to guide members of parliament in situations where there is a potential conflict of interest, offer them solutions and provide them with advice in this regard through a specific body.

207 *The sparsely populated provinces in northern Canada do not have their own legislative assemblies and are administered by the central government. However, local governments exist in these provinces as well.*

208 *For example, southern Quebec and southern Ontario operate with the British system of counties, which are administered by their own councils composed of representatives of towns and villages and represent a second level above the local level. Large conurbations, such as Toronto, have a specific system adapted to high-density urban neighbourhoods that is quite different from the system used in rural Canada. Some rural areas do not even have local governments at all and are administered at the provincial level, due to the very small population there. The idea of multi-level government is still alive in Canada because of the self-governance of the indigenous peoples of Canada's polar regions.*

209 *Available here: https://laws-lois.justice.gc.ca/eng/const/page-1.html*

210 *One such rule is, for example, Article 83 of the Constitution, which stipulates that the offices of the Quebec executive are incompatible with membership in the provincial legislature.*

211 *"Crown corporations". These are state or provincially owned companies, serving in part the public interest. Examples include the Bank of Canada, railway companies, travel agencies, etc. See: https://www.canada.ca/en/treasury-board-secretariat/services/guidance-crown-corporations/list-crown-corporations.html*

212 *Available here: https://laws-lois.justice.gc.ca/eng/acts/c-36.65/*
In its interpretative provisions, the Conflict of Interest Act distinguishes between two groups of public officials, namely "reporting" and "non-reporting" public officials. However, only reporting officials are the subject of this text, as non-reporting officials correspond to civil service employees. For this reason, the text will continue to work with the term promiscue to refer to appointed officials and reporting officials.

213 *Available here: https://www.ourcommons.ca/procedure/standing-orders/appa1-e.html*

214 *Available here: https://seo-cse.sencanada.ca/en/code/ethics-and-conflict-of-interest-code-for-senators/*

For this reason, this document will continue to work with the rules for members of parliament (i.e. a combination of the rules set out in the codes for senators and members of the House of Commons) and the rules for appointed officials (arising from the Conflict of Interest Act). In the case of differences in the rules, these will be pointed out separately.

Beyond these three key regulations, in Canada the rules are supplemented by codes of ethics issued by the various branches of government.[215]

General definition of conflict of interest

For the purposes of the Conflict of Interest Act, a conflict of interest is **defined** in Article 4, which states that *"a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests"*. Article 5 of the same regulation sets out the general obligation of public officials to organise their private affairs in such a way as to avoid the risk of conflicts of interest.

In its introductory provisions, the law also provides detailed legal definitions of the terms necessary for the application of the law; for example, it precisely defines the functional classification of individual officials, family members, private interest, etc. According to Article 2, a private interest is defined as *"a private interest which is not of general application, which does not affect a public office holder as one of a broad class of persons, and which does not concern the remuneration or benefits received by virtue of being a public office holder"*.

Both **parliamentary codes** offer interpretative provisions on the terms used, and define conflicts of interest in their introduction, similar to the Conflict of Interest Act described above. However, it also lays down another general rule, which is the **ban on using the influence of one's office**. This rule explicitly prohibits the use of one's position as a legislator to influence matters that, as a public official, are not within the person's discretion.

A key concept that all the regulations mentioned work with is **furthering of private interest**. This includes, but is not limited to, conduct that results in the preservation or enhancement of the value of the official's personal assets, the reduction of the official's debts, the acquisition of shares or financial resources or instruments, the enhancement of professional income, or career advancement. This definition is part of the interpretative provisions of the relevant codes and is therefore applied as such by the relevant authorities.

Institutional provision of conflict of interest issues

The key authority at the federal level is the **Office of the Conflict of Interest and Ethics Commissioner** (**"Office of the Commissioner"**)[216], which has a dual purpose. First, it is in charge of the conflict of interest agenda relating to public appointed officials as defined by the Conflict of Interest Act, and in addition, it is charged with the same agenda for members of the House of Commons under the Conflict of Interest Code for Members of the House of Commons. The main tasks of the Office of the Commissioner are to provide internal advice and recommendations to the prime minister on the application of the Conflict of Interest Act, to make internal recommendations

215 *One example is the Code of Ethics of the Ministry of Justice, the second chapter of which is devoted to the prevention of conflicts of interest. Available here: https://www.justice.gc.ca/eng/rp-pr/cp-pm/vec-cve/c1.html*

216 *Office of the Commissioner website https://ciec-ccie.parl.gc.ca/en/Pages/default.aspx*

to individual public officials on their obligations under the Conflict of Interest Act, to investigate and report on possible breaches of the Conflict of Interest Act by public officials, and to administer the asset declarations of those officials subject to the obligation.[217] The Authority reports on its activities in detailed annual reports.[218]

The Office of the Commissioner is mandated by Article 51 of the Conflict of Interest Act to maintain a **public register**[219], which is where those facts or documents that the law or the Code of Ethics stipulates must be disclosed by the Office of the Commissioner or the public official himself are published.

Because of the dual function of the Office of the Commissioner, **oversight** of the Office of the Commissioner is provided by two bodies, namely, the Standing Committee on Procedure and House Affairs, which deals with its activities in relation to members of the House, and the House of Commons Standing Committee on Access to Information, Privacy, and Ethics, which oversees activities relating to appointed officials as well as the functioning of the Office of the Commissioner as a whole.

According to Article 50 of the Conflict of Interest Act, neither the Commissioner nor the employees of his office can be called as witnesses on matters which have come to their knowledge during the course of their duties. Assuming that the Commissioner and the employees of his office perform their duties in good faith, they cannot be prosecuted or subject to civil law claims in respect of such activities.[220]

The **Senate Ethics Officer** (**"SEO"**) is responsible for the conflict of interest agenda in the Senate.[221] His main tasks include the implementation of the agenda arising from the Conflict of Interest Code for Senators, i.e. in particular the administration of the public and non-public part of the asset declarations of senators, providing advice to senators on the resolution of possible conflict of interest situations, and – on the basis of a report – investigating possible violations of the Ethics Code for Senators.[222]

217 *SAVOIE, Alexandra; THIBODEAU, Maxime-Olivier. Conflict of Interest at the Federal Level: Legislative Framework. Parliamentary Library. Ottawa: 2018. p. 3. Available here: https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2010-92-e.pdf*

218 *The Office of the Commissioner issues two different annual reports distinguishing between activities under the Conflict of Interest Act and under the Conflict of Interest Code for members of the House of Commons. Both reports are available here: https://ciec-ccie.parl.gc.ca/en/About-APropos/Pages/AnnualReports-RapportsAnnuels.aspx*
Under the Conflicts of Interest Act regime, 3,349 recommendations were issued and over 15 investigations were conducted (Annual Report on the Conflicts of Interest Act 2021–2022, pages 6 and 13), while under the Conflicts of Interest Code for members of the House of Commons, 605 recommendations were issued and 6 investigations were conducted (Annual Report on the Conflicts of Interest Code 2021–2022, pages 5 and 10).

219 *Available at https://prciec-rpccie.parl.gc.ca/EN/PublicRegistries/Pages/PublicRegistryHome.aspx*

220 *This is a pre-emptive response to situations in which the Commissioner would become involved in a political struggle and would exercise his office with the aim of harming selected officials. It would then not be an act of good faith and the Commissioner could be held criminally liable for his actions and civil claims could be brought against him. A typical claim would then be for compensation for lost profits, for example as a result of a loss of customers in his business, if he were wrongly accused of breaching the rules of the proper exercise of public office.*

221 *In the 1990s, when the two conflict of interest bodies were established, there was a debate on whether such a body should be common to both houses. The original plan was to establish one office and one set of rules of conduct. However, in the interests of the different constitutional roles of the two houses and the separation of powers, this solution was not ultimately adopted. There have been several other attempts to unify this body for both houses of parliament, the most recent in 2009. For more see SAVOIE, THIBODEAU. Conflict of Interest at the Federal Level: Legislative Framework. pp. 6–7.*

222 *Ibid.*
The SEO provides advice relatively frequently: According to the last annual report, he provided 141 oral and written pieces of advice and opinions during the year. In the previous year there were 243 such outputs. By contrast, investigations led by the SEO are an exception – none took place at all in the period 2021–2022. The SEO himself stresses the role of prevention.
2021–2022 Annual Report of the Office of the Senate Ethics Commissioner, pp. 1, 9–12, available here: https://seo-cse.sencanada.ca/media/lz4ooi2r/annual-report-2021-2022.pdf

Incompatibility of offices – true incompatibility

Parliamentary level

Article 39 of the Canadian Constitution stipulates that senators are barred from election to the House of Commons. This means that if a person is a senator, they cannot even participate in elections to the House of Commons. The Canada Elections Act stipulates that members of provincial legislative assemblies cannot be elected to the elected bodies of the federation.[223]

Article 7 of the House of Commons Code states that **members of the House of Commons** are in no way restricted in engaging in any other profession or gainful occupation, thereby permitting other public offices to be held, unless precluded by law.

In Canada, members of the government are also members of the House of Commons. There is even a constitutional convention that if, perhaps by chance, a member of the government was not a member of parliament at the time they took office, it is their duty to defend their mandate at the next possible election.[224]

Appointed officials and the provincial level

At the federal level, there are no impediments preventing appointed officials from holding other offices. However, many of the limitations are based on provincial rule-making or are regulated by the Canadian Constitution in its sections relating to the provinces (see above), making it impossible to cumulate provincial offices with federal ones "from below". Therefore, for example, a person who is a member of the House of Commons cannot be elected to the legislative assembly of a particular province. This is regulated differently across Canadian provinces.

incompatibility of offices – false incompatibility

Parliamentary level

As noted above, members of the House of Commons who are not also ministers are in no way restricted from engaging in any other profession or gainful occupation. However, members are required to observe the other rules set out in the House of Commons Code. Article 5 of the Code for Senators is identical in meaning. Senators may also be employed or self-employed or own and manage a company while in office.

Members of the House of Commons are prohibited from knowingly being a **party to a contract** with a government entity, directly or as a subcontractor. This shall not apply if the Office of the Commissioner issues an opinion concurring with such a contract. Similarly, members of the House of Commons may make use of government benefits for which contracts (typically subsidies) are concluded, provided that they are treated in the same way as any other participants in such programmes.[225]

Members of the House of Commons, however, are permitted to hold **interests in public companies** that contract with the State or a subdivision thereof unless the Office of the Commissioner finds that the extent of the holdings is so large that it would necessarily result in an impermissible conflict of interest for the office holder.[226] For private companies, the mechanism is reversed. A member of the House of Commons may hold their shares directly only if the Office of the Commissioner determines that it is not inconsistent with that officer's position.

Similar rules regarding the conclusion of contracts with the state apply to **senators** (according to Articles 20 to 23 of the Code for Senators). However, the Senate Commissioner is the authority for them on this issue.

223 *Section 65(c) of the Canada Elections Act, available here: https://laws-lois.justice.gc.ca/eng/acts/e-2.01/page-7.html#h-204314*

224 *FORSEY, Eugene A., How Canadians Govern Themselves, chapters 6.5 and 6.6. Library of Parliament. Ottawa, 1st edition, 1980. Available here: https://lop.parl.ca/About/Parliament/senatoreugeneforsey/book/chapter_6-e.html*

225 *Article 16 of the House of Commons Code*

226 *Articles 17 and 18 of the House of Commons Code*

Appointed officials

Section 15 of the Conflict of Interest Act provides that appointed officials are required to **refrain from** employment, self-employment, management positions in trade unions or professional associations, executive functions in business corporations, and the active exercise of the rights of a business owner, unless such activity is required by virtue of their position as a public official.

There are three **exceptions** to this general rule. The first of these refers to situations where it is necessary and appropriate for a public official to maintain a certain level of professional experience, otherwise they could lose their licence to practice their original profession or employment. However, this exemption may only be applied provided that the public official does not receive any remuneration for such activity and that the Office of the Commissioner consents to the activity based on an assessment of whether the performance of the proposed activity may create an undesirable conflict of interest for the public official. The second exception is where the appointed officer is assigned to one of the so-called crown corporations and also has a management position in a private financial or commercial company. They may remain in that position only if the Office of the Commissioner finds that the concurrence of office does not result in a conflict of interest for that official. The final exception is where, again subject to the approval of the Office of the Commissioner, a public official may take up or remain in office in a public benefit, charitable or non-profit company. The ban described above in no way restricts the appointed officials in their political activities.

According to Article 10 of the Conflict of Interest Act, public officials are prohibited from being influenced in the exercise of their office by plans for their future career direction or offers of employment outside the public sector.

Members of the government may not knowingly **enter into contracts** with the government entity they manage. Similarly, they may not hold shares in companies that enter into such contracts with the organisational unit of the state of which they are a part. This does not apply if the Office of the Commissioner issues an opinion finding that such a contract does not have the potential to affect the performance of the official's duties.[227]

It is forbidden to enter into contracts with one's partner, offspring, parents or siblings as a public official. A similar rule applies if such a contract is concluded by an organisational unit of the state (e.g. a ministry) with the same circle of relatives, unless the official in question is excluded from supervising the process and the contracting party is selected on the basis of objective criteria. This rule does not apply to goods and services offered at the same prices as those offered to the general public.[228]

According to Article 27 of the Conflict of Interest Act, appointed officials are subject to the **mandatory divestiture of assets** (*divestment*). This involves either the sale of the assets[229], or in entrusting part of the assets of[230] to a trust fund. Other forms of divestiture are not permitted. The trust fund must be set up in such a way that the official has no control over the assets in the fund. The trustee is prohibited from consulting with the public official about the direction of the fund and may not inform the public official about the status of the fund, except to provide information required by law to ensure compliance with reporting obligations to the state. The trustee must be selected in such a way that they have no close connection with the official and may only be a public trustee, a public company, an investment company providing trustee services or a professional trustee. That trustee is obliged to file an annual report with the Office of the Commissioner on the nature and value of the trust fund, its

227 *Article 13 of the Conflict of Interest Act*

228 *Article 14 of the Conflict of Interest Act*

229 *In the so-called at arm's length scheme, i.e. in a situation where each of the contracting parties pursues only its own interest and is not forced into a transaction or dependent on the other party in relation to a transaction. This scheme typically precludes sale to family members. For more, see https://www.investopedia.com/terms/a/armslength.asp*

230 *According to the interpretative provision of Article 20 of the Conflict of Interest Act, these are assets whose value may be directly or indirectly affected by the exercise of an office or a political decision of the government. An illustrative list is given, e.g. publicly traded securities, stocks, bonds, financial derivatives, voluntary pension schemes, tradable commodities, foreign currencies held for speculation, guarantees, etc. Conversely, this obligation does not apply to the entire list of items typically serving the personal needs (i.e. not commercial purposes) of the official or their family, including certain types of investment instruments.*

turnover, income and any fee for acting as trustee. The only information disclosed to the public is whether the assets have been sold or whether a trust fund has been set up. Other information remains confidential and is available only to the Office of the Commissioner. A public official has the right to receive the profits generated by a trust fund. The Office of the Commissioner has the ability to order the payment of the public official's costs associated with the divestiture of assets.

Protection period

Parliamentary level

Since there is nothing to prevent members of the House of Commons or senators from engaging in employment or self-employment during their term of office, there is no transitional period for these officials. However, members of both houses are required to comply with the other rules of the Codes.

Appointed officials

In relation to the transition period, the basic rule under Article 33 of the Conflict of Interest Act is that no public official may abuse his or her previous position in a future profession. After leaving office, public officials are prohibited from acting in contractual relationships in which they previously acted as representatives of the state.

Specifically, it is stipulated that public officials may not be **employed** in companies that had substantial legal relations with the organisational unit of the state in which the official held office. These companies may not be managed by former officials, nor may they contract with them or represent them in dealings with the state. This restriction shall apply for one year after the public official leaves office.

Former members of the government may not legally represent or act on behalf of members of the new government for a period of two years from the end of their term of office.

The Office of the Commissioner may grant exemptions from the above limitations, subject to public notice, if the statutory conditions are met. Similarly, the above periods of time during which the activities in question cannot be carried out can be shortened. In such a case, the Office of the Commissioner is always tasked with considering the nature of the two activities, the situation in which the public official left office, and other relevant factors in assessing a potential conflict of interest.[231]

Declaration of personal interest

Appointed officials

No public official may take a decision or participate in a decision where their presence would give rise to a suspected case of conflict of interest, if they knew or should have known and could have known of such a situation. Over and above this regulation, there is a special regulation for members of the government who are also members of parliament, according to which such officials are obliged to abstain from voting and debating on a matter that would put them in a conflict of interest. All officials must refrain from any discussion, decision, debate or vote on any matter in which they have a conflict of interest. In the event that such a situation arises, the public official is obliged to publicly announce within 60 days what the situation is and what solution has been decided on.[232]

231 *Articles 33–39 of the Conflict of Interest Act*

232 *Articles 5, 21 and 25 of the Conflict of Interest Act*

Members of the House of Commons and senators

Where a member of parliament has a private interest which may affect a matter under consideration in the plenary session of the house or in a committee of which they are a member, that official shall report the fact to the presiding member, who shall make a record of the fact and send it to the Office of the Commissioner for publication. A similar rule shall apply in cases where the matters in question are not matters under discussion but the performance of other duties connected with the exercise of the mandate. The senate arrangement is similar, but the Senate Commissioner is the disclosing authority. If a member of parliament has a personal interest in a decision, that member may not participate in the debate or vote on the matter. This is without prejudice to the rule set out in the preceding paragraph.[233]

Declaration of activities and assets

Appointed officials

The Conflict of Interest Act introduces an obligation for public officials to file a **confidential disclosure** within 60 days of their appointment. This disclosure shall be sent to the Office of the Commissioner and shall include a summary of all the official's assets, including an estimate of the value of each item, a summary of all the official's liabilities and a summary of their value, a summary of all the official's income in the 12 months preceding their appointment and in the 12 months following their appointment, and a summary of all employment and gainful employment for the two years preceding the appointment, a description of the official's activities in the non-profit sector, charitable organisations, and public benefit organizations, a description of all the official's activities as a trustee, executor, liquidator, or attorney general in the past two years, and any other information that the Office of the Commissioner determines is necessary to determine whether the official is fit to serve.[234] Information is also provided on any income or benefits provided to the official or their family by private companies in which the official or a family member has an interest, if such a company has a contract with an organisational unit of the state and if the performance under that contract is to occur within the next 12 months. In addition, members of the government are required to make reasonable efforts to provide the same information about members of their family. In the event of any change in the facts reported above, the public official shall report the change to the Office of the Commissioner within 30 days of its occurence.[235]

In the event that a public official receives an **offer of employment** outside the public sphere, they must inform the Office of the Commissioner of that offer within seven days (Article 24 of the Conflict of Interest Act). Should they decide to accept such an offer, they must notify their immediate superior within seven days of acceptance.[236]

The above facts, as already mentioned, are only to be reported to the Office of the Commissioner or to the immediate superiors within the organisational unit of the state. However, the Conflict of Interest Act in Canada also provides for **public disclosures** that are available to the general public. These include disclosure of items and things listed by law, liabilities in excess of CAD 10,000 (EUR 7,600), including details that allow the origin and nature, but not the exact amount, to be traced, and a list of senior positions held in the private sector or in charitable, non-profit and public benefit organisations, all within 120 days of appointment. Gifts received by a public official or a family member worth in excess of CAD 200 (EUR 150), apart from those from relatives or friends, must also be publicly disclosed within 30 days of receipt. This disclosure includes details enabling the gift to be identified, its source and the circumstances under which it was received. Where an offer of transport mediation has been accepted (see below), the public official is obliged to disclose this fact as well.

233 *Articles 12 and 13 of the Code for Senators and Articles 12 and 13 of the House of Commons Code*

234 *The jurisdiction of the Office of the Commissioner in this regard is not limited in principle, but the information should be relevant to the case under consideration. The assessment of relevance in the first step rests with the Office of the Commissioner, which is thus likely to insist that the requested information be provided. The legitimacy of a request for such information may be reviewed by a court.*

235 *Article 22 et seq. of the Conflict of Interest Act*

236 *That is, in the case of members of the government, to its president, in the case of deputies to the relevant minister, and so on (Article 24-2 of the Conflict of Interest Act).*

Each year, the Office of the Commissioner is tasked with verifying all the disclosures it receives and verifying the information they contain. The Office of the Commissioner is vested with a number of specific powers to ensure that the duties of public officials are complied with, including the power to direct an official to carry out specific duties. However, the basis of the work of the Office of the Commissioner is more to proactively communicate with all those to whom the standard applies so that the chosen solution is achieved through discussions with the public official, for example, regarding the divestiture of property.[237]

Members of the House of Commons and senators

Within sixty days of being elected, and annually thereafter, a member of the **House of Commons** is required to make a **confidential disclosure**. This disclosure shall include all items in the legal sense of the word worth in excess of CAD 10,000 (EUR 7,600), a list of income and its sources in excess of CAD 1,000 (EUR 760) for the last 12 months, all benefits and income received by the member or their family, even indirectly, from contracts entered into with the state, for the previous 12 months and for the coming 12 months. In addition, all ascertainable information about the activities and assets of any private companies that appear in any way in the official's disclosure is listed. The disclosure is filed with the Office of the Commissioner and must be updated within 60 days if any changes occur. A member of the House of Commons makes a similar disclosure on behalf of their family members, and it is the member's duty to make reasonable efforts to find out this information. The Office of the Commissioner may request a personal meeting to clarify the contents of the disclosure. It is then tasked with preparing a summary of the disclosures. The **disclosure summary** is a document that summarises the confidential disclosure and is available to the public on the website. It includes a summary of assets, but not the specific values of individual items, a summary of contracts entered into, a summary of the names of the companies mentioned in the disclosure but without further details, a summary of gifts received and reimbursements for travel expenses, and a summary of positions held in private companies or professional or trade union associations.[238]

The mechanism for senators is similar to that for members of the House of Commons. Senators therefore also file a comprehensive confidential disclosure on the prescribed form and the Senate Commissioner uses that to compile a disclosure summary, which is available to the public.[239]

Acceptance of gifts

Appointed officials

Neither a public official nor members of their family may accept gifts or other benefits if these would appear to a reasonable observer to be intended to influence the performance of the public official's duties.[240] According to the interpretative provisions, a gift is defined as *"an amount of money if there is no obligation to repay it"* or *"a service or property, or the use of property or money, that is provided without charge or at less than its commercial value".* There is an exception to this rule where a gift from a relative or friend may be accepted and that gift is a common expression of social courtesy and is considered to be the normal standard acceptable for acceptance by a public official. In addition, campaign contributions may be accepted under the conditions set out in the Elections Act.[241] If a public official or a family member accepts a gift in excess of CAD 1 000 (EUR 760) in the course of their duties, the gift shall accrue to the state, unless the Office of the Commissioner decides otherwise.

237 *A detailed description of this process is provided in the Office of the Commissioner's Annual Report 2021–2022, in respect of the Conflict of Interest Act. It also includes the results of feedback from public officials on the performance of the Office of the Commissioner. With a response rate of more than 30%, the majority of evaluations are positive, and direct communication is particularly well perceived.*

238 *Articles 21 to 24 of the House of Commons Code. The same articles offer a list of specific things that are not included in the public summary. These include, for example, holiday properties.*

239 *Article 27 et seq. of the Code for Senators*
The prescribed forms are available here: https://seo-cse.sencanada.ca/en/public-registry/forms-for-senators/
The disclosures are available here: https://seo-cse.sencanada.ca/en/public-registry/public-registry/

240 *Article 11 of the Conflict of Interest Act*

241 *Art. 477.89 et seq. Available here: https://laws-lois.justice.gc.ca/eng/acts/E-2.01/FullText.html*

None of the highest-ranking appointees or members of their families may accept an offer of travel on a non-commercial or private aircraft for any purpose, unless it is necessary to do so in the performance of their duties or in exceptional circumstances with the prior permission of the Office of the Commissioner.[242]

In the event that the value of gifts received by a public official or their family in accordance with these rules exceeds CAD 200 (EUR 150), the official must report those gifts to the Office of the Commissioner within 30 days of exceeding the applicable threshold.

Members of the House of Commons and senators

Members of the House of Commons and their family members are prohibited from accepting gifts or other benefits suspected of having been given to influence the exercise of their mandate. Exemptions from this rule are gifts or other benefits which are an expression of ordinary social service or which are a normal expression of hospitality and as such are compatible with the exercise of the mandate. If the value of the gift or other benefit received exceeds CAD 200 (EUR 150), the member of parliament must report the gift to the Office of the Commissioner.[243] Members of the House of Commons are permitted to accept reimbursement for travel expenses from third parties, but if the amount exceeds CAD 200 (EUR 150), they must also notify the Office of the Commissioner, including the purpose and nature of the journey and the source of the funds received.

The rules for senators regarding the acceptance of gifts or other benefits and the reimbursement of the travel expenses of senators or their family members are similar, but the financial limit is set at CAD 500 (EUR 380; instead of CAD 200 [EUR 150] for members of the House of Commons).[244]

Regulation of lobbying

Conflict of interest issues are closely linked to lobbying regulation in Canada. Canada has a comprehensive **lobbying law**[245] dating back to the late 1980s, which is aimed primarily at lobbyists, where it distinguishes between professional lobbyist-intermediaries and in-house lobbyists who promote the interests of their employer. Lobbyists are required to register[246], which also requires ongoing updates of the information provided. Similar to conflicts of interest, the Office of the Commissioner of Lobbying[247] has been established and is very active in its work. According to Article 37 of the Conflict of Interest Act, if former public officials wish to engage in lobbying, they must inform the Office of the Conflict of Interest and Ethics Commissioner.

Enforceability of legislation

Appointed officials

The **Office of the Commissioner** is endowed with investigative **powers**. It has the right to summon witnesses, question them and require them to give evidence, even under oath. It also has the right to request any documents it considers relevant to its activities.[248] In exercising these powers, the Office of the Commissioner has the same powers in relation to witnesses and documents as a court in civil proceedings. However, the hearings are not public. Information disclosed in a deposition before the Office of the Commissioner may not be used against the deponent in any way, except for prosecution for the crime of perjury.

242 *Article 12 of the Conflict of Interest Act*

243 *Article 14 of the House of Commons Code*

244 *Article 17 of the Code of Conduct for Senators*

245 *Available here: https://laws-lois.justice.gc.ca/eng/acts/L-12.4/page-1.html*

246 *The registry is available here: https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/guest?lang=eng*

247 *Website of the Office of the Commissioner of Lobbying https://lobbycanada.gc.ca/en/*

248 *In this respect, the Office of the Commissioner has the power to request, in principle, all the documents it deems appropriate and its powers in this respect are not formally limited in any way. It is possible to imagine situations in which the provision of certain documents would be denied, but this would have to be, for example, in specific and exceptional cases of national security.*

The Conflict of Interest Act contains a number of administrative **sanctions**, in particular fines. The amount of the fine may not exceed CAD 500 (EUR 380), depending on the nature of the offence. Fines are imposed for failure to comply with disclosure obligations, both confidential and public. In the event that a public official is found guilty of such misconduct, the Office of the Commissioner is required to publish information about which official committed what misconduct, what it consisted of, and the amount of the fine imposed.[249]

Members of the House of Commons and senators

The Office may initiate an **investigation** either on its own initiative or on the basis of a reasoned complaint by any member of parliament. In the case of members of the House of Commons, it is the responsibility of the Office of the Commissioner to **report** its findings to the Speaker of the House of Commons and, if appropriate, propose sanctions. After informing the Speaker, it is tasked with publishing its report. The conclusion regarding the investigation may be that the official may have engaged in misconduct, but given the nature of the misconduct and the circumstances of the case, it may be recommended that any sanction be waived. A similar mechanism applies to senators.

In relation to the House of Commons, the role of the Office of the Commissioner is to make internal **recommendations** to individual members on how to deal with conflict of interest situations. In relation to members of the House of Commons, the Office of the Commissioner is endowed with investigative powers, which come into play at the request of a member of the House of Commons or on his or her own initiative. During the course of an investigation, it is the duty of the Office of the Commissioner to act with discretion at all times so as to avoid premature conclusions and leaks. The member of the House of Commons under investigation must be given the opportunity to comment during the investigation.[250] Once the investigation is completed, the Office of the Commissioner publishes detailed final reports.[251]

Conflict of interest legislation in the province of Quebec

Francophone **Quebec** is the largest and second most populous province in Canada. The unicameral National Assembly is the legislature. The leader of the strongest party in the Assembly becomes the premier of Quebec, at the head of the Executive Council of Quebec, a provincial government composed of ministers who must be members of the National Assembly. The head of the province is the Lieutenant Governor, who represents the Canadian king – in reality, the British monarch. The province of Quebec is divided into 17 regions and over 1,000 local governments.

Legal framework

Quebec does not have a constitution embodied in a single document, but a constitutional order composed of the provisions of the Canadian Constitution relating to the province, certain organic laws, such as on the National Assembly[252], constitutional customs and case law. The **Code of Ethics and Conduct of the Members of the National Assembly**[253], which applies not only to MPs but also to ministers, is absolutely crucial for the prevention of conflicts of interest. The Code goes very far in the rules it sets, as the approach taken in adopting it was to set out an ideal to work towards. Article 15 defines that MPs must not place themselves in a situation where their personal interest may impair the independence of their judgement in the performance of their duties.

249 *Article 62 of the Conflict of Interest Act*

250 *SAVOIE, THIBODEAU. Conflict of Interest at the Federal Level: Legislative Framework. p. 4.*

251 *Available here: https://ciec-ccie.parl.gc.ca/en/investigations-enquetes/Pages/AllInvestRepCode-TousRapEnqCode.aspx*

252 *Available here: https://www.legisquebec.gouv.qc.ca/en/document/cs/A-23.1*

253 *Available here: https://www.legisquebec.gouv.qc.ca/en/document/cs/C-23.1*

Institutional safeguards and sanctioning system

Articles 62 et seq. of the Code establish the office of **Ethics Commissioner**[254], who is appointed by a two-thirds majority in the National Assembly on a joint motion filed by the prime minister and the leader of the opposition. The Commissioner's main task is to advise public officials on potential conflict of interest situations, to investigate and prosecute such situations, and to propose sanctions in relation to potential violations. It has a team of around 15 lawyers and analysts to assist it in this.

Investigations are conducted in such a way as to interfere as little as possible with the integrity of individual officials. They thus include non-public interviews with officials regarding possible violations, verification of these facts, legal assessment of the findings of fact, and a conclusion consisting of a report on the facts found. An investigation may also result in the proposal of a sanction in relation to a member of the National Assembly, which, according to Article 99 of the Code, may include a reprimand, a fine, the return of a payment or unlawful gain, suspension from office or, in extreme cases, dismissal from office. The system is based almost entirely on prevention and the Commissioner rarely has to resort to coercive means. The Ethics Commissioner reports on his findings in investigation reports, which are similar to judgements.[255]

The enforceability of ethics rules is illustrated by the case of the provincial Minister of Economic Development, Innovation and Export Trade, Pierre Fitzgibbon, who was found by the Ethics Commissioner to have a conflict of interest in not divesting himself of shares in two companies that did business with the province. The Commissioner proposed that he be suspended from office until he sold his shares or relinquished his position as minister and transferred the shares to a blind trust. Mr Fitzgibbon decided to sell the shares and was then able to return to office.[256]

Rights and obligations of public officials

The Code sets out detailed rules on the acceptance of gifts, restrictions on post-employment activities and general rules on the management of conflicts of interest. The content of the regulation is similar to the federal regulation. In addition, there are rules on incompatibilities of public office. Thus, members of the National Assembly may not serve on local government or school boards.[257]

Summary and identification of good practice

Canada's conflict of interest legislation is complex and highly detailed, defined both by a specific conflict of interest law and by very substantial rules embodied in codes of ethics.[258] The regulation distinguishes between elected representatives of the citizens, who are not so restricted in their secondary activities, and appointed officials. The detailed regulation takes into account a wide range of situations that may arise during the performance of the office and offers solutions to them. This also covers relatively advanced conflict of interest issues, such as the ban on exploiting the influence of a legislator's office or using it to support third parties to promote private interests. These concepts are already included in the general definitions of conflict of interest, helping to define everything considered problematic conduct that should be avoided.

Similarly advanced is the attempt to sanction the risk of an appointed public official allowing their future career plans to be influenced. The rules for the ancillary activities of appointed officials are also detailed and rightly include procedures for the disposal of companies owned by the official or the regulation of contracts between the public authority being governed and companies or family members of the public official.

254 *Website of the Ethics Commissioner https://www.ced-qc.ca/en/*

255 *Available here: https://www.ced-qc.ca/en/actualites-et-publications/26-publications#navigation7 Full reports are available in French only; summaries are also available in English.*

256 *https://montreal.citynews.ca/2021/09/01/fitzgibbon-returns-ethics-violation-resolved/*

257 *Article 10 of the Code*

258 *As in the other countries compared, the provisions of Part 4 of the Canadian Criminal Code apply not only to public officials as an ultima ratio. The latter defines a number of offences related to corruption, bribery, abuse of official authority, etc. The Code is available here: https://laws-lois.justice.gc.ca/eng/acts/C-46/page-20.html#docCont*

Very detailed rules also accompany the disclosure obligations regarding the assets or interests of public officials. The disclosures are treated in a dual regime, with very detailed information being obtained by the Office of the Commissioner for a thorough review, while less comprehensive summaries are made public, reflecting the desire to strike a balance between protecting privacy and the right to information.

The strong Office of the Commissioner plays a crucial role. Although the Office was created within parliament, it is clearly a respected body with a high degree of authority due to its mature political culture.[259] The Office's investigative powers are unprecedented compared to other countries. This is also the reason that the Office has such an influence on the interpretation of the conflict of interest rules. Provided that institutional independence is maintained, conflict of interest rules can be interpreted in a manner consistent with their purpose.

That Canada's arrangements work can also be inferred from the fact that the Office of the Commissioner can investigate even the highest-ranking public officials, i.e. (now former) Finance Minister Bill Morneau or even Prime Minister Justin Trudeau, in multiple cases.[260] On the other hand, it is true that even the discovery of a breach of the rules has not led directly to the imposition of sanctions or to clear political consequences, which can undermine public confidence.[261] Detailed reports from the Office of the Commissioner help to shed light on the nature of situations where private and public interests intersect.

The Canadian practice of establishing a commission at the end of the enactment of a law to evaluate the functionality and shortcomings of the enacted law and to propose amendments and improvements to the law also contributes to the functionality and timeliness of the legislation. In the case of the Conflict of Interest Act, an evaluation was conducted in 2014 by the House of Commons Standing Committee on Access to Information, Privacy and Ethics, which issued a comprehensive report with recommendations for making the Act more effective.[262]

The Canadian example demonstrates, both at the federal and provincial levels (the Quebec regulation, for example, is more robust than that of many of the countries compared), that one way to regulate conflict of interest issues is to choose a truly robust regulation that does not leave much room for interpretation. In practice, a number of seemingly casuistic provisions cover the subtle nuances that public officials may attempt to exploit to advance their own or others' private interests.[263]

259 *STEDMAN, Ian. Resisting Obsolescence: A Comprehensive Study of Canada's Conflict of Interest and Ethics Commissioner and the Office's Efforts to Innovate while Strategically Asserting Greater Independence. York University. Toronto: 2019. Available here: https://yorkspace.library.yorku.ca/xmlui/handle/10315/37465*

260 *In one of these cases, Bill Morneau, as Minister of Finance, did not recuse himself from decisions to award grants to a charity with which he had close ties. Justin Trudeau also had close ties to WE Charity. More here: https://www.cbc.ca/news/politics/we-charity-ethics-report-trudeau-morneau-1.6024982*
The reports of the Office of the Commissioner are available at: https://ciec-ccie.parl.gc.ca/en/investigations-enquetes/Pages/InvestReport-RapportEnquete.aspx

261 *More here: https://democracywatch.ca/democracy-watch-again-calls-on-rcmp-and-prosecutors-to-issue-update-on-investigation-into-obstruction-of-snc-lavalin-prosecution-by-trudeau-cabinet-officials/*

262 *Available here: https://www.ourcommons.ca/Content/Committee/412/ETHI/Reports/RP6365946/ethirp01/ethirp01-e.pdf*

263 *One example of this is Article 27 of the Conflict of Interest Act, which regulates in great detail the requirements for the transfer of a public official's property into a so-called blind trust, so as to ensure that the official cannot actually obtain information that they could use for their own enrichment.*

Germany

The Federal Republic of Germany is a federal parliamentary republic. The Federal Chancellor (*Bundeskanzler*), who heads the **federal government** (*Bundesregierung*), which is made up of ministers, plays a decisive role.[264] The number and powers of the ministries may vary from term to term, as this is decided by the government, which is bound solely by the constitutional requirement to establish ministries of finance, defence and justice. In the current government of Olaf Scholz, 15 ministries have been established.[265] In addition to the ministries, there are several other supreme federal authorities (*Oberste Bundesbehörde*) at the highest level, such as the Federal Court of Auditors (*Bundesrechnungshof*) and the Federal Government Commissioner for Culture and Media (*Beauftragter der Bundesregierung für Kultur und Medien*).

The head of state is the indirectly elected **president**, who primarily performs representative functions.

The German parliament is unicameral and is called the German Bundestag (*Deutscher Bundestag*). Members are elected partly from party lists and partly directly by voters. In addition to the Bundestag, the Federal Council (*Bundesrat*) represents the interests of the federated states at the national level. The members of the Federal Council are appointed by the state governments from among their members. They are therefore not elected members of parliament and the Bundesrat is not considered a chamber of parliament under German law. Therefore, the prevention of corruption in relation to the members of the Federal Council also rests on the activity of the individual federated states and is not a federal matter.[266]

Germany is made up of 16 **federated states** (commonly referred to as *Bundesland*; but correctly just Land), three of which are independent city states. The federated states have a relatively high degree of autonomy.[267] In each country, citizens elect their representatives to state parliaments (*Landtag*)[268]. State governments (*Landesregierung*)[269] are accountable to the state parliaments and are composed of ministers whose number and competences are determined (depending on the particular state) directly by the state constitution, by special laws or at the discretion of the state prime minister (*Ministerpräsident*)[270].

264 *In addition to ministers, there may also be Parliamentary State Secretaries (Parlamentarischer Staatssekretär), who are assigned to a particular minister or directly to the chancellor from among members of parliament and primarily act as liaisons between ministries and political groups in parliament. Parliamentary Secretaries of State must be members of the Bundestag, except for the Chancellor's Secretary of State, for whom this obstacle can be overcome. Parliamentary Secretaries of State are not considered members of the government, but are nevertheless subject to the same rules for the prevention of conflicts of interest as members of the federal government (especially in relation to the accumulation of functions and activities), since Section 7 of the* ***Act Governing the Legal Status of Parliamentary State Secretaries*** *(abbreviated ParlStG; available here: https://www.gesetze-im-internet.de/parlstg_1974/BJNR015380974.html) refers to the corresponding regulation of the Act on the legal status of members of the federal government. Parliamentary State Secretaries must be distinguished from ordinary state secretaries (Staatssekretär) in the civil service, whose position corresponds to Czech political deputies just below the level of minister, only these are career civil servants more often than in the Czech Republic.*

265 *Overview here: https://www.bundesregierung.de/breg-de/bundesregierung/bundesministerien*

266 *GRECO. Evaluation Report Germany, Fourth Round, paragraph 19. All GRECO reports on Germany are available here: https://www.coe.int/en/web/greco/evaluations/germany*

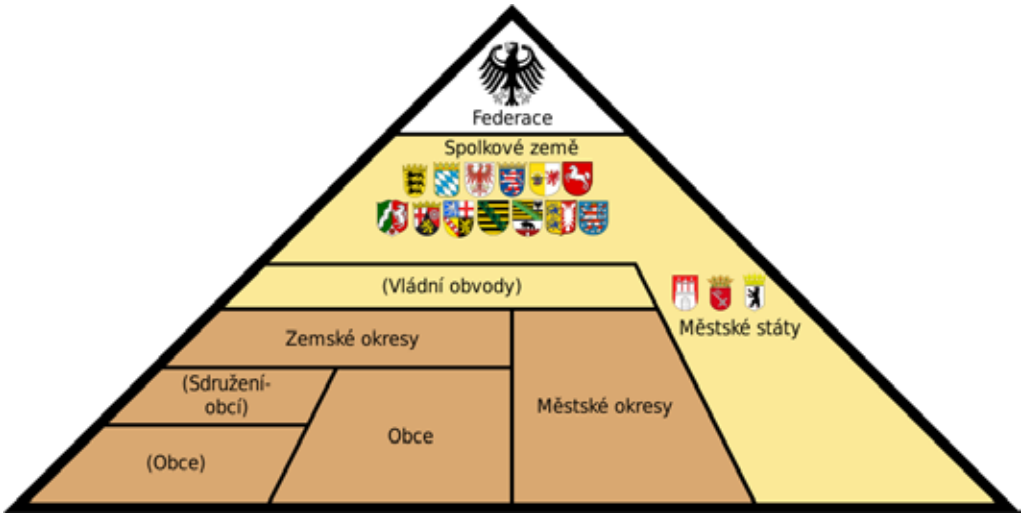
267 *This is based on Article 30 of the Basic Law (see below), according to which the exercise of state powers and state tasks is a matter for the federated states, unless the Basic Law provides or allows otherwise. In the event of a conflict between state and federal law, federal law applies (Art. 31).*

268 *In the city states, other names are used: in Berlin Abgeordnetenhaus; Bürgerschaft in Bremen and Hamburg.*

269 *In the so-called free states of Saxony and Bavaria, the state government (Staatsregierung; composed of state ministers) is used instead of the federated state government, and in the city states the senate (Senat; composed of senators).*

270 *In city states, the heads of state governments are referred to differently, in reference to the urban nature of the country.*

The individual federated states have the freedom to set up their own system of **local government** organisation within their territorial jurisdiction. For this reason, due to the different sizes and characters of settlements or different historical developments, there are very different concepts of municipal systems in the different states, both in terms of organisation and nomenclature.[271] The federated states, except for city states, are generally divided into districts (Landkreis, approximately 300), which represent a higher level of self-government with an elected assembly (*Kreistag*) to which the executive (*Landrat*) is responsible. At the local government level, there are nearly 11,000 municipalities, of which over 2,000 are towns. The municipal authority is an elected assembly, from which emerges a certain board of directors/council, headed by the mayor. The direct election of municipal leaders is allowed. It is true that larger towns are not usually part of provincial districts.[272]



Basic legal framework

For historical reasons, the constitution in Germany is called the **Basic Law** (*Grundgesetz*; also referred to as "**GG**").[273] The Basic Law contains some rules on incompatibility of offices and the bases for the further regulation of the prevention of conflicts of interest.

Another important piece of legislation is the law on the legal status of members of the Federal Government (**Federal Minister Law**; *Bundesministergesetz*, abbreviated to *BMinG*).[274] At the beginning of the term of office, the members of the federal government receive a handbook (*Handreichung*) describing their duties, including the prohibition of secondary activities, the rules for accepting gifts and the protection period. The main point of contact is the Federal Ministry of the Interior (*Bundesministerium des Innern und für Heimat*).[275]

271 *The current municipal arrangements in the individual federated states are based, among other things, on the division of Germany into occupation zones after the Second World War, where the various victorious powers projected their ideas and experiences regarding the functioning of local government https://www.grin.com/document/19291*
The differences in nomenclature can be seen in the following overview https://de.wikipedia.org/wiki/Gemeindeorgan

272 *Image downloaded from Wikimedia Commons. Licence CC BY-SA 2.0 de. Author: user glglgl. Author of Czech version: Jan Dudík. Available from: https://commons.wikimedia.org/wiki/File:Administrative_Gliederung_Deutschlands.svg*

273 *Available here: https://www.gesetze-im-internet.de/gg/BJNR000010949.html*

274 *Available here: http://www.gesetze-im-internet.de/bming/BJNR004070953.html*

275 *GRECO. Evaluation Report Germany, Fifth Round, paragraphs 46–47.*

The rights and obligations of members of the Bundestag are regulated by the Act on the Legal Status of Members of the German Bundestag (**Members of the Bundestag Act**; *Abgeordnetengesetz*, abbreviated to *AbgG*)[276] of 1977. The Bundestag has its own code of conduct, which is considered part of the rules of procedure, is regularly updated and lays down some more detailed rules on the acceptance of gifts or transparency regarding other activities (*Verhaltungsregeln*).[277]

Due to the extensive autonomy of the federated states in terms of the organisation of public administration, the legal framework for the prevention of conflicts of interest differs from one country to another. A comparison of lobbying rules and some conflict of interest prevention measures at the level of each federal state by Transparency International Germany in 2022[278] shows these differences, including details of the measures taken. **Thuringia** (*Thüringen*) comes out best in the comparison and is therefore the subject of a separate section at the end of this analysis. Among other things, the comparison shows that no federated state fared better than the authorities at the national level.

General definition of conflict of interest

Conflicts of interest are not generally defined in German law. Only partial instruments for the prevention of such conflicts are applied, e.g. in the form of a ban on concurrent offices and activities.

Institutional provision of conflict of interest issues

The topic of conflict of interest prevention does not have a separate institutional framework at the national level and all established processes are dealt with by political bodies such as the **Presidium of the German Bundestag** (*Präsidium des deutschen Bundestages*).

Incompatibility of offices – true incompatibility

According to Article 55(1) of the GG, the **federal president** may not be a member of any federated or state legislative body or their governments.

According to Section 4 of the Federal Minister Law, **members of the federal government** may not be members of any state government. In practice, however, federal ministers are usually also members of the Bundestag.

It is not permitted to concurrently hold the offices of a member of the **Bundestag** and the Bundesrat. If a member of the Bundesrat is elected to the Bundestag, they must inform the president of the Bundesrat which office they will retain within a reasonable period of time.[279] As a result of this prohibition, it is also not possible to be a member of the Bundestag and the state government at the same time, since members of state governments automatically become members of the Federal Council or are entitled to represent another member of the state government there. On the other hand, it is not generally forbidden to be a member of the Bundestag and a member of the Landtag, but some federated states prohibit this combination of functions for their officials, and in practice such combinations have been found in only a handful of cases in the last twenty years. Federal MPs are expressly prohibited by law from being members of the European Parliament.[280]

276 *Available here: https://www.gesetze-im-internet.de/abgg/BJNR102970977.html*

277 *Available here: https://www.bundestag.de/resource/blob/194754/587380ffe131740718106773136 67ea0/web_Verhaltensregeln_2021-data.pdf*

278 *Here: https://lobbyranking.de/*

279 *Section 2 of the Rules of Procedure of the Federal Council: http://www.gesetze-im-internet.de/brgo_1966/BJNR104370966.html*

280 *Statistical overview of the history of the German Bundestag, chapters 2.8–2.11. Available here: https://www.bundestag.de/datenhandbuch*

Incompatibility of offices – false incompatibility

The Federal President may not hold any other salaried office, trade or employment. He may not hold executive positions in profit-oriented business entities or serve as a member of the supervisory board.[281]

Article 66 of the Basic Law in conjunction with Section 5 of the Federal Minister Law prohibits the chancellor and federal ministers from holding any other salaried office, trade or employment.[282] In profit-oriented businesses, such persons may not hold senior positions and membership of the supervisory board or the board of directors is only permitted with the consent of the Bundestag.[283] It is also forbidden to hold honorary public office unless the federal government gives its consent. It is also forbidden to act as an arbitrator or to give out-of-court expert opinions if such activity is remunerated.[284]

After their election to the Bundestag, civil servants, judges, members of the armed forces and public service employees may not exercise their current profession while in office. University professors and associate professors can continue to do research or teach, but have a reduced entitlement to remuneration for this activity.[285]

The provisions of Section 44a(4) of the Members of the Bundestag Act expressly prohibit MPs from abusing their position by referring to their membership of the legislature in order to gain an advantage in professional or business relations.

No public official at the national level is prohibited from entering into contractual relations with the public administration.[286]

Protection period

Since 2015, all members of the federal government must notify the government in writing if they intend to take up remunerated employment outside the public administration within 18 months of leaving office, at least one month before starting their new job. The federal government may prohibit the exercise of a notified profession in whole or in part within the 18 months from the end of the term of office in question if there are doubts about a possible breach of the public interest. This is particularly the case if the profession is to be carried out in a field regulated by a ministry which the member of the government has headed, or if the integrity of the Federal Government may otherwise be compromised. The government's decision is based on the opinion of a three-member advisory board and must be justified.[287] The government's decision can be challenged as an administrative act in an administrative court, but such a procedure would be rather rare, because in practice it could also damage the reputation of the plaintiff politician who refuses to accept the government's decision.

No similar restriction applies to members of the Bundestag.[288]

281 *Article 55 of the Basic Law*

282 *Interestingly, there are differences between the federated states as to whether a similar prohibition applies to members of state governments. In North Rhine-Westphalia, for example, it is common for state ministers to hold a number of secondary salaried positions: https://rp-online.de/nrw/landespolitik/die-nrw-landesregierung-ist-in-ueber-220-nebenjobs-engagiert_aid-32826507*

283 *The Ministry of the Interior, referring to the general statutory prohibition on holding any other salaried positions, recommends that no remuneration be received for such positions. GRECO. Evaluation Report Germany, Fifth Round, paragraph 75.*

284 *More detailed rules and recommendations are contained in the aforementioned handbook, which members of the federal governments receive when they take office.*

285 *Section 9(2) of the Members of the Bundestag Act*

286 *GRECO. Evaluation Report Germany, Fourth Round, paragraph 67; GRECO. Evaluation Report Germany, Fifth Round, paragraph 77.*

287 *Sections 6a–6c of the Federal Minister Law*

288 *GRECO. Evaluation Report Germany, Fourth Round, paragraph 66.*

Declaration of personal interest

Members of the government do not have to explicitly declare a conflict of interest in the specific matter under discussion.[289]

Members of the Bundestag must declare their personal interests in meetings of the Bundestag committees before taking the floor if they have a financial interest in the matter or if they are the rapporteur on a particular matter. This fact is noted in the minutes of the committee meeting.[290] This does not apply if the relationship to the matter is already apparent from the activity declaration. A personal interest in the case does not in itself constitute grounds for disqualification from the hearing of the case.

Declaration of activities and assets

There are no reporting requirements for members of the federal government regarding their assets, income, liabilities or activities. However, federal ministers are often also members of the Bundestag, for whom there is an obligation to declare activities and income.

Members of the Bundestag must submit a written **declaration of their activities** to the speaker of the chamber within three months of obtaining their mandate or of a change or addition to the facts reported. The declaration states previous employment and details of entitlement to return to it at the end of the mandate (this shall include previous employment as well as employment held or acquired during the mandate), and membership of boards of directors, supervisory, administrative or other boards of business or public entities. Also to be listed are secondary gainful activities carried out concurrently with the mandate, membership of the bodies of associations or foundations of supra-local importance, anticipated property income or membership and ownership interest in business corporations exceeding 5 %, except for entities that rent or lease or manage their own property. As a general rule, liabilities are reportable if they generate cash income of at least EUR 1,000 per month or EUR 3,000 per year.[291] Certain parts of the activity declaration should be published on the Bundestag website on an ongoing basis on the profile of the individual member.[292] Violations of the obligation to submit complete activity declarations shall be dealt with by the Presidium of the Bundestag. The sanction may be a non-public reprimand, a public reprimand (i.e. publication of a statement on the infringement) or a fixed penalty notice up to an amount equivalent to half of the member's annual allowance.[293]

If, in the exercise of their legal profession, members of the Bundestag personally represent the state or its bodies or public institutions or foundations in court or outside the courts for a fee of more than EUR 1,000, or represent an opposing party in such cases for a fee exceeding the same amount, they must inform the president of the Bundestag.[294]

289 *GRECO. Evaluation Report Germany, Fifth Round, paragraph 70.*

290 *Section 49 of the Members of the Bundestag Act*

291 *Section 45 of the Members of the Bundestag Act*

292 *Information on the last employment held and on the offices held in the bodies of legal entities concurrently with the exercise of the mandate should be publicly available.*
From the beginning of the year until September 2022, unlike in previous years, declarations were not available on members' profiles, citing the adaptation to the new rules adopted at the beginning of 2022. However, such a long delay is not justified.
More information, including a link to the list of members, can be found here: https://www.bundestag.de/abgeordnete/nebentaetigkeit

293 *Section 51 of the Members of the Bundestag Act. Half of the annual members' allowances is equivalent to approximately EUR 60,000. Since 2005, when the Code of Conduct for Members of the Bundestag was tightened up, ten public reprimands have been issued and in one of these cases a fine of EUR 20,000 was imposed. More information on the sanctioning mechanism and a list of sanctioned legislators is available here: https://www.abgeordnetenwatch.de/uebersicht-diese-abgeordneten-verstiessen-gegen-die-verhaltensregeln-des-bundestages*

294 *Section 46 of the Members of the Bundestag Act*

Acceptance of gifts

Members of the federal government must notify the government of any gifts they receive in connection with the performance of their duties. The obligation also applies to former members of the government if they received the gift in connection with their former engagement.[295] The information is forwarded to the head of the chancellor's office together with a proposal for the use of the gift. No notification is required if the gift is worth less than €150 and is not politically significant. If the gift is politically significant, it must be reported regardless of its value. Otherwise, there is no need to report gifts that the official immediately transfers to state property or pays the corresponding value of the gift to the state budget without undue delay. According to GRECO, the handbook also provides clear rules on what should be considered a gift (e.g. benefits for family members) and how exactly to proceed.[296]

Members are prohibited from accepting any pecuniary contribution that is clearly provided to promote certain interests in the Bundestag. It is also expressly prohibited to accept payment for lecturing activities directly related to the performance of a member's mandate. Members are also prohibited from accepting donations from public corporations, political institutions, interest groups, unknown donors, etc.[297] Prohibited remuneration would become state budget revenue. Members must keep accounting records of all donations (i.e. payments made in accordance with the law, for example to support political activities). If a member receives courtesy gifts worth more than EUR 200 or if the value of a gift from a single donor exceeds EUR 1,000 in a calendar year, the member notifies the president of the Bundestag of this fact, together with the details of the donor. If the value of a donation from a single donor exceeds EUR 3,000 per calendar year, the president of the Bundestag publishes it on the Bundestag's website. In the event of a suspected breach of the rules, the Presidium of the Bundestag may take action, and is empowered to impose sanctions in a similar way to those imposed in the case of breaches of the obligation to declare activities.[298]

Regulation of lobbying

Since April 2021, **lobbying** against the federal government, members, bodies or clubs in the Bundestag and high-ranking officials is also regulated in Germany by law[299]. The personal and substantive scope of the law is quite broad and covers a wide range of activities. The law establishes a publicly accessible register[300] and sets out the obligation to pursue interests in accordance with the principles of openness, transparency, honesty and integrity, which is further specified in a code of conduct issued by the government and the Bundestag in cooperation with civil society. The entry of a lobbyist or lobbying organisation in the register constitutes acceptance of this code of conduct. Serious breaches of the basic principles may lead to the publication of a note of misconduct in the register, which has implications for the reputation of the lobbying entity. Registration obligations are enforced by monetary fines. The Chancellery of the Bundestag has published a detailed manual on the application of the rules and the operation of the register[301].[302]

295 *Section 5(3) of the Federal Minister Law*

296 *GRECO. Evaluation Report Germany, Fifth Round, paragraphs 78–79.*

297 *Section 48(4) of the Members of the Bundestag Act in conjunction with Section 25(2) of the Political Parties Act*

298 *Sections 44a, 48 and 51 of the Members of the Bundestag Act*

299 *Lobbying Register Act (Lobbyregistergesetz; abbreviated LobbyRG), available here: http://www.gesetze-im-internet.de/lobbyrg/BJNR081800021.html*

300 *Available here: https://www.lobbyregister.bundestag.de/startseite*

301 *Available here: https://www.lobbyregister.bundestag.de/informationen-und-hilfe/handbuch*

302 *Very detailed information about the rules set for lobbying, the current problems with unfair advocacy and the necessary adjustments to the existing rules is provided in the Lobbyreport 2021, available here: https://www.lobbycontrol.de/wp-content/uploads/Lobbyreport-2021_Beispiellose-Skandale-strengere-Lobbyregeln.pdf*

Conflict of interest legislation in Thuringia

Thuringia (*Thüringen*) is one of the smaller German states, formerly part of the German Democratic Republic. The Provincial Assembly selects the Minister-President (*Ministerpräsident*) by secret ballot, who appoints and dismisses the ministers of his provincial government.

Legal regulation and definition of conflict of interest

The **Constitution of the Free State of Thuringia** (*Verfassung des Freistaats Thüringen*)[303] was adopted in 1993. Article 72(2) prohibits provincial ministers from holding any other paid office, trade or employment. Provincial ministers may not be members of the management or supervisory bodies of profit-oriented companies unless they have the consent of the Provincial Assembly. The **Act on Members of the Thuringian Provincial Assembly** (*Thüringer Abgeordnetengesetz*)[304] prohibits members of parliament from being members of the European Parliament, the German Bundestag[305] and the legislative assemblies of other federal states. Furthermore, civil servants, senior civil servants and judges cannot be members of the provincial assembly. The same restrictions apply to university teachers as at the national level. As Thuringia was part of East Germany, members of the provincial assembly who had reached the age of majority before 15 January 1990 were obliged to be vetted for their involvement in the totalitarian authorities. In the event of a positive finding, a case-by-case assessment is carried out.[306]

The **Act on Members of the Thuringian Ministers** (*Thüringer Ministergesetz*)[307] repeats the restrictions laid down in the provincial constitution and adds a prohibition on the exercise of honorary offices, unless an exception is granted by the provincial government. They must transfer the income from any ancillary activity to the federated state's budget once it exceeds a certain threshold.

Local government is regulated by the ***Thuringian Municipal Ordinance*** (*Thüringer Kommunalordnung*),[308] Sections 23(4) and 102(4) of which introduce an incompatibility of office for members of elected bodies, consisting of a ban on holding various official and appointed positions in another municipality except in a higher municipality in the same territory.

Conflicts of interest are not explicitly defined in the Thuringian regulations, nor at the federal level.

Institutional safeguards and sanctioning system

As at the national level, there is no specific institution responsible for preventing conflicts of interest. The system is also based on political accountability and any declarations are directed by the members to the President of the Provincial Assembly, who is also endowed with sanctioning powers.[309]

Rights and obligations of public officials

Members of the Thuringian Provincial Assembly must keep records of any donations received. Donations in excess of € 5,000 must be reported to the President of the Assembly together with the donor's details. Information on donations over €10,000 from the same person is published on the Assembly's website. Reference to membership of the Provincial Assembly in professional or commercial matters is prohibited. Members must declare conflicts of interest when sitting on committees.[310]

303 *Available here: https://landesrecht.thueringen.de/bsth/document/jlr-VerfTHpG1*

304 *Available here: https://landesrecht.thueringen.de/bsth/document/jlr-AbgGTH1995rahmen*

305 *The prohibition on the concurrence of the office of member of the provincial assembly with membership of the Bundestag is not enshrined in some state legal systems. See Statistical Overview of the History of the German Bundestag, chapter 2.10.*

306 *Section 42i of the Act on Members of the Thuringian Provincial Assembly*

307 *Available here: https://landesrecht.thueringen.de/bsth/document/jlr-MinGTHV7P16*

308 *Available here: https://www.landesrecht.thueringen.de/bsth/document/jlr-KomOTH2003rahmen*

309 *Sections 42g–42h of the Act on Members of the Thuringian Provincial Assembly*

310 *Sections 42d–42f of the Act on Members of the Thuringian Provincial Assembly*

Ministers of the provincial government must notify the provincial government in writing of their intention to move to a position outside the public sector within the 24-month protection period. The provincial government may, on the recommendation of a 5-member advisory committee, prohibit the exercise of other gainful activities if it may be detrimental to the public interest. Violations are punishable by a fine.[311]

In Thuringia, a lobby register has been set up[312], but only those who have lobbied through written proposals in the legislative process are required to register.

Enforceability of legislation

If necessary, members may **request further information on their rights and obligations** from the president of the Bundestag. Conversely, the president may request explanations from members of the Assembly and a statement from the president of their club if there are doubts about the fulfilment of the obligations for the prevention of conflicts of interest under the Members of the Bundestag Act. In the case of moderate breaches, for example, if the deadline for submitting the declaration of activities is exceeded, the president may issue a warning. In more serious cases, the Presidium of the Bundestag hears the case and issues a final opinion. The Presidium does not have a separate sanctioning mechanism, but sanctions under other regulations may apply.[313]

In general, political integrity in Germany is enforced through **political accountability**, and voters are generally sensitive to violations of moral and ethical rules in politics, and conflicts of interest are no exception. So the rules are not very robust on paper; they are followed and enforced based on the expectations of the electorate. For example, the face mask affair (Maskenaffäre)[314] in March 2021 was followed by a visible drop in the preferences of the CDU and CSU coalition.[315]

The issue of senior German politicians moving to the bodies of large business groups is a sensitive topic in Germany. The most glaring case is that of former Chancellor Gerhard Schröder joining the supervisory board of the Russian oil company Rosneft. Although the rules introduced for the **protection period** apply only to the last two governments, the mechanism was already used many times under the first government and in some cases activities were banned.[316] However, there are no sanctioning mechanisms in place should the outgoing member of the government fail to comply with the ban issued by the government. The 18-month limitation has proven too short in practice, and some doubts also arise about the composition of the government advisory body, as its members, as former politicians themselves, have a conflict of interest in some cases.[317]

311 *Sections 5a–5e of the Act on Members of the Thuringian Provincial Assembly*

312 *https://beteiligtentransparenzdokumentation.thueringer-landtag.de/#tab-1*

313 *Sections 50–51 of the Members of the Bundestag Act*

314 *The scandal was over the fact that members of the ruling parties Georg Nüßlein (CSU) and Nikolas Löbel (CDU) received commissions for their companies for brokering state purchases of face masks. For more see: https://www.zeit.de/politik/deutschland/2021-03/maskenskandal-cdu-affaere-csu-jens-spahn-georg-nuesslein*

315 *See the graph showing the results of the Infratest dimap voting behaviour survey, available here: https://www.infratest-dimap.de/umfragen-analysen/bundesweit/sonntagsfrage/*

316 *The former Minister of Economic Affairs and then Foreign Affairs Sigmar Gabriel, who was to take up his post as a member of the board of directors of the merging Siemens Alstom group, had to wait twelve months following a decision taken by the new government. However, neither the merger nor S. Gabriel's accession to office ultimately took place. For more see: https://www.handelsblatt.com/unternehmen/industrie/ex-aussenminister-gabriel-kann-job-beim-zugkonzern-von-siemens-und-alstom-2019-antreten/22741870.html*
Similarly, the government rejected his involvement in the Polish investment company Kulczyk Holding due to concerns about conflicts of interest https://www.dw.com/en/germany-bars-ex-foreign-minister-from-job-with-polish-firm/a-50058646

317 *Lobbyreport 2021, pp. 32–35.*

As in many other Western European countries, the most serious breaches of the integrity of a public official are punishable by **criminal law** in Germany. Two offences are relevant in this respect. The first is bribing or accepting a bribe from a mandate holder under Section 108e of the Criminal Code, which punishes members of elected assemblies at the national and provincial levels if they secure an undue advantage for themselves or third parties in return for influencing the exercise of their rights or duties in connection with the exercise of their mandate. The second is the offence of receiving an advantage under Section 331(1) of the Criminal Code, which could be committed by an executive official in a similar manner. Both offences carry a basic penalty of three years' imprisonment or a fine.[318] However, criminal sanctions are not often applied.[319]

Members of the Bundestag have **immunity** under Article 46 of the GG, according to which the consent of the Bundestag is required for the extradition of a member of parliament for criminal proceedings, unless that member is caught in the act or on the same day. Members of the government have no immunity, but may still retain immunity from their duties as members; the sharing of these duties is common in Germany. Members of the government cannot be subject to disciplinary proceedings.[320]

Summary and identification of good practice

The German approach to the prevention of conflicts of interest amongst senior officials is characterised by an emphasis on political accountability to the electorate. The emphasis is on codes of ethics and non-binding instructions on how public officials should act. It is noteworthy that, unlike most other countries surveyed, where the executive is much more tightly controlled, many of the rules in Germany focus on legislators and the transparency of their actions.

Many of the legal regulations have only recently been introduced, mostly in response to specific cases that have exposed weaknesses in the rules – specifically, the introduction of a protection period. One visible example is the specific regulation of the checks on the future engagements of outgoing members of the government by their cabinet colleagues. As with some other measures, there are clearly some loopholes in th solution that would allow the rules to be circumvented, but it seems that the spirit of the established arrangement is generally respected, as an attempt to not comply with the spirit of the rules would damage the reputation of the public official.

The emphasis on written ethical rules, which are quite detailed and instructive, can be inspiring. This approach is applied, for example, to the rules for accepting gifts and donations, where legal imperatives are complemented by clear guidance for the public officials concerned. Also interesting is the explicit prohibition on accepting donations from unknown donors, which increases the demands on officials to verify and be able to prove from whom the donation was received.

In particular, it is also appropriate to mention the information obligation concerning the pursuit of the legal profession, if it affects public institutions in some way. It is also expressly prohibited to refer to one's membership of the legislature, thereby sanctioning conduct that might be consistent with the motivations of some aspirants to public office. It is also good practice to keep members informed of changes to the declaration of members' activities. The rules for lobbying seem to be set up quite effectively, but this is a new regulation that can only be evaluated in hindsight.

318 *Gesetzliche Regelungen zu Interessenkonflikten – Sachstand. German Bundestag – Scientific Support Service. Berlin: 2017. Available here: https://www.bundestag.de/resource/blob/497828/c6c69075bded2f9ead830f382ab5f3ef/WD-3-003-17-pdf-data.pdf*

319 *GRECO. Evaluation Report Germany, Fifth Round, paragraph 99.*

320 *Section 8 of the Federal Minister Law*

Norway

The Kingdom of Norway is a constitutional monarchy, formally headed by a hereditary **monarch**. The ruler's duties are largely representative and ceremonial, and in real terms power is in the hands of bodies with democratic legitimacy.[321] The **executive power** consists of the prime minister and the Council of State (*Statsråd*; also known as the "government"). The government is formally chosen by the monarch with the consent of parliament. It is composed of the ministers in charge of the relevant ministries. Some ministries even have two ministers, while some ministers have a minimum number of subordinate staff.[322] There are currently twenty ministries, formally established by the monarch.[323]

The **legislature** is a unicameral parliament, the *Stortinget*, to which members are elected on a proportional basis in 19 constituencies.

Territorially, Norway is **divided** into 11 counties (*fylker*), which are administered by a council made up of representatives of local councils and a government-appointed governor. The practical significance of regions as local self-government units is relatively low. Counties are further divided into roughly 350 urban and rural municipalities (*kommune*), which represent the local level of government. At the local level, elections are held for local councils, and these councils then elect a council and a mayor.

Basic legal framework

The rules on restrictions on the concurrence of certain offices derive directly from the Norwegian **Constitution**.[324]

The key legislation governing conflicts of interest in Norway is the **Public Administration Act** (*Lov om behandlingsmåten i forvaltningssaker*).[325] According to Article 2 of this Act, the term public official means a person employed by the central government or a local government. The courts and parliament are exempted from this Act. Although this regulation has a limited personal scope, it is important because it is referred to in the various codes of ethics and internal regulations, thus extending its reach.

321 *Where the Norwegian constitution provides that a power is vested in the king (or the queen, if a woman is on the throne), this is in fact in the hands of the government. In terms of Norwegian constitutional theory, this is treated through the terms the King and the King in Council, which are completely interchangeable. Thus, if the constitution specifies the power of the "king", what is really meant is "the king in government", in effect the government as a whole, while the king does not exert decisive control over the government. It is the government that prepares the decision, and the king merely has a seat in the government. However, he is active in this respect and actually participates in the negotiations. In formal terms, it is possible for the king to make decisions on his own without the cooperation of the government, but constitutional practice and many years of legal development prevent this, so such a situation is not even considered a real risk. This corresponds to the provisions of Article 5 of the Constitution, which deals with the principle of zero power and zero responsibility of the monarch. This concept is common in the world of monarchies.*
However, there are also powers that are expressly conferred on the king himself. These include the power to appoint the government, the power to open parliamentary sessions and the power to grant royal assent to the publication of laws. However, even in these cases, the king follows the recommendations of the government and is bound by restrictive constitutional practices. Moreover, any legislation issued by the king must be countersigned by the member of the government who bears political responsibility for that legislation.

322 *The staff most closely subordinate to ministers include secretaries of state and political deputies, who, although they cannot represent the minister at cabinet meetings, can be important in terms of strategic decision-making. In general, these public officials are subject to the same conflict of interest prevention rules as members of the government, with some exceptions for political deputies.*

323 *The list of ministries can be expanded in the menu on the official government website: https://www.regjeringen.no/en/id4/*
There are also administrative authorities in Norway that are to some extent independent. This independence means that they cannot be tasked by the government as to their activities and objectives, in accordance with their degree of independence, but their staff are not part of the main political leadership of the country.

324 *Available here: https://lovdata.no/dokument/NLE/lov/1814-05-17*

325 *Available in Norwegian and English here: https://lovdata.no/dokument/NLE/lov/1967-02-10*

The main instrument for preventing conflicts of interest in Norway is not the law. A number of sub-legislative, often internal, regulations apply to public officials in top public administration positions. These include, in particular, the **Political Leadership Handbook** (*Politiske ledelse handbok*)[326] as well as the **Instructions for Members of the Government**, the **Regulation on the Organisation of Ministries and Administrative Processes**, and the **Decree on Working Conditions for Political Leadership in Ministries**.[327]

Parliament and its members are regulated in Norway primarily by internal ethical regulations, which are the **Ethical Guidelines for Members of the Storting**[328] and the **Regulations for the Registers of Activities and Financial Interests of Members of Parliament**[329]. The basic rule for dealing with conflicts of interest of members of parliament is that openness creates trust and reduces the risk of misunderstanding and speculation.[330]

General definition of conflict of interest

There is no general definition of conflict of interest in Norwegian law.

Institutional provision of conflict of interest issues

There is no central authority in Norway that deals with conflict of interest issues. However, there are several bodies or contact points that deal with this issue. These include the Presidium of the Storting (in the case of the asset declaration agenda) and the special **Commission for the Assessment of Restrictions on Exit from the Public Sector**, which is tasked with the issue of the protection period. The Commission is established by the so-called Corona Act.[331] It consists of five members, two of whom must have held a senior political office in the past and two of whom must have a law degree. It is an independent body that must not be tasked by the government.

Incompatibility of offices – true incompatibility

Members of the government may be elected to parliament, but they may not attend meetings of parliament while serving as a member of the government, so in effect they cannot exercise their mandate. In addition, they may not hold local government positions. On the other hand, other ministry employees may not be elected to parliament. The same applies to members of the Supreme Court and officials in the diplomatic service (Article 62 of the Constitution). It is interesting to note the "incompatibility" arising from Article 12 of the Norwegian Constitution, according to which two siblings, two spouses or a parent and their offspring may never be members of the government at the same time.

There are no other legal rules on the incompatibility of public offices.

The internal regulation governing the relationship between the political leadership and the state administration establishes the **relationship between the political leadership of the ministry and the ministry as an administrative body**. This therefore regulates the conflict between the political interest, which is a private or partisan interest of the minister in question, and the interest in the proper performance of public administration. This relationship is regulated in such a way that the civil service must work for the minister as head of the ministry, not for the minister as a politician. Civil servants are prohibited from preparing political campaign materials or contributing to political party activities. The civil service may write articles and notes at the behest of the minister, regardless of their context,

326 *Available here: https://www.regjeringen.no/no/dokumenter/handbok-for-politisk-ledelse2/id2478689/*

327 *These documents can be found in the database at: https://www.regjeringen.no/en/find-document/acts-and-regulations/id438754/, most of them in Norwegian only.*

328 *Available here: https://www.stortinget.no/no/Stortinget-og-demokratiet/Representantene/Etisk-veileder-for-stortingsrepresentantene/*

329 *Available here: https://www.stortinget.no/no/Stortinget-og-demokratiet/Representantene/Okonomiske-interesser/*

330 *Adapted from the introduction to the Ethical Guidelines for Members of the Storting, available here: https://www.stortinget.no/en/In-English/Members-of-the-Storting/Ethical-Guidelines-for-Members-of-the-Storting-including-Substitute-Members-when-in-attendance-/*

331 *Section 18 et seq. Available here: https://lovdata.no/dokument/NL/lov/2015-06-19-70*

but it is obliged to comply with the rules requiring professionalism and objectivity. Any political argumentation must be formulated by the politicians themselves in charge of the institutions. Civil servants are subject to disciplinary rules in this regard, while political leadership is only politically accountable.

The Norwegian **Local Government Act** allows **councillors** who would have significant difficulty in performing their duties to apply to the council for temporary exemption from office. This mechanism is used when a member of the municipal council becomes a member of the government.[332] Otherwise, there are no rules in Norwegian law on incompatibility of offices at the municipal level, unless the municipalities themselves set it up in an enforceable way.

Incompatibility of offices – false incompatibility

The Political Leadership Handbook[333] states that **senior executives** must not engage in other occupations or employment in the private or public sector if it might interfere with the normal performance of their principal office. It follows that it is possible to hold positions that do not interfere with the performance of the office. If an official wishes to hold a position that they believe will not impair the performance of their duties, they need the written consent of the prime minister.[334] This consent is not required for positions that clearly cannot impair the objectivity of the exercise of public office.[335] Consents granted are published on the government website for individual officials.

As regards positions on supervisory boards and committees of private companies, Norway has a customary rule that members of the government do not serve in these positions while in office. However, no legal restrictions prevent them from doing so.[336] The public register makes it possible to find out whether a person serves on certain bodies.[337]

Norway does not have prohibitions on public officials or companies they own **entering into contracts** with the state or state-owned companies. In contrast, Norwegian law regulates in considerable detail the obligation of public officials in executive power to disclose ownership of securities with a value exceeding NOK 20,000 (EUR 2,000) that are linked to Norway, for example, if the public limited company whose shares the official holds is domiciled in Norway. This is a measure to prevent insider trading.[338]

Public officials may accept **remuneration** for scientific, academic or publishing activities if remuneration for such activities is customary. However, they may not accept remuneration for activities that they perform in their official capacity; for example, the Minister of Finance may not accept remuneration for a lecture on the state budget.[339]

332 *According to provisions 7–9 of the Municipalities Act, available in English here: https://www.regjeringen.no/contentassets/fe1cd53af88443308daa6be8d6704d1e/21.0421/act-relating-to-municipalities-and-county-authorities.pdf*

333 *Point 6.2 of the Handbook*

334 *However, there is no list or number of exemptions granted; these are political decisions for which the government and its ministers bear political responsibility.*
GRECO. Evaluation Report Norway, Fifth Round, paragraphs 91–92. All GRECO reports on Norway are available here: https://www.coe.int/en/web/greco/evaluations/norway

335 *Examples include the position as the coach of a small football team in which the children of officials play, or a position on the board of a kindergarten attended by the children of officials.*

336 *GRECO. Evaluation Report Norway, Fifth Round, paragraph 93.*

337 *Available here: http://www.proff.no/*

338 *Norway has, among other things, a law on the transparency of media ownership (available here: https://lovdata.no/dokument/NLE/lov/2016-06-17-64), which establishes an authority to ensure transparency of ownership interests in Norwegian media and to collect and systematise data on them. The authority is entitled to request the necessary documents from other bodies and persons, such as contracts or documents on any facts that may ultimately affect the media content produced by the media outlet in question. In the event of failure to provide the required documents, the authority is endowed with sanctioning powers, whereby it is entitled to impose fines, both of a one-off nature and periodic.*

339 *GRECO. Evaluation Report Norway, Fifth Round, paragraph 94.*

Protection period

In Norway, the emphasis is on enabling mobility between the public administration and the private sector. Nevertheless, some restrictions apply when moving from the public to the private sector. The mechanism is set up in such a way that a public official who plans to take up a position outside the public sector is obliged to notify the **Commission for the Assessment of Restrictions on Exit from the Public Sector** at least three weeks before doing so and to provide it with all the relevant documents, in particular information on which position in the private sector they are applying for or how they intend to do business. This obligation shall apply for 12 months after that person ceased to hold public office. If the Commission finds that the area in which the official has served is closely intertwined with the area of the private sector in which they plan to be active, or if the Commission finds that the planned transfer of the former official could undermine confidence in the public administration as a whole, it will prohibit the official's planned activity for up to 6 months. This prohibition is a so-called quarantine period, during which the former official is entitled to the salary they had at the time they left office. In special circumstances, this quarantine can be followed by an outright ban, which can last up to 12 months, after which the former official is no longer entitled to a salary. The time limit shall always be calculated from the end of the official's term of office, although in particularly serious cases the two time limits may be cumulative.

In the event of a breach of the aforementioned opinion, the Commission has the power to impose specific measures, failure to comply with which is subject to a monetary penalty. This can be either a lump sum or an amount that is paid for as long as the unlawful situation continues. In addition, the Commission has the right to confiscate the enrichment obtained by the former official by failure to comply with the opinion. This enrichment, usually of a financial nature, then becomes revenue for the state budget.[340]

Declaration of personal interest

Norwegian legislation does not introduce a specific obligation to declare conflicts of interest in specific situations that arise, but through the law or internal regulations[341], the rules for disqualification from decisions under Article 6 of the Public Administration Act apply to all public officials, including members of the government, with the exception of members of parliament elected by the people.

The relevant mechanism is that a public official is obliged to disqualify themself from decision-making activities or from preparing the basis for a decision they are a party to the proceedings or are related to a party (i.e. if they are a partner, spouse, sibling, ancestor, descendant, trustee or guardian), or if they are a member of the body of a legal entity that is a party to the proceedings, or if they are a senior employee of that legal entity. Similarly, a public official shall be excluded if they have a personal interest in the outcome of the proceedings or if their presence in the proceedings could give rise to doubts as to the objectivity of the decision. If a public official is thus excluded, none of their direct subordinates may rule on the matter.

Violation of this rule and failure to recuse oneself from a decision does not automatically invalidate that decision. This only comes into play when the review procedure establishes that the result would have been different if the official in question had been excluded. In such a case, the actual official does not face any sanction unless their conduct can be classed as a crime.[342]

340 *In most cases, in practice, breaches of the Commission's opinion are dealt with by the imposition of a specific measure, while a monetary penalty tends not to be imposed. One example of such a practice is the Commission's opinion in the case of former Minister of Fisheries Per Sandberg, who violated the rules of the established protection period by attending business meetings in Iran. The Commission issued an order to refrain from further similar actions until the end of the protection period under threat of a fine. More here: https://www.nettavisen.no/nyheter/per-sandberg-brot-karanteneloven-pa-iran-tur/s/12-95-3423571747*

341 *See, amongst others, Political Leadership Handbook, point 4.3*

342 *GRECO. Evaluation Report Norway, Fifth Round, paragraphs 84–86.*

In practice, it is common in Norway, even in the absence of an explicit obligation in the legislation, for public officials to declare their link to the matter at hand and not to take part in the vote or decision-making, as this is in keeping with the local political culture. Failure to declare a personal interest would cause the decision taken to be called into question by citizens and could infer political accountability.[343]

Declaration of activities and assets

In Norway, members of the government and members of parliament are obliged to declare activities and assets, while the issue is regulated only for members of parliament. Members of the government are subject to the same regime by reference.

Rule 76 of the parliamentary Rules of Procedure[344] stipulates that its members are required to register their positions and financial interests in a **register**. The purpose of this register is to provide comprehensive information on individual members so that it is available to the general public online.[345]

The **declaration states the gainful activities** carried out by the person subject to the reporting obligation. If the gainful activity generates a profit exceeding NOK 50,000 (EUR 5,000) per year, it must be specifically identified. In the case of gain from a contract, the counterparty to the contract must be specified. Agreements with an employer on the temporary interruption of employment or future employment contracts must also be published.

The declaration lists **properties** that are of substantial value[346] and are used for business purposes. The purpose of the property, its location and the legal title to it must be stated. Residential and recreational properties do not need to be listed, nor do farms.

In the event that an official has **debts or guarantees** related to business whose value exceeds ten times the amount of the basic national insurance in the case of debts or twenty times the aforementioned reference amount in the case of guarantees, the official is obliged to indicate those debts, and also specify the creditor, the nature of the debt and any guarantors. This rule applies only to debts to which the official is directly a party as an individual, and not, for example, to a company owned by the officer.

The business interests of the official, which particularly mean **business interests**, namely those held through other entities, are also declared, provided that they exceed 10% of the total ownership interest in the company. There is no need to disclose holdings in investment and other funds. However, this exclusion does not apply if any such participation, whether material or otherwise, could give rise to a suspected conflict of interest.

The declaration also includes **gifts** worth in excess of NOK 2,000 (EUR 200) accepted by the official in accordance with the rules on the acceptance of gifts. In this case, the donor, the type of gift and the date of the gift are stated. The official's business trips abroad, paid for, even if only partially, from other than public, party or the official's own funds, are also stated.

The declaration must also include any other facts that might, in the eyes of others, give rise to suspicion of influence on the conduct of the official concerned.

343 *GRECO. Evaluation Report Norway, Fourth Round, paragraphs 45–48.*

344 *Available here: https://www.stortinget.no/no/Stortinget-og-demokratiet/Lover-og-instrukser/forretningsorden/*

345 *Here: https://www.stortinget.no/no/Stortinget-og-demokratiet/Representantene/Okonomiske-interesser/*

346 *According to Norwegian practice, a carport, for example, is not covered by the notification obligation, but a shop is. The decision as to whether the property is substantial in value is at the discretion of the official.*

Declarations **are filed** with the relevant department of parliament and are published within 20 days of delivery. Any changes must be notified on an ongoing basis. In addition, business interests are always updated after six months, with the exact date linked to the dates of parliamentary sessions. Declarations are removed from the website when officials leave office. The responsibility for the proper completion of the declaration rests solely with the official filing the declaration; the content is not controlled in any way. There are no penalties for late or incomplete declarations. According to the Norwegian authorities, the system used to file declarations does not cause any difficulties in practice and control is mainly based on media scrutiny and the possible damage to the official's reputation caused by the public airing of incomplete or undelivered declarations.[347]

The supervision of the assets of Norwegian public officials is complemented by the general rule that the **tax returns** of all citizens are publicly available for inspection. This is done via web access with mandatory registration.[348] Views of tax returns are recorded, so anyone can see who has viewed their tax return. This does not apply to the media and state bodies, where nothing is recorded.[349]

Acceptance of gifts

The acceptance of gifts is regulated for senior political officials by the *Political Leadership Manual*, which is based on the Civil Service Act.[350] As a general rule, public officials may not accept gifts that could give rise to the suspected impairment of the impartial performance of their duties. It is true that the assessment of the acceptability of a gift must be made on a case-by-case basis, and according to the Handbook, it should be clear that *"accepting an affordable bottle of wine after a lecture or flowers, for example, is acceptable, but accepting a voucher for a week abroad is not"*. The guidance for evaluating the appropriateness of accepting a gift includes an assessment of the circumstances under which the gift was offered (publicly or non-publicly), who offered it and in what capacity, whether the acceptance of the gift is merely a courtesy or a substantial advantage for the recipient, and whether it is customary to accept a gift in similar situations. Most gifts received in the course of office are taxable income to the office holder. Violations of the rules are not sanctioned in any way; only political accountability can be imposed.[351]

Regulation of lobbying

Lobbying is not comprehensively regulated in Norway. As part of the general emphasis on transparency, public officials' contacts with third parties can generally be traced in the officials' open calendars or on their social networks. Any breach of the usual unwritten rules would be dealt with in terms of political accountability.[352] Attempts by some legislators to introduce a mandatory lobbyist register were still unsuccessful in 2022.[353]

Enforceability of legislation

The **principle of transparency** is applied as one of the main principles for preventing conflicts of interest in Norway. For example, each member of the government has a detailed calendar of meetings and events, an overview of previous positions in the civil service and other political functions, and an overview of responses to interpellations and parliamentary reports on issues raised by the member. The obligations to declare other activities and assets are also quite extensive. It is common to be informed of the existence of a conflict of interest in a pending matter.

347 *GRECO. Evaluation Report Norway, Fifth Round, paragraph 123.*

348 *Available here: https://tjenester.skatteetaten.no/*

349 *This availability of tax returns is based on a long Norwegian tradition of making tax returns available to citizens at local authorities. The spread of the internet has led to completely open access to all tax returns online. However, this revealed the disadvantages of making sensitive data too easily accessible, so registration-based access was adopted.*

350 *Section 39 of the Civil Service Act, available here: https://lovdata.no/dokument/NL/lov/2017-06-16-67*

351 *GRECO. Evaluation Report Norway, Fifth Round, paragraphs 102–106.*

352 *GRECO. Evaluation Report Norway, Fourth Round, paragraphs 62–65. GRECO. Evaluation Report Norway, Fifth Round, paragraphs 64–66.*

353 *https://www.nrk.no/nyheter/nei-til-lobbyregister-pa-stortinget-1.15972901*

Public officials are not subject to any form of administrative sanction and **accountability** is merely **political**. The legislation introduces very few obligations particularly for members of parliament as elected representatives of the people, as in their case political accountability is assessed in regular elections. In Norway, political accountability is generally a sufficient means of dealing with undesirable behaviour and informal social sanctions are often sufficient in this respect. However, there are also cases in which political accountability is not enforced, even though a public official has a conflict of interest in a given situation, for example, in relation to their ability to make decisions in the area in which they are engaged in business.[354] In practice, problems also arise at the local level, where conflicts of interest often arise between local officials.[355]

Significant breaches of the established rules could be dealt with at the **criminal level** if the attributes one a particular criminal offence, such as the offence of abuse of official authority under Article 173 of the Norwegian Criminal Code, is fulfilled. Public officials in Norway do not enjoy any form of **immunity** from prosecution. In this respect, they are treated like any other citizen. The only exception would be the king, who effectively has no decision-making powers and operates on the principle of *zero power – zero responsibility*.

As regards members of the government, Norway has the option of **impeachment**, whereby parliament can remove an individual member of the government from office through a special process. However, the last time this process was used was in 1926, and since then other avenues of parliamentary scrutiny have been used, notably the possibility of a vote of no confidence in an individual minister or the government as a whole.[356]

Summary and identification of good practice

Norway is a country that does not have a robust conflict of interest regime as such. Most of the procedures applied are based on a combination of ethical and legal rules, which are not covered by sanctions other than political accountability. The basic principle underlying the Norwegian regulation is the principle of openness, whereby open and transparent conduct does not give rise to situations of conflict of interest, unlike non-transparent conduct. This corresponds to the reporting principle, whereby persons in senior executive positions are obliged to declare their other positions and parts of their assets, and this information is publicly available. The second key principle is the robust principle of opting out of decisions. Here, if an official has links to a matter on which they are making a decision, or if their action in the matter could call their objectivity into question, they must exclude themself from the decision.

Norway's trust-based system is difficult to transfer to countries where public officials are not highly trusted and where political accountability is difficult to enforce.

354 *Transparency International Norway criticised the former Minister of Fisheries because she had property interests in the fishing industry (family-owned fish farms). This minister was excluded from deciding on matters relating to her companies, yet there was no consensus on whether a person with a vested interest in the sector could even serve as a minister. More here: https://transparency.no/2021/01/05/vandrende-interessekonflikter-utfordrer-forvaltningen/*

355 *Ibid.*

356 *GRECO. Evaluation Report Norway, Fifth Round, paragraph 126.*

Poland

Poland is a parliamentary republic. **Legislative power** is vested in the bicameral parliament, which consists of the Sejm (lower house) and the Senate (upper house). The **executive branch** is formally headed by the directly elected president of Poland, who has a relatively strong position and can exert considerable influence on the legislation.[357] In fact, the most important executive office is that of the prime minister. The president appoints the cabinet – the Council of Ministers, headed by the prime minister. The Sejm subsequently expresses its confidence in the new government.

Local government in Poland is organised into three tiers. The highest are the **voivodeships** (*województwo*), of which there are sixteen in Poland. Administrative power at the voivodeship level is divided between a governor appointed (usually politically) by the central government, an elected assembly (*sejmik*) and an executive board (*zarząd województwa*) elected by the assembly. The head of the executive board is called the marshal (*marszałek*).

The second tier comprises the **counties** (*powiat*), of which there are 380; they have relatively few powers because most of the powers are exercised by the other levels of local government. A distinction is made between city counties and land counties. City counties consist of large settlements that are no longer subdivided into smaller municipalities. They are governed by a directly elected mayor (*prezydent*) and an elected city council (*rada miasta*). Counties have an elected county council (*rada powiatu*), which elects a district board (*zarząd powiatu*) headed by a mayor.

The third level is the so-called gmina, which is often translated into English as municipality (the term should be understood as a designated municipal authority, as many municipalities are more rural in nature and this is the term used to describe these areas). There are almost 2500 municipalities in Poland. A municipality has an elected council (rada gminy or rada miasta, depending on the nature of the local government) and a directly elected mayor (in large cities he is called prezydent, in most urban-rural gminas burmistrz, and in rural gminas wójt).

Basic legal framework

The Polish **Constitution** is the basis for the regulation of conflict of interest issues.[358] The fundamental constitutional principles for public authorities related to conflicts of interest include the impartiality of public authorities, which must not take into account any personal or financial preferences of their representatives, or their political, ideological and religious views (Article 25(2)). Certain measures aimed at preventing conflicts of interest among members of parliament, such as incompatibility of office with certain ancillary activities or asset declarations, are regulated by th**e Act on the Execution of the Mandate of a Member of Parliament and Senator** (*ustawa o wykonywaniu mandatu posła i senatora*).[359] Certain sub-issues are then dealt with in the rules of procedure of the houses of parliament or in the Principles of Deputies' Ethics.[360]

In addition, Poland has the 1997 **Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions** (*ustawa o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne*; the so-called **Anti-Corruption Act**).[361] The main objective of the law is to prevent corruption among persons holding public office and to combat corruption at the highest levels of public authority by stopping the mutual influence between public authority and the business community. To this end, the law introduces restrictions on the freedom of economic activity otherwise guaranteed in Article 20 of the Constitution.

357 *That is why some sources classify Poland as a semi-presidential system.*

358 *Available in English here: https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm*

359 *Available here: https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19960730350*

360 *However, according to the GRECO evaluation, the codes of conduct are not very specific and enforceable, and there are doubts about the objectivity of parliamentary ethics committees.*
GRECO. Evaluation Report Poland, Fourth Round, paragraph 38. All GRECO reports on Poland are available here: https://www.coe.int/en/web/greco/evaluations/poland

361 *Available here: https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19971060679*

The prevention of conflicts of interest **at the local government level** is regulated by the codes governing the different levels of local government, i.e. the **Law on Provincial Government**[362], the **Law on District Government**[363] and the **Law on Local Government**[364],which deal primarily with the rules on incompatibilities and mandatory disclosure of information (declarations of personal interest and declarations of assets) by elected and appointed local government officials at each level of local government.

General definition of conflict of interest

There is no general legal definition of conflict of interest in Poland.

Institutional provision of conflict of interest issues

No specific institution has been established to comprehensively address the issue of conflicts of interest. Many oversight powers are exercised directly by the houses of parliament or by the government and its agencies.

In order to prevent and detect corruption (consisting mainly of bribery and activities detrimental to the economic interests of the state), the **Central Anti-Corruption Bureau** (*Centralne Biuro Anticorupcyjne*; hereinafter also referred to as "**Bureau**") was established by law[365] in 2006, with approximately 1,300 employees.[366] The Bureau is tasked with detecting and investigating corruption crimes and setting up measures to prevent them. In the context of the prevention of conflicts of interest, the Bureau is authorised to check the asset declarations of public officials. The Bureau also carries out analytical, awareness-raising and educational activities.

Incompatibility of offices – true incompatibility

The Constitution states that it is not possible to be a member of parliament and a senator at the same time. Members of the **national parliament** cannot be members of the European Parliament. Members of parliament may not simultaneously hold the positions of President of the National Bank of Poland, President of the Supreme Audit Office, Ombudsman, Ombudsman for Children's Rights, member of the Monetary Policy Council, member of the National Broadcasting Council, ambassador or employee of the offices of the Sejm, the Senate, the president or the government. In addition, judges, public prosecutors, civil servants and members of the security forces may not hold office as a member of parliament. Violations of the incompatibility of offices set out in the Constitution can theoretically lead to the loss of one's mandate. Also, senior positions in central government bodies are often limited by specific laws in a way that is incompatible with the exercise of the mandate of a member of parliament.[367]

In Poland, the **Lustration Act** applies to the highest officials of the executive branch born before 1 August 1972.[368]

Within **local governments**, the ban on simultaneously holding several public offices is established in such a way that the office of a council member or an office in the administration of a local government unit cannot be exercised simultaneously with the office of a member of parliament or senator. In addition, it is not possible to simultaneously hold positions in the elected and executive bodies of local governments at different levels

362 *Available here: https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19980910576*

363 *Available here: https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19980910578*

364 *Available here: https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19900160095*

365 *English version here: https://www.cba.gov.pl/ftp/dokumenty_pdf/ACT_on_the_CBA_October_2016.pdf*

366 *Bureau website: https://www.cba.gov.pl/en*

367 *Articles 102–103 in conjunction with Article 108 of the Constitution. GRECO. Evaluation Report Poland, Fourth Round, paragraphs 44 and 46.*

368 *GRECO. Evaluation Report Poland, Fifth Round, paragraph 55.*

(i.e. a member of a voivodeship executive board may not be a county mayor or a member of a county council, etc.). Holding the office of the top representative of a local government (governor, district mayor or mayor of a municipality) or their deputy excludes the performance of a similar function in other local governments, membership in local government bodies, employment in the state administration and the performance of the function of an MP or senator. A member of an elected local government body may not be employed by the local government. In addition, it is forbidden to simultaneously hold any combination of the positions of member of the control committee, voivodeship marshal, president and vice-president of the voivodeship elected assembly and membership of the voivodeship executive board in the voivodeship.[369]

Incompatibility of offices – false incompatibility

According to Article 150 of the Constitution, a **member of the Council of Ministers** may not engage in any activity contrary to their public duties. In addition, the Anti-Corruption Act stipulates that the prime minister and ministers cannot, in principle, be members of executive boards, supervisory boards or audit committees in commercial companies, foundations conducting business activity or cooperatives (except housing cooperatives). They may not hold other positions in commercial companies if such activities could lead to the suspicion that they are pursuing a personal interest, or hold more than 10% of the shares or stakes in the total shareholding structure of commercial companies. It is also forbidden to be self-employed or to be a representative or a plenipotentiary in the context of a business activity, unless it is in the field of agriculture.[370] There is no restriction on members of the government entering into contractual relations with the state.[371]

Members of parliament are constitutionally prohibited from engaging in business activities involving the state or local governments or their assets, which also restricts contracting with the public sector. Furthermore, the Act on the Execution of the Mandate prohibits the performance of other activities if this could undermine the electorate's trust in the fact that the official will perform their duties in a proper manner. In addition, employment in the security forces of the state and in a number of public authorities, typically in supervisory bodies or courts or prosecutors' offices, is expressly prohibited. Members of parliament must notify the marshal of the relevant house of any ancillary activity.[372]

Local government officials normally have other jobs or businesses. However, any additional activity should not undermine citizens' trust in their official offices. The possibility of using municipal funds for business activities is also limited.[373]

Protection period

According to Article 7 of the Anti-Corruption Act, neither executive nor local government officials may be employed by or perform any other activity for a company if they have participated in making individual decisions concerning that company (except for taxes and local fees) for a period of one year after leaving public office. However, the period of the ban is not absolute: a commission set up by the prime minister may give its consent to the new employment before it expires. The three-member commission shall take a decision within 30 days of receiving the application.[374]

369 *MAKOWSKI, Grzegorz (ed.). The conflict of interest in the Polish government administration. Stefan Batory Foundation. Warsaw: 2014. ISBN: 978-83-62338-51-1. p. 40. Available here: https://www.researchgate.net/publication/281346519_The_conflict_of_interest_in_the_Polish_government_administration*

370 *Article 4 of the Anti-Corruption Act*

371 *GRECO. Evaluation Report Poland, Fifth Round, paragraph 57.*

372 *Articles 30(1) and 34 of the Act on the Execution of the Mandate; Article 107(1) in conjunction with Article 108 of the Constitution*

373 *MAKOWSKI (ed.). The conflict of interest in the Polish government administration. Pp. 40–41.*

374 *Further information on the functioning of the commission, its composition and the list of officials affected by the restrictions, etc., is available on the website here: https://www.gov.pl/web/premier/inne-organy-doradcze-powolane-do-rozpatrywania-okreslonej-sprawy-lub-grupy-spraw3*

The commission grants most applications for a reduction in the protection period.[375] The rules for the protection period were reviewed by the Constitutional Court in 1999, which concluded that the measure was not unduly restrictive. Surprisingly, it is not the public official who is sanctioned for breaking the rules, but the entrepreneur under the Misdemeanour Act, as the rules are seen more as a means of preventing entrepreneurs from using the knowledge of former public officials.[376]

Ad hoc declaration of personal interest

Ad hoc declarations of personal interest are only mandatory for local government officials. They are not allowed to vote in local government bodies if the matter under discussion (at least potentially) affects their legal interests, even if they coincide with the interests of the local government.[377] This is not regulated at the national level.

Declaration of activities and assets

Representatives of the executive branch at the national and local government level, i.e. members of the Council of Ministers, the heads of central administrative authorities, the heads of local governments and members of local government councils, are required under Article 12 of the Anti-Corruption Act to file written **declarations of benefits** granted to them or their spouses. Declarations are published in the Register of Benefits[378], which is maintained by the State Election Committee. The Register of Benefits includes information on salaried positions in public administration and in the private sector, participation in the bodies of commercial companies, foundations or cooperatives, even if no monetary benefits were received as a result of those positions, and donations received from domestic or foreign entities, if their value exceeds 50 % of the lowest salary applicable to the employee, other benefits exceeding the aforementioned value, domestic and foreign travel not connected with official duties, if paid from sources other than the employee's own resources, and other benefits received which are not connected with the performance of official duties. Changes to the declared data must always be reported within 30 days at the latest.

Public officials are also required to file **declarations of assets**. The asset declarations of legislators and executive officials are regulated in different laws[379], but in principle the regulations are similar. If members of parliament are also members of the government, they have to file their asset declarations twice. Members of elected and appointed local government bodies also file declarations of assets.[380] In principle, declarations are made upon taking office, annually as of a certain date, and finally upon leaving office. The declarations disclose, on the prescribed form, assets in the form of immovable property, cash, securities and income from public budgets, as well as professional income, liabilities and valuable movable property. Members of parliament's declarations of assets are submitted to the marshal of the relevant house and published on the profiles of the individual legislators.[381] Representatives of the executive branch of government generally submit them to a superior body; in the case of the prime minister, this is the First President of the Supreme Court.[382]

375 *MAKOWSKI (ed.). The conflict of interest in the Polish government administration. p. 18.*

376 *MAKOWSKI (ed.). The conflict of interest in the Polish government administration. Pp. 35–36.*

377 *MAKOWSKI (ed.). The conflict of interest in the Polish government administration. p. 41.*

378 *Available here: https://rk.pkw.gov.pl*
Declaration of the Minister of Justice available here: https://rk.pkw.gov.pl/pliki/1576676899_Deklaracja 16-12-2019 r. A.pdf
A declaration from the Chief of the Counterintelligence Service that includes information about the material gifts received, including the value (e.g. valuable chess pieces) https://rk.pkw.gov.pl/pliki/1609252573_Deklaracja 28-12-2020 r. A.pdf
Legislators' declarations are published on their profiles on the website of the house in question.

379 *Articles 35–35a of the Mandate Act for legislators and Article 10 of the Anti-Corruption Act for persons with top executive functions*

380 *MAKOWSKI (ed.). The conflict of interest in the Polish government administration. p. 41.*

381 *The list of members of the Sejm is available here: https://www.sejm.gov.pl/Sejm9.nsf/poslowie.xsp.*
The list of members of the Senate is available here: https://www.senat.gov.pl/sklad/senatorowie/.

382 *An amendment to the Mandate Act was adopted in 2019, which made it mandatory for legislators to file declarations of assets for their spouses and children as well. However, this regulation was declared unconstitutional by the Constitutional Court: https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/11712-rozszerzenie-zakresu-oswiadczen-o-stanie-majatkowym-funkcjonariuszy-publicznych-o-informacje-dotyczace-sytuacji-majatkowej-osob-najblizszych-skladajacym-oswiadczenia*

Acceptance of gifts

The acceptance of **gifts** by public officials is not prohibited; the only restriction on members of parliament is that they are prohibited from receiving any gift that could undermine the electorate's trust in them to carry out their duties.[383]

For public officials falling within the scope of the Anti-Corruption Act, it is only mandatory to disclose gifts exceeding a given value in the declaration published in the Register of Benefits described above. If the gift is of a lesser value, no legal obligations apply. GRECO states that there are no specific and clear rules and guidelines on gifts. In practice, there is also a relatively low awareness of what constitute acceptable and prohibited gifts and benefits.[384]

Regulation of lobbying

The Act on lobbying activity in the law-making process[385] defines lobbying, provides for the registration of professional lobbyists[386] and specifies the obligations of public authorities in their interaction with lobbyists. They are obliged to immediately publish information about professional lobbying activities directed at them and to report lobbying activities by unregistered entities. The Ministry of the Interior imposes fines for unregistered lobbying activities.

Members of parliament may not **refer to their mandate** or use the title of member of parliament in connection with their profession or business.[387]

Enforceability of legislation

The enforcement of Polish conflict of interest rules is dependent on **criminal law** and there are essentially no effective means of prevention.[388] Even the regulation of asset declarations relies on criminal liability, as the filing of false asset declarations is a criminal offence introduced directly by Article 14 of the Anti-Corruption Act, which allows for a prison sentence of up to five years for this offence. Less serious violations can be punished by a restriction of personal liberty or a fine, or a prison sentence of up to one year.

The filing of **declarations of assets** is considerably confusing as regards to whom the declarations are filed and how the obligation to disclose them is respected. There are also no methodological instructions specifying what to include in the declarations or how. The review of declarations of assets by their standard recipients tends to be a mere formality. In addition, the law allows for declarations of assets to be reviewed by the Central Anti-Corruption Bureau and, in the case of legislators, they are also forwarded to the locally competent tax authorities. One major shortcoming of the reporting obligations is that they do not have a consistent form or a functional mechanism for checking them. In addition, the scope of the officials to whom the obligation applies should be extended.[389]

383 *Article 33(2) of the Mandate Act*

384 *GRECO. Evaluation Report Poland, Fifth Round, paragraph 60.*

385 *Available here: https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20170000248*

386 *Published in the Public Information Bulletin, link: https://archiwumbip.mswia.gov.pl/bip/rejestr-podmiotow-wykon/23846,Rejestr-podmiotow-wykonujacych-zawodowa-dzialalnosc-lobbingowa.html*

387 *Article 33(3) of the Mandate Act*

388 *GRECO. Evaluation Report Poland, Fifth Round, paragraph 80.*

389 *MAKOWSKI (ed.). The conflict of interest in the Polish government administration. p. 17.*

Breaches of duty by legislators are dealt with at the political level according to the rules of procedure of the house concerned.[390] In Poland, there is a long-standing problem with the enforcement of the duties of members of parliament (who also commonly become the top representatives of the executive branch) due to their extensive immunity. This applies even to acts unrelated to the performance of official tasks, and even when caught in flagrante delicto. Parliament can strip its members of their immunity, but the rules and practice are not fixed and cases are treated differently. In addition, the most senior state officials may be tried by the State Tribunal established under Article 198 et seq. of the Constitution instead of by the general courts, although this procedure is lengthy and rife with theoretical and practical disputes about its use, and in practice it fails to hold top politicians accountable.[391]

Fundamental doubts prevail regarding the independence of the established Central Anti-Corruption Bureau. The position of the director of the Bureau, its internal functional set-up and the focus of its activities are legally in the hands of the prime minister, albeit often in cooperation with other senior political bodies. Not only is the Bureau politically dependent, but it also has tools at its disposal that allow its powers to be abused. The Bureau uses very invasive criminal law instruments in its investigations, including wiretapping, mail inspection or the deployment of agents. According to reports by the non-governmental Stefan Batory Foundation, the Bureau's procedures violate the right to a fair trial and provide politically tinged information about the cases it investigates.[392]

Summary and identification of good practice

While Polish conflict of interest legislation contains some common instruments, such as declarations of assets or incompatibility of public office with certain secondary activities, it general fails. The regulation contains gaps and can be circumvented, especially in situations where there are no clear procedures on what happens in the event of a conflict of interest being identified. In particular, the lack of means of enforcing the regulations is critical. For procedural reasons, criminal law cannot be relied upon alone in this area, nor should it be, as prevention plays a very important role in avoiding the adverse consequences of acting in a conflict of interest. Prevention is difficult to set up in a situation where supervisory or at least consultative powers are exercised by a body showing signs of political manipulation, or where it is not at all clear who should be competent to deal with a particular situation.

The situation has remained unchanged for a long time, although many evaluation reports by various institutions criticise the fundamental shortcomings of the Polish regulation. The Polish authorities provide regular information about planned legislative changes that could fill many of the gaps, but these are not being implemented. The current legislation does not have any broader perspective. Even public officials or civil servants themselves are not familiar with the rules. The rules set are partly very casuistic, and partly very vague.[393] The Polish legislation therefore does not offer any good basis for setting a policy for preventing and sanctioning conflicts of interest. The structure of the Polish legislation is generally similar to that of the Czech Republic, but apart from broader rules for limiting the concurrence of certain offices and the existence of lobbying regulation, it does not provide much inspiration on how to regulate conflicts of interest.

390 *Article 33(4) of the Mandate Act*

391 *For more detailed information on the pitfalls of enforcing the rules against people holding the highest offices of State in Poland, see: GRECO. Evaluation Report Poland, Fifth Round, paragraphs 82–90.*

392 *KRAJEWSKA, Anna; MAKOWSKI, Grzegorz. Corruption, anti-corruption and human rights: the case of Poland's integrity system. Stefan Batory Foundation. Crime Law and Social Change, 2017/9. ISSN: 1573-0751. Available here: https://www.researchgate.net/publication/319683992_Corruption_anti-corruption_and_human_rights_the_case_of_Poland's_integrity_system*
MAKOWSKI, Grzegorz; WOJCIECHOWSKA-NOWAK, Anna; NOWAK, Celina. Implementation of Selected Provisions of the United Nations Convention Against Corruption in Poland Report. Stefan Batory Foundation. Warsaw: 2015. ISBN: 978-62338-52-8. Available here: https://www.researchgate.net/publication/346625813_Implementation_of_Selected_Provisions_of_the_United_Nations_Convention_Against_Corruption_in_Poland_Report

393 *MAKOWSKI (ed.). The conflict of interest in the Polish government administration. pp. 12–14.*

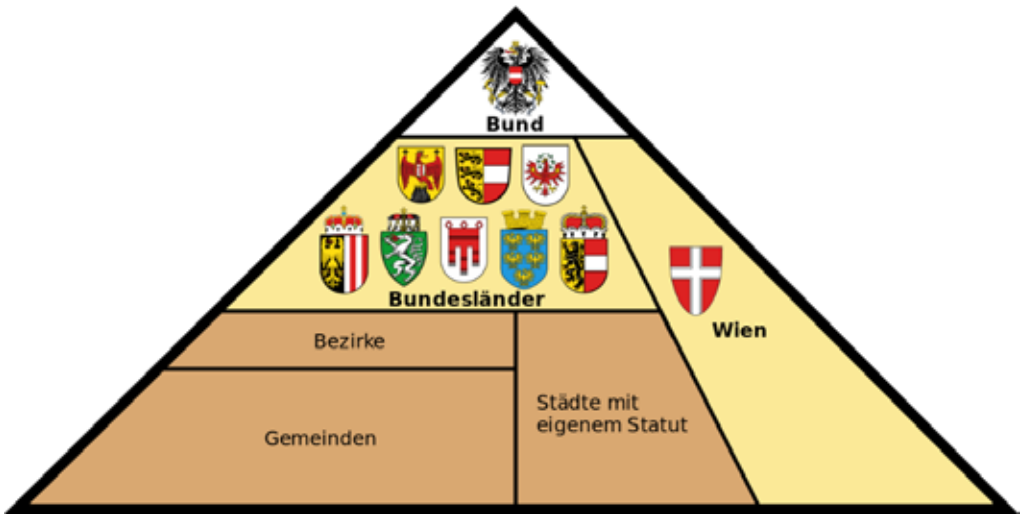
Austria

Austria is a federal republic. The Austrian **parliament** has two chambers: The National Council (*Nationalrat*; lower house; elected by the population on a proportional basis) and the Federal Council (*Bundesrat*; upper house; elected by the legislative assemblies of the individual federated states, whose members must defend their interests).

The head of state is the Federal President, who is elected by direct universal suffrage. The Federal President has the task of appointing the members of the government, which as a whole is accountable to the National Council. The government is headed by the Federal Chancellor. Among the most senior members of the **executive** are the state secretaries, who may serve in any number of roles similar to those of ministers, being appointed in the same way, although they are assigned to one of them and are bound by their instructions. Austria has 12 ministries (including the Federal Chancellery).[394] There are no other central state administration bodies at the level of ministries.[395]

Austria is divided into nine autonomous **federal states** (*Bundesland*), which have their own state constitutions (*Landesverfassungsgesetz*), unicameral parliaments (*Landtag*) and provincial governments (*Landesregierung*), headed by a governor (*Landeshauptmann / -frau*). The importance of the independent federal states in Austria is more a cultural and historical phenomenon. While the federal states have powers in matters of spatial planning, nature conservation, agriculture and the collection of certain taxes, etc., they are far less autonomous than in other federations, such as the Federal Republic of Germany.

The federal states are divided into 80 districts and 15 statutory cities. Districts do not have their own local government and are further divided into individual **municipalities**, which total over 2 000 and can take on the character of a city or town. In municipalities, a municipal council is directly elected, which in some federal states is called a city council office, which also corresponds to the Czech nomenclature. The executive body of the municipalities is the executive board, consisting of the mayor, deputy mayors and other members. The mayor is usually elected by the municipal council or directly by the citizens, depending on the state. This system does not apply to the federal state of Vienna, which is divided into self-governing municipal districts.[396]



394 *Section 1 of the Federal Act on the Number, the Powers and the Organisation of Federal Ministries. Available here: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000873*

395 *Beyond the direct competence of the ministries, federal administration may be carried out either indirectly through the authorities of the individual federated states or directly through administrative bodies with national competence, but only in the areas defined in Article 102(2) of the Austrian Constitution.*

396 *Image downloaded from Wikimedia Commons. Free work. Author: user Perhelion. Available from: https://de.wikipedia.org/wiki/Verwaltungsgliederung_Österreichs#/media/Datei:Verwaltungsgliederung_Österreichs.svg.*

Basic legal framework

The **Austrian Constitution** of 1920 (Federal Constitutional Law; *Bundes-Verfassungsgesetz*)[397] regulates the incompatibility of offices for constitutional officials.

Further rules in this area are contained in the **Act on incompatibilities and transparency** (*Unvereinbarkeits- und Transparenz-Gesetz*, abbreviated *Unv-Transparenz-G*)[398] from 1983, which was significantly amended in 2012 with effect from 2013. Several scandals in Austrian politics have led to the adoption of sweeping changes[399]. The law contains a preamble which explicitly states that for members of parliament and provincial parliaments, participation in working, political and social life is a source of information for decision-making and is part of their tasks. The exercise of a profession whose interests the public official represents is in principle permitted. The Act had a different basis when it was passed in the 1980s than it does today. The previous list of prohibited side activities has just been shifted by a major amendment in 2012 to narrow the scope of prohibited activities at the cost of greater transparency based on the robust declaration of activities. As there are no barriers to holding multiple political offices, it is common in Austria for a single person to hold 10 to 20 local, state and national offices combined with non-governmental or private sector offices.[400]

Most of the provisions of the Act on incompatibilities and transparency are designated by the legislator as **constitutional provisions** (*Verfassungsbestimmung*), which thus become part of the Austrian constitutional order. This means that a parliamentary constitutional majority is needed to adopt or amend them, even in the case of ordinary laws.[401]

On the basis of the GRECO recommendations, a code of ethics for legislators was adopted in January 2021 in the form of the **Rules of Conduct for Members of Parliament** (*Verhaltensregeln für Parlamentarier/innen*).[402] However, these rules only provide an overview of the legal provisions that provide for incompatibility of offices and the obligation to declare activities and income.

General definition of conflict of interest

Conflicts of interest are not generally defined in Austrian law and the legal rules consist mainly of the regulation of incompatibility of offices, the prohibition of other activities and the obligation to submit a declaration of assets and a declaration of activities and income.

397 *Available here: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138*

398 *Available here: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000756*

399 *GRECO. Evaluation Report Austria, Fourth Round, paragraph 41. All GRECO reports on Austria are available here: https://www.coe.int/en/web/greco/evaluations/austria*
These were cases of politicians being linked to lobbyists, revealing the payment of large sums of money suspected of illegally financing political parties. Telekom Austria, for example, was also involved. More here: https://www.dw.com/en/former-austrian-chancellor-resigns-amid-corruption-scandal/a-15365554

400 *GRECO. Evaluation Report Austria, Fourth Round, paragraph 37.*

401 *For more details see: http://www.verfassungen.at/verfassungsbestimmungen-hinweis.htm*

402 *Available here: https://www.parlament.gv.at/ZUSD/PDF/Verhaltensregeln_und_Praxisleitfaden_fuer_ParlamentarierInnen_NEU_BF.pdf Of particular relevance are pp. 23–31.*

Institutional provision of conflict of interest issues

In Austria, there is no specific institution with comprehensive powers to prevent conflicts of interest.

Partial powers in this area are exercised by the **parliamentary Incompatibility Committees** (*Unvereinbarkeitsausschuss*) in the National Council and the Federal Council, which are elected by the members of parliament themselves from among their own ranks. In the National Council, members tend to be elected according to the principle of proportional representation at the beginning of the legislative period. The composition of the Committee in the Federal Council corresponds to the distribution of forces in the individual federal states.[403]

The **Court of Audit** (*Rechnungshof*; Austria's supreme audit institution) receives the declarations of assets.

The **Federal Bureau of Anti-Corruption** (*Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung* – BAK) has been established within the Austrian Ministry of the Interior. However, this is more of a unit focusing on the criminal level of corruption, which does not deal with conflicts of interest unless they go beyond the level of criminal offences.[404]

Incompatibility of offices – true incompatibility

According to the Constitution, the **Federal President** may no longer exercise any other profession or be a member of elected assemblies, i.e. the National Council, provincial parliaments or city council offices.[405]

Members of parliament may not hold office in the other chamber and are also excluded from the office of Federal President.

The **president of the Court of Audit** may not be a member of any elected body, including the European Parliament, and may not take up the post if they have been a member of a federal or state government in the last five years.[406]

The three-member **Austrian Ombudsman Board (AOB)** may not include a person who is a member of an elected body, including the European Parliament, or a member of a federal or state government. At the same time, members of the executive board may not exercise any other profession.[407]

Members of elected bodies, including the European Parliament and the federal or state governments, are also not allowed to serve on the **Supreme Court**. This prohibition shall apply until the end of the relevant term of office of the public official concerned, even if they resign early. A person who has served in the aforementioned positions within the last five years cannot become president or vice-president of the Supreme Court.[408] These rules also apply to administrative courts, the Supreme Administrative Court[409] and the Constitutional Court. Moreover, the office of judge of the Constitutional Court is prohibited for officials of political parties.[410]

403 *GRECO. Evaluation Report Austria, Fourth Round, paragraph 59.*
404 *List of provisions regulating the status of the BAK: https://www.bak.gv.at/102/Rechtliche_Grundlagen.aspx*
405 *Article 61(1) of the Constitution*
406 *Article 122(5) of the Constitution*
407 *Article 148g(5) of the Constitution*
408 *Article 92(2) of the Constitution*
409 *Article 134(5) and (6)*
410 *Article 147(4) and (5) of the Constitution*

The Constitution expressly allows[411] for a member of parliament to also be a member of the federal government, a state secretary or a member of the provincial parliament. In practice, however, this does not happen, because members of parliament surrender their mandates, which they can take up again when they leave office.[412]

Federal states may lay down rules for their officials in their state constitutions. This step was taken in the provincial parliaments of Burgenland, Carinthia, Lower Austria and Tyrol, where they prohibit various combinations of cumulative offices for members of state governments or parliaments.[413]

There are also special laws prohibiting the exercise of certain offices by members of parliament or political parties, etc., in relation to the work of research institutions, universities, and bodies active in the communications or energy sectors.[414]

Incompatibility of offices – false incompatibility

Section 1 of the Act on incompatibilities and transparency defines the **public officials** to whom it applies. These are:

1) the supreme executive authorities under Article 19 of the Constitution, i.e. the federal president, federal ministers, state secretaries and members of the state governments;
2) mayors, their deputies and members of city councils in statutory cities (these councils are known as senates);
3) elected representatives in the National Council, the Federal Council and the provincial parliaments.

According to Section 2, the aforementioned highest public authorities[415], as well as the president of the National Council, the president of the representative club in the National Council and the president of the Court of Audit are prohibited from **exercising a profession** for the purpose of their livelihood during the exercise of their offices, unless authorised by the relevant Incompatibility Committee, where such activity by a public official cannot affect the objective and independent exercise of their offices. A public official must notify the committee of the exercise of a secondary profession immediately after taking up the post. If consent is not granted, the secondary gainful activity must be terminated within three months. The exercise of a secondary profession during the term of office may only be undertaken with the prior authorisation of the committee. Neither the management of one's own property nor the exercise of offices in a political party, in a statutory association or in a voluntary professional association to which a public official has been elected are regarded as the exercise of a profession.

In addition to this prohibition, public officials falling within groups 1 and 2 as defined above may not hold any **senior** position in any public limited company, limited liability company engaged in banking, trade, industry or transport or in a savings bank[416]. There are exceptions to this prohibition in the case of companies with state or local government shareholdings if the federal or state government at that level approves the involvement of the public official.[417]

411 *Article 70(2) of the Constitution*

412 *GRECO. Evaluation Report Austria, Fourth Round, paragraph 34.*

413 *Rules of Conduct for Members of Parliament, p. 25. Status as of January 2021.*

414 *For specific cases, see Rules of Conduct for Members of Parliament, pp. 25–28.*

415 *I.e. the public officials defined under point 1.*
This prohibition extends to the federal president, who is already prohibited by the Constitution itself from exercising any other profession or being a member of an elected body.

416 *In Austria, savings banks (Sparkasse) have historically been very popular institutions for providing financial services to the general public. Their frequent explicit regulation also reflects the time in which the law originated in the 1980s, when they were used more frequently than now. Cf. GRECO. Evaluation Report Austria, Fourth Round, paragraph 53.*

417 *Sections 4 and 5 of the Act on incompatibilities and transparency*

Designated officials of the highest public authorities must notify the relevant Incompatibility Committee of their **ownership of an interest in companies or other forms of business** upon taking office or immediately after acquiring the relevant interest. The size of the shareholding, including that of the official's spouse, is also declared to the Committee. Where a public official and their spouse own a shareholding exceeding 25 %, the entity concerned may not directly or indirectly acquire public contracts at a level corresponding to the public official's function. This means that companies of members of state governments are not allowed to obtain contracts from state authorities and the same applies at the national level. The ban on public procurement also applies to the exercise of self-employed activities by public officials.[418] In contrast, members of the legislatures at the federal and state level are in no way restricted in this regard.[419]

Members of parliament and provincial parliaments must **declare their employment** with local government bodies to the president of the respective representative body. The relevant Incompatibility Committee decides whether the continued exercise of this activity is admissible. Certain activities, such as those in the security forces or in the capacity of judge or prosecutor, are prohibited in principle unless the committee explicitly agrees to the activity because the independent and impartial exercise of the office is not compromised.[420] Conversely, other such activities are prohibited, if the committee expressly decides to do so on the grounds that the independence of the exercise of the mandate is compromised.[421]

Protection period

In Austria, there is no transitional period, either for members of the government or for other public officials.

Interestingly, members of parliament are still entitled to a remuneration of 75% of the remuneration paid during their mandate for three months after the end of their mandate, unless they have another job or political office.[422]

Some form of protection period results from the fact that some of the rules on incompatibility of offices apply even 5 years after the end of the mandate. Thus, ministers cannot become senior officers of the courts even during the protection period after their term of office ends.

Declaration of personal interest

The law does not provide for the obligation to file a declaration of personal interest on an ad hoc basis. However, there has been a partial shift following GRECO's recommendations: parliament's Rules of Procedure have been amended. Under the new arrangements, members of the immunity and incompatibility committees who may be personally affected by a matter under discussion are represented by a substitute from the same caucus. Declarations of a personal interest are filed in writing and need not be substantiated.[423]

418 *Section 3 of the Act on incompatibilities and transparency*

419 *GRECO. Evaluation Report Austria, Fourth Round, paragraph 38.*

420 *If a specific secondary activity is not permitted, a similar post is to be provided for the member of parliament.*

421 *6a of the Act on incompatibilities and transparency*

422 *GRECO. Evaluation Report Austria, Fourth Round, paragraph 22.*

423 *GRECO. Second Interim Compliance Report for Austria, Fourth Round, paragraph 20.*

Declaration of activities and assets

Since 2013, according to Section 3a of the Act on incompatibilities and transparency, members of the federal government (including state secretaries) and state governments (in the case of Vienna, the mayor and members of the city senate) are obliged to provide information on their assets to the president of the Austrian Court of Audit within three months of taking office, every second year thereafter and within three months of leaving office. The **declaration of assets** lists real estate, capital assets (dividends, securities, savings income, etc.), businesses and shares in companies, and liabilities. Declarations of assets are not published.

In addition, members of the National Council and the Federal Council must file a **declaration of their activities** to the president of the respective chamber within one month of taking office or within one month of commencing their activities. The declaration indicates, together with the fact whether the activity is gainful, leadership positions in companies, foundations, savings banks, employment, self-employment, political offices, participation in statutory and voluntary interest associations, other profit activities and the performance of honorary offices. At the same time, members of parliament always report their gross monthly income by 30 June of the following year. The data are provided in a range of categories, graded in five sections.[424] Declarations of activities, including details of the category of monthly income, are published on the website of the relevant parliamentary chamber.[425]

Acceptance of gifts

In Austria, there are no legal obligations regarding the provision of gifts. Reference can only be made to the criminal law on bribery.

Regulation of lobbying

Lobbying has been regulated in Austria since 2013 by the **Act on Transparency of Lobbying and Interest Representation** (*Lobbying- und Interessenvertretungs-Transparenz-Gesetz*; abbreviated as *LobbyG*)[426]. Lobbying and interest groups must register in the register maintained by the Federal Ministry of Justice, which is largely available online[427]. The public can thus learn about lobbying entities and individuals, but they do not have access to data on who lobbied whom and why. Lobbying is carried out on the basis of a paid lobbying mandate, which has the parameters of a contract.[428] The regulation therefore primarily affects the lobbying party, which is obliged by law to promote its interests through contact with the federal president, members of the federal and provincial governments, members of national elected representative bodies and other entities through which public powers are exercised, at all levels of government. Violations of the law are punishable by fines.

According to Section 1a of the Act on incompatibilities and transparency, which was added to the Act as part of the 2012 reform, members of the federal and provincial parliaments are not allowed to accept lobbying assignments. However, according to GRECO, this prohibition can be easily circumvented because public officials can be given a position in legal entities that enables them to effectively act as lobbyists without being obliged to accept lobbying mandates.[429]

424 *Section 6 of the Act on incompatibilities and transparency*

425 *Available here: https://www.parlament.gv.at/POOL/SWBRETT/ZUSD/BezBegrBVGPar9-NR.pdf https://www.parlament.gv.at/POOL/SWBRETT/ZUSD/BezBegrBVGPar9-BR.pdf*

426 *Available here: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007924*

427 *https://lobbyreg.justiz.gv.at/*

428 *More detailed overview information is available here: https://www.usp.gv.at/laufender-betrieb/lobbying-und-interessenvertretungsregister.html*

429 *GRECO. Evaluation Report Austria, Fourth Round, paragraphs 36–44.*

Enforceability of legislation

There are no **penalties** for breaches of the above rules, except for the threat of loss of the mandate of a member of the parliament or of a provincial parliament in the event of abuse of office with the intention of self-enrichment or in the event of failure to comply with a decision of the Incompatibility Committee. The committee may refer the withdrawal of the mandate to the Federal Constitutional Court.[430]

The focus of conflict of interest prevention in Austria is therefore more on the threat of prosecution for a criminal offence, which can also lead to loss of one's mandate, and an emphasis on ethical standards.[431] Ethical standards are routinely set in the Austrian civil service that also apply to the highest officials, which may include appointed public officials. All Austrian public officials are subject to the Code of Conduct for the Prevention of Corruption in the Civil Service, *"It's my responsibility – a matter of ethics"*, updated in 2020.[432] This does not, however, introduce any new rules, but merely describes more clearly the existing standards applicable to the civil service.

GRECO criticised the absence of sanctions and based its recommendation on that. According to Austria, the possibility of introducing sanctions was discussed by a parliamentary working group, which concluded that the current system of sanctions is sufficient.[433]

Although selected public officials are obliged to file **declarations of assets or declarations of activities and income**, there are no clear rules on what is to be included, which can be verified by comparing some of the declarations of activities filed with identifiable activities from public sources. Public officials themselves are also unsure, as they have no methodological guidance, except for a three-page document on the parameters of activity declarations[434], which GRECO considers inadequate. For example, it is not clear what is meant by 'active' activity to be reported. Activity declarations do not include information on the financial income from the activity, so very important information can be lost. Based on GRECO's recommendations, the need for more detailed rules on declarations of activities and income was discussed by the parliamentary working committee, which concluded that this was not necessary. Moreover, declarations of assets do not contain any information about other persons, including the immediate relatives of public officials.

A late or incomplete **declaration** has no direct consequences, unless the Incompatibility Committee decides to deal with the matter under threat of forfeiture of the official's mandate. However, such an approach is likely to be perceived as rather radical by a politically occupied body. In addition, there is no system of consequences if any problematic issues are detected in the declarations. Based on GRECO's recommendations, the Act was supplemented to enable the Incompatibility Committee to require that persons obliged to submit declarations provide more information and documents on the data contained in the declarations. However, this still does not correspond to good practice, as the committees have a narrow focus on incompatibility of offices and are not particularly active in that, either. Minutes of committee meetings are not made public and no official decisions of parliamentary committees have been submitted to GRECO. Similarly, it is not clear to what extent the data provided in the declarations of assets provided to the Court of Audit, which has no tools or obligations to deal with the irregularities it identifies, are checked. The only instrument is the obligation under Section 3a(3) of the Act on incompatibilities and transparency toinform the president of the National Council or the provincial parliament if the Court of Audit notes an extraordinary increase in the size of the assets of a public official filing a declaration of assets.[435]

430 *Sections 9 and 10 of the Act on incompatibilities and transparency*

431 *For members of parliament, described clearly here: https://www.parlament.gv.at/SERV/COMP/#*

432 *Available here: https://www.oeffentlicherdienst.gv.at/moderner_arbeitgeber/korruptionspraevention/verhaltenskodex/Verhaltenskodex.html*

433 *GRECO. Second Interim Compliance Report for Austria, Fourth Round, paragraphs 46–49.*

434 *https://www.parlament.gv.at/POOL/SWBRETT/25020/0010/BezBegrBVGPar9Erkl-NR.pdf*

435 *GRECO. Evaluation Report Austria, Fourth Round, paragraphs 27, 52, 54, 62 and 63.*
GRECO. Second Interim Report on the Implementation of Recommendations for Austria, Fourth Round, paragraphs 37, 43–44.

Despite GRECO's recommendations, no rules on the acceptance of gifts by public officials have been adopted. There has only been training and the drafting of a code, but this is not intended to introduce new rules.[436]

Summary and identification of good practice

The Austrian regulation on the prevention of conflicts of interest at the level of top officials is very mild and lacks any legal means of enforcement. The system is based on the incompatibility of the offices of public officials, but any problematic situations are decided on by the public officials themselves in parliamentary committees. Furthermore, Austria lacks rules on the acceptance of gifts by public officials. There is also no obligation to declare a personal interest in specific cases and no restrictions on public officials after they leave office. Several instruments are set up to ensure transparency, such as the lobby register and the declarations of activities and assets, but the rules in place contain gaps, and it is not clear how exactly they are to be implemented and who enforces them. It is therefore possible to circumvent them. There is thus almost no legislation on conflicts of interest in Austria and everything depends rather on voters evaluating the performance of selected politicians. However, voters must do so on the basis of less publicly available information than is common in the other countries compared.

Only partial measures can be assessed as good practice. These include, for example, the restriction on outgoing public officials being appointed to senior judicial positions, which can effectively prevent top public officials from seeking lucrative positions in the judiciary after failures in elections.[437] One workable solution could be to have the declarations of assets of public officials addressed to the supreme audit authority, if (apparently contrary to Austrian practice) such an independent authority had clear procedures on how to verify the information in the declarations and what to do if it finds irregularities.

436 *GRECO. Second Interim Compliance Report for Austria, Fourth Round, paragraph 27.*

437 *This problem has been discussed, for example, in Slovakia: https://domov.sme.sk/c/22029095/ustavny-sud-kandidat-robert-fico.html*

Spain

The Kingdom of Spain is a constitutional monarchy headed by a hereditary **monarch**. His position is representative and diplomatic; he is not considered a public official and is outside the law in terms of conflict of interest regulation. **Legislative power** is vested in a bicameral parliament (*Cortes Generales*), divided into a Congress of Deputies (*Congreso de los Diputados*; the lower chamber is elected by direct proportional representation) and a Senate (*Senado*; the upper chamber, with significantly weaker powers, to which some senators are elected by majority vote and some are delegated by the individual autonomous communities). The Congress of Deputies expresses confidence in the government (*Gobierno*), which leads the executive branch and is headed by its president (*Presidente del Gobierno*).

Spain is highly decentralised, divided into 17 **autonomous communities** (*comunidad autónoma*).[438] Each autonomous community has its own autonomous statute, approved by the Spanish Parliament in the form of an organic law[439], which defines the basic institutional set-up within the community, including the form of the local parliament, how it is elected and the scope of powers exercised by the community.[440] The functioning of the different autonomous communities therefore varies greatly, both in the scope of the powers assumed and in institutional terms. The form of the legislative, executive and judicial authorities and the establishment of local governments differ. While the rules on conflicts of interest established at the national level are also applied in the individual autonomous communities, most of them have their own laws to regulate conflicts of interest. These local rules may not conflict with the national legislation, although they can go beyond it, and often do.

The autonomous communities are further divided into 50 provinces, although since the democratisation and decentralisation of the country in the late 1970s, these have minimal powers and can be likened more to a grouping of municipalities. Provinces should be understood as the **lowest level of territorial administration**, together with municipalities, of which there are over eight thousand.[441] In addition to municipalities, there are several other elements of local government at the lowest level, such as islands or *territories smaller than municipalities*, of which there are almost 4,000.[442] The concept of local government in Spain must therefore be distinguished from that in the Czech Republic.

Given the number of autonomous communities with completely different legal systems, a separate section of this analysis focuses on the legal arrangements for the prevention of conflicts of interest in the **autonomous community of Valencia**.

Basic legal framework

Article 103 of the **Constitution** (*Constitución*)[443] contains the general principles for the exercise of public offices, which consist primarily of promotion of the public interest and respect for the law. At the constitutional level, there are also rules prohibiting the accumulation of constitutional offices. The aforementioned Article 103 refers to the statutory regulation, which further defines the rules on the incompatibility of the offices of other public officials and the guarantees of impartiality in the exercise of such offices.

438 *In addition, two more autonomous cities in the north of Africa – Ceuta and Melila – have been designated as enclaves.*

439 *This is a category of ordinary laws, which, however, according to Article 81(1) of the Constitution, must be adopted and amended by a qualified majority in parliament.*

440 *Articles 147–148 of the Constitution*

441 *84% of Spain's municipalities have fewer than 5,000 inhabitants; the smallest has as few as six.*

442 *Ministry of Territorial Policy. Local Government in Spain. Available here: https://www.hacienda.gob.es/Documentacion/Publico/SGT/CATALOGO_SEFP/223_Regimen-Local-ING-INTERNET.pdf*

443 *Available here: https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229*

The **legal regulation** is fragmented into several laws that regulate the rules governing conflicts of interest separately for different groups of public officials. The regulation is strictly divided between the legislature and the executive, although some obligations are regulated in a very similar manner. With regard to deputies and senators, the rules on incompatibility of offices and asset declarations are regulated by the **general electoral law** in the form of an organic law from 1985 (*Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General*).[444] The statutory rules are developed and complemented by the **Parliamentary Code of Conduct** in many respects.[445]

The rules on the incompatibility of offices in the legislative assemblies of the autonomous communities and local governments are governed by **Law 53/1984 on Incompatibilities of Public Administration Personnel** (*Ley 53/1984, de 26 de diciembre, de Incompatibilidades del personal al servicio de las Administraciones Públicas*)[446], which otherwise deals more with the rules for public administration personnel.

Public officials in the executive branch are covered by **Law 3/2015, of 30 March, on the Exercise of High Office in the General State Administration** (*Ley 3/2015, de 30 de marzo, reguladora del ejercicio del alto cargo de la Administración General del Estado*).[447] This law applies to the full range of public officials listed in Article 1, including members of the government, heads of other central government agencies[448], the highest ranking officials including secretaries of state, undersecretaries, government agents in public bodies, heads of permanent diplomatic missions, senior executive positions in state and public corporations, and other executive branch officials appointed by the government. This law regulates incompatibility of offices, reporting obligations, other restrictions on the exercise of public offices and its basic principles. In addition, this law establishes the Office for Conflicts of Interests.

Partial aspects (mainly the rules for the acceptance of gifts) are regulated by **Law 19/2013 on Transparency, Access to Informationand Good Governance** (Transparency Law; *Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno*).[449] This law also established the **Council of Transparency and Good Governance**, which provides advice, education and expert support in the area defined by the law, i.e. mainly regarding public access to information.

Institutional issues concerning the functioning of the executive at national level are regulated by **Law 6/1997 on the Organisation and Operation of the General Administration of the State** (*Ley 6/1997, de 14 de abril, de Organización y Funcionamiento de la Administración General del Estado*).[450]

444 *Available here: https://www.boe.es/buscar/act.php?id=BOE-A-1985-11672*

445 *Available here: https://www.senado.es/web/composicionorganizacion/senadores/codigodeConducta/index.html*

446 *Available here: https://www.boe.es/buscar/act.php?id=BOE-A-1985-151*

447 *Available here: https://www.boe.es/buscar/act.php?id=BOE-A-2015-3444*

448 *The chairman, vice-chairman and other members of the Council of the National Markets and Competition Commission, the chairman of the Council for Transparency and Good Governance, the chairman of the Independent Authority for Fiscal Responsibility, the chairman, vice-chairman and members of the Council of the National Securities Market Commission, the chairman, directors and secretary general of the Nuclear Safety Council, and the chairman and members of the governing bodies of any other regulatory or supervisory body.*

449 *Available here: https://www.boe.es/buscar/doc.php?id=BOE-A-2013-12887*

450 *Available here: https://www.boe.es/buscar/act.php?id=BOE-A-1997-7878*

General definition of conflict of interest

The **definition of conflict of interest** is contained in Article 11 of Law 3/2015. According to the law, public officials of the executive branch must serve the public interest impartially and prevent their personal interests from unduly influencing the performance of their duties and functions. A public official shall be deemed to have a conflict of interest if a decision they are to take could affect or prejudice their personal economic or professional interests. The personal interests of an official are considered to be:

a) self-interest;
b) family interests, including the interests of their spouse or a person with whom they are in a similar relationship, and the interests of relatives up to the fourth degree of consanguinity in the direct line or the second degree of consanguinity in the indirect line;
c) the interests of persons with whom the official is engaged in litigation;
d) the interests of persons with whom the official is bound by close friendship or open hostility;
e) the interests of corporate bodies or private entities in which the official has held a senior position in any employment relationship during the two years prior to their appointment to office;
f) the interests of legal or private entities with which the relatives referred to in point b) are linked by an employment or professional relationship of any kind, where it involves the exercise of managerial, advisory or administrative offices.

Article 3(1) of the Parliamentary Code of Conduct defines conflict of interest for the purposes of the legislature. According to this definition, a conflict of interest arises when a deputy has a personal interest, direct or indirect or through another person, which may improperly influence the performance of their duties in such a way that their impartiality or independence may be called into question, or if the legislators do not seek to promote the public interest. It is not considered a conflict of interest if a certain benefit relates exclusively to society as a whole or to a broad group of persons.

Institutional provision of conflict of interest issues

In Spain, a specialised institution has been set up, the **Office for Conflicts of Interests** (*Oficina de Conflictos de Intereses*)[451], which falls under the Ministry of Finance and Civil Service.[452] The competences of the Office include the management of incompatibility for public officials in the executive branch and civil service employees[453], checks on compliance with their duties, investigation and administrative punishment of any misconduct detected, approval of the performance of activities after the end of the public office, and maintenance and management of the registers of declarations filed by these public officials. The Office for Conflicts of Interests submits a report to the government every six months, transmitted to the Congress of Deputies, on the fulfilment of reporting obligations by public officials, on offences committed in this respect, and on sanctions imposed.[454]

451 *Office website: https://www.hacienda.gob.es/es-ES/El Ministerio/Paginas/Organigrama/CVs/SEPF-OCI.aspx*

452 *This is enshrined in Article 19 of Law 3/2015 of 30 March, regulating the exercise of high public civil service offices. Previously, the Office was under the Ministry of Territorial Policy and Civil Service, which was changed by Legislative Royal Decree No. 507/2021.*

453 *It applies to public officials in accordance with Law 3/2015 (details here: https://www.mptfp.gob.es/portal/funcionpublica/etica/altos_cargos.html) as well as civil service employees in accordance with Law No. 53/1984 (details here: https://www.mptfp.gob.es/portal/funcionpublica/etica/Personal_normal.html)*

454 *Article 19 of Law 3/2015*
Available here: https://www.mptfp.gob.es/portal/funcionpublica/etica/Obligaciones-art.-22-Ley-3-2015.html

The **parliamentary Office for Conflicts of Interests**, housed in the Congress of Deputies (*Oficina de Conflicto de Intereses de las Cortes Generales*), was established by the Parliamentary Code of Conduct (Article 8) in order to monitor the duties of deputies.[455] It has powers over members of the Congress of Deputies and the Senate and must be led by senior lawyers of the parliamentary offices. The role of this parliamentary office is to oversee compliance with the Parliamentary Code of Conduct and advise legislators in such matters. The parliamentary office submits annual reports to parliament with recommendations for improving the system for preventing conflicts of interest in the legislature.

Incompatibility of offices – true incompatibility

Legislators

The incompatibility of senior state offices is regulated at the constitutional level. According to Article 67 of the Constitution, deputies and senators may not be members of both houses of parliament at the same time. Furthermore, according to Article 70, they may not also be a judge of the Constitutional Court, a senior civil servant other than a member of the government, an ombudsman, an active judge or prosecutor, an active member of the armed forces, or a member of an electoral commission, while the details and any other incompatibilities are defined by the Electoral Law. It prohibits deputies from being the president of the National Commission on Markets and Competition, a member of the board of directors of the Spanish broadcasting company RTVE, a member of the cabinet of the prime minister, ministers or secretaries of state[456], a government commissioner in the administrations of ports, waterways or roads, or a member of the executive bodies of public companies, or a public official at the national, regional or local level. The Electoral Law further prohibits the concurrent office of a member of Congress and a member of the legislature of an autonomous community. Deputies may take up appointed positions in the executive roles of autonomous communities. Senators are not restricted in membership of regional bodies. Deputies can be part of the collective management bodies of public companies.[457]

Senior officials of the executive branch

Members of the government may hold the concurrent office as a deputy or senator, but they are only remunerated for one of these two positions. Members of the government may not hold any other representative office apart from their parliamentary mandate, or any public office not arising from their position, or any professional or commercial activity (Article 98(3) of the Constitution). Article 13 of Law 3/2015 provides for certain exceptions to this rule. This allows a member of the government, for example, to be a member of diplomatic missions or to hold positions in political parties.

Moreover, the monarchy has a rule that the office of guardian of a minor monarch is incompatible with any other political or representative office (Article 60(2) of the Constitution).

Incompatibility of activities – false incompatibility

Legislators

The position of **national legislators** is based on the principle of the exclusive exercise of this office. Therefore, they may not engage in any other profession, office or activity, whether public or private, or employment or self-employment. In particular, it is expressly prohibited to be involved in representation or advice to public bodies or entities to which subsidies or public contracts are granted at any level of government or which are otherwise connected with the exercise of public authority. Exceptions are management of one's own property, teaching or research activities in cooperation with a university, other scientific, literary, artistic or craft activities. At the request of a deputy, the

455 *The parliamentary Office for Conflicts of Interests is to be distinguished from the aforementioned separate Office for Conflicts of Interests. If this text refers to a parliamentary institution, it is explicitly stated.*

456 *The role of secretaries of state in Spain can be compared to Czech deputy ministers, so these are some of the most senior civil service positions.*

457 *Articles 155–156 of the Electoral Law*

relevant congressional credentials committee or the Senate committee on incompatibility may authorise certain ancillary activities. The opinions of the committees are noted by the plenary of the chamber.[458] This permitted activity must then be stated in the declaration of activities.[459]

Senior officials of the executive branch

Members of the government and the heads of central administrative authorities also exercise their offices exclusively and may not combine them with the exercise of any other position, activity or profession of a public or private nature. Exceptions to the performance of certain activities are permitted, provided that this does not compromise the public official's impartiality or independence in the performance of their duties. This includes managing one's own or family property, literary, artistic, scientific or craft activities, speaking at professional conferences, seminars or courses, unless they are employment-related, and participation in cultural or non-profit bodies. It is acceptable to serve in the public sector in the top bodies of public companies if their activities are materially related to the activities of a member of the government.[460]

Common rules

In all cases, public officials may not receive **remuneration** for a second function or activity, with the exception of normal travel allowances, etc.

In accordance with Law 3/2015, neither deputies nor public officials of the executive branch may directly **receive funds from public budgets**, for example in the form of public contracts or subsidies. At the same time, they may not own, directly or indirectly, more than a 10% share in companies that have entered into contractual relations with the public sector. Law 3/2015 establishes a mechanism according to which a public official who owns a larger share must divest themself of that share by selling or transferring the right to dispose of the share. The chosen solution is approved by the Office for Conflicts of Interests.[461] Furthermore, according to Law 3/2015, public officials cannot themselves dispose of securities with a value exceeding EUR 100,000. Their management must be entrusted to a specialised company (Article 18).

Protection period

For **members of the government and the heads of central administrative authorities**, Article 15 of Law 3/2015 imposes restrictions on the exercise of private activities after the end of the public office in question. Public officials may not, for a period of two years after leaving public office, provide services to or be employed by private bodies affected by decisions in which they have participated. The ban also applies to other entities in the same corporate group. Decision-making is considered to mean situations where (a) the official, in the exercise of their own powers or on the basis of a proposal by their superior, has issued an administrative decision or the necessary basis for an administrative decision or has signed a private act in relation to the company or entity concerned; or (b) if, by voting or submitting the corresponding proposal, they have interfered in the meetings of the collective bodies at which a decision was taken in relation to the company or entity concerned.

Public officials serving on regulatory or supervisory bodies shall not, within two years after leaving office, provide services to private entities that were subject to the supervision or regulation of those institutions. This rule particularly applies to officials of the National Securities Market Commission, the National Commission on Markets and Competition, and the Nuclear Safety Council.

458 *Opinions of the Congress of Deputies on the ancillary activities of its members are available here: https://www.congreso.es/web/guest/cem/dictamenes_actividades_xivleg*
In general, there are not many legislators carrying out ancillary activities in Spain. Cf. GRECO. Evaluation Report Spain, Fourth Round, paragraph 46. All GRECO reports on Spain are available here: https://www.coe.int/en/web/greco/evaluations/spain

459 *Articles 157–159 of the Electoral Law*

460 *Article 13 of Law 3/2015*

461 *Article 14 of Law 3/2015 and Article 159 of the Electoral Law*

The restriction does not apply to public officials who, prior to holding public office, carried out their professional activities in private companies they wish to rejoin, provided that those activities are not related to the scope of the public office held.

During this two-year period, public officials may not, directly or indirectly, through entities in which they directly or indirectly own more than a 10% share, or through subcontractors, enter into contracts for the provision of consultancy, technical assistance[462] or other services with the public administration, provided that they are directly and materially related to their public offices. The entities in which they provide services must adopt procedures to prevent and detect conflict of interest situations during that period.

During this two-year period, public officials must notify the Office for Conflicts of Interests of the activities they wish to engage in and obtain permission from the Office to do so. If the Office decides in favour of the application, it shall inform the applicant in its annual report.

Declaration of personal interest

Article 12 of Law 3/2015 provides for an early warning system for the prevention of conflicts of interest, under which public officials of the executive branch should refrain from exercising their powers and tasks in situations that would put them in a conflict of interest. If such a situation arises, the official must inform their superior or the appointing authority of their abstention from a particular act within one month. In the case of a meeting of a collegial body, a mention in the minutes is sufficient. Declarations of personal interest made are included in the declarations of activities filed in the corresponding register. The Office for Conflicts of Interests is competent to consult on specific matters.[463] Dozens of such declarations are made every year.[464]

Declaration of activities and assets

Legislators

Deputies submit **declarations of assets** and **declarations of ancillary activities**. These are submitted at the beginning and end of the mandate and, in the event of changes, during the mandate. The obligation does not apply to spouses or children.

The **declaration of ancillary activities** must include all activities that are relevant in terms of the incompatibility rules, and any other activities that generate or may generate economic income.[465] Furthermore, Article 4 of the Parliamentary Code of Conduct extends the obligations so that activities carried out in the five years prior to obtaining the mandate which are relevant to political activity or economic income are also declared. For the same period, any donations received and any benefits received that might, in the light of other circumstances, be relevant to the assessment of a possible conflict of interest are required to be disclosed, as well as the foundations or similar organisations supported. **Declarations of assets** include information on real estate, vehicles, income from secondary activities, liabilities and dividends. All declarations are publicly available online, always on the profile of the individual deputy or senator.[466]

462 *A technical assistance contract (contrato de asistencia técnica) is a specific obligation under Spanish law that consists in the provision, for a consideration, of technical expertise possessed by the contractor or its employees in order to put commission machinery, equipment, etc., or to obtain a product, which requires knowledge or experience that the contracting authority does not possess. More here: https://guiasjuridicas.wolterskluwer.es/Content/Documento.aspx?params=H4sIAAAAAAAAEAMtMSbF1jTAAAUMjA3NTtbLUouLM_DxbIwMDCwNzAwuQQGZapUt-ckhlQaptWmJOcSoA_qMG7zUAAAA=WKE*

463 *Article 12 of Law 3/2015*

464 *GRECO. Evaluation Report Spain, Fifth Round, paragraph 85.*

465 *Article 160 of the Electoral Act*

466 *Member search: https://www.congreso.es/web/guest/busqueda-de-diputados*
senator search: https://www.senado.es/web/composicionorganizacion/senadores/declaracionbienesactividades/index.html

Senior officials of the executive branch

Also, in accordance with Law 3/2015, senior officials of the **executive branchfile** declarations of activities and declarations of assets. **Declarations of activities** are filed with the Office for Conflicts of Interests within three months of taking office and thereafter upon any changes, for a period of two years after leaving public office. Due to the strict prohibition on the performance of secondary activities by members of the government, the declarations mainly list the activities performed in the last two years before taking office and then the activities that the official will start performing after leaving office. **Declarations of assets** are filed in the form of tax returns. Thus, no separate declaration is created, but the public official submits copies of his or her tax returns, plus confirmation from the tax administration of the (non-)existence of tax arrears to the Office for Conflicts of Interests within three months of taking office and then every year. A public official may authorise the Office for Conflicts of Interests in writing to obtain data directly from the tax administration. The Office for Conflicts of Interests maintains two registers of such declarations. The Register of Declarations of Senior Officials (*Registro de Actividades de Altos Cargos*) is accessible to public authorities on request; the register of declarations of assets is not public and can only be accessed by parliamentary and judicial authorities, although a brief summary of the content of each declaration of assets is published in the bulletin[467].[468]

Acceptance of gifts

Legislators

The acceptance of gifts by deputies is regulated in Article 5 of the Parliamentary Code of Conduct. Members may not accept gifts, services, travel invitations, discounts or other benefits worth in excess of €150 for themselves or their family that are offered in connection with their position and may be perceived as an attempt to influence their behaviour. Personal gifts from relatives and friends unrelated to the work of legislators are allowed, as are gifts or benefits given according to normal custom with no connection to the exercise of public office.

Senior officials of the executive branch

According to Article 26(6) of the Law on Transparency, as a manifestation of the principle of good governance, senior officials of the executive branch may not accept any gift or favour beyond normal social or courtesy customs that could affect the exercise of their offices. More valuable gifts become the property of the state.

Regulation of lobbying

No comprehensive regulation of lobbying has yet been adopted, but corresponding legislative proposals are being prepared and are aimed at establishing a public lobbyist register.[469] Article 6(2) of the Parliamentary Code of Conduct requires legislators to disclose contacts with interest entities through their calendars on the Transparency Portal. An interest entity is any natural person or legal entity or unincorporated entity that interacts directly or indirectly with public office holders or their staff to advance private or public individual or collective interests in connection with legislative work. The legislator is responsible for the accuracy of the published data.[470] Lobbyist registers are set up at the level of the autonomous communities, for example in Madrid.[471]

467 *https://www.mptfp.gob.es/portal/funcionpublica/etica/declaracion_bienes.html*

468 *Articles 16–17 and 21 of Law 3/2015*

469 *GRECO. Second Report on the Implementation of Recommendations for Spain, Fourth Round, paragraphs 18–21.*

470 *Which can be seen, for example, here: https://www.senado.es/web/composicionorganizacion/senadores/composicionsenado/fichasenador/agendasenador/index.html?id1=18326&legis=14&d=26012022&id=4&id2=2022&aFilter=s#26*

471 *Available here: https://tomadedecisiones.madrid.es/registration_lobbies/index*

Enforceability of legislation

Legislators

Oversight of legislators' compliance with their duties is carried out by the relevant committees in parliament: The Congressional Credentials Committee and the Senate Committee on Incompatibilities. On the basis of his own knowledge of a breach of duty or in response to a corresponding initiative from the legislators, the president of the chamber refers the matter to a committee of the chamber for investigation. The committees must hear the legislator concerned, may seek the opinion of the Parliamentary Office for Conflicts of Interests and may propose sanctions, which are decided in disciplinary proceedings by the bureau of the chamber. If the rules on incompatibility of offices have been violated, the legislator may lose their mandate, or may choose which function or activity they will not perform. The Parliamentary Office for Conflicts of Interests consults on these matters and reports on the measures taken in its annual reports.[472]

Senior officials of the executive branch

Articles 25–26 of Law 3/2015 establish a comprehensive system of misdemeanour liability for violation of the rules for the prevention of conflicts of interest under this law or under the Law on Transparency.[473] A distinction is made between very serious, serious and minor violations.

The system is clearly described in a table taken from the GRECO evaluation report[474]:

Seriousness of the offence	Facts of the offence	Sanctions
Very serious	– infringement of incompatibility rules – making false declarations of activities and assets – failure to comply with the obligation in relation to the management of shares and participation in companies – misrepresenting or failing to comply with the eligibility requirements for appointment to high office	– loss of office – loss of entitlement to severance pay – obligation to repay severance pay – ban from holding high public office for 5–10 years – publication in the Official Journal
Serious	– failure to declare activities and property rights in the relevant registers – deliberate omission of data and documents – repeated breaches of the obligation to abstain from voting – repeated minor infringements	– ban from holding high public office for 5–10 years – publication in the Official Journal
Minor	– late submission of a declaration – breach of the obligation to abstain from voting	– reprimand

Very serious offences and offences committed by members of the government are dealt with and sanctioned by the government. Serious offences are punishable by the Ministry of Territorial Policy and Civil Service. Minor offences are dealt with within the civil service.

Regulation of conflicts of interest in Valencia

Valencia is one of the autonomous communities (*Cominidad autónoma de Valencia*). It is an example of a community that has most comprehensively supplemented the nationally established conflict of interest rules within its jurisdiction.

472 *Article 9 of the Parliamentary Code of Conduct*

473 *Reference in Article 27 of the Law on Transparency*

474 *GRECO. Evaluation Report Spain, Fifth Round, points 112 and 118 et seq.*

General starting points

The autonomous community of Valencia, the *Generalitat Valenciana*, is made up of an elected autonomous parliament (*Corts Valencianes*), a president, an autonomous government (*Consell*), courts, an ombudsman's office and several other cultural institutions (e.g. the Valencian Academy of the Language). This institutional setting is regulated by the **Statute of Autonomy of the Valencian Community, Organic Law 5/1982** (*Llei Orgànica 5/1982, d'1 de juliol, d'Estatut d'Autonomia de la Comunitat Valenciana*)[475].

Legal regulation and definition of conflict of interest

Conflicts of interest in the exercise of public offices of the autonomous community are regulated by **Law 8/2016, of 28 October, on the incompatibility of non-elected public offices for the Valencian Community**.[476]

A conflict of interest is **defined** here as a situation where the acts or failure to act of an unelected public official who is bound by the duty to serve the general interest subordinate that general interest to the official's private interest or the interest of other persons in the form of pecuniary or other financial gain, even if their acts or failure to act do not achieve their objective.

Institutional safeguards and sanctioning system

The Law on Incompatibility establishes the **Office for the Monitoring of Conflicts of Interest**[477], which is a specialised institution providing oversight in this area within the administration of the autonomous community. The Office has the power to initiate sanction proceedings for breaches of the law. However, according to data from the report on the Office's activities in 2017–2021[478], the number of disciplinary proceedings conducted by the Office is low, namely 2 proceedings per year in 2018 and 2019 (sanction imposed in 1 case per year), 12 proceedings in 2020 (12 sanctions imposed) and 2 proceedings in 2021 (2 sanctions imposed). The Office sets out an inspection plan for its supervisory activities, in which it ranks inspections according to their significance.

Rights and obligations of public officials

The law regulates direct and indirect incompatibility during the term of office and after leaving office. Certain ancillary activities are acceptable as long as they do not compromise the independence and credibility of the public office being held. The conclusion of contracts between a public institution and the official who heads it is also restricted, as is the ownership of companies and the raising of funds from public budgets. Compliance with the incompatibility obligations is supervised by the Office.[479]

A **Register for the Monitoring of Conflicts of Interest** is established, which is publicly accessible, includes information on the activities and assets of public officials in the institutions of the autonomous community and is administered by the Office.

Law 22/2018 of 6 November 2018 of the Valencian Government, General Inspection of Services and the alert system for the prevention of bad practices in the Administration of the Valencian Government and its instrumental public sector[480] regulates the tools for detecting and preventing malpractice in the exercise of public offices within local government.

475 *Available here: https://dogv.gva.es/va/disposicio-consolidada?signatura=0108/1982*

476 *Available here: https://www.cortsvalencianes.es/consulta_legista/#legislacio/detall/id/188777350516300 The law is further elaborated by Decree No. 56/2016 of 6 May.*

477 *More information here: https://gvaoberta.gva.es/es/incompatibilitats-dels-alts-carrecs*

478 *Available here: https://gvaoberta.gva.es/documents/7843050/167955849/08_Memorándum+OCCI_cast+sin+firma.pdf/3396f333-f0e4-4ad4-8ebd-db4b96fa8e62*

479 *Cf. Valencian Anti-Fraud Agency publication on conflicts of interest, p. 12 et seq. Available here: http://www.antifraucv.es/wp-content/uploads/2021/03/20201204_Reflexio_general_conflicte_interes_comunicacion.pdf*

480 *Available here: https://www.cortsvalencianes.es/consulta_legista/#legislacio/detall/id/189508348262110*

Law 25/2018 of 10 December 2018 on the regulation of lobbying activities within the administration of the autonomous community of Valencia[481] then regulates the conditions for lobbying in accordance with the principle of transparency, thus also consolidating the concept of good governance.

Summary and identification of good practice

Spain is one country where the rules for the prevention of conflicts of interest have developed substantially over the last ten years. For example, based on the GRECO recommendations, the Parliamentary Code of Conduct was adopted, which was assessed as detailed, well thought out and adopted by general consensus.[482]

From the point of view of the legal standards, the key piece of legislation is primarily Law 3/2015, supplemented by some related obligations in other regulations. However, some other provisions still require amendments and additions, which are currently being debated in Spain. Within the Spanish OGP Action Plan 2020–2024[483], specific commitments have even been adopted, such as Commitment 1, aimed at reforming the legal regulation of transparency in public administration, which also consists in part in the modification of Law 19/2013, on Transparency. A working group has been set up to reform the Law on Transparency, which publishes the minutes of its meetings with debates on various aspects of the law on its website.[484] Another commitment (No. 5.3) is to amend or replace Law 53/1984 so that the prevention of conflicts of interest in public administration meets today's requirements. According to Transparency International Spain[485], this should be achieved by broadening the content and personal scope of asset and interest declarations (including by local governments) and ensuring that they are reviewed by sufficiently independent authorities with adequate powers. There should be a revolving door regulation for many public offices and an obligation to provide transparent information about the agenda of public officials. The system of sanctions (e.g. for failure to comply with the obligation to abstain from voting) should also be strengthened.

The Action Plan also includes a commitment[486] to introduce a mandatory lobbying diary. The Spanish Action Plan also includes commitments from the autonomous communities, under which the autonomous community of Extremadura is working towards the introduction of an electronic system to automatically process and check declarations filed by public officials (commitment 10.34).

Despite the shortcomings of the existing rules, the clear and comprehensive rules on incompatibility of public offices should be highlighted. The Spanish legislation is based on the principle of the exclusive exercise of the legislator's office and also covers the ancillary activity of consultancy. Under the Law on Transparency all public officials are prohibited from receiving funds from public budgets and must also divest themselves of significant shares in private companies or at least leave their management to others. Such measures have a positive impact on the integrity of public officials.

Strict rules are also set for the protection period, although there are doubts about their enforceability. Between 2006 and 2019, the Office for Conflicts of Interests issued 525 permits to engage in new activities and rejected applications in just 11 cases. The number of sanctions imposed has been minimal, while several breaches of the rules have been exposed by the media or the Court of Auditors. While the Office for Conflicts of Interests possesses information relevant to determining the subsequent employment of public officials, such as from the social security administration, applications by public officials are reviewed only on a formal basis and the good

481 *Available here: https://www.cortsvalencianes.es/sites/default/files/law/doc/llei_25-2018.pdf*

482 *GRECO. Second Report on the Implementation of Recommendations for Spain, Fourth Round, paragraph 15.*

483 *Available here: https://www.opengovpartnership.org/documents/spain-action-plan-2020-2024/*

484 *More information here: https://transparencia.gob.es/transparencia/transparencia_Home/index/Gobierno-abierto/Grupo-Trabajo-de-Reforma-Ley-de-Transparencia.html*

485 *Available here: https://transparencia.org.es/wp-content/uploads/2021/10/ALEGACIONES-TI-ESPAÑA-A-CONSULTA-PÚBLICA-PREVIA-SOBRE-ANTEPROYECTO-DE-LEY-DE-PREVENCIÓN-DE-CONFLICTOS-DE-INTERESES-DEL-PERSONAL-AL-SERVICIO-DEL-SECTOR-PÚBLICO.pdf*

486 *Commitment 5.2, page 76 of the Action Plan.*

faith of the public official is presumed. The rules do not cover situations where a public official acts as a lobbyist in the field of their former office. However, in the wake of major scandals, the employment of former politicians in Spain can be a reputational risk that private companies want to avoid.[487]

The weakest links in the Spanish conflict of interest regulation are the process of checks and the application of sanctions. Although a separate Office for Conflicts of Interests has been established, it is subject to the Ministry of Territorial Policy and Civil Service, does not have its own budget and does not have access to all the necessary information. Its checks are therefore more formal in nature. Moreover, the Office cannot apply sanctions itself. In proceedings, it only files proposals or acts as an advisory body.[488] In its comments on the shortcomings of the current regulations, Transparency International Spain also states that the Office's independence needs to be significantly strengthened, that systematic screening of the evidence received from public officials should be introduced, and the Office should be held accountable for conducting such screening.[489]

The system thus relies largely on transparency, which it achieves reasonably well, as a large amount of information on the actions of public officials is published and easily traceable. For example, all declarations about legislators' assets or activities are available directly on their profiles on the parliament website. The data from declarations of assets are processed by the Spanish branch of Transparency International as part of the Integrity Watch 2.0 project[490], which provides a clear online database accessible to the general public. The collection of data revealed complications in obtaining the necessary data. The existing declaration forms are inadequate, public officials do not follow the instructions for completing them, and the instructions are often unclear, so that each public official completes the form in a different way. The declarations are published on the profiles of the individual public officials and are not machine-readable.[491]

487 *GRECO. Evaluation Report Spain, Fourth Round, paragraphs 100–104.*

488 *GRECO. Evaluation Report Spain, Fifth Round, paragraph 115*

489 *Comments from TIq Spain*

490 *Here: https://www.integritywatch.es/*

491 *More details in the 2020 evaluation report including recommendations here: https://transparencia.org.es/wp-content/uploads/2021/02/Informe-Final-Integrity-Watch-Spain.pdf*
TI Spain organised an online conference on Advances and Challenges in Transparency and Integrity in the Congress of Deputies and the Senate. Available for viewing here: https://www.youtube.com/watch?v=ecAk9mw6UR8

Conclusion

Results of the countries compared

The comparison showed significant differences between the legislation in the individual countries, although the ideological foundations are quite similar and if any preventive measures are in place, they tend to be similar in form and differ only in the scope of obligations and the potential for enforcement.

Detailed conclusions are given for each country, but for the purpose of summary, the countries examined can be distinguished according to the effectiveness of the conflict of interest regulation they have introduced and whether their rules are a suitable inspiration for standard-setting in the Czech Republic. In the following overview, each country's score on the 2021 Corruption Perceptions Index is presented[492], so that their rules for the prevention of conflicts of interest can be seen in the context of the country's overall capacity to fight corruption. The inadequacy of conflict of interest legislation or its inappropriateness for application in the Czech Republic does not necessarily correlate with the ability of the compared countries to counter corruption in other ways, for example by emphasising moral standards without setting up legal instruments for enforcement.

Inadequate legislation

Poland (CPI rank 42, score 56):

A loose legal framework with many uncertainties about the correct procedures and with major question marks about enforceability, made more pronounced by doubts about the independence of the institution that is supposed to deal with certain aspects of the conflict of interest. Despite widespread criticism, there has been no improvement in the last ten years.

Austria (CPI rank 13, score 74):

Regulation focused more on incompatibility of offices, based on parliamentary oversight. Although the political culture in Austria is at a higher level than in the Czech Republic, there are repeated scandals related to conflicts of interest in Austrian politics and there is a general reluctance to introduce concrete measures to prevent such situations, which is reflected in the almost total absence of legal regulation of this issue.

Italy (CPI rank 42, score 56):

While Italy has some necessary mechanisms in place to prevent conflicts of interest, the legislation is so chaotic and opaque that it is not clear even to the legislators themselves what rules apply. Although there is a visible effort to adopt at least some rules, doubts arise about the enforceability of the established standards.

Moderately effective legislation

Spain (CPI rank 34, score 61):

Relatively clear and transparent regulation, which covers most problematic conduct. The issue is primarily the enforcement of the established rules. The supervisory institution does not have sufficient independence, so while officials must provide transparent information about their circumstances, in reality it is the public that is concerned with these, rather than institutions with the capacity to legally enforce them.

492 *https://www.transparency.cz/cpi2021/*
The Index ranks countries according to the degree of perceived corruption in the public sector and business using a scale of 0 to 100, where 100 points indicates a country with almost no corruption and 0 points indicates a high level of corruption. In 2021, 180 countries were ranked, with the 1st place going to the countries with the best results.

Legislation with an emphasis on moral integrity

Norway (CPI rank 4, score 85):

Almost no obligations regarding conflicts of interest of public officials are codified, and legislation is largely absent. Compliance with the rules is based primarily on political accountability, accompanied by some elements of transparency. The system is only able to function due to the high moral integrity of public officials. Owing to the absence of many of the basic elements of regulation, the Norwegian legislation is difficult to transfer to other countries.

Germany (CPI rank 10, score 80):

The long-term concept based on the political accountability of public officials has been complemented by concrete measures in recent years. While individual tools can be effective, they tend to respond to specific problems that arise. Apart from this, the prevention of conflicts of interest is still based on the political accountability of public officials and the oversight of political bodies.

Effective and inspiring legislation

Croatia (CPI rank 63, score 47):

All public officials are subject to extensive rules on the prevention of conflicts of interest, accompanied by a high level of transparency. The oversight institution acts independently, has extensive powers and actively addresses conflicts of interest, including for politicians of the ruling parties. Due to its historical development, the ideological and legislative-technical concept of conflict of interest is very similar to that in the Czech Republic and can serve as a model for it.

France (CPI rank 22, score 71):

Over the last ten years, the legislation has developed into a very robust system that covers a large number of problematic situations. The supervisory institution has strong powers and is active externally. Furthermore, very strict rules are set for incompatibilities.

Canada (CPI rank 13, score 74):

The extremely sophisticated legislation is in many respects the most advanced of the countries compared. The rules are clearly formulated, the focus is on the purpose of the measures to be implemented and the rules are accompanied by extensive decision-making practice. Although the oversight is entrusted to politically appointed bodies, they act independently.

As indicated in the preface to this analysis, even the most sophisticated conflict of interest regulations are not able to completely prevent undesirable phenomena. Even in countries with effective moral, ethical or legal rules in place, excesses do occur and there are still areas that are not covered. These include online content and social media appearances, or persistent problems with the transfer of influential public officials to the private sector, especially to large corporations seeking to maintain influence over legislation or oversight (the *revolving door* problem).

Overview of good practice

In general, regulation needs to be viewed from a distance and set up in such a way that it is comprehensive. Case-by-case legislation, or pulling individual measures out of the gears of other mechanisms, cannot be very successful, as such a solution will offer easy ways to circumvent the rules. Nevertheless, a simplified projection of the existence of some key elements is transferred to the following table. A certain degree of simplification is necessary, so the assessment is divided into three levels according to colour. Green indicates that the country has a certain amount of support for the area; red represents the opposite. Yellow indicates those situations where a measure is in place, but contains holes or it is not very clear how to proceed. The table does not include an assessment of true incompatibility of offices, as almost all countries start from similar premises and any significant differences are described in the text (France and Spain).

	CZ	F	HR	I	CAN	D	N	EN	A	E
separate law										
ethical rules										
general definition										
separate specialised institution										
false incompatibility of **appointed** officials										
false incompatibility of **elected** officials										
protection period										
declaration of personal interest										
declaration of the **assets of appointed** officials										
declaration of the **activities of appointed** officials										
declaration of the **assets** of **elected** officials										
declaration of the **activities of elected** officials										
rules for the acceptance of gifts										
regulation of lobbying										
means of enforcement										

Different approaches to regulation

Across the regulations examined, two different approaches can be identified in the two areas studied. The first concerns the legislative and technical solution to the definition of officials; the second concerns the method of sanctions for violations of obligations.

It is clear that officials affected by the legislation in any country must be defined in some way. A twofold approach can be essentially be taken, either using a general definition or by means of an enumeration, usually complete. The appropriateness of the chosen solution depends on the way the state administration in charge of this issue operates, especially in how it sanctions any possible violations. In the case of an exhaustive list, this does not leave the authority applying the law much room for interpretation as to which persons are subject to the obligations in place. On the other hand, in the case of general definitions, it is first necessary to define, by way of interpretation, which specific officials are affected by the regulation. When constructing legal norms, it is therefore appropriate to bear in mind the way in which those norms are applied, and by which authorities. The structure and technical design of this legislation should be adapted accordingly.

The second difference in approach can be observed in the way that any violations of the statutory obligations of public officials are sanctioned. One option is to apply criminal law; the other is administrative sanctions. For some of the legislation examined, there is an evident tendency of evaluation bodies (e.g. GRECO) to criticise the absence of administrative sanctions. This is true even if any violations are covered by criminal law sanctions. In this context, however, it cannot be overlooked that the established case law of the European Court of Human Rights stipulates that the charge of an offence, i.e. the process of administrative punishment, is a criminal charge within the meaning of Article 6 of the European Convention on Human Rights. In light of this established case law, it is then appropriate to ask to what extent the distinction between criminal and administrative sanctions is relevant in relation to conflicts of interest. It seems that the functionality of the mechanism and the bodies that are supposed to impose or enforce these sanctions is much more important than the chosen form of sanction. If such a mechanism does not work, the form and the chosen branch of law seem to be secondary.

Institutional framework and enforceability of legislation

The comparison clearly shows that the key to successful regulation is the existence of an independent institution with sufficient powers and tools to enforce the obligations imposed. Indeed, in some countries, such an institution plays a fundamental role in shaping the environment as a whole. The Czech Republic lacks such an institution. Although the Ministry of Justice possesses some of the powers and responsibility of the law, on principle, given its position, it can hardly achieve significant positive shifts in practice as it does not have sufficient independence or the conditions for an independent proactive approach. The situation is comparable to Spain, where the separate agency is a subordinate department of the ministry, yet still does not have the necessary independence or capacity to deal with problematic situations. It is not appropriate to transfer a system based purely on parliamentary control to the Czech Republic, so it is advisable to seek inspiration in France or Croatia, where an independent entity in the form of independent administrative bodies has been established.

The Czech Republic follows good practice with regard to the existence of a specific law on conflicts of interest and the general definition of conflict of interest defined therein, to which specific obligations and measures can be applied. Any reform efforts should preserve and build on this good practice.

Incompatibility of offices and ancillary activities

Interestingly, there is a very different perception of whether it is possible, appropriate or even necessary to cumulate offices as a member of the legislature and the top executive. In most countries, including the Czech Republic, it is common for members of the government to be legislators. In Canada, it is even compulsory to defend an unelected office in the next general election. The opposite view prevails in France, where the regulation very clearly stipulates that these offices must be separate.

The incompatibilities of public office generally go far in some countries. On the other hand, in the Czech Republic and several other countries, it is common to have an extensive accumulation of offices across state administration and local governments, enabling as many as ten or more offices to be held. This is inconceivable in most countries with developed rules to prevent conflicts of interest, and people used to such an approach rightly ask how it is possible to devote oneself properly to more than one office that normally requires the full attention of national legislators. The principle of the exclusive exercise of public offices is not enshrined in any way in the Czech Republic, but it would be appropriate to consider such a principle for at least certain senior offices. Modern Czech legislation is criticised by all parties as being poor, which may be due, among other things, to the fact that legislators in parliament devote their time to many other offices, which they sometimes even publicly declare to be more important to them.[493]

The performance of other private activities is also not sufficiently covered in the Czech Republic. Although some prohibitions are placed on secondary activities, including entrepreneurship, this is a necessary minimum, which should be significantly supplemented by further restrictions along the lines of other countries, while almost all the legislation compared is stricter than the Czech regulations. The Czech legislation does not cover many situations. It would therefore be appropriate, as in other legislation, to cover transfers of property to close persons or to restrict the provision of various types of advice to public officials. In addition, a review should be carried out to determine whether the rules set for the protection period are workable and enforceable. The Czech legislation contains specific restrictions on members of the government, including a ban on media control, the receipt of subsidies and the acquisition of public contracts, which also applies to companies they control, which is not standard in all countries. These rules are appropriate for the prevention of conflicts of interest, but it is necessary to ensure that they are functional and enforceable by amending the law.

In addition, it is essential for the Czech Republic to adopt rules for lobbying. There are many countries to draw inspiration from. The main consideration should be to try to fulfil the purpose of the obligations to be introduced – i.e. to be able to determine who met which public official and why. The common standard is to display this information in a publicly available open register.

Tools for greater transparency

In the vast majority of cases, public officials in the countries compared are required to file declarations of assets or disclose their other activities or interests. Where a specific reporting obligation is required, the scope of the information to be reported is usually quite similar.

What is crucial is what happens to declarations after they have been filed. And this varies from country to country. Some declarations are fully available to the public, sometimes including detailed assets. Other declarations are submitted in confidence to protect the privacy of public officials. Both approaches are acceptable if their choice is somehow justified. The confidentiality of very detailed declarations that are reviewed by the supervisory institution makes sense. Conversely, the expedient arguments of top public officials who might seek to keep information secret in declarations that no one has the power to review should not be accepted. The crucial question is whether there is an institution that is entitled or, better still, obliged to review the declarations and whether it has sufficient tools to do so.

493 *Opinion of the Reasonable Law platform entitled Making Legislation Requires Fundamental Changes, 23 May 2022, available here: https://www.rozumne-pravo.cz/cz/stanoviska/tvorba-legislativy-vyzaduje-zasadni-zmeny/*
WINTR, Jan. On the Constitutionality and Legality of Anti-epidemic Measures in Spring 2020. In: Správní právo No. 5–6/2020, pp. 282–297. Available here: https://www.wintr.cz/images/nouzovystavSpravnipravo2.pdf
VEJVODOVÁ, Alžběta. In the Czech Republic, laws are made up on the side; politicians are usually not interested in their impact. Ekonom weekly. 28 January 2021. Available here: https://ekonom.cz/c1-66874620-v-cesku-se-zakony-vymysli-od-boku-politici-se-o-jejich-dopady-nezajimaji

Related to this is the question of how many public officials should be subject to the reporting obligations, or whether they should apply equally to all. This consideration must be based on the specificities of the country, for example the degree of autonomy of sub-national governments or the number of local governments. The higher the status of the public official, the more they should be obliged to disclose information about their assets and interests. Such a consideration should also be reflected in the Czech Republic, as practice shows how controversial the reporting obligations are. The current legislation is not very stratified, yet it could help to bridge some of the justified objections and at the same time promote transparency where it is really needed.

Annex 1 – assignment for the comparative study

1.1 Comparative study

1.1.1 Intent

In particular the comparative study:

- provides information on the conflict of interest legislation in the individual countries,
- summarises and compares the above with the situation in the Czech Republic, and
- provides an overview of examples of good practice in each country and concludes by presenting a clear summary of the good practices identified.

The comparative study and its outputs will be presented at a two-day international conference on the issue of conflicts of interest, implemented under the project "PDP 5 – Stepping up the fight against corruption by raising awareness of the public sector with a focus on judges, law enforcement agencies and public administration".

1.1.2 Factual assignment

Compare legal regulation of conflicts of interest with regard to the personal scope of the regulations for the following entities (hereinafter referred to as "public officials"):

- elected representatives of the people – members of parliament and senators (national level); mayors, councillors and council members (regional and local level),
- members of the government,
- heads of central administrative authorities or administrative authorities with national competence exercising competence in an area in which a ministry controlled by a member of the government does not exercise competence, in particular in the fields of energy, telecommunications, broadcasting, competition and public procurement supervision, protection of personal data and the management of political parties and movements.

Compare the regulation of the aforementioned entities particularly in the following areas:

- incompatibility of offices (so-called true incompatibility) – the impossibility of certain public offices being held concurrently, or the ban on receiving remuneration for more than one public office,
- incompatibility of activities (so-called false incompatibility) – typically restrictions on the economic activities of certain public officials (business, ownership of certain assets, media ownership, participation in public procurement, receipt of subsidies, etc.),
- the obligation to disclose facts from the public official's private life (personal interest in matters discussed or decided on by public authorities, business and other economic activities, property, income, gifts, liabilities, job offers, lobbying, etc.),
- a "cooling off period" – a ban for a certain period of time after the end of a public office on performing work or a similar activity at an entity operating within the competence of the public authority in which the public official held the office (e.g. at an entity that was a bidder for a public contract on which the public official made a decision while in office),
- similar obligations or bans that are specific to the individual legal systems compared and that constitute a restrictive infringement on the rights of public office holders.

1.1.3 Countries compared

Czech Republic, Canada, France, Austria, Germany, Poland, Croatia, Spain, Italy, Norway.

1.1.4 Minimum content requirements

In particular, the comparison will state the following:

- the legal force of the legal regulation (constitutional, statutory, sub-statutory regulation),
- the specific content of the legislation (rights and obligations),
- the complexity of the legislation (one or more legal regulations, relations of generality and specialty between the legal regulations),
- the enforceability of the legislation (public and private law consequences of failure to comply with obligations, the actual level and success rate of enforcement by public authorities, especially law enforcement and administrative authorities) and the general functioning of the legislation in practice, including the decision-making practice of competent authorities,
- a clear summary of identified examples of good practice.

1.1.5 Minimum quality and technical requirements

- The Client sets the minimum scope of the analysis at 40 standard pages.
- The study will be delivered electronically in the ".doc"/".docx" format of the MS Word text editor, or in another open, commonly available format, and in 2 copies.

1.1.6 Target group

- employees of the public administration, in particular the Ministry of Justice.