

## The stage of the legislative proposals aiming to amend the integrity framework

Currently, 6 legislative proposals aiming to amend the integrity framework are pending before the Parliament procedures<sup>1</sup>. In one case, ANI issued a favorable point of view regarding the legislative proposal, while in 4 cases, ANI issued negative points of view regarding the legislative proposals. In addition, one legislative proposal (drafted by the Romanian Ministry of Justice) is on the inter-ministerial approval circuit and will subsequently enter the Parliamentary procedures. Throughout 2021, 6 legislative proposals have been rejected by the Parliament<sup>2</sup>.

### **A) 7 pending legislative proposals aiming to amend the integrity framework**

#### *1. Legislative proposals on the protection of whistleblowers*

As a member state of the European Union, Romania has the obligation to transpose the *Whistleblower Protection Directive (2019/1937)*. To comply with this obligation, the Ministry of Justice drafted a legislative proposal, with the prior consultation of NIA.

Since the Directive provisions the obligation to institute independent and autonomous external reporting channels to receive and process information on violations, the National Integrity Agency is designated as a competent authority in this regard.

In mid-December 2021, another legislative proposal on transposing the *Whistleblower Protection Directive* was initiated by a group of parliamentarians.

Please find a short description of the two legislative proposals:

#### **a) Legislative proposal on the protection of public interest whistleblowers**

The legislative proposal was drafted by the Romanian Ministry of Justice. Currently, the draft normative act is on the inter-ministerial approval circuit and will subsequently enter the Parliamentary procedures.

#### **b) Legislative proposal on the protection of public interest whistleblowers - Pl-x no. 573/2021**

The second legislative proposal was initiated by a group of parliamentarians and is currently pending before the standing committees of the Chamber of Deputies.

**Last mention:** 13.12.2021 - **The Economic and Social Committee sends notice.**

16.12.2021 - **The Legislative Committee sends *favorable* notice.**

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<sup>1</sup> **Pending before Parliament:** Pl-x nr. 573/2021; Pl-x 135/2020, Pl-x 179/2018, Pl-x 200/2021, Pl-x 398/2021, Pl-x 415/2019

<sup>2</sup> **Rejected by the Parliament:** Pl-x 309/2015, Pl-x 310/2015, Pl-x 543/2015, Pl-x 471/2018, Pl-x 670/2020, Pl-x 565/2020

21.12.2021 - Presented before the Standing Bureau of the Chamber of Deputies.

Sent for report before the Committee for Legal Matters, Discipline, and Immunities (amendment deadline: 30.12.2021; report deadline: 08.02.2022)

Sent for report before the Committee for Human Rights, Cults and National Minorities, the Committee for Information and Communication Technology and the Committee for Equal Opportunities for Women and Men

2. *Legislative proposal to amend Law no. 176/2010 - L470/2021 (Pl-x 200/2021) - ANI favorable point of view*

**Summary of the legislative project:**

- **amending point 31 of art. 1, para. (1) of Law no. 176/2010**, by defining the categories of persons who have the obligation to declare assets and interests, namely “persons with public or contractual offices”;

- **amending art. 25, para. (2) of Law no. 176/2010**: “The person removed from office under the provisions of paragraph (1) or towards which it was found the existence of a conflict of interest or incompatibility loses their right to exercise a public office or dignity or exercise by contract or by delegation any management or control duties in a public institution for a period of 3 years after removal from that office or public dignity or from the date of mandate end.

The proposed amendment removes the interpretation according to which that a person found to be in a state of incompatibility or conflict of interest is prohibited from holding the position that generated the state of incompatibility or conflict of interest, and may instead hold any other eligible position. Thus, through the legislative amendment, once the existence of a state of incompatibility or conflict of interest is definitively ascertained, the person loses the right to hold any other public office, a public dignity or to exercise by contract or delegation any management duties or control in a public institution, for a period of 3 years from the end of the mandate.

- **adding art. 25 para. (21)** according to which “in case the person no longer holds a public office or dignity at the date of ascertaining the state of incompatibility or the conflict of interests, the 3-year interdiction provided by par. (2) operates according to the law, from the date when the evaluation report remained definitive or from the date of the definitive and irrevocable Court decision confirming the existence of the conflict of interests or state of incompatibility”.

- **repeal of para. (5) in art. 25 of Law no. 176/2010**, according to which “Civil, administrative or disciplinary liability for deeds that determine the existence of conflict of interest or incompatibility of persons exercising public dignities or offices is removed, and can no longer be held, after the general term of prescription of 3 years from the date of their commission, in accordance with art. 2.517 of Law no. 287/2009 on the Civil Code, republished, with subsequent amendments. ”

**Follow-up of the legislative proposal:** Pending before the standing committees of the Senate

Last mention: 26.10.2021 - *Chamber of Deputies* - final vote - the qualified majority for adoption has not been met

27.10.2021 - Registered at the Senate

01.11.2021 - Sent for report before the Committee for Legal Matters Appointments, Discipline, Immunities, and Validations (deadline 16.11.2021), the Committee for Public Administration (deadline 10.11.2021), the Committee for Human Rights, Cults and National Minorities (deadline 10.11.2021).

10.11.2021 - The Committee for Human Rights, Cults and National Minorities sends *negative* notice.

15.12.2021 - The Committee for Public Administration sends *negative* notice.

3. *Legislative proposal to complete the Emergency Ordinance no 57/2019 on the Administrative Code - (Pl-x 135/2020 - L93/2020) - ANI negative point of view*

**Summary of the legislative project:** The initiators propose to modify the *Emergency Ordinance no 57/2019, in the sense that:*

- the persons who did not commit deeds which determined the existence of a conflict of interest or a state of incompatibility, less than 3 years before the election date, ascertained through ANI's evaluation reports, which remained definitive, **can be validated in the local councilor mandate;**

- the persons who committed deeds which determined the existence of a conflict of interest or a state of incompatibility, more than 3 years before the election date, ascertained through ANI's evaluation reports, which remained definitive, **can candidate and occupy local elected official positions;**

- the persons who committed deeds which determined the existence of a conflict of interest or a state of incompatibility, less than 3 years before the election date, ascertained through ANI's evaluation reports, which remained definitive, **cannot candidate and occupy local elected official positions.**

*Furthermore, through the joint report of the Commission for Public Administration and Territorial Organization and the Legal, discipline and immunities Commission from 28.04.2020, additional amendments to the legislative proposal were adopted, for which ANI has also sent a negative point of view.*

**Follow-up of the legislative proposal:** Pending before the standing committees of the Chamber of Deputies

**Last mention:** 17.05.2021 - Sent for additional report before the Committee for Public Administration Territorial Planning and Committee for Legal Matters, Discipline, and Immunities

4. *Legislative proposal to amend and complete the Emergency Ordinance no 57/2019 on the Administrative Code - L227/2021 (Pl-x nr. 398/2021) - ANI negative point of view*

**Summary of the legislative project:** The initiators propose the amendment of the Emergency Ordinance no 57/2019 as follows:

1. Art. 415, para. (3) is amended and shall have the following content: "(3) Civil servants elected in the management bodies of trade unions may opt for one of the two positions. If the civil servant chooses to carry out the activity in the management position in the trade union organizations, their office is suspended for a period equal to that of the mandate in the management position in the trade union organization."
2. Art. 415, para. (4) is amended and shall have the following content: "(4) Civil servants elected in the management bodies of trade unions may simultaneously hold the

public office and the position in the governing bodies of trade unions, with the obligation to comply with the regime of incompatibilities and conflicts of interest applicable to them."

**Follow-up of the legislative proposal:** Pending before the standing committees of the Chamber of Deputies

**Last mention:** 07.10.2021 - **The Committee for Equal Opportunities for Women and Men sends favorable notice**

5. *Legislative proposal to amend Law no. 161/2003 on certain measures to ensure transparency in the exercise of public dignities, of public offices and in the business environment, and prevent and sanction corruption L238/2019 (Pl-x 415/2019 - Bp. 74/2019) - ANI negative point of view*

**Summary of the legislative project:** Through this proposal, the initiators propose to establish some exceptions to the legal regime of incompatibilities and conflicts of interest for certain categories of public offices, which result from simultaneously holding the public office/dignity of deputy, senator, minister, prefect and deputy prefect and the quality of natural person merchandiser, as well as limiting the situations of incompatibility in which a person who exercises the position of deputy, senator, prefect and deputy prefect, is found, in the sense in which the quality of natural person merchandiser is excepted, with the exception of liberal activities and those of agriculture, unless he has a contract concluded with the public authority of which he is a part.

**Last mention:** 22.10.2019 - **The Commission for economic policy, reform and privatization sends notice**

**No progress has been registered since the last report**

6. *Legislative proposal to amend and complete art. 178 of Law no. 95/2006 on reform in the health field - ANI negative point of view - L57/2018 (Pl-x nr. 179/2018: Bp 532/2017)*

**Summary of the legislative project:** Removing the incompatibility situation caused by the simultaneous exercise of the position of hospital manager and the medical activities carried out in other public or private sanitary units.

**Follow-up of the legislative proposal:** Under debate at the Chamber of Deputies

**Last mention:** 12.02.2020 - **The Government sends NEGATIVE point of view.**

**No progress has been registered since the last report**

## **B) 6 legislative proposals have been rejected by the Parliament**

1. *Legislative proposal to amend para. (2) of art. 25 from Law no. 176/2010 (Pl-x 309/2015 - L635/2014) - ANI negative point of view*

**Summary of the legislative project:** According to the legislative proposal, a person found in incompatibility or in conflict of interest, while exercising an eligible office, can no longer occupy the same office that generated the state of incompatibility or the conflicts of interests, for a period of 3 years.

**Last mention:** 15.02.2021 - **Rejected by the Senate.**

2. *Legislative proposal to amend para. (2) of art. 25 from Law no. 176/2010 (Pl-x 310/2015 - L39/2015) - ANI negative point of view*

**Summary of the legislative project:** According to the legislative proposal, the phrase "elective positions" will be explained by the phrase "positions occupied following elections". Furthermore, the positions for which the interdiction to occupy a public position or dignity for a period of 3 years will be limited, if the conflict of interest or the state of incompatibility has been found, in the sense of no longer holding the same position that generated the state of incompatibility.

Last mention: 15.02.2021 - Rejected by the Senate.

3. *Legislative proposal to amend and supplement Law no. 176/2010 - art. 1, para. (1), pct. 34 and pct. 35 (Pl-x 543/2015 - L558/2015) - ANI negative point of view*

**Summary of the legislative project:** The legislative proposal aims at extending the scope of the National Integrity Agency to members in administration councils, in boards of directors or in supervisory boards, as well as to persons holding management positions within a company where the state or an authority of the public local administration is a shareholder, as well as to the management staff within banks where the state is a shareholder, without distinction regarding the participation of the state.

Last mention: 15.02.2021 - Rejected by the Senate.

4. *Legislative proposal to amend and supplement Law no. 176/2010 - art. 1, para. (1), pct. 37 (Pl-x 670/2020)*

**Summary of the legislative project:** According to the legislative proposal, pct. 37 of art. 1, para. (1) of Law no. 176/2010 should be repealed, in the sense that the Presidents, Vice-Presidents, Secretaries, Trades in the union federations and confederations, will no longer be subject to the integrity framework set out by law and therefore should not submit assets and interest disclosures.

**Follow-up of the legislative proposal:** 09.03.2021 - Rejected by the Chamber of Deputies

5. *Legislative proposal to complete Annex 2 (Interest Disclosure Form) of Law no. 176/2010 (Pl-x 565/2020)*

**Summary of the legislative project:** According to the legislative proposal, persons subject to Law no. 176/2010, should also declare in their interest disclosure the public office which they were entrusted with by foreign state, as well as their citizenship of a foreign state.

**Follow-up of the legislative proposal:** 09.03.2021 - Rejected by the Chamber of Deputies

6. *Legislative proposal to abrogate art. 94, para. 2<sup>1</sup> of Law no. 161/2003 - L282/2018 - (Pl-x 471/2018; B65/2018)- ANI negative point of view*

**Summary of the legislative project:** It is proposed to remove the cases in which there is no incompatibility situation:

1. public servant who is appointed by an administrative act, issued under the law, to represent the interests of the state in relation to the activities carried out by the

economic operators with capital or integral or majority state assets, under the conditions resulting from the normative acts in force;

2. public servant to participate as a representative of the public authority or institution within bodies or collective management bodies established under the normative acts in force;

3. public servant to exercise a mandate of representation, based on the designation by a public authority or institution, in the conditions expressly provided by the normative acts in force.

Last mention: 08-06-2021 - **Rejected by the Chamber of Deputies.**