

Phased overview of a new compliance system's development for good administration in Romanian public institutions

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ABSTRACT

This work presents the phased process through which a practical solution, firmly grounded in theoretical terms, was defined for the concrete challenges to which Romanian public institutions must respond. The objective pursued in this work for defining a new compliance system for good administration applicable to Romanian public institutions, was to provide a viable integrated solution, to meet a multitude of compliance requirements having different sources and legal force, which public institutions are currently implementing using parallel management systems, generating bureaucracy, administrative overload, and limiting the institutional capacity to perform its social function. Deriving benefits from elements specific to the science of law, sociology, management, and even technical sciences, the proposed model is structured into two major components: the elements and rules applicable to the new compliance management system and the good administration requirements to which the new compliance system is called to respond.

Conclusions of the testing of the newly proposed compliance system for good administration applicable to Romanian public institutions have pointed out that it is also capable of satisfying the legal requirements applicable to each institution, the requirements of international management standards as well as national and international best practice models. Since both, public and private companies, operate in the same common market and serve the same consumer citizens, a possible interesting approach for the future may be on the assessment of the possibility and opportunity of applying within private entities of the compliance model system for good administration developed in this study.

KEYWORDS: *compliance system, integrated management system, public institution, good administration, practical solution*

1. Introduction

The starting point of this approach is the systematic referral to the concept of good administration in European documents which establish the conditions for a state's belonging to the "area of freedom, security and justice" and the detection of the way that this concept is transposed into the community institutional practice, as well as into the institutional practice of the other European Union Member

States and Romania. In this context, this research aims to outline benchmarks for defining an innovative model for a new compliance system applicable in Romanian public institutions, for ensuring the fulfillment of the good administration standard requirements as a prerequisite for the fulfillment of their social function, respectively for the fulfillment of their institutional mission within the society and for increasing satisfaction of the recipient citizens.

For the proposed model of the newly developed compliance system for the Romanian public institutions to be well anchored into the regulatory, managerial and cultural context, but also into the current institutional needs and constraints, and in order to confer to it actual practical applicability, always during the research consideration has been given to the fact that the scientific approach cannot be properly achieved without considering in all its complexity the addressed reality. The approached reality is that of the entire European continent, whose components (countries), each one with its own millennial culture, are trying to consolidate together a functional and harmonious administrative structure (European Union) such that each and every one of the citizens to be able to live with dignity the best possible live.

A significant amount of legal, administrative, managerial, cultural, sociological, political and other information was systematized in order to make possible to decipher, understand and correctly apply the good administration concept, its coverage area and how it is operational zed, and the instruments used in this respect highlighted by the literature and by the comparative analysis of institutional practices, by the international standards analysis and of the good practice models, as well as the jurisprudential interpretation provided by the European Court of Justice, European Human Rights Court and by the national courts.

The scientific approach is directed towards identifying the common standardization elements to sketch a new unitary compliance system that can be multiplied and applied at the level of public institutions, regardless of their functional or structural particularities. The purpose of this new unitary system is to provide a viable solution to compliance requirements from multiple sources, that, in the current administrative practice, lead to a strong parallelisms between several management systems which results in excessive bureaucracy, administrative overload and resource unwise use, satisfying the society's expectations and needs incompletely, and finally resulting in *maladministration*.

Compliance of public institutions with the requirements of the good administration standard implies, on the one hand, the satisfaction of some aspects with economic valences such as the judicious use of resources and even their saving by increasing efficiency, and on the other hand it comes to safeguard the taxpayer's right to quality public services, and not least ensure prerequisites for achieving individual labor rights of the public system employees.

This reality has enabled the research to be developed so that the proposed solutions can address, under conditions of customization, also problems that are not just issues related to solving exclusively matters of the public administration area. In many of the points of the analysis, there are, among the issues raised and possible solutions, serious implications related to the human nature and the psychology of the individual, derived

from cultural reflexes that have been consolidated in many years of history. As the work focuses mainly on the Romanian institutional context, the solutions formulated also addressed these psycho-social aspects, thus trying to propose an integrated approach that would ensure the viability and validity of the proposed model.

Once again reiterating the idea that this research aims to provide an integrated solution that contributes both to the theoretical aspects of the approached theme and to represent a viable practical option, taking into account the current pertinent legislation and standards and on the good international practices, it is also developed a new system of compliance for good administration applicable in Romanian public institutions which was then tested and validated in a case study conducted at the National School of Political and Administrative Studies in Bucharest.

2. The social function of the public institutions

The leading assumption in this study is that *each public institution has a social function for which it has been created and that has to fulfill it¹⁾*, namely to protect and satisfy the public interest established by law in its competence, as well as to ensure the rule of law and constitutional democracy, to guarantee the rights, freedoms and the citizens' fundamental duties, or the realization of a fundamental right that is collectively exercised.

Premises for the fulfillment of the social function by the public institutions are (1) the capacity (legal, administrative) – to be established, to exist, to have resources, to exercise its competences, (2) the compliance – to act in accordance with the applicable regulatory framework, and (3) the good administration – to meet in line with expectations the needs of the community it serves. The content of each of the three before mentioned premises is as follows.

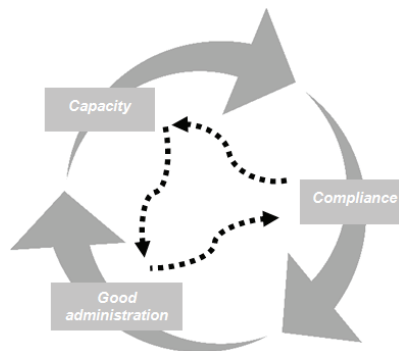


Figure 1 – The intricate interdependency, based on a cyclical dynamics, of the administrative law legal capacity, compliance and good administration.

¹⁾ Klotz-Santha. 2013. p. 16, in Pallai, K. *Integrity and integrity management*, created within the framework of priority project No. SROP-1.1.21-2012-2012-0001: Prevention of corruption and the revision of public administration development, in Gurzawska, A. *Principles and Approaches in Ethics Assessment. Institutional Integrity*, University of Twente, June 2015, <http://satoriproject.eu/media/1.e-Institutional-Integrity.pdf>.

The administrative law legal capacity presupposes the existence of a self-contained organization/ structure, of a dedicated patrimony represented by all the *resources* owned: human, material, informational, the existence of a *purpose established by law* and the ability to exercise public power rights and to assume administrative obligations, *according to the powers derived from its purpose*. **The compliance** content refers at carrying out the entity's activities in compliance with the *obligations imposed by laws and regulations*, as well as respecting the entity's *internal policies* that are appropriate to the fulfillment of its purpose. **Good administration** includes, both in law and in principle, elements of *legality, legitimacy, responsibility*, respect for human rights, the *judicious use of resources*, consultation of citizens in decision-making and fulfillment of legitimate expectations, and of its *purpose* respectively. A detailed analysis of the contents of the three premises highlights a series of common elements of the three, indicating that any change to one of them will generate a change in the contents of all three premises as shown in Figure 1. It follows, therefore, that the behavior of the three premises is intricately interdependent and with a cyclical dynamics.

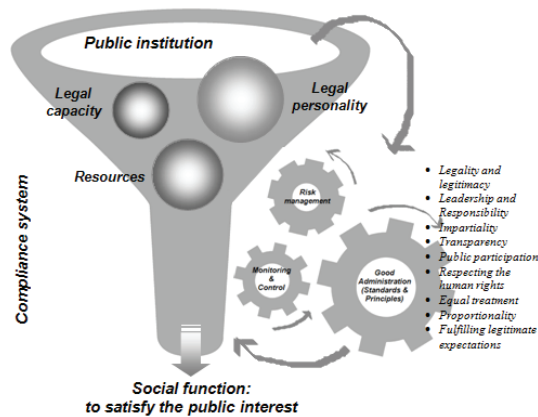


Figure 2 – The main elements that may affect the content of the three premises are the reference and regulatory framework, the organizational culture and resources.

The **fulfillment** of the social function of public institutions depends on the changes that affect the contents of each of the premises. Any amendment into the contents of a premise triggers the above mentioned cyclical dynamics such that affects the others content. As graphically shown in Figure 2, the main elements that could affect the content of the three premises can be structured as follows: (a) the reference and regulatory framework respectively, (b) the organizational culture representing that ensemble of values, philosophy, practices and customs that define the institution and which is unique to each entity, and (c) the resources that usually

are established for public institutions through normative acts, so we will treat them together with such normative acts.

Observing the sources of influence shown and the contents of the premises, we find that they cannot be represented statically and do not exist independently. There is needed an additional element to manage how sources of influence affect the premises, to make the necessary choices on whether or not to apply changes, to monitor the effects of developments and to take the necessary actions in case of slippages. It is therefore necessary **to manage the three premises by using and including them into a management system.**

There are currently *several models or typologies of management systems*. Some of these systems are determined by law (they are mandatory – for example OSGG No. 400/2015 on the internal managerial control – at the time of finalizing this study OSGG No. 600/2018), others are established as sectoral good practices (CAF – Common assessment framework), and the third category includes recognized and/or required/imposed systems by the market and society (ISO 9001 – quality management system).

As these systems present both common and divergent elements, the **application in practice of several systems in parallel** (most often OSGG No. 400/2015, or OSGG No. 600/2018, and ISO 9001) causes **confusion and bureaucracy and may seriously affect compliance.**

Thus, it is necessary to identify the common elements of these management systems and their completion them by defining the other elements necessary in relation to the institutional objectives, the social function, the resources and the organizational culture. It therefore appears necessary to define a **compliance management system for good administration.**

3. Conceptual benchmarks regarding the compliance framework for good administration applicable to public institutions

“Proper functioning of an institution and the suitability of its functioning for the purpose for which it was created, its consistency and its perception as legitimate” are all elements that define the institutional integrity²⁾. A righteous institution carries out its duties in accordance with and for the fulfillment of the established purpose, acting in a transparent, responsible, decent, ethical, irreproachable and non-vulnerable manner³⁾.

The strategies used to ensure integrity range from focusing on compliance with the regulatory framework to the application of approaches centered on adherence to

²⁾ Grebe, E; Woermann, M. *Institutions of Integrity and the Integrity of institutions: Integrity and ethics in the politics of development leadership*, The developmental Leadership Program, Paper 15, 2011, in Gurzawska, A. *op. cit.*, p. 3.

³⁾ Klotz-Santha, in Gurzawska, A. *op. cit.*, p. 4.

ethical principles⁴⁾. Compliance-based strategies are centered on the development of detailed formal rules and procedures where individual ethical choices are limited to choosing to follow the rule or to break it through commission or omission⁵⁾. Even in this context, however, compliance requires a process of internalization and adhesion involving ethical valences expressed in values and principles.

The European Union's solution is to lay down rules setting out the common elements and the minimum conditions that each of the administrations must comply, so as to ensure the unity and diversity is respected equally. The common standards to which we refer in the following are those derived from the concept of good administration and the conditions that a state must fulfill for belonging to the "area of freedom, security and justice" and the common market. Implementation of standards of good administration, however, is intrinsically linked to the existence of institutions that have both the legal and the practical means necessary to guarantee the rights and freedoms of citizens.

3.1. Good administration

The public administration represents, in this context, the activity of organizing the execution, as well as the execution of the law, made by means of disposition or performance actions⁶⁾. In this sense, the administration is not only a dimension of executive power, it is the main instrument through which the political power resulting from the expression of the people sovereignty, transferred into laws, returns to the citizen by the actual execution of the sovereign will. Thus defined, the modern public administration, called to solve the citizens' needs is shaped in the parameters defined by its fundamental principles.

The foundation of public administration on the principle of legality has, in a correlative manner, led to the possibility of exercising a legality control over its acts. Yet there are aspects of public administration that exceed the legal issues and which do not produce the expected results – those inappropriate decisions that cannot be subject to legality control but would need to be circumscribed to an opportunity check⁷⁾.

⁴⁾ The Conference Board of Canada. *How to Ensure Ethics and Integrity throughout an Organization*, April 2008, p.1, in Gurzawska, A. *op. cit.*, p. 7.

⁵⁾ Fox, C. *The use of Philosophy in Administrative Ethics*, in Terry L. Cooper (ed.). 2001. *Handbook of Administrative Ethics*, 2nd Edition, New York, USA: Marcel Dekker, p. 105-130, in Gurzawska, A. *op. cit.*, p. 10.

⁶⁾ Bălan, E. 2008. *Administrative Institutions*, Bucharest, Romania: CH Beck Publishing House, p. 22.

⁷⁾ C-154/05 și C-155/04, Alliance for Natural Health and Nutri-Link, [2005] ECR I -6451, § 72 & T-54/99, Maxmobil Telekommunikation Service GmbH, [2002] ECR II-313, § 48.

Tridimas, T. 2006. *The General principle of EU Law*, Oxford, Oxford University Press, p. 411, in De Leeuw, p. 6.

Reichel, J. *Between Supremacy and Autonomy. Applying the Principle of Good Administration in the Member States*, in Bernitz, U; Nergelius, J. Cardner, C. 2008. *General Principles of EC Law in a Process of Development*, The Hague, Netherlands: Kluwer Law International, p. 243-271, p. 245, in De Leeuw, p.6.

Their corroborated analysis highlights the difficulties in qualifying the good administration. Thus, the good administration also appears as a right, principle and standard. In the first of these concepts, it mainly includes procedural safeguards aimed at protecting subjective rights, while in the second hypothesis, good administration incorporates rules of law that structure the exercise of administration so as to satisfy the public interest. On the third level are considered those non-legal rules aimed at the proper functioning of the administration and the provision of services both in terms of quality and economic efficiency. It should be noted that some of the elements of good administration are constituted as transversal dimensions of the three levels⁸⁾.

Regarding direct application of Charter of Fundamental Rights in national law, this can be achieved in nuanced terms, in the light of the European Court of Justice's ruling (C-141/12 and C-372/12, EU:C:2014:2081), according to which "the right to good administration provided for in Art. 41 of the Charter of Fundamental Rights" is not addressed to the Member States, but only to the institutions, bodies, offices and agencies of the European Union⁹⁾. However, the "right to good administration" reflects a general principle of the Community law¹⁰⁾.

In the same sense, the Decision No. 12 of 22 January 2013 of the national constitutional litigation court states that "as regards the provisions of Art. 41 of the Charter of Fundamental Rights of the European Union, concerning the right to good administration, the Court notes, first of all, that they can be invoked by virtue of Art. 148, and not of the Art. 20 of the Constitution...". This is because, according to Article 6 (1) of the Treaty on European Union (consolidated version), "The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of December 7, 2000, as adapted on December 12, 2007 at Strasbourg, which has the same legal value as the Treaties¹¹⁾".

3.2. Administrative capacity

The doctrine defines legal capacity as being the person's ability to exercise rights and to assume obligations, by doing his own legal acts. Since we have in mind the legal capacity from the point of view of the public administration, we will refer to its formal meaning by which we understand the system of institutions, comprising

Azoulai, L. *Le principe de bonne administration*, in Auby, J.B.; Dutheil de la Rochere, J. 2007. *Droit Administratif Europeen*, Bruxelles, Belgium: Bruylant, pp. 493 – 518, in Mendes, J. *Good Administration in EU Law and the European Code of Good Administrative Behaviour*, EUI Working Papers, LAW 2009/09 Department of Law, p. 3.

⁸⁾ Mendes, J. *Good Administration in EU Law and the European Code of Good Administrative Behaviour*, EUI Working Papers, LAW 2009/09 Department of Law, p. 5.

⁹⁾ The YS decisions & Others, C-141/12 and C-372/12, EU:C:2014:2081, § 67, and Mukarubega, C-166/13, EU:C:2014:2336, § 44.

¹⁰⁾ Decision C-604/12, EU:C:2014:302, § 49.

¹¹⁾ Safta. M. *Reception of EU law by the case law of the Romanian Constitutional Court. Selection of decisions issued and published between Jan. 1st, 2013 and April 1st*, in *Afaceri Juridice Europene Journal*, 2013, <http://iaduer.ro/?p=1759>.

various administrative structures dedicated to the execution of the activity of organizing the execution and enforcement of the law¹²⁾.

In order to be a legal person, an entity must have a stand-alone organization and its own patrimony, which has a legitimate and moral purpose in accordance with the general interest¹³⁾. A legal person is any form of organization which, under the conditions required by law, is the holder of civil rights and obligations¹⁴⁾. Thus, the premises of the existence of the legal person are: (i) self-organization; (ii) own patrimony, intended to achieve a purpose; (iii) a legitimate and moral purpose in accordance with the general interest.

Regarding the ability of the legal person of public law, or that of the public institution, to acquire rights and to assume obligations, it should be noted that although Art. 206 (1) of the Civil Code speaks of its universality, apart from “those who, by their nature or according to the law, can only belong to the individual”¹⁵⁾, its actual extent can only be determined by reference to the whole of Art. 206. It follows that a first delimitation of the legal capacity of public institutions is the very purpose for which they were established.

In this context, we must state that public institutions can conclude in their own name those legal acts which are given by law in their competence, namely those legal acts that subscribe to the purpose for which they were established. Thus, competence or administrative capacity is a component of the legal capacity of the public institution and is its ability to have and exercise administrative command rights through means of authority as public power¹⁶⁾.

According to the European Charter of Local Self-Government¹⁷⁾ and the Explanatory Report accompanying it, it is mentioned that the term “capacity” (*ability*) expresses the idea that the legal right to regulate and administer public affairs must also be accompanied by the means of efficiently fulfilling this mission.

In light of the functional dimension of administrative capacity, we may consider that a broad definition of the administrative capacity of public institutions includes all of the material resources, organizational (structural, organizational) and human resources available to a public institution, *as well as the actions it carries out* in the exercise of its legal powers.

3.3. Management systems

According to the ISO 9000: 2015, *management* is the coordinated activities carried out to order and control an organization, whether public or private. Management is usually provided by one or more people who have the authority

¹²⁾ Bălan, E. 2008. *Administrative Institutions*, Bucharest, Romania: CH Beck Publishing House, p. 22.

¹³⁾ Art. 187 Civil Code.

¹⁴⁾ Art. 25(3) Civil Code.

¹⁵⁾ Such as the right to life, to dignity and to marriage.

¹⁶⁾ Bălan, E. *op. cit.*, p. 49.

¹⁷⁾ http://www.coe.int/t/congress/sessions/18/Source/CharteEuropeenne_en.pdf, p. 34; The Charter was ratified by Romania through Law no. 199/1997.

and responsibility to manage and control an organization. The management activity thus materializes through the formulation of objectives and subsequent policies and processes for the achievement of the established objectives¹⁸⁾.

Prof. Secarea defines the management system of an entity as the ensemble of elements of decisional, organizational, informational and motivational character through which the management process is realized in order to obtain the highest efficiency of its activity¹⁹⁾.

The ISO 9000 family of standards encompasses the requirements that entities may choose to follow voluntarily to ensure that the products and services they provide meet the requirements and expectations of their customers, while also ensuring the compliance with applicable legal requirements as well as ensuring continuous improvement²⁰⁾. The ISO 9001: 2015 standard establishes the requirements for the quality management system and is the only one that can be certified, even if this is not mandatory. Its most recent edition incorporates specifically, as an intrinsic part of the management system, the idea of risk management. The underlying principles of this type of management system are client orientation, the involvement and motivation of top-level management, the process-based approach and, especially, the continual improvement. One of the main reasons why ISO management systems have been recognized so widely is the possibility of obtaining certification for compliance with them. Another major benefit of these management systems is that they follow a similar structure and approach, so it is possible to implement the requirements of several standards in parallel.

Other management systems considered for the scope of this work are the *total quality management* (TQM), the *Kaizen*, the *Common assessment framework (CAF)* and the *internal managerial control system*, currently governed by the Order of the General Secretariat of the Government No. 600/2018 – previously the OSGG no. 400/2015.

All the above mentioned models of quality management systems are aimed at meeting the needs and expectations of customers or service users, and that they incorporate rules on continuous improvement and various forms of co-involvement and involvement of the staff. With this research strengths of each them have been capitalized and incorporated into a unique, innovative system.

3.4. Compliance framework

Independent of the theories developed around the content of legal norms, all doctrinaires agree that they govern social norms. Good administration incorporates the fundamental idea of equality before the law or the equal treatment of individuals in similar situations. However, in order for this equality to be achievable, a high

¹⁸⁾ Drăgulănescu, N., Ciobanu, E., Drăgulănescu, C. 2016. *Quality management system – Guidelines for implementing SR EN ISO 9001: 2015*, Bucharest, Romania: Standardization Publishing House, p. 11.

¹⁹⁾ www.universitatea-cantantemir.ro/CursuriRei/documente/.pdf.

²⁰⁾ SR ISO 9000:2015.

degree of compliance²¹⁾ is needed to allow for a uniform and predictable conduct. In this context, advocates of community legal constructions appreciate that the elements of legality and justice can only be effectively managed in communities that share common values and ideas²²⁾.

In this sense, the idea of compliance is closely linked to the legality and coercive force of the state to meet the normative imperative, or to sanction non-compliance.

This legalistic approach to compliance risks losing sight of the fact that it differs both from concept of "vimplementation" and from "efficiency". Compliance is not exclusively focused on the coercive force with which public policy prescriptions can be implemented (implementation), nor on the effectiveness of a legal norm to resolve a political issue that preceded its formulation (efficacy)²³⁾.

*Compliance therefore implies the extent to which the addressees of a rule adhere to its prescriptions and to the measures necessary for its implementation*²⁴⁾. In order for real compliance to be assessed, it is necessary for this assessment to relate equally to the applicable rule, to the way it is interpreted, understood and assumed, and last but not least to relate on how it is being enforced or implemented.

At the level of the national legislation, the Government Ordinance No. 119/1999 art. 2 letter b) defines the compliance as being that feature of some operations, acts or administrative deeds produced within that public entity to expressly correspond to the policy assumed in the respective field by an entity or its superior authority.

The same authors show that there is a direct link between the type and scope of a rule and the ability of an institution to comply with it, namely that there is a direct causal link between institutional capacity and the compliance level.

In classifying compliance systems as functional or not, doctrines identify several determinants according to which they classify compliance systems as follows²⁵⁾:

- a) *Rational institutionalism* – it requires both an effective monitoring system and the institutionalization of the implementation of rules so that risks and costs are minimized.
- b) *Regulation* – the solution identified is to create a very detailed regulatory framework that incorporates all valences and clarifies how to implement it. This approach is grasped on the idea that legal rules are by their very nature a compliance dimension²⁶⁾.

²¹⁾ Neyer, J.; Zurn, M. *Compliance in comparative perspective, The EU and other Institutions*, in *IIS-Arbeitspapier*, no. 23, 2001, Institut für Interkulturelle und Internationale Studien, Bremen, p. 3.

²²⁾ Goodin, R. *What is so special About our fellow Countrymen?*, in *Ethics Journal*, Vol. 98, No. 4, 1988, pp. 663-686, in Neyer, J.; Zurn, M. *op. cit.*, p. 3.

²³⁾ Neyer, J.; Zurn, M. *op. cit.*, p. 4.

²⁴⁾ Jacobson, H.; Weiss, B. 1998. *A framework for Analysis*, in *Engaging Countries. Strengthening Compliance with International Environmental Accords*, Cambridge, London: The MIT Press, pp. 1-18, in Neyer, J.; Zurn, M. *op. cit.*, p. 4.

²⁵⁾ Neyer, J.; Zurn, M. *op. cit.*, p.8-16.

²⁶⁾ Franck, T. M. 1990. *The Power of Legitimacy among Nations*, New York, Oxford: Oxford University Press, in Neyer, J.; Zurn, M. *op. cit.*, p.11.

- c) *Legitimacy* – legitimate compliance is structured by most theorists in the material legitimacy stemming from the fairness and fairness of regulation, and the legitimacy stemming from the regulatory process that runs in accordance with the principles of good administration²⁷⁾.
- d) *Management* – this model identifies the lack of material resources and the ubiquity of implementation issues as the main sources of non-compliance. In this context, effective communication between the authors of the rules and their recipients and the allocation of sufficient resources are essential for avoiding non-compliance.

Analysis of the four models highlights the fact that none of them can exist independently of each other and that for a functional compliance system it is necessary to borrow from the characteristics of each of the four models.

All the management or compliance systems rely on standards, which are defined as *those rules or conditions that define an expected conduct and which all those adhering to them are expected to respect and fulfill, thus allowing for comparison between them, but also a guarantee for the beneficiaries of those who adhere to these rules and conditions that their activity respects a certain level of quality.*

3.5. Organizational culture

The concept of culture has many meanings, but from the perspective of social anthropology, of interest to the present work, it is “the group of thought patterns, feelings and actions of a group”²⁸⁾. According to the same authors, citing Hofstede, culture is “collective programming of thought that distinguishes members of a group of members of another”²⁹⁾, where group-specific values shape the expression of good and evil in the group’s sense.

Because the perspectives on which it is addressed are extremely varied, there is currently no unanimously accepted definition of what organizational culture means. In this respect, over 160 different definitions can be identified in the literature³⁰⁾.

So “organizational culture is the personality of an organization”³¹⁾. “Organizational culture is a unitary system of thinking of the members of a group

²⁷⁾ Habermas, J. 1992. *Faktizitat und Geltung. Beitrage zur Biskurstheorie des Rechts und des demokratischen Rechtsstaats*, Frankfurt/M, 2nd Edition, in Neyer, J.; Zurn, M. *op. cit.*, p.13.

²⁸⁾ Mihuț, I; Lungescu, D. *Cultural dimensions of the Romanian management*, in *Management&Marketing Journal*, No. 1, 2006, p1, <http://www.managementmarketing.ro/pdf/articole/art1.pdf>.

²⁹⁾ Hofstede, G. 1996. *Management of Multicultural Structures*, Bucharest, Romania: Ed. Economică Publishing House, p. 21, in Mihuț, I; Lungescu, D. *op. cit.*, p1.

³⁰⁾ Schein, E.H. 1985. *Organizational Culture and leadership*, San Francisco, USA: Jossey Bass Publishing House; Martin, J. 2002. *Organizational Culture: Mapping the terrain*, CA., USA: Sage, Thousand Oaks, in Stănimir, E.F. 2014. *Managementul culturii organizaționale în poliția română*, PhD Thesis, Bucharest, Romania, p. 5.

³¹⁾ McNamara, C., *Organizational Excellence*, in *Business&Economic Review*, July-September, 1997, in Stănimir, E.F, *op. cit.*, p.5.

that differentiates them from other groups”³²⁾. “Organizational culture is a model of common assumptions that the group has learned with problem solving, which have proved functional and were considered valid enough to be passed on to new members as the right way to perceive and tackling similar issues later on”³³⁾.

Organizational culture is a dynamic phenomenon that begins with the values and rules imposed by leaders of a particular group. If this group is successful, then the accepted set of values defines the group culture and what kind of leadership it supports³⁴⁾. From a management system perspective, “an organization’s manager is an individual who has the responsibility of a management process with certain goals, not only assuring the organization, management and coordination of resource utilization, but also continually assessing the performance of the process”³⁵⁾. According to the same authors, the managers of an organization should, by their behavior and attitudes, or through their decisions and initiatives, set and inspire employees the idea that they have a common goal, to which each of them contributes and whose achievement must be pursued by each of them.

The leadership is therefore, according to the European Model of Excellence, “the way in which the managers of the organization through their behavior and actions are visibly involved, inspire, support and stimulate organizational culture”. The same leadership model is also described in the context of the “Romanian Quality Award *J.M. Juran*” – the Romanian model of excellence. In both models the leadership is considered as the determining factor that generates all the results on organizational performance and results to customers, staff and society³⁶⁾.

4. Analysis of the elements of the good administration standard and the compliance requirements for public institutions

As already mentioned, “the proper functioning of an institution and the suitability of its functioning for the purpose for which it was created, its coherence and its perception as legitimate” are as many elements that define institutional

³²⁾ Hofstede, G. 1991. *Culture’s consequences: International differences in work – related values*, Beverly-Hills, USA: Sage, in Stănimir, E.F, *op. cit.*, p. 11

³³⁾ Schein E.H. *Culture: The Missing Concept in Organization Studies*, in *Administrative Sciences Quarterly*, No. 41, 1996, in Stănimir, E.F, *op. cit.*, p. 11.

³⁴⁾ Vlăsceanu, M. 2005. *Psycho-sociology, organizations and management*, Bucharest, Romania: Ed. Mediauno, in Stănimir, E.F, *op. cit.*, p. 12.

³⁵⁾ Drăgulănescu, N.; Ciobanu, E.; Drăgulănescu, C. 2016. *Quality Management System – Guide to Implementation of the Standard SR EN ISO 9001: 2015*, Bucharest, Romania: Publishing Standardization, p. 105.

³⁶⁾ Drăgulănescu, N.; Ciobanu, E.; Drăgulănescu, C. 2016. *Quality Management System – Guide to Implementation of the Standard SR EN ISO 9001: 2015*, Bucharest, Romania: Publishing Standardization, p. 110-111.

integrity³⁷). Thus, we can bring into discussion the need to establish a unitary interpretation of what the law means for each institution, keeping its unique spirit, in the light of the values and principles that it emanates, and allowing a flexible and adaptable application to concrete situations that each one institution has to manage in a given context.

These latter element linked to context, emphasizes that the application of a norm with respect to its spirit must take into account, on the one hand, the institutional capacity of a particular organization at a certain point in time, as well as to consider, at the same time, the needs of the society or community that the institution serves. Sometimes the need to ensure compliance in relation to these two elements generates major ethical dilemmas in practice, when a determined institution does not have sufficient institutional capacity to effectively meet the needs of the community it serves.

4.1. Determining the compliance requirements

Regardless of the nature of the debate on the concept of good administration, both the already mentioned international institutions and the doctrine accept as common elements for defining good administration the functioning of public institutions under conditions of legality and legitimacy, leadership and responsibility, impartiality, transparency, public participation, respect for rights human rights and equal treatment of all citizens, proportionality and the satisfaction of their legitimate interests.

According to ISO 19600, any institution must systematically identify compliance requirements and their implications for its activities and for the fulfillment of the purpose for which it was established.

The main examples of sources of compliance requirements provided by the standard are:

A. Compliance obligations:

- a. Laws and other normative acts
- b. Permits, authorizations, licenses
- c. Orders, guidelines or other instructions issued by regulatory authorities
- d. Decisions of administrative courts or courts of law
- e. Treaties, conventions and protocols

B. Compliance commitments:

- a. Agreements or arrangements with the community or non-governmental organizations
- b. Agreements with public authorities or customers
- c. Internal policies and procedures
- d. Principles or codes of good practice

³⁷) Grebe, E; Woermann, M. *Institutions of Integrity and the Integrity of institutions: Integrity and ethics in the politics of development leadership*, The developmental Leadership Program, Paper 15, March 2011, in Gurzawska, A, *op. cit.*, p.3.

- e. Labeling or other environmental commitments
- f. Obligations resulting from contracts
- g. Relevant professional standards

When analyzing the categories of compliance requirements and their source, we will find that their inventory is more than the requirement of an ISO standard, but it is even a requirement for the proper functioning of public institutions.

In this context, we appreciate that identifying, making the inventory and analyzing the content of compliance requirements is the expression of ensuring in practice the means by which the legal provisions are taken into account and the prerequisites for ensuring compliance with the principle of legality are established. This process of identifying compliance requirements is recommended to be carried out by a designated person within the institution, which enables it to be empowered with a set of explicit responsibilities in this respect – constitute obligation according to the job description, thus avoiding the risks arising from the sharing and dilution of these responsibilities among several persons.

Through compliance needs we will understand the relationship between what is required by compliance obligations and what already exists within the public institution. This analysis is necessary to assess both the already existing degree of compliance, as well as the potential conflicts between the different compliance requirements and the prioritization amongst them, the resources needed to meet the compliance obligations and the time needed to meet them.

4.2. Sources, legal binding and hierarchy of the compliance requirements

A first step towards determining the compliance framework is to identify the legal originations or the main sources containing requirements or compliance commitments. As shown in the previous section, compliance obligations are the result of formal regulatory acts and, most often, commitments have their source in good practice models and contracts.

A legitimate question is related to how the requirements of good administration will be applied, depending on their legal force.

It is considered in this work that from this point of view, what must follow a compliance standard for good administration is a maximum level – that is, it will always be pursued to apply the most detailed requirements and those who establish the highest level of compliance with good administration requirements, irrespective of the legal force of the document in which they are contained. This solution is viable under two essential conditions. The entity must have the legal capacity (competence) to implement the maximum standard, in other words not be compelled by the law not to adopt or not to implement certain measures, and there should be no contradiction between the legal norm and the requirement established by the standard, in other words, the standard does not deviate from the legal norm in the opposite direction. In the presence of these two conditions, we appreciate that the application of the maximum standard becomes the expression of the “who can do more, can do and less” principle.

4.3. The good administration standard – political dimension

The historical source of the good administration concept, born in the 1980s, has been the need of international institutions, notably the World Bank and the International Monetary Fund, to measure the effectiveness and impact of the reconstruction and development programs funded. Later, in the 90s, the concept was taken over by the United Nations institutions and the European Union for the same purpose³⁸⁾. While initially the valences of this concept have had a preponderant financial and economic dimension, it gradually gained more and more valences in the field of the protection of citizens' rights and the rule of law.

- a) World Bank
- b) International Monetary Fund
- c) Organization for Economic Cooperation and Development (OECD)
- d) The European Communities and the European Union

4.4. The good administration standard – legal dimension

A first analysis of the legal dimension of the good administration standard must start from its constitutional protection. It should be noted that none of the European national constitutions *explicitly* protects a right to good administration in the sense of the Charter of Fundamental Rights of the European Union, but the European Court of Justice and other treaties consistently refer to the Member States' constitutional traditions when talking on the content of this concept. Most constitutions protect elements that make up the concept of good administration without, however, consecrate it directly, this task being backed up by lower-ranking regulations that contain sufficient detail.

The Romanian constitutional text, although it does not explicitly protect the right to good administration, nor does it evoke between the general principles those of good administration, offers a fairly broad protection of the constitutive elements of this concept, without being able to crystallize an option regarding its legal nature. A structured analysis of the way the Romanian Constitution reflects the requirements of good administration is available in Annex II of this doctoral thesis.

Subsequent to the constitutional protection of the requirements of good administration, they are further mirrored in the normative framework with legal infra-constitutional force. The main sources defining the legal dimension of the good governance standard applicable, both at European and national level, can be structured according to their legal strength and the regulatory area, according to the model available in Annex III.

³⁸⁾ Wouters, Jan; Ryngaer, Cedric. *Good Governance: Lessons from International Organizations*, Institute for International Law K.U. Leuven, Working Paper No. 54, May 2004.

4.5. Good administration standard – technical dimension

For the implementation of the first two dimensions it is employed the latter, which capitalizes not only aspirational aspects but also practical experience and expertise of some renowned specialists.

The main standards relevant to public institutions and enterprises, which are convergent with the elements defining the good administration standard, the requirements of which have been analyzed in this paper include:

- a) ISO 9001:2015 on quality management
- b) ISO 31000:2009 on risk management
- c) ISO 37001:2016 on anti-bribery policies
- d) ISO 26000:2010 on social responsibility
- e) ISO 27001:2013 on information security management systems
- f) ISO 19600:2014 on compliance management systems

4.6. The compliance management system

Compliance is defined according to the Standard in a much broader way than the mere satisfaction of legal obligations. Compliance is defined as the fulfillment of compliance requirements which in turn are defined as obligations or commitments that an organization must or will choose to meet. This approach of the standard is also reflected in the national regulatory practice in Romania.

Incorporating compliance into an organization's organizational culture depends to a large extent on the conduct of the entity's leaders, on the way they assume and apply institutional values and principles, including good governance, ethical standards and how they understand to meet community requirements. The success of this approach is the result of its assumption at all organizational levels, clear values and a firm commitment to the adoption of measures necessary to promote a conforming conduct.

It is therefore noted that the ISO standard itself emphasizes the importance of establishing a value-based compliance management system, and not just a purely formal, normative conformism, inter alia, because no normative system will be able to cover all potential situations and risks generating troubles when there is no prescribed a predefined response process or procedure for certain situations.

5. Competences and responsibility for carrying into effect the good administration standards

The way each institution implements the requirements of good administration is specific to the context in which it operates, and the analysis of literature³⁹⁾ and

³⁹⁾ See Chayes, A; Chayes, A. H. 1995. *The new sovereignty. Compliance with International Regulatory Agreements*, Cambridge, Mass., USA: Harvard Univ. Press, in Neyer, J.; Zurn, M, *op. cit.*, p.16.

practice shows that in fact each institution uses a solution that combines normative compliance elements with elements of adhesion to values and principles. This unique solution, specific to each institution, defines its organizational culture.

Coming back to the central idea of this research – to shape a compliance system for good administration, we will report in the following to good administration as a standard which needs to be internalized and assumed by the organizational culture of a public institution. Since the reference framework for determining good administration requirements has a multitude of sources, with different legal force, we will continue to analyze the most important such sources to determine who is responsible for implementing good administration requirements.

Thus, this section aims to address the issue of the implementation of good administration requirements from the perspective of the person called by law or through the internal acts of a public institution, to do so, or has a positive obligation to do. From this perspective, in the following, we will focus on the idea of responsibility and responsible persons with the implementation of requirements, and less on liability, but without excluding the latter.

5.1. Institutional Competence vs. Individual competences

The aptitude of the subjects of law to act on the basis and in the execution of the law through public power procedures is given by equipping them with competence. The competence of administrative persons appears in the form of attributions that they have and by virtue of which they may conclude administrative acts, administrative contracts, administrative or technical-material operations. At the same time, the rights and obligations with which the administrative persons are invested are their attributions⁴⁰⁾. The exercise of these rights is done for the realization of the institutional mission.

Institutional competence in the sense of attributions recognized by law may also be exercised by subdivisions of the legal person, but their exercise is not carried out in their own name but on behalf of the legal person. According to Prof. Balan, this service competence is born in the legal relations of the administrative person, which may be service or employment relationships, as relationships that are established between the public institution and the person legally appointed to a position established within the institution.

In the sense and interest of this research we will understand by *institutional competence* all the legal acts and deeds that the institutions can conclude by virtue of their attributions, respectively of the rights and obligations that have been conferred to them by law. On the other hand, we will note that the *individual competence* represents all the legal acts and deeds an individual can conclude by virtue of the rights and obligations which have been conferred to him on the basis

⁴⁰⁾ Bălan, E. 2008. *Administrative Institutions*, Bucharest, Romania: CH Beck Publishing House, pp. 42-43.

of the service or employment relationship. There is a report from whole to part in between institutional and individual competence.

Thus, in fulfilling its institutional mission, an institution may require an individual to fulfill the obligations arising from his / her individual competence in order to achieve institutional competence. In this respect, the leader of an institution is called by virtue of his competence to coordinate and organize the activity, to adopt the legal acts necessary to enforce the requirements of the law, which are precisely the tasks of the institution.

5.2. Institutional responsibility vs. Individual responsibility for carrying into effect the good management standards

Although in current language the terms of liability and responsibility are defined by one another, yet we note their different valences. Moreover, it is widely accepted in the literature that the two notions are not identical.

Doctrinaires of Romanian law⁴¹⁾ show that each society is governed by a system of values that its members recognize and assume it, internalizing it and living according to its requirements. This assumption of the system of values and the consistent conduct with it presupposes the responsibility of the individual. When the individual moves away from this value system and the society reacts in order to oblige him to account for, the individual ceases to be responsible and his liability is engaged⁴²⁾.

According to Dimitrie Gusti, individual responsibility is directly proportional to the level of collective responsibility, the responsibility essentially fulfilling a social function⁴³⁾.

Administrative liability may take the form of disciplinary liability, contravention and patrimonial liability. These forms of administrative liability are in fact forms of individual liability of natural persons.

In light of the constitutional text⁴⁴⁾, of the Law no. 554/2004 and of the considerations regarding situations in which coercion may occur, we find that institutional liability can exist both in the case of a guilt, when subjective liability gets involved, as well as an objective liability for the limits of public service⁴⁵⁾.

⁴¹⁾ Florea, M. 1970. *Responsibility of Social Action*, Bucharest, Romania: Didactic and Pedagogical Publishing House, in Vedinaş, V. 2002. *Administrative Law and Political-Administrative Institutions – Practical Handbook*, Bucharest, Romania: Lumina Lex Publishing House, p. 581.

⁴²⁾ Vedinaş, V. 2002. *Administrative Law and Political-Administrative Institutions – Practical Handbook*, Bucharest, Romania: Lumina Lex Publishing House, p. 581.

⁴³⁾ D. Gusti. 1969. *Opere*, Vol. II, Bucharest, Romania: Academy RSR Publishing House, p. 299, in Borza, A.; Popa, M.; Osoian, C. *The moral model crisis – a reality?*, in *Management&Marketing Journal*, Vol. 5, Issue 1, 2007, p. 55, www.managementmarketing.ro/pdf/articole/47.pdf.

⁴⁴⁾ Art. 52.

⁴⁵⁾ Bălan, E. 2008. *Administrative Institutions*, Bucharest, Romania: CH Beck Publishing House, p. 224.

From the perspective of the individual, administrative accountability can be attributed only to the extent that he has guilty of misconduct, respectively a compliance requirement. In this situation, we are talking exclusively about subjective accountability, which can be removed when there is no guilt. Within this sphere of responsibility, we also discuss the obligation of individuals as exponents of administrative persons to take all necessary care to protect legitimate rights and interests, but without it being able to ensure absolutely the protection of all of them.

5.3. Responsibility for carrying into effect the political dimension of the good administration requirements. The role of the strategic vision of the political elite

From the perspective of the political dimension of the requirements of good administration – which is also the historical source of the concept, it is difficult to precisely identify who is responsible for carrying them into effect, given the complex nature of the actors involved and their evolution over the time.

The expressed political will has been transposed into legal will expressed through the normative acts elaborated and adopted by the legislative power and through the acts of implementation and enforcement of the law adopted by the government and by its specialized bodies.

From this perspective, the responsibility of legislative and executive power to ensure the adherence and implementation of good administration requirements is determined solely as an expression of the exercise of national sovereignty, and failure to do so can only engage in political responsibility.

5.4. Responsibility for carrying into effect of the legal dimension of the good administration requirements

In order to serve the purpose of this research, we will first lean on an analysis of the regulatory framework that sets out responsibilities for the implementation of good administration requirements.

Consistent with the previous conclusions, in order to analyze the regulatory framework, we will use the proposed structure within it to define the requirements of the good administration standard.

Analyzing the national regulatory framework we find that it is the task of the heads of public institutions to organize and coordinate the implementation of good administration requirements. In the event of non-fulfillment of this obligation, it is clear from the analysis of the texts in question, corroborated with those of GO No 119/1999, that although not clearly regulated, the sanction that may be applied to a minister or other head of the specialized bodies subordinated to the Government, is the revocation, or the governmental reshuffle, as a result of a hierarchical control⁴⁶⁾

⁴⁶⁾ Article 44 (2) of Law no. 90/2001.

or as the result of the exercise of parliamentary control⁴⁷⁾, as the case may be. The same solution applies to local public administration directors, in which case the specific measures for their removal from office will be applied.

In the case of civil servants – leaders of public entities and authorizing officers, the managerial responsibility for non-fulfillment of their obligations under the law is equivalent to disciplinary liability, to which the civil claim may be added, for the damage caused.

For much of the requirements of good administration, regulations already provide for the designation by the head of the institution of a specialized structure. The establishment of these specialized structures also incorporates a transfer of competences from the head of the institution to the subordinate staff, failing to fulfill such obligations constituting disciplinary deviation.

If, as regards civil servants, the liability regime is the one shown in the above section, dedicated to senior civil servants, as regards the contract staff, their liability regime is governed by the labor law.

5.5. Responsibility for carrying into effect of the technical dimension of the good administration requirements

According to standards' understanding, the top-level management⁴⁸⁾ is the person or group of people who lead and control an *institution* at the highest level, or has the power to delegate authority and provide resources within the organization. It is therefore worth noting that the management at the highest level in the sense of the standard overlaps with the idea of the head of the institution, and even with the idea of the authorizing officer, as they were defined in the previous sections.

This responsibility is reflected in activities through which the institutional objectives are identified and the processes and resources necessary to obtain the desired results are determined. As we can see, this technical dimension overlaps the legal elements related to the very existence of the institutional capacity.

From the perspective of the management systems, the responsibility of management structures incorporates two elements, that of establishing the vision and objectives (leadership) and commitment⁴⁹⁾. It also involves *engagement* (participation in an activity, an event or a situation⁵⁰⁾) and *contribution* to activities to meet the *common objectives* set. So, the role of management at the highest level does not remain purely formal, but requires co-participation with all the staff.

Thus, the fundamental role of management structures is to develop a culture of compliance, which requires an active, visible, consistent and sustained commitment of the leading management and management at the highest level towards a common

⁴⁷⁾ Article 58 of the Romanian Constitution.

⁴⁸⁾ Requirement 3.1.1 of the SR Standard ISO 9000: 2015.

⁴⁹⁾ Requirement 3.1.4 of Standard SR ISO 9000: 2015.

⁵⁰⁾ Requirement 3.1.3 of Standard SR ISO 9000: 2015.

standard of behavior that is made public and applied to all the activities of the institution.

5.6. Consequences of non-compliance

According to ISO standards, non-compliance means failing to meet a management system requirement⁵¹⁾. However, we note that the ISO 19600 standard makes a terminological distinction between the *non-compliance* of the management system, meaning, as already shown, failure to comply with a management system requirement, and *non-compliance* with the compliance requirements governing the activity of that entity. Thus, according to the standard, it nevertheless may happen that a compliant management system not ensure compliance with the compliance requirements applicable to that activity, as they were structured in the compliance obligations and commitments.

Failure to meet the responsibilities arising from the application of quality management requirements is materialized in legal terms in the failure to fulfill the responsibilities of the job descriptions, which may entail disciplinary and/or civil liability of the responsible person. This form of liability for non-compliance with international standards exceeds the framework they regulate, but it is a way of internalizing and establishing their binding force for staff, once they have been implemented.

Particularly in the case of ISO 37001, non-compliance with established responsibilities – namely the due diligence obligations (both legal and derived from the standard) – may lead to criminal liability. However, we reiterate the idea that the fundamental purpose of the requirements of international standards it is not to establish new ways or forms of liability, but on the contrary, to formulate solutions for voluntary compliance by promoting a culture appropriate to compliance within the organization.

6. Integrated compliance management system for good administration applicable to public institutions – a model proposal

Against the backdrop of significant developments in the socio-economic and cultural challenges that contemporary society and, implicitly, public institutions have to face, a rigid normative and compliance framework is no longer viable, being permanently exposed to the risk of failure or non-adjustment. Faced with these challenges, the legal framework can no longer be all-covering, in the sense of providing solutions to all potential situations in practice.

⁵¹⁾ Paragraph 3.6.9 of ISO 9000: 2015, paragraph 3.22 of ISO 37001: 2017, paragraph 3.33 of ISO 19600: 2014.

Therefore we believe that now it is particularly pronounced the need to ensure a flexible law enforcement system, both in its letter and in its spirit, and especially to ensure identifying approaches allowing the institution to formulate solutions for both unregulated and new situations.

In this context, we believe that using a compliance management system can be a viable solution to address these challenges. But compliance is not a state, it is a continuous process, in which the institution incorporates the lessons learned and the experience of the staff in order to permanently adapt to the requirements of the market. As these requirements manifest in multiple forms, the proposed system is a supple and flexible, which has the characteristics of an integrated management system, taking into account these different requirements.

As already discussed before, the role of leadership is to influence the group of individuals who form the staff of an institution to jointly achieve a common goal. In this respect, the common goal of the newly proposed system is the fulfillment of the institutional mission under good administration conditions.

Good administration thus becomes the objective of the compliance management system, aimed at ensuring coherence and direction to actions, and to support finding new solutions for non-standardized situations.

6.1. The compliance management system for good administration

It is reiterated here the idea that a compliance management system for good administration actually has the nature of an integrated system, that incorporates both, domain specific regulatory mandatory requirements, as well as voluntary requirements specific to the standards. In this meaning, when defining the requirements of the standard, we will consider setting a higher level than that required by law, otherwise the system risks losing its added value. The main elements of this system include:

1. Institutional analysis
2. Comprehensive inventory of sources containing compliance requirements
3. Designation of a compliance officer
4. Commitment and involvement of managers at all levels
5. Empowering staff at all levels
6. Increasing the professional capacity of the staff: training and information
7. Assigning material and time resources
8. Delegation to ex-ante checked for compliance external subcontractors
9. Pooling resources by multiple organizations
10. Periodic assessment of requirements compliance, inclusively through the participatory management channels
11. Continuous improvement
12. Continuous communication to all stakeholders

13. Use of good administration as a guiding principle for law enforcement in its spirit
14. Orientation of the activity towards meeting the expectations of the stakeholders
15. In case of competing requirements, the highest standard will be preferred, respecting the institutional competence and its administrative capacity

The above-mentioned may constitute the benchmarks for good administration, to underpin its customization to meet the challenges of each institution.

6.2. Compliance requirements for good administration

From the analysis of the previous sections, it can be noted that there is a close correlation between the good administration requirements of different sources. From the perspective of management systems organized according to the requirements of the ISO Standards, meeting the requirements of several standards leads to the implementation of integrated systems.

Overlapping the requirements of ISO standards with those arising from the applicable legal framework and even arising from the applicable policy elements, indicate that a number of elements remain outside the overlapping sphere. Similarly, for others requirements of the ISO standards there are similar requests in other different sources. At the same time, the analysis of how good administration requirements are stated in the Charter of Fundamental Rights of the European Union and in the European Code of Good Administrative Behavior indicates their overlapping to a large extent, as illustrated in the matrix available in the appendix to this paper.

To address this challenge, the scientific approach proposes setting up a type of integrated system whose referential is composed, on the one hand, of the applicable legal requirements and, on the other hand, of the requirements stemming from the relevant ISO standard. Whenever there is overlap between requirements, preference will be given the more demanding requirement in applying the “who can do more, can do and less” principle, translated into who meets a stricter requirement, automatically satisfies less stringent requirements.

Given the multitude of options for the classification of good administration requirements, it is proposed in the chapter dedicated to their structuring in relation to the main elements recognized and accepted as being decisive for good administration, that each of them to be detailed according to several sub-requirements. According to this proposal for the structuring of requirements, the good administration standard generally includes the following major indicators:

1. Legality and legitimacy
2. Leadership and Responsibility
3. Impartiality
4. Transparency
5. Public participation

6. Respecting the human rights
7. Equal treatment
8. Proportionality
9. Fulfilling legitimate expectations

Based on these, at the time of developing and customizing the compliance management system for good administration, the sources of the requirements applicable to each institution will be identified depending on its nature, and in some cases, they may be different.

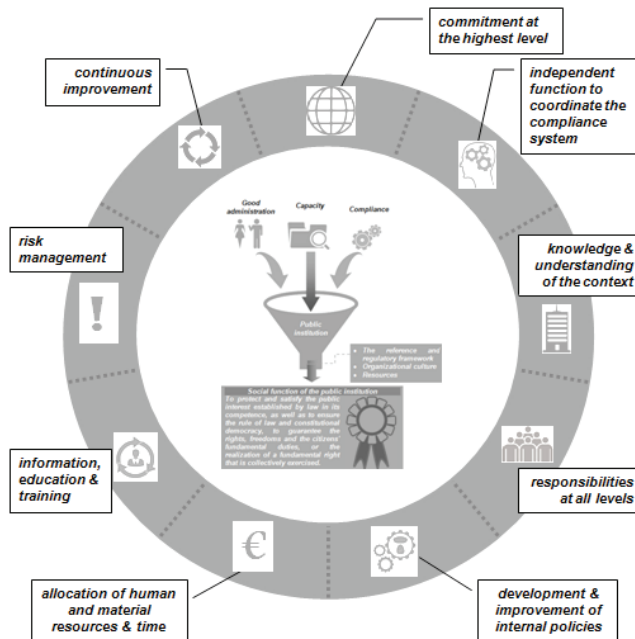


Figure 4 – Proposed compliance management system model

6.3. Determining specific compliance requirements for good administration

Compliance requirements can be structured in generic, relevant and applicable requirements for all public institutions, as well as specific compliance requirements depending on the activity of each institution.

We recall in this regard, for example, that there is a framework law on education, on the basis of which the educational units acquire legal personality and which sets out additional compliance requirements. Similarly, there are specific requirements for quality assurance for the same category of institutions. We will also find specific compliance requirements for public health, sanitary, veterinary, energy, waste management and other institutions.

To correctly configure the compliance system for good administration it is necessary first to identify and list all sources or origins of compliance requirements, including those specific.

Once these sources have been identified, the analysis of their legal force will be carried out according to the rules set out in the dedicated chapter of this paper, giving preference to the requirements that ensure the highest degree of compliance.

6.4. Competent and responsible structures

We believe that for a true and effective implementation of a compliance management system for good administration, it is necessary that:

- (1) the leadership should assume the goals at the level of commitment and be the first to contribute to their realization, thus configuring the elements of the organizational culture that it promotes
- (2) under the direct subordination of leadership, to organize specialized structures for compliance management for good administration, specifically empowered for this purpose and recognized within the institution
- (3) there is clear communication to all staff and an explanation of each person's role in the implementation of each good management requirement.

6.5. Organizational culture: competences and commitment

Romanian management⁵²⁾ is characterized by a large spread of power, which will make the role of the leader even more prominent. The idea of influencing culture through its own personal example is what we think that may be of a kind to inspire the organization's teams.

Very low individualism and a tendency towards collectivism reiterates the need to provide extensive consultations and adequate communication with staff, to be able to surprise and capture collective opinion.

Medium-level masculinity and tendency toward femininity may pose a challenge in identifying non-conformities since they are capable to cause a generalized apathy or false positive signals, but the tendency toward egalitarianism may be harnessed with the help of heroes/ champions to inspire behavioral patterns.

Regarding the attitude towards avoidance of uncertainty and the long-term orientation, they may represent an Achilles heel of the organizational culture and require close monitoring. The rooted "it works anyway" culture or of the partial compliance may represent an area of vulnerability that also requires careful monitoring.

It follows, therefore, that the role of the leader and the designated person responsible for the compliance function will have to be calibrated and exercised

⁵²⁾ Mihuț, I; Lungescu, D. *Dimensiuni culturale ale managementului românesc*, in *Management&Marketing Journal*, No. 1, 2006, p. 15, <http://www.managementmarketing.ro/pdf/articole/art1.pdf>.

in institutions through these considerations, in order to support the process of not only formal compliance, but also substantial.

6.6. Updating the compliance requirements

One last point worth taking into account is to update the compliance requirements, respectively the way to identify them. The natural choice for updating compliance requirements is to use the inventory as the sources for an institution's compliance system and the constant monitoring of the benchmarks developments.

From this perspective, the responsibility for the action must belong to either the person designated to coordinate the implementation of this system, either to a person in the legal department. In either of these two options, it is necessary for them to be able to achieve the necessary correlations between different categories of rules and areas, as well as to accurately estimate the impact on the organization.

The next stage in updating the requirements is to communicate the changes to all relevant structures and consult with them to assess the actual impact and the measures to be taken to align them.

7. Conclusions

This is a research project that aims to outline the benchmarks for defining an innovative system of compliance applicable in public institutions in Romania, capable of ensuring the fulfillment of the requirements of the good administration standard, as a prerequisite for the fulfillment of their social function, respectively for the fulfillment of their institutional mission within the society and the increase of the satisfaction of the recipient citizens.

The objective pursued in defining the *compliance system for good administration applicable to public institutions* was to provide a viable integrated solution, to meet a multitude of compliance requirements having different sources and legal force, which public institutions are currently implementing using parallel management systems, generating bureaucracy, administrative overload, and limiting the institutional capacity to perform its social function.

For the backdrop of significant developments in the socio-economic and cultural challenges that contemporary society and, implicitly, public institutions have to face, a rigid normative and compliance framework is no longer viable, and can no longer be all-covering in the sense of providing solutions to all potential situations in practice.

Good administration thus becomes the objective of the compliance management system, designed to ensure the coherence and direction of actions, and to support the finding of new solutions for unusual situations.

The *compliance system for good administration applicable to public institutions* incorporates elements of the legal competence and personality of the institution, resources available, management elements, leadership and organizational culture,

as well as the three dimensions of the good administration requirements, in order to formulate a viable solution allowing for a flexible application of the law, both in the letter and in the spirit of the law. But compliance is not a state, it is a continuous process, in which the institution incorporates the lessons learned and the experience of the staff in order to permanently adapt to the requirements of the market. As these requirements manifest in multiple forms, the proposed system is a supple and flexible, which has the characteristics of an integrated management system, taking into account these different requirements.

The proposed model can be structured into two major components – the elements and rules applicable to the compliance management system and the good administration requirements to which the compliance system is called to respond.

Requirements for the compliance management system incorporates rules for determining the relevant regulatory framework, instruments to determine the specific requirements for good administration, applicable to each sector of activity, rules on establishing responsible structures and updating compliance requirements, and, last but not least, ways of modeling and influencing organizational culture.

Therefore, the proposed system exploits elements specific to the science of law, sociology, management, and even technical sciences, to propose a solution that integrates into a unitary approach requirements related to legal, organizational and market compliance.

We can conclude that it is also validated the premise that the *compliance system for good administration applicable to public institutions* may be implemented as an integrative solution to the requirements already in place, meaning that regardless of the reforms that will come, it is the responsibility of leadership to find the right solutions to ensure that the existing system meets the new requirements.

This latter statement is also consistent with the recently adopted Order of the General Secretariat of the Government No. 600/2018 on the approval of the code of managerial internal control of public entities.

Among the provisions of the new order it is worth highlighting the explicit provision of the fact as „public entities that have implemented a quality management system or any other domain-specific management system, may use the principles of the implemented management system to meet the requirements of the Managerial Internal Control Code. This is possible provided that those principles are applied uniformly throughout the public entity. *Addressing the implementation of a management requirement, such as setting objectives, performance indicators, risk management, business continuity, procedures, etc., through the various systems leads to the risk of duplication of documents justifying the implementation of a requirement, meaning that this method is excluded from the application*”.

We appreciate that all of the above, come to re-validate the approach proposed in this study and to support the idea of both utility, as well as the need for a *compliance system for good administration applicable to public institutions*.

Returning to the idea with which we started this research approach, that good administration is a fundamental concept for the “area of freedom, security and justice”, in which free competition defines the essence of the common market and the freedoms of movement, we believe that the theories formulated in this doctoral thesis may also serve in the future for answering new challenges. Given that both, public and private companies, operate in the same common market and serve the same consumer citizens, a possible interesting approach for the future may be on the assessment of the possibility and opportunity of applying within private entities of the compliance model system for good administration developed in this thesis, and formulating solutions for defining a uniform system of standards applicable for both, the public and private institutions.

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