



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.2.2008
COM(2008) 62 final

**INTERIM REPORT FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

On Progress in Romania under the Co-operation and Verification Mechanism

INTERIM REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

On Progress in Romania under the Co-operation and Verification Mechanism

1. INTRODUCTION

When Romania entered the EU on 1 January 2007, a *Cooperation and Verification Mechanism (r CVM)*¹ was set up to help Romania to remedy shortcomings in the area of judicial reform and the fight against corruption and to monitor progress in these areas.

This report is the second report tabled by the Commission under the Cooperation and Verification Mechanism². The six months since the first report is considered to be too short to allow Romania to remedy the shortcomings and for the Commission to revisit the assessment made last June. Therefore the report presents a factual update of progress without providing an assessment of results achieved under each of the benchmarks. In addition, the present *interim* report includes an overview of assistance provided to Romania in the areas relevant for the benchmarks. This has been done with a view to identifying possible assistance gaps and providing a full range of relevant support to Romania.

2. JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION: STATE OF PLAY

2.1. Follow-up of the June 2007 review: the Action Plan

Since the Commission's last report in June 2007, a close and permanent dialogue has been established with the Romanian authorities in Brussels and Bucharest. Romania has provided detailed updates on the state of play to the Commission on a regular basis.

The Romanian authorities have taken up the suggestion by the Commission to establish an Action Plan on how Romania intends to meet the benchmarks. The Commission provided assistance to Romania in the form of a methodological evaluation of the Action Plan. Subsequently, in October 2007 following stakeholder consultation a detailed report was endorsed by the Romanian government and submitted to the Commission. The timely preparation and adoption of the Action Plan which required a concerted effort and mobilisation of considerable resources within a short period of time reflects a serious commitment by the Romanian authorities³.

¹ Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ L 354, 14.12.2006, p. 56).

² The Commission reported for the first time on 27 June 2007 COM(2007)378 final

³ The action plan can be consulted on the following website:
[http://www.just.ro/Portals/0/Right_Panel/Plan%20de%20actiune/plan_actiune_en_21122007\[1\].pdf](http://www.just.ro/Portals/0/Right_Panel/Plan%20de%20actiune/plan_actiune_en_21122007[1].pdf)

2.2. Update on Progress

2.2.1. *Benchmark 1: Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes*

- *Implement any necessary measures, including those provided for in the relevant Action Plan of the Superior Council of the Magistracy adopted in June 2006, that ensure a consistent interpretation and application of the law at all levels of court throughout the country following adequate consultation with practising judges, prosecutors and lawyers; monitor the impact of recently-adopted legislative and administrative measures*
- *Design and implement a rational and realistic staffing model for the justice system on the basis of the ongoing needs assessment*
- *Develop and implement a plan to restructure the Public Ministry that addresses the existing managerial shortcomings and human resources issues*
- *Monitor the impact that the newly-adopted amendments to the Civil and Criminal Procedure Codes have on the justice system so that any necessary corrective measures can be incorporated in the planned new Codes*
- *Report and monitor on the progress made, as regards adopting the new Codes including adequate consultations and the impact it will have on the justice system*
- *Enhance the capacity of the Superior Council of the Magistracy to perform its core responsibilities as well as its accountability. In particular, address the potential conflicts of interest and unethical actions by individual Council members. Recruit judicial inspectors, according to the newly-adopted objective criteria, who should also have a greater regional representation*

A series of training sessions and regular meetings of judges and prosecutors from the courts of appeal and the High Court of Cassation and Justice and regional or lower level magistrates have taken place to promote the unification of jurisprudence. Similar activities are planned for 2008.

By January 2008 a new leadership of the Superior Council of Magistracy (SCM) was elected, the budget for the SCM was reinforced and new management plans were published. A Communication Strategy of the SCM and of the Romanian Judiciary was approved in December 2007⁴ with the aim of enhancing transparency in the justice system. The organisation of the SCM was strengthened with 240 out of 275 positions filled. 572 openings remain in the prosecution service. Roughly half of all recruitments to the judiciary followed an ad hoc procedure in order to fill existing vacancies⁵ quickly. In these cases openings were filled on the basis of interviews and previous work experience without verification of the qualification of the new magistrate or training⁶ The development of a Human Resources Strategy for the

⁴ This strategy shall be running until 2012 and is reflected in the Action Plan. It will be implemented by a working group appointed by SCM.

⁵ Through amendment of law 304 the requirement for the council of the National Institute of the Magistracy (NIM) to agree on nominations and revocations of the NIM senior management was abolished.

⁶ The interview procedure is now abolished through GEO 100/2007 with applicability as of 1 June 2008.

judiciary is awaited for January 2009.⁷ In November 2007, the National Anti-Corruption Directorate (DNA) launched investigations against several prosecutors for forgery of competitions for leading prosecutor positions.

The general part of the new Criminal Procedure Code was drafted and following a public debate submitted to the relevant Commissions in Parliament and the SCM in December 2007⁸. Adoption is still pending.

The obligation for courts to publish (and update) jurisprudence on the Internet is foreseen for end 2008.⁹

2.2.2. *Benchmark 2: Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken*

- *Adopt legislation establishing an effective and independent integrity agency with responsibilities for verifying assets, potential incompatibilities and conflicts of interest, as well as issuing mandatory decisions on the basis of which dissuasive sanctions can be taken*
- *Establish such a National Integrity Agency, ensure it has the necessary human and financial resources to fulfil its mandate*

The legal framework for the National Integrity Agency (ANI) was approved in May 2007¹⁰. However, ANI is not yet operational. Only the Vice-president has been elected. Preparatory activities, recruitment, procurement for infrastructure and allocation of financial resources for premises, and budget - and work on the organizational chart has started¹¹.

2.2.3. *Benchmark 3: Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption*

- *Continue to provide a track record of professional and non-partisan investigations into high-level corruption cases. Ensure the legal and institutional stability of the anti-corruption framework, in particular by maintaining the current nomination and revocation procedure for the General Prosecutor of Romania, the Chief Prosecutor of the National Anti-Corruption Directorate and other leading positions in the general prosecutor's office*

The work of the National Anticorruption Directorate (DNA) shows a positive track record over the past six months¹². By October 2007 the DNA had requested

⁷ Activity 1.4 of part V of the Action Plan. In addition a new organizational chart of the Public Ministry was approved (Order no. 2477/C/1.10.07) .

⁸ There is no practice of systematic prior consultation of the SCM by the Minister of Justice on key legislation for the judiciary. Such systematic consultation would allow the SCM to better exercise its role of guardian of the Romanian judiciary.

⁹ Action Plan part II, point 2.1).

¹⁰ Law 144/207 of 25 May, 2007.

¹¹ To speed up the Agency's set up Government Emergency Ordinance no 138/6.12.2007 was adopted.

¹² During June 1st and October 31st, 2007, 148 defendants were indicted by DNA in 64 files. In the same period the courts rendered 31 non-final conviction decisions regarding 53 defendants in DNA cases. 22 final decisions were rendered by courts regarding 31 defendants. Final acquittals were rendered in the same reference period regarding 10 defendants.

permission to start criminal investigations on eight serving or former Ministers. This was granted by the Romanian President in January¹³. The decision on lifting immunities was taken following an intense legal and political debate. In the past six months several of these cases which involve serving or former members of the government have been sent back by the courts to the prosecution on grounds of procedural errors. This, in addition to the immunity issue, has provoked considerable debate and controversy¹⁴. It is not clear whether the courts' argumentation means that the evidence is inadmissible, requiring new investigations, or whether the prosecution can remedy the situation without having to restart the process.¹⁵

In October 2007 the Romanian Parliament adopted a series of amendments to the Criminal Procedure Code and to the Penal Code. The law on amendments to the Criminal Procedure Code has not yet been promulgated by the President who has sent it back for review.¹⁶ The amendments foresee significant changes to the legal framework for the investigation and prosecution of criminal cases. They stipulate inter alia that criminal investigations would in principle be limited to 6 months, no search or interception/taping would be allowed without the prior information of the suspect¹⁷ and fraud below 9MEUR would be considered a minor offence with a maximum penalty of 5 years. If promulgated, these amendments would have a substantial negative affect on the efficiency of criminal investigations in Romania in general. They would also affect joint investigations with Member States, the fight against terrorism and the prosecution of cross-border crime.

It is no longer possible for the prosecution to use technical evaluations by the fiscal administration on the extent of damages.¹⁸

2.2.4. *Benchmark 4: Take further measures to prevent and fight against corruption, in particular within the local government*

- *Assess the results of the recently-concluded awareness-raising campaigns and, if necessary, propose follow-up activities that focus on the sectors with a high risk of corruption*
- *Report on the use of measures to reduce the opportunities for corruption and to make local government more transparent, as well as on the sanctions taken against public officials, in particular those in local government*

¹³ By Government Ordinance no 95 of 4 October 2007, promoted by the former Minister of Justice the procedure for lifting procedural immunity of ministers had been amended in the sense that the existing advisory committee had been replaced by a new committee consisting of judges. This law was declared unconstitutional by the Romanian Constitutional Court. Following the resignation of the Minister of Justice who is himself implicated in one of the eight cases and the nomination of an interim minister in January, the President lifted the immunity of all defendants in January.

¹⁴ The main rationale is non-respect by the prosecution (DNA) of a new judgement of the Constitutional Court on the withdrawal of immunity of the defendants which requires withdrawal of immunity also for previous members of government. This new judgement was however rendered *after* the respective procedures were launched by DNA.

¹⁵ Relative nullity sanctions procedural infringements that have not caused fundamental damage to basic rights and can be repaired. In the case of absolute nullity and infringement of e.g. basic rights of the defendant repair is not possible and the case is sent back to the prosecution to redo the investigation..

¹⁶ In case the law on the amendments is voted in favour a second time, presidential promulgation becomes obligatory under art 77 of the Romanian Constitution.

¹⁷ Failure to conform would result in the nullity of the investigation.

¹⁸ Government Ordinance no 47 of August 28, 2007.

A new protocol with NGOs on the National Integrity Centre was signed in November by the Minister of Interior following a considerable delay in project implementation.¹⁹ The Green Help line, initially designed as a general anti-corruption call-in line has been broadened to cover general citizens' enquiries in relation to the work of the Ministry of Interior.²⁰

Preparatory work on a national anti-corruption strategy focussed on vulnerable sectors and local public administration has encountered delays but has started²¹. It is scheduled for adoption by the government in March 2008

3. SUPPORT UNDER THE COOPERATION AND VERIFICATION MECHANISM

Substantial support has been made available to Romania in the area of justice and home affairs by both EU programmes such as Phare and the Transition Facility as well as by Member States.²² This area remains the main focus of EU post-accession support: almost half of the budget of the EU's Transition Facility for Romania is dedicated to this sector, including a special envelope for projects directly supporting progress under the CVM benchmarks.

Projects implemented in the area of justice and home affairs cover the entire range of benchmarks. A closer analysis of projects implemented since 2004²³ shows that some areas, such as judicial reform (BM 1) have received significant levels of assistance and may be approaching the saturation point. Substantial funds have also been made available for the building up of capacity in the fight against high-level corruption (BM 3) and local corruption (BM 4). However, some vulnerable sectors such as education have not yet received anti-corruption support. The new National Integrity Agency (BM 2) which is expected to become operational only in the first half of this year has so far received little support.

The support provided has had an impact on progress by Romania: Judicial Reform has enjoyed sustained international support and is an area where there has been

¹⁹ A public awareness campaign improving the fight against corruption took place between October 2007 and January 2008.

²⁰ To which degree these changes will still allow for a partnership with Civil Society and continue to provide a service on the follow-up of corruption signals could not be established.

²¹ This initiative represents the main measure proposed in the Action Plan under benchmark 4, see activity number 5.

²² PHARE alone has made available over 187 MEUR to justice and home affairs in Romania since 2004. The Transition Facility will be implemented until 2010. In the framework of the structural funds, specific attention and support is given for setting-up of a sound and transparent financial management of EU funds which is a process linked to the fight against corruption. Technical assistance will be provided for project monitoring, evaluation and control, as well as for developing of an effective Single Management Information System able to provide also transparent information on fund interventions and absorptions. TAIEX organized a substantial number of activities in the area of justice and home affairs in Romania and still keeps budget available for activities in the future.

²³ In order to identify possible assistance gaps and to ensure that a full range of support is available, relevant EU and bilateral assistance provided to Romania since 2004 is summarized in a list attached to this report. The list has been established on the basis of information available within the Commission and on the basis of information communicated by Member States. Not all data on individual projects could be listed and aggregated data has been given preference to allow better readability. However, the full available set of information has been shared with Romania and the suggestions in this chapter have been discussed with the Romanian authorities and are supported by them.

relatively stable progress. The National Anticorruption Directorate, also a recipient of substantial funds, has been able to build up capacity for the investigation and prosecution of high-level corruption cases in a relatively short period of time.

Future support should be focused on supporting the National Integrity Agency and the fight against corruption. It should directly address the priorities and needs identified in the Action Plan which has been drafted by Romania. In general, preference should be given to smaller, well targeted assistance missions that respect the absorption capacity of Romanian institutions and allow full ownership in the integration of results. An interdisciplinary approach should be sought e.g. focusing on both judges and prosecutors in the fight against high level corruption. A managed phasing-out of support in saturated areas seems appropriate.

Support should continue in the form of exchange of best practice, training and scholarships. Larger projects in the area of local corruption should be complemented by flexible and well-targeted short-term or medium-term projects that address specific aspects or focus on particularly vulnerable areas and sectors.

Romania is encouraged to make full use of the substantial EU assistance budget which is still available through the Transition Facility and TAIEX. These funds allow for short-term missions at short notice as well as for medium-term assistance projects of up to 6 months ("twinning light").

The Commission would advise Member States to consider more direct and practical support to Romania in the form of exchange of best practice, trainee- and scholarships and institutional partnerships with key departments such as the National Integrity Agency or the National Anti-Corruption Department.

4. CONCLUSION

In its first year of EU membership Romania has continued to make efforts to remedy weaknesses that would otherwise prevent an effective application of EU laws, policies and programmes. However, in key areas such as the fight against high-level corruption, convincing results have not yet been demonstrated.

The technical update which is provided in this report does not constitute an in depth assessment of progress under the benchmarks but the situation on the ground gives rise to concerns which need to be addressed before the Commission carries out a full assessment in June. Delays have occurred in implementing a coherent recruitment strategy for the judiciary (benchmark 1), in the establishment of a National Integrity Agency (benchmark 2) and in developing an overall strategy and implementing flagship projects to fight local corruption²⁴ (benchmark 4). Romania should particularly step up its efforts in the fight against high-level corruption (benchmark 3) and should strengthen its efforts to maintain the legal and institutional stability of the Romanian anti-corruption framework.

The Commission recognises the important effort that has been made to produce a credible Action Plan which describes the activities, deadlines and institutions

²⁴ Action Plan: benchmark 4, activity 5.

responsible for achieving the benchmarks. However, the action plan needs more coherence in some parts and needs to fill some gaps.²⁵ The Commission proposes that Romania corrects the action plan on these points.

²⁵ Some legal and political initiatives pursued in fact, contradict the objectives foreseen in the Action Plan. In addition, the Action Plan omits the key issue of legal and institutional stability of the anti-corruption framework (benchmark 3) The plan also misses an indication of when and if sector strategies to replace those which have recently expired on judiciary reform and anti-corruption will be prepared. For local corruption (benchmark 4), the Action Plan does not provide sufficient detail. The Action plan also introduces some activities and indicators that seem not sufficiently targeted to deliver the intended result. This relates in particular to indicators such as media leaks on confidential information (BM 3; chapter I, point 1.2). A study on the individualisation of penalties for corruption offences (BM 3; chapter II, point 1) can only be a first step in addressing the problem of possible leniency in judging high-level corruption as mentioned by the Commission's CVM report of 27 June 2007. The Action Plan should be continuously updated and performance against its indicators should be rigorously monitored by a strong central operational coordination mechanism.

ANNEX

Overview of EU Assistance provided to Romania in the area of Judicial Reform and the Fight against Corruption²⁶

Benchmark 1: Judicial Reform

EU projects have provided institutional capacity building to the Senior Council of Magistracy and the Romanian judiciary training institutions. A substantial budget was reserved for the IT equipment of courts and prosecutors offices. Several larger bilateral projects and a number of smaller initiatives complemented this institution-building effort. Future projects continue to focus on capacity building, on the transparency of the judicial process and address particular areas such as judiciary statistics, probation system or witness protection. Judicial Reform has been a strong focus of assistance.

Phare 2004-2006:

- Institutional Capacity Building and IT and office equipment for the Superior Council of Magistracy (several projects, ongoing: 2.4 MEUR)
- IT and Office Equipment for the Superior Council of Magistracy (Until Nov06: 600,000 EUR)
- Strengthening the institutional and legislative framework in the field of international judicial cooperation (Nov06-May08: 1,2 Mio EUR)
- Institution Building and Equipment for the National Institute of Magistracy and to the National School of Clerks (several projects, ongoing: total 5.24 Mio EUR)
- IT equipment, training and development of case management and documentation software at courts and prosecutors' offices (several projects, ongoing: total 28,72 Mio EUR)
- Assistance to set up an efficient legal aid system (Until Nov06: 1,25 Mio EUR)
- Mediation as an alternative dispute resolution (275.000 EUR until June 2007)
- Increasing the Transparency of Courts' and prosecutors' offices (Nov07-Dec08: 1 Mio EUR)
- Assistance to the High Court of Cassation and Justice: Training and Capacity Building (Nov07-Dec08: 700,000 EUR)
- Further consolidation of the institutional and administrative capacity of the Ministry of Justice (Phare 2006: 0.4 MEUR)

Transition Facility 2007:

- Unification of the Jurisprudence of Courts and Prosecutor Offices in Romania (600,000 EUR)

²⁶

PHARE: Budgetary figures include Romanian national co-financing.

Bilateral Projects: Only larger bilateral projects are taken up in this list. In addition, various assistance missions, study visits and smaller activities have taken place.

- Strengthening the Public Ministry's institutional capacity (170,000 EUR)
- Improving the System of Romanian Judicial Statistics (560,000 EUR)
- Strengthening the Romanian Probation System and the Inter-Institutional Cooperation on Victim Protection (570,000 EUR)
- Assistance for Enhancing the Respect of Human Rights in Prisons and Improving the Efficiency of the Romanian Penitentiary System (660,000 EUR)
- Improving the Witness Protection Capacity (250.000 EUR)

Main Bilateral Projects:

- Consulting Services for Revision of the Penal Procedure Code (Jan-Nov07: 299,500 EUR)
- Strengthening the functioning of the Romanian Judiciary and its representative body – Superior Council of Magistracy (750,000 EUR)
- Development of Judiciary Training Capacities (Mar-Nov07: 40,000 EUR)
- Several Projects on: Management and media training for magistrates, Increasing Integrity within the Judicial System, Strengthening the Probation Service, Assistance to the Anti-Money Laundering Office, Court Management (635,000 EUR)
- The implementation of basic procedural rules for protecting the financial interests of the EU (May-Oct07: 82,000 EUR)
- Support for improving the capacity of the Ministry of Justice (36,000 EUR)
- Assistance to the National Institute for Magistracy of Romania
- Improving the Human Rights Situation in Prisons (07-08: 50,000 EUR)
- Several smaller training projects, internships, organisational audits, study visits, seminars

Main Projects with a total budget of at least 45.41 MEUR

Benchmark 2: Integrity Agency

A single large project includes support to the creation of the National Integrity Agency. Two bilateral projects complement the institution-building effort through support in related areas. Given that the National Integrity Agency will become operational only in the course of 2008, follow-up support should be considered.

Phare 2004-2006:

- Improving the fight against corruption – assistance to the National Integrity Agency and the DNA (Aug06-Jan08: 0.6 Mio EUR concerning ANI)

Main Bilateral Projects:

- Enhancing the Monitoring Role of Civil Society (88,000 EUR)
- Protection of whistleblower program

Main Projects with a total budget of at least 1.6 MEU

Benchmark 3: High-Level Corruption

Several projects supported building-up capacity at the Romanian National Anti-Corruption Prosecution Services (DNA). This support continues through smaller projects.

Phare 2004-2006:

- Improving the fight against corruption – assistance to the National Integrity Agency and the DNA (Aug06-Jan08: 1 Mio EUR concerning DNA)
- Strengthening the institutional capacity of DNA (Sept05-Feb07: 1,2 Mio EUR)
- IT equipment and software for the DNA (Until Nov06: 1,75 Mio EUR)

Transition Facility 2007:

- Enhancement of National Anticorruption Department Investigative Capacities (560,000 EUR)

Bilateral Projects:

- Several individual advisory missions, seminars and study visits

Main Projects with a total budget of at least 6.5 MEUR

Benchmark 4: Local Corruption

Several large EU projects are being implemented or in preparation. Bilateral support shows a particular emphasis on the area of local corruption. Several projects have been implemented with central and local administration.

Phare 2004-2006:

- Improving the fight against corruption: Corruption Awareness among central and local public administration (since Nov06: 1,6 Mio EUR)
- Supply of IT equipment for the General Directorate for Anticorruption / Ministry of the Interior (Phare 2006: 0.3 MEUR)
- Strengthening administrative mechanisms and legislation to better foster and protect the public integrity system in public administration. (Phare 2006: 1.3 MEUR)
- Strengthening the fight against corruption on the preventive side (Phare 2006: 1 MEUR)
- Corruption in the Public Administration (Sept07-: 1,2 Mio EUR)
- Development of the Anti-corruption General Directorate of the Ministry of Interior and Administrative Reform (MIRA) (Jun07-Jul08: 1,1 Mio EUR)

Transition Facility 2007:

- Building Civil Society Support against Corruption (2,5 Mio EUR)
- Bringing Anti-Corruption Capacities in the Ministry of Internal Affairs up to EU Standards (250,000 EUR)
- Strengthening the Capacity to Fight Economic and Financial Crime (200.000 EUR)

Bilateral Projects

- Resident adviser on corruption with MoI (until Jun08)
- Improving Transparency and Accountability of Local Government (ended Aug07: 135,000 EUR)
- Tackling corruption within the Customs Administration (ended Jul07: 52,500 EUR)
- Reducing corruption within the Health Sector (until Mar08: 58,500 EUR)
- National Integrity Centre (ended Aug07: 115,000 EUR)
- Romanian Youth Versus Corruption; Together against corruption; Anti-corruption educational campaign (Integrity Centres)
- Improving Romanian local government integrity (MPP) (04-06: 320,000 EUR)
- Regional Transparency Councils

Main Projects with a total budget of at least 9.9 MEUR