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COMMISSION STAFF WORKING DOCUMENT

ROMANIA: Technical Report

Accompanying the document

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

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

{COM(2012) 410 final}

COMMISSION STAFF WORKING DOCUMENT

ROMANIA: Technical Report

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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

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

- *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*

Note:

Under each of the four benchmarks, several issues of particular concern were mutually agreed when the Cooperation and Verification Mechanism was created in December 2006. These issues are listed above under each benchmark and have been addressed as far as progress has been reported. You may consult previous reports at: http://ec.europa.eu/dgs/secretariat_general/cvm/index_en.htm

1. INTRODUCTION

This technical report sets out the information and the data which the Commission has used as the basis for its analysis. This information has been collected from a variety of sources. Over the past five years, the Commission has devoted particular attention to collecting information and deepening its knowledge of Romania. It has used a combination of on-the-spot dialogue with key interlocutors, a permanent presence in the Commission's representation, and the knowledge and experience of experts from other Member States. It has also had the benefit of working closely with successive Romanian governments, which have provided detailed and focused responses to a series of questionnaires, as well as with a variety of key judicial and governmental bodies. This technical report makes several references to past reports of the Commission under the Co-operation and Verification Mechanism (CVM), which provide a collective record of progress since Romania's accession to the EU.

This technical report summarises developments over the full five year period. Nevertheless, it should be noted that it has been drafted at a time of rapid change in Romania, with implications for many of the issues raised.

A number of decisions by Government and Parliament in the week of 2 July raised serious concerns regarding the respect for judicial independence and the rule of law in Romania. These decisions appeared to deliberately remove effective Constitutional controls of political decisions. They included deliberate actions to limit the powers of the Constitutional Court,[1] the replacement of several senior officials[2] and changes to referendum rules.[3] Some of these decisions werecontrary to constitutional requirements.[4] These events were accompanied by pressure against individual magistrates.[5]

2. 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

Reform of the judicial system is one of the two overarching themes monitored under the Co-operation and Verification Mechanism in Romania. At the point of accession it was concluded that shortcomings remained in the functioning of the Romanian judicial system which required further reforms. These reforms focused on the need to strengthen the efficiency and

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1 The power to review decisions (as opposed to laws) passed by Parliament was taken away from the Constitutional Court on 4 July by Government Emergency Ordinance (GEO) 38/2012. This ordinance was published and entered into force only on the same day. An identical legal provision previously proposed by the Parliament in a draft law has been declared unconstitutional on 9 July.

2 This notably concerns the replacement of the Ombudsman on 3 July.

3 The rules for the validity of the referendum to impeach President Basescu were changed by Government Emergency Ordinance on 5 July. The Constitutional Court later required that for the validity of the referendum, a participation of at least 50% plus 1 of voters in the electoral list would have to be achieved.

4 For instance, amendments to the powers of the Constitutional Court were made by GEO, which is not allowed under Article 115 of the Constitution. Government Emergency ordinances can only be directly attacked in the Constitutional Court by the Ombudsman.

5 The Constitutional Court published a press release on 6 July that a judge had received threats ahead of a decision which was to be taken on the same day.

consistency of the judicial process, as well as the transparency and accountability of the judiciary.

Statistics of the ECHR show that Romania counts the second highest number of ECHR judgments among any EU Member State which are pending execution. A large number of these judgments concern difficulties with civil enforcement, the excessive length of civil proceedings and the absence of an effective remedy and ineffective criminal investigations.[6]

In more detailed terms this involved adopting new Codes, implementing measures to unify jurisprudence, strengthening human resources management within the judiciary, restructuring the Public Ministry, and enhancing the capacity and accountability of the Superior Council of the Magistracy and of the transparency, accountability and integrity of the judiciary as a whole.

Reform of the legal framework and the new Codes

A central component of the judicial reform initiatives of the Romanian authorities has been the modernisation of legislation. Since 2007 Romania has adopted new substantive Civil and Criminal Codes and their accompanying procedure Codes. This has been a significant legislative undertaking, requiring important efforts by the executive, legislative and the judiciary. Taken together, the new codes seek to modernise the substantive law and to improve the efficiency and consistency of the judicial process.

Modernisation of the substantive law has included efforts to increase the predictability of the judicial system, by regulating more clearly the fields of civil and criminal law.[7] The new substantive codes have also introduced possibilities (such as the possibility to obtain a divorce before a notary where the divorce is by mutual consent) which may help reduce the workload of the courts.

The new Procedure Codes contain a variety of new approaches which seek to strengthen the consistency and efficiency of the judicial process. Significant reforms are made to jurisdictional arrangements and trial procedures by both codes, including introducing a new preliminary ruling procedure to assist with the unification of jurisprudence. The new Criminal Procedure Code also introduces the "opportunity principle" for the prosecution, a preliminary chamber judge – who should check the legality of the indictment, evidence and procedural acts, preventing such issues delaying the substantive trial – and an admission of guilt procedure before the court.[8]

However, despite the adoption of the new substantive codes in 2009 and the new procedural codes in 2010, so far only the new Civil Code has entered into force. This Code came into force in October 2011. The new Civil Procedure Code is scheduled to enter into force on 1

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6 Of approximately 151,600 applications pending before a judicial formation on 1 January 2012, 8,1% had been lodged against Romania.

7 The new Civil Code, for example, brings together regulations on private persons, family and commercial relations in one place. The new Criminal Code, for example, regulates more clearly the sanctioning regime, including the application of fines and complementary penalties, the penalties to be applied in the case of defendants convicted of multiple offences, and the criteria for individualising penalties.

8 Other reforms streamline the handling of evidence. According to the new Criminal Procedure Code, only the evidence challenged by the parties will have to be re-administered in court. The new Criminal Code also includes offences of obstructing justice (contempt of court) which will incriminate the refusal of witnesses/parties to show up in court when summoned. Currently only administrative and procedural sanctions can be applied in these cases.

September this year.[9] Work to implement the new Criminal Code and Criminal Procedure Code is ongoing, with entry into force foreseen for 2013.

Implementation has proved and remains a challenging task for the Romanian institutions. Significant further efforts are required to ensure a smooth implementation of the remaining codes. This includes further legislative efforts, with implementing laws still needing to be adopted for the new Criminal and Criminal Procedure Codes – an important step in delivering legal certainty and fixing a clear implementation date – but also other essential measures including training, further recruitments, internal restructurings and other managerial and organisational measures, as well as public information campaigns.[10]

In July 2011, the Commission recommended the Romanian institutions to accompany the entry into force of the new Civil Code and to adopt a comprehensive implementation plan to guide their efforts to implement the remaining three new codes.[11] An implementation plan was drafted and was finalised by the Ministry of Justice in early 2012 following consultations with other institutions. However, although covering the principal issues, its endorsement by – and the active engagement of – other institution appears unclear. In addition, further details still have to be worked out, key decisions still have to be taken by the executive and the judiciary, and the plan does not seem to have developed into the kind of comprehensive, living road-map envisaged.[12] Efforts therefore remain disjointed, which presents a continuing risk for the efficiency and effectiveness of the implementation.[13]

Implementation has been further complicated by the decision of the Romanian authorities to draft an impact study only after the codes themselves had been adopted. A study has now been drafted and is being used as a tool to assist with implementation, identifying resourcing and other implementation needs. However, this delay prolonged the process of implementation and opened the door to calls to reopen discussions on central elements of the new Codes: the argument being that since the true practical and resource implications were not factored into the policy making process, the implementing law should include changes which effectively amend the Code itself.

In these circumstances further work is therefore required to complete the reform initiated by the drafting of new codes. It also remains too early to draw conclusions on the impacts that result from the new Codes, to see if they have achieved their goals to modernise the legal framework and to strengthen the efficiency and consistency of the judicial process.[14] The task

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9 The preliminary ruling procedure foreseen in the new Civil Procedure Code will come into force separately, on 1 January 2013.

10 The implementing law for the new Civil Procedure Code was adopted by the Parliament on 8 May 2012 The implementing law for the new Criminal Code was sent to Parliament in 2010 but is currently still pending in the decisional chamber, the Chamber of Deputies.

11 See the Commission's Report of 20 July 2011, COM(2011) 460 page 8

12 For example, one such question is what to do with small courts that have insufficient judges to apply the new Criminal Procedure Code. The plan envisages the closure of these courts, but it seems the political decision to pursue this course has not yet been taken.

13 One such example is the decision that the new preliminary ruling procedure contained in the new Civil Procedure Code will not enter into force with the rest of the Code this September, but will be delayed until January 2013. This delay is justified by the need to recruit additional personnel at the High Court to ensure the smooth operation of this new mechanism. However, the delay raises questions as to the thoroughness of the consideration that established the implementation date for the Code as a whole, whilst also raising questions as to the efficiency of the preparations for implementation given it has not proved possible in the two years since the Code was adopted to prepare for application of these provisions.

14 This is true even for the new Civil Code which is now in force. The time period since implementation is too short to draw comprehensive findings.

of the Romanian authorities is therefore to consolidate and intensify efforts to implement the remaining new codes, and to concentrate then on identifying the tangible impacts that result.

In the interim, with a view to expediting some of the reforms, in 2010 a Small Reform Law was adopted, amending the existing procedure codes with a view to accelerating judicial proceedings and increasing their quality. Key reforms strengthened the efficiency of the prosecution by allowing the prosecution to take over motivations of the police in simple cases where the prosecutor decides not to open an investigation, and by introducing greater possibilities for the prosecution not to pursue cases where existing evidence does not warrant further investigation. Other changes sought to expedite trials – streamlining summonsing procedures and introducing a guilty plea procedure – as well as to strengthen the efficiency of the existing mechanisms for unifying jurisprudence. Reaction from practitioners clearly points to the conclusion that this law has had a positive impact, anticipating in some cases provisions in the new Codes.

Unification of jurisprudence

At the point of Romania's accession to the European Union one persistent vulnerability identified was the inconsistent interpretation and application of the law.

Since accession the major legislative reforms adopted have all sought to strengthen the mechanisms for unifying jurisprudence. Addressing in part recommendations issued by the Commission in 2009 and 2010, the Small Reform Law amended the competence of the High Court, reducing its scope of jurisdiction as a first instance and first appeal court, in order to help the Court to focus on cassation and unification of jurisprudence. It also streamlined the appeal in the interest of the law, an existing extraordinary mechanism for resolving, for future cases, legal questions arising from inconsistent final decisions.[15] The new Procedure Codes consolidate these reforms, overhauling jurisdictional arrangements, concentrating jurisdiction for second appeals at the High Court and refocusing second appeals on their primary cassation purpose. To complement the appeal in the interest of the law, the new procedure codes also introduce a new, more proactive mechanism for unifying jurisprudence. This preliminary ruling procedure allows for a court ruling in final instance to address questions to the High Court for an interpretative ruling that is binding both for the court in question and for future cases.

The reforms brought by the Small Reform Law have been well received by practitioners, and have led to real improvements in terms of the efficiency of solving appeals in the interest of the law.[16] However, the total number of appeals solved through this mechanism remains small, questioning how far it has contributed to solving the problem of inconsistent jurisprudence.[17] More far-reaching reforms are introduced by the new Procedure Codes. These Codes offer the potential for the High Court to consolidate and intensify its important

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15 The Commission's report of 22 July 2009, COM(2009) 401, recommended that Romania "strengthen the role of the High Court of the Cassation and Justice in unifying jurisprudence, including through streamlining the procedure for appeals in the interest of a coherent interpretation and application of the law…". The Commission's report of 20 July 2010, COM(2010) 401, recommended that Romania "Consider a revision of the competence of the High Court of Cassation and Justice by reducing the competence to try cases in first instance and limiting the judging of appeals to points of law. Consider implementing other measures proposed by the High Court in a draft law to improve legal unification."

16 These appeals are now being routinely solved, motivated and the decisions published within four and a half months of notification of the Court.

17 In 2011 33 appeals in the interest of the law were resolved. This contrasts to 73 in 2007, 46 in 2008 and 37 in 2009. Between January and 11 June 2012 9 appeals in the interest of the law were resolved.

role in unifying jurisprudence, in fulfilment of their constitutionally enshrined responsibilities.[18]

It remains to be seen how the revised jurisdictional arrangements and new preliminary ruling procedure will function in practice.[19] The High Court will need to be prepared for their revised tasks. Suitable filters will need to be in place to establish the clear admissibility of appeals or requests for preliminary rulings. At present it is unclear whether these filters are in place.[20]

The High Court will be crucial to the success of legislative reforms in establishing efficient arrangements and mechanisms for unifying jurisprudence. The High Court has begun to take steps to prepare for their new tasks, undertaking simulations of how they will handle the new preliminary rulings and obtaining financing to hire a small number of additional assistant magistrates, the majority of which will be dedicated to assisting the panels responsible for ruling on appeals in the law and preliminary ruling requests.[21] However, questions remain as to whether the competence of the High Court has been suitably reshaped. For Constitutional reasons the High Court has to deal with a significant workload of first instance trials in criminal cases, whilst it also has to rule on a significant number of other procedural decisions, such as on transfer of files between Courts. In some of these cases, the High Court has shown it can offer the function of providing best practice, but consideration could be given to divesting the High Court of some of these competencies to allow the High Court to focus further on their cassation role. Further organisation changes within the High Court could also strengthen the efficiency of court proceedings.

Legislative reforms alone will not solve inconsistent jurisprudence. It also requires a recognition of the importance of this issue amongst the judiciary. Since 2007 the Romanian authorities have also taken a number of practical steps to promote a consistent jurisprudence amongst the magistracy, including meetings, training seminars and improvements in the publication of motivated court judgments. However, further work is required. There appears a persistent reluctance in some quarters to follow the jurisprudence of superior courts. This hampers – and could continue to hamper – the unifying effect of cassation appeals.[22] This

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18 Article 126(3) of the Romanian Constitution states that "The High Court of Cassation and Justice shall provide a unitary interpretation and implementation of the law by the other courts of law".

19 Proposals for a separate law on the unification of jurisprudence tabled developed in 2010 were ultimately not progressed.

20 Under the new Civil Procedure Code, the admissibility criteria for second appeals has been tightened compared to the current Procedure Code. Under the new Procedure Code such appeals can also only be lodged by a lawyer. A filter mechanism has been established at the level of the High Court. For the new preliminary ruling mechanism, no filter mechanism has been established at the High Court and the Court will rely instead upon the referring court to check admissibility. It remains to be seen how these mechanisms will work in practice. The Commission's report of July 2011, COM(2011) 460 final, stated in respect of the new preliminary ruling procedure, "the application of strict rules to accompany the new mechanism will be necessary to avoid that unfounded requests for preliminary rulings unduly delay trials". Given the new Procedure Codes may impose additional burdens upon the High Court, revisions to the existing Procedure Codes could also assist the Court to meet the demands of the new Procedure Codes in the transition period, such as limiting the grounds for second appeals under the existing Procedure Code.

21 Government Decision 108/2012 of 28 February 2012 approved the supplementing of the High Court's personnel scheme with ten additional assistant magistrates. Seven of these additional assistant magistrates will assist the panels responsible for solving appeals in the interest of the law and preliminary ruling requests. The recruitment procedure is underway.

22 This is why Romania has resulted to introducing the extraordinary mechanisms of the appeal in the interest of the law and the preliminary ruling to unify jurisprudence.

necessitates a cultural change and a greater impact of these issues in the evaluation and promotions system.

Meetings between the High Court and the Courts of Appeal to discuss jurisprudence issues ceased due to a lack of financing. A video-conference system which was procured to allow for these discussions to take place remotely is also rarely used, due to budget constraints. Suitable financing needs to be ensured. Access to jurisprudence also remains a major impediment. The online publication of all court motivations, a Commission recommendation, has not yet been achieved.[23] This includes the High Court, which does not yet publish all its motivated judgments online, reportedly reflecting both resourcing constraints and a recognition that even within the High Court itself, there are examples of inconsistent jurisprudence. For other courts the situation is worse. Jurindex, a publicly accessible online database, is currently not being updated and contains only a limited range of decisions from 2008-10, whilst the public section of the courts portal managed by the Ministry of Justice contains even fewer decisions, with only a fraction of the total number of decisions issued each year. The internal database is also insufficiently comprehensive, posing particular problems for judges ruling in final instance at Courts of Appeal, who can only access the decisions from their Court of Appeal circumscription. These issues hinder both the unification of jurisprudence and also the transparency and accountability of the act of justice.

Inconsistency and a lack of predictability in the jurisprudence of the courts has also been identified as a major concern for the business community and for the wider society. Reports of inconsistent decisions continue to arise and the new codes may severely test the ability of the judicial system to ensure consistent jurisprudence, potentially exacerbating in the short run the challenge of inconsistent jurisprudence. This necessitates intensified efforts form the judiciary. Although inconsistent jurisprudence is recognised as a major vulnerability by the Romanian authorities, there has been little attempt to map this vulnerability. This makes it also more difficult to measure the impact of the measures taken.

Capacity, human resourcing and structural reform of the judicial system

At the point of accession, the second major vulnerability of the Romanian justice system was efficiency. This was directly influenced by its capacity. Since 2007 significant sums have been committed to judicial reform from external, as well as internal, sources. As of March 2012 projects totalling 57 M EUR have been finalised, projects totalling a further 9 M EUR were ongoing and projects totalling a further 13 M EUR were under evaluation. A further 81 M EUR has been contracted of a World Bank loan to support the reform for the judiciary. Payments from the loan have been made totalling 36 M EUR. As a result of the loan two new courts have been constructed, construction work has been completed at a further eight courts and is ongoing at another four courts. The loan has or is continuing to finance technical assistance and to finance the procurement of an integrated IT system for resource management within the judiciary.

Since 2007 the number of positions for judges and prosecutors has been expanded, with an additional 54 positions for judges and 66 positions for prosecutors allocated. The number of magistrates seconded out of the magistracy has also been significantly reduced, and a special reserve fund of 100 financed magistrates' positions created to enable additional magistrates to

[23] The Commission's report of 20 July 2010 , COM(2010) 401 final, recommended that Romania "ensure that the full jurisprudence of the courts are published and accessible to all in a user friendly, easily searchable remit". The Commission's report of 20 July , COM(2011) 460 final, 2011 reiterated this recommendation, recommending that Romania "achieve the electronic publication of all jurisprudence".

be allocated to courts or prosecutors' offices with temporarily vacant – and therefore blocked – positions and a disproportionate workload.[24]

However, capacity and resourcing issues continue to raise significant challenges for the judicial system. The Commission's reports under the CVM have followed this issued closely. Although between 2007 and 2011, significant numbers of new magistrates have been appointed each year, the judicial system has struggled to recruit sufficient numbers of new magistrates to cope with exits from the system and there has been negligible progress in reducing the total number of vacant positions within the judiciary.[25] As a result, between 2007 and 2011 the total number of vacant positions for prosecutors has fallen by only 103 positions and of vacant positions of judges by only 8 positions.[26]

Significant staffing imbalances remain, with notable variations in workload reported between courts of the same level of jurisdiction and between courts of different levels of jurisdiction. CVM reports have consistently noted the need for a redistribution of vacant positions.[27] The redistributions which have taken place have not been extensive enough to tackle discrepancies between courts, and a thorough re-dimensioning of the personnel scheme has not been attempted. The introduction of the new codes is an opportunity to undertake a fundamental reorganisation, but this does not now seem to be taking place, so that existing inefficiencies within the system will remain. A fundamental weakness of the Romanian judiciary has been the continued absence of effective mechanisms to measure workload and performance within the judiciary, and therefore make informed management judgments about how many magistrates are required and where. However, an important project has now been launched which seeks to address this deficiency and can be used, once complete, as the basis for a fundamental reorganisation.[28]

Until recently, questions have also continued to be raised as to the professionalism and objectivity of the resourcing decisions taken by the Superior Council of the Magistracy, with allegations of subjective decision making and a tendency that the career prospects of magistrates prevail over the sound human resources management of the system.[29]

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24 Between 2007 and 2010 the number of seconded magistrates fell by 30%. The reserve fund became fully functional in 2008. It allows courts or prosecutors' offices with positions temporarily vacant (e.g. as a result of a secondment or a maternity leave) to hire additional magistrates. The position is returned to the fund the next time a permanent vacancy arises at that court or prosecutors' office. The fund finances up to 50 positions for judges and 50 positions for prosecutors. Between 2008 and 2011 59 positions were occupied through the fund.

25 Between 2007 and 2011 981 new judges and 841 new prosecutors were appointed. These figures included a number of prosecutors who were reappointed as judges (113 in total) and a small number of judges who transferred to become prosecutors (17 in total). During the same period 793 judges and 635 prosecutors left office.

26 In 2007 there were 347 vacant judge positions and 540 vacant prosecutor positions. As of 2011 there were 339 vacant positions of judges and 437 vacant positions of prosecutors.

27 The Commission's report of 22 July 2009, COM(2009) 401 final, recommended that Romania take "emergency measures such as transferring vacant posts to where they are needed most (including transfers between different court levels)…". The Commission's report of 20 July 2010, COM (2010) 401 final, recommended that Romania "adopt immediate measures to reduce capacity imbalances by an extension of the transfer of vacant positions between appellate regions and between court levels and by maximising the use of delegation of magistrates to locations with acute resourcing problems".

28 This project, "Determining and implementing the optimal volume of work to judges and court clerks and ensuring the quality of the courts' activity", is financed by a loan from the World Bank.

29 For instance in many of the last five years, when promotion contests have been launched, the Council has decided to open all vacant positions at higher level courts and prosecutors' offices for promotion, rather than limiting to those positions where the workload demands necessitate the occupancy of these positions.

Nearly half of all new magistrates recruited during the five years from 2007 have been recruited using provisions in the law allowing for extraordinary direct entrants into the magistracy, as opposed to through the usual two-year training at the National Institute of the Magistracy.[30] The authorities have justified this on the grounds of capacity shortfalls within the judiciary – reflecting an inability of the leadership of the judiciary to estimate human resources needs on the medium and long term – but also capacity constraints at the National Institute of the Magistracy. The Commission recommended increasing the capacity of the Institute to train new magistrates in CVM reports in 2010 and 2011, but this has not yet been significantly increased. The total number of initial trainees the Institute can accommodate is still capped at approximately 200 per year and the Institute is still restricted by the premises they occupy. The volume of continuous training offered has also fallen significantly since 2007.[31] Nevertheless, first steps to address these persisting weaknesses may now be beginning to be taken, with increases in financing for initial and continuous training and provision to hire 15 additional trainers.[32] Further strengthening of the capacity of the Institute would be needed to ensure its resourcing adequately reflects the recruitment and training needs of the judiciary.

The large-scale usage of the direct-entry route has also raised questions about the thoroughness of selection procedures applied to these candidates and the preparedness of new recruits recruited in this way. The Romanian authorities have gradually taken steps to address these concerns, but not before significant use has been made of these recruitment channels. In 2007-2008, 164 magistrates were appointed without a thorough contest. The law at the time permitted legal professionals with ten years' experience to enter directly into magistracy, subject to a simple interview before the Superior Council of the Magistracy. Following concerns raised by the Commission this possibility was eliminated. In its place significant use has been made of an alternative, existing direct entry route into the magistracy by exam, for legal professionals with five years' experience. Since 2007, 708 new magistrates have been recruited through this route. However, as these recruits have until now sat a less comprehensive examination than applicants to the Institute (who subsequently would also need to pass a series of further exams), and benefitted from only a short period of post-recruitment training, questions remained as to the equivalent level of preparedness for their tasks. Following concerns raised by the Commission, in April 2012 the Superior Council of the Magistracy adopted amendments to internal regulations to apply equivalent exams for entry to the Institute and direct entry to the magistracy and increasing training for direct entrants from one month to two months. However, it remains to be seen if this reform goes far enough. Proposals to increase initial training to six months has been considered but not yet adopted, and would constitute a further step in bringing the standard of direct entry recruits closer to those who pass through the Institute.

Work to implement other structural reforms to the judicial system has also been slow. Little progress has been achieved in rationalising the territorial distribution of courts and prosecutors' offices. In 2005 external experts recommended the closure and restructuring of a

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30 In total 448 new judges (45% of the total) and 424 new prosecutors (50% of the total) were recruited under these direct entry provisions.

31 In 2011 there were 191 continuous training seminars organised by the Institute. Whilst slightly higher than in 2009 or 2010, this was significantly lower than in 2007when 282 seminars were held, translating into a one third fall in the total training time magistrates on average receive.

32 The expenses allocated to initial training have increased from approximately 10 million RON per annum during 2009 – 11 to over 15 million RON in 2012. The expenses allocated to continuous training has also increased from approximately 2 million RON to 3.7 million RON.

significant number of courts.[33] In 2010 the Government brought forward draft legislation proposing the closure of 15 currently functioning courts and their associated prosecution offices.[34] However, in the Parliament the proposals were significantly reduced and only three working courts and their associated prosecution offices were closed.[35] These closures freed up just seven positions of judges and nine positions of prosecutors for reallocation. Further court rationalisation has been discussed, but no legislation has yet been proposed.

There has also been slow progress in introducing other long-proposed reforms. Pilot programmes have been launched in key areas including the transfer of certain administrative tasks from judges to court clerks (piloted 2006-10) and introducing court managers to remove some of the burden of administrative tasks from court leaderships (piloted 2009). However, these have not yet been rolled out nationwide, and an agreed assessment of the optimum division of responsibilities, procedures for appointing such officials and their lines of responsibility has not been made. Draft legislation was proposed to Parliament in autumn 2011 and is currently pending before the Parliament.

The commissioning of an overarching review of the functioning of the judicial system is an opportunity to drive more comprehensive change. The review, financed with EU funds and undertaken by the World Bank, was contracted in February 2012 and should be complete in 9–12 months. The review is assessing the resourcing, organisation, functioning and performance of the judicial system. It should provide short, medium and long term recommendations to guide the direction of judicial reform, as well as a vehicle for reinvigorating structural and capacity reforms.

Superior Council of the Magistracy and the Judicial Inspection

Integrity and accountability issues were the third major concern affecting the Romanian judicial system identified at the point of accession. These concerns were closely related to the ability of the Superior Council of the Magistracy (SCM) and of the Judicial Inspection to ensure a transparent, accountable and effective judicial system, and to uphold the highest standards of integrity within the judiciary.

In line with recommendations set out in CVM reports,[36] since 2007 the SCM has taken a number of measures to improve its institutional transparency. These have included efforts to strengthen communication, the progressive expansion of the institution's website, and the online publication of its decisions, including disciplinary decisions (since 2010). Since early

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33 External experts recommended the closure of 28 small courts and the effective closure of a further 14 small courts which would be merged with larger courts. A further 12 small courts were proposed for merger to create six courts of an efficient size. See "Study on Romanian Court Rationalisation", Terry R Lord and Jesper Wittrup, March 2005, page 30.

34 The proposals also provided for the elimination from the list of courts contained in the legislation of a further nine courts and their associated prosecution offices which were listed in the legislation but were not operational in practice.

35 The law as adopted, Law 148/2011, also eliminated from the statute book the nine non-operational courts and their associated prosecution offices. However, as these courts had neither an allocated personnel scheme nor any magistrates attached, their closure will have at most delivered only a small financial saving.

36 The Commission's Report of 22 July 2009, COM(2010) 401 final, recommended that Romania "strengthen the transparency and accountability of the Superior Council of the Magistracy, including through the Council assuming its responsibility for a more proactive approach to recruitments, promotions disciplinary measures, transfers of staff and secondments, and by publishing the Council's reasoned decisions in a clear and accessible format".

2011 the Council's sessions have also been partially broadcast live online. However, full transparency is not yet achieved.[37]

Efforts have also been made to revise internal regulations with a view to strengthening the objectivity of various management decisions within the competence of the Council. In certain areas these efforts have been complemented by important legislative reforms initiated by the government. In particular, in 2011 the Government proposed legislative amendments which brought substantial improvements to the selection procedure for High Court judges.[38] Attempts to use internal regulations to ensure a thorough, objective and transparent procedure had failed, and the legislation reflected a determined Government effort to progress on the issue.[39] The legislation was adopted by the Government assuming responsibility before the Parliament in December 2011. The first selection procedure under this new law is currently underway.

Public perceptions of the integrity of the judiciary as a whole are inevitably shaped by perceptions of the SCM. Over the last five years, the SCM has had an uphill task to establish public confidence, due to a number of cases which have undermined the legitimacy and credibility of the Council by seeming to show a Council which fails to recognise that protecting the reputation of the judiciary is part of its core functions.[40] The recent decisions taken by the SCM to more proactively defend the independence of the judiciary and the rule of law, as well as the SCM's handling of a number of recent cases, are steps which show the SCM more ready to exercise its Constitutional role and address the issue of public confidence.[41]

The SCM needs to authorise the search and arrest of magistrates. All 24 requests for search filed since 2007 were admitted. Of the 17 requests for custody and 22 for preventive arrest, the SCM dismissed such requests in only one case.[42]

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37 The Romanian Constitution provides that the Council takes decisions by secret vote. However, the Council has also interpreted this Constitutional provision to mean that the deliberations prior to these votes are also treated by the Council as confidential and therefore neither open to the public who attend or broadcast online.

38 This important attribution has for many years been a source of controversy. It was one of the major issues raised in a petition for "Integrity and Dignity" signed by hundreds of magistrates in March 2010, following controversial appointments to the High Court and in light of a major corruption scandal at the Court.

39 The new law – Law 300/2011 – introduced a three-stage selection procedure, involving an assessment of the candidate's documentation, including court decisions prepared by the candidate during their career, an interview and a written examination. From the first two stages, a candidate must obtain a mark of 80 or above to be able to sit the written exam. The assessment of the candidate's documentation is worth a maximum of 75 points and the interview is worth a maximum of 25 points. In addition to creating the basis for a more objective and thorough assessment of candidates, the new procedure also brings greater transparency, with candidates' applications subject to public scrutiny.

40 One such episode was detailed in the Commission's Report of 8 February 2012, COM(2012) 56 final, page 3.

41 For example, the SCM issued a statement in June defending the independence of the judiciary in the light of public interventions and attacks by a number of institutions, associations and lawyers in respect of one important high-level corruption case. In July the SCM also issued a statement calling for the full implementation of all court decisions following public doubts about the effective implementation of a number of final court rulings. In July the SCM suspended from office two prosecutors. One of the prosecutors was a member of the SCM and the other his counsellor. The two prosecutors are under criminal investigation in respect of alleged corruption offences.

42 The decision to dismiss the custody and preventive arrest measure against a judge was taken by the Section for Judges of the SCM.

The particular significance of integrity has been recognised by the SCM with the adoption in March this year of a strategy for integrity within the judiciary. This strategy seeks to increase the transparency of the judiciary, improve access to the judicial system, enhance ethical rules and integrity within the judiciary and improve the system of disciplinary liability. This will need to be backed up with proactive leadership and specific mechanisms to ensure that all levels of the judicial system recognise their obligations and bring results.

Various measures have also been taken to strengthen the Judicial Inspection and the disciplinary system for magistrates. These have included progressive steps to strengthen the recruitment procedure for inspectors, including to ensure the regional representativeness of recruits, the status of inspectors, and the internal working practices within the Inspection.[43] Since 2010 the performance of the Inspection and its inspectors has also been subject to periodic evaluations. The Inspection has also launched its own website and since 2011 has produced its own separate annual activity report.[44]

CVM recommendations had pointed to the need to consider a more thorough reform of the Judicial Inspection and disciplinary system.[45] More comprehensive and far reaching changes to the Judicial Inspection were adopted by the Parliament in December 2011. These seek to strengthen the disciplinary system through enhancing the autonomy of the Judicial Inspection, expanding the range of disciplinary offences and sanctions, and extending the power to initiate disciplinary action to the President of the High Court, the General Prosecutor and the Minister of Justice.[46] The new law also seeks to close significant loopholes in existing legislation that had undermined the effectiveness of the disciplinary system by allowing magistrates to escape disciplinary liability through retirement whilst under disciplinary investigation.[47] The new law also introduces the possibility to suspend magistrates whilst under disciplinary investigation.[48]

The law came fully into force in May 2012. Its success will depend on whether it strengthens the efficiency of the disciplinary system and the Judicial Inspection. Applying the law in a way which shows its benefits as a tool for enhancing the effectiveness and integrity of the judiciary is the best way to reassure those who fear that it could generate potential abuses and undermine judicial independence.

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43 Guidelines have been produced and periodic internal meetings now take place to allow inspectors to share best practices and to discuss points of interpretation and disciplinary jurisprudence. Since 2011 the Judicial Inspection has sought to better target inspections of courts and prosecutors' offices and has introduced a filter mechanism for disciplinary complaints.

44 The introduction of periodic evaluations was a reaction to a recommendation in the CVM report of 20 July 2010, COM(2010) 401 final.

45 The Commission's report of 20 July 2010 recommended that Romania "consider a thorough reform of the disciplinary system. Re-examine the objectives and strengthen the capacity and organisation of the Judicial Inspection in order to ensure sufficient focus on disciplinary investigation. Adapt the types of possible disciplinary sanctions in order to allow for a greater variety of sanctions and take steps to ensure the application of consistent, proportionate and dissuasive disciplinary penalties."

46 Law 24/2012.

47 There are differences of opinion within the judiciary as to whether the revised law prevents retirement throughout the disciplinary process, or only once the investigation is complete and the magistrate is awaiting a determination by the Council. The latter interpretation, which would undermine the effectiveness of the reform, is considered artificially narrow by the Ministry of Justice and contrary to the broader interpretation foreseen by the legislator.

48 First use of this possibility was made in June 2012, with the suspension of a prosecutor from office pending the conclusion of an ongoing disciplinary investigation,

The law is of particular importance, given slow progress in addressing deficiencies or enhancing performance within the Judicial Inspection.[49] Despite periodic recruitment procedures, there remain significant shortfalls in the personnel within the Inspection, whilst reports of inconsistent practices continue.[50] The track record of the Inspection itself also continues to raise questions. Statistical data supplied for the years 2007-11 indicate that over the five years, there has not been a significant change in the number or types of disciplinary sanctions applied to magistrates.[51] This data, combined with the experience of certain emblematic cases, have continued to raise questions as to whether the Inspection is contributing to the reform of the judiciary with the speed, pro-activeness and rigour that might be expected. The rigour of the Inspection's action and the dissuasiveness of the sanctions applied has a direct bearing on public confidence concerning integrity within the judiciary.

Concerns also remain as to the efficiency of the Judicial Inspection's work in their non-disciplinary control activity. Although since 2006, the Inspection has undertaken management controls of all courts and prosecutors' offices, and undertaken a series of topic-related controls on a useful range of issues, the consistency, impact and effectiveness of these controls remains unclear, particularly in terms of follow-up. The Commission's report of July 2011 recommended that the Judicial Inspection demonstrate a track record in the analysis and improvement of judicial practice, and a number of useful controls on significant issues have been undertaken.[52] These controls are more focused than in the past, and some have generated the formulation of important recommendations. If these recommendations are followed up and this practice becomes generalised, it will represent an important step in the use of the Inspection to promote reform.

Public Ministry

At the point of accession, specific deficiencies were also identified in the prosecution.[53] Over the five years since accession, the then newly appointed General Prosecutor has in the course of her two mandates taken a series of measures designed to strengthen the management and performance of the prosecution. Measures taken have included greater prioritisation, the adoption of local strategies for combating certain priority crimes, the introduction of new more focused evaluation criteria for prosecution offices, the creation of networks of dedicated and specialised prosecutors, targeted trainings, and the drafting and dissemination of best practices guides.

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49 For example, Government Emergency Ordinance 59/2009, despite making explicit provision for the Judicial Inspection to launch ex-officio proceedings regarding the disciplinary offences committed by magistrates, has not so far succeeded in encouraging a proactive approach by the Inspection.

50 The occupancy rate of inspector positions within the Inspection fell from 75% in 2007 to 62% in 2011. The total number of provided positions is also significantly lower than existed prior to the creation of the Judicial Inspection.

51 Between 2007 and 2011 the Superior Council of the Magistracy penalised 52 judges and 18 prosecutors for breach of disciplinary offences. The vast majority of these magistrates received either warnings or small salary reductions. However, 16 magistrates were excluded from the magistracy, though a number of these exclusions have either been overturned by, or are pending on appeal before, the High Court.

52 These include controls on the celerity of high level corruption trials, on cases pending in the courts for more than ten years, and for managerial efficiency at the High Court. The control report on the celerity of high level corruption trials is significantly more comprehensive than a similar control report produced in 2010.

53 The Commission's Monitoring Report on the State of Preparedness for EU membership of Bulgaria and Romania of 26 September 2006 stated, "no steps have yet been taken to address the Public Ministry's serious managerial shortcomings such as the very uneven distribution of workloads, lack of relevant ongoing training and inability to collect statistics" (page 34)

Addressing specific weaknesses identified in the pre-accession monitoring reports, the Public Ministry has also developed its internal computer systems, establishing a case management system, a secure communication system, direct access to state databases, and a virtual library containing an archive of decisions, jurisprudence and guidelines. The case management system ensures file tracking and provides management data, improving statistical data collection to strengthen the monitoring of the performance of the prosecution as a whole. The General Prosecutor has also actively proposed and supported closely the legislative reform process, ensuring the introduction of provisions in the Small Reform Law and the new Codes which are designed to strengthen the efficiency of the prosecution. Further reforms to strengthen the control of the Public Ministry over the judicial police and to hire technical and scientific experts to assist the regular prosecution are being pursued in the context of implementation of the new Codes.

As a result of this proactive approach, Romania can report a significant increase in the prosecutions of smuggling, tax evasion, corruption and organised crime offences.[54] Although these increases may in particular be the result of the work of the specialised prosecution offices, rather than necessarily reflecting changes in the prosecution as a whole, over the last five years there has also been a steady increase in the total number of solved cases and of indictments, indicating more generalised improvements.[55] Tangible improvements in the efficiency of the prosecution are reported to have resulted from the Small Reform Law, whilst further efficiency gains are awaited once the new Criminal Procedure Code is in force.

However, despite these improvements there remain significant challenges to be addressed. One of the principal concerns flagged at the point of accession was of the uneven distribution of workload. The General Prosecutor has made a series of proposals in this field over the last five years, some of which have been adopted by the Superior Council of the Magistracy and led to some reorganisation of personnel schemes and redistribution of positions.[56] Nevertheless acute imbalances between resourcing and workload remain.[57] More substantial efforts to promote the further redistribution of positions, the closure of small prosecutors' offices or the redefinition of territorial districts have not been accepted by the Council.

Other challenges include the persistence of large numbers of vacancies within the prosecution and insufficient auxiliary personnel, whilst the sizeable number of new recruits who have entered the prosecution in recent years creates challenges in terms of experience and

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54 Comparing 2011 to 2007, the number of defendants sent to trial in organised crime and corruption cases has doubled, the number of defendants in tax evasion cases has tripled, whilst the number of defendants in smuggling cases has increased ten-fold. These include cases sent to trial by the National Anti-Corruption Directorate and the specialised organised crime prosecution service, DIICOT. It is not clear how much these figures reflect also improvements in the performance of the regular prosecution offices, as opposed to predominately the specialised DNA and DIICOT units.

55 In 2007 462,397 cases were solved by the prosecution, with 47,787 defendants indicted. In 2011 579,322 cases were solved by the prosecution, with 60,980 indictments.

56 Key management functions, including the promotion, evaluation and transfer of staff rest with the Superior Council of the Magistracy. The General Prosecutor is therefore dependent upon their co-operation and action to address resourcing issues within the prosecution.

57 Since 2007 some vacant positions have been redistributed between prosecution offices of the same jurisdictional level, whilst 115 positions were transferred from the Prosecutors' Office attached to the High Court of Cassation and Justice to local prosecution offices confronted with the highest deficits of personnel. A further 12 positions were transferred from Prosecutors' Offices attached to the Courts of Appeal. However, workload continues to vary dramatically, with the number of files per prosecutor varying from 300 – 400 in certain locations to over 1,500 files in other locations.

institutional knowledge.[58] These challenges are exacerbated by the steadily rising number of criminal files, with the number of incoming cases outstripping the rate of solved files, despite notable year-on-year increases in the number of solved files.[59] The impacts of the new Codes will need to be closely monitored in this regard, and further legislative interventions contemplated if the Codes themselves do not prove sufficient in ensuring an efficient framework for managing the inflow of cases.

The recovery of the proceeds of crime and the pursuit of money laundering have also been areas expressly identified under the CVM as requiring improvements.[60] Over the five years since accession, the Public Ministry has taken a number of steps to address weaknesses in financial investigations, the pursuit of money laundering and the low levels of the confiscation of the proceeds of crime. In 2010 external experts were commissioned under an EU-financed project to undertake an analysis of the performance of the Romanian system. Further measures taken include training for specialised prosecutors and police officers, as well as introducing specialised training on the curriculum for trainees at the National Institute of the Magistracy. There is now a common order of the General Prosecutor and the Minister of Interior which lays down a standardised procedure to be applied in all criminal cases, to ensure the measures to recover the proceeds of crime are considered in all cases and from the earliest moment. These measures have also been assisted by legislative amendments and the establishment of an Asset Recovery Office within the Ministry of Justice.

Reacting to the virtual absence of prosecutions of money laundering as an autonomous offence, in autumn 2011 the General Prosecutor issued a legal opinion confirming that existing legislation allowed for money laundering to be prosecuted without a prior conviction or simultaneous prosecution of a predicate offence, and without the precise determination of the predicate offence that generated the laundered proceeds. However, further work is required in these fields too. The impact of these measures and the extent to which they have contributed to meeting the Commission's recommendations in these fields are analysed under Benchmark 4, where the steps of other institutions to improve the performance of the Romanian authorities in these fields in also detailed and assessed.

3. 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.

The combating of corruption is the second overarching theme monitored under the Co-operation and Verification Mechanism in Romania. One part of the requirements was to establish an integrity agency to verify assets, incompatibilities and potential conflicts of interest of holders of public office. At the point Romania joined the EU, this Agency – the National Integrity Agency (ANI) – did not exist. Today the Agency has been operational for

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58 According to figures supplied by the Public Ministry, 20% of prosecutors have less than three years of operational experience.

59 The number of criminal files has tripled since 2001 and is 50% higher than in 2007. In 2011 there were 1,656,130 recorded criminal files. These evolutions are not believed to reflect a significant increase in criminality, but to reflect legislative issues and an increase in unfounded complaints.

60 The Commission's report of 20 July 2011, COM(2011) 460 final, recommended that Romania "demonstrate convincing results in the recovery of the proceeds of crime by following best practice in other EU Member States, adopting a new law on extended confiscation and strengthening judicial practice. Romania should also demonstrate a proven track record in pursuing money laundering as a stand alone offence."

over four years, albeit with its activity severely interrupted in 2010. The key objectives that Romania needed to address with a view to fulfilment of this benchmark were to establish an effective, robust and secure legal and institutional framework for the Agency, and to deliver a convincing track record of investigations, findings / referrals and sanctions.

Legal Framework

The founding law of ANI was adopted by the Parliament in the year after accession, and strengthened by a Government Emergency Ordinance of the same year. However, central elements of this legal framework were declared unconstitutional by the Constitutional Court in spring 2010.[61] For a number of months, work at ANI ceased, in the absence of a legal framework. Following extremely difficult discussions in the Parliament that summer, when draft laws were approved by the Parliament reducing ANI's powers over and beyond amendments required to comply with the Constitutional Court decision – an episode detailed extensively in the Commission's report of July 2010 – new legislation was finally adopted in August 2010.[62] This law now underpins ANI's activities.

The 2010 law was discussed at length in the CVM report of July 2011.[63] Whilst the new law addressed the key points of concern identified in the July 2010 report, concerns remained as to its effectiveness in a number of specific areas, in particular concerning the prescription periods (which were introduced by the 2010 law) and the functioning of the Wealth Investigation Commissions.[64]

The constitutionality of the new law has also been questioned. However, in June 2012 the Constitutional Court rejected a series of Constitutional exceptions, upholding the Constitutionality of central elements of the 2010 law. Nevertheless, a number of other Constitutional exceptions remain pending, whilst there have also been periodic attempts in the Parliament to change ANI's legal framework, including amendments proposed late last year which would have undermined the efficiency and impact of ANI's activities.[65]

Institutional Capacity

Since ANI first became operational in 2008, significant efforts have been made to develop and consolidate the institutional capacity of the Agency. Staff have been recruited, internal

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61 See the Supporting Document to the Commission's Report of 20 July 2010, SEC(2010) 949, pages 8 – 9.

62 The Commission's report of 20 July 2010 (COM(2010)401) concluded that the legislation approved by the Parliament on 30 June 2010 "seriously undermines the process for effective verification, sanctioning and forfeiture of unjustified assets…restricts the transparency of financial and economic interests of dignitaries and public officials and excludes dissuasive sanctions that protect against corruption….interrupts the encouraging development of ANI and breaches commitments taken by Romania upon accession". Following the Commission's report, at the request of the Romanian President, the Parliament met in emergency session in August and approved a revised new law, Law 176/2010, which was adopted on 24 August and promulgated by the President on 31 August. The new law came into force on 6 September 2010.

63 See the Supporting Document to the Commission's Report of 20 July 2011, SEC(2011) 968, pages 8 – 11.

64 These Commissions were re-established by the 2010 law – they had existed prior to the creation of ANI – with a view to addressing concerns of the Constitutional Court.

65 These amendments would have limited publication of declarations, removed the ability of ANI inspectors to obtain documents from other institutions and therefore to undertake their verifications, and reduced sanctions for incompatibilities and conflicts of interests.

procedures adopted, codes of conduct drafted, trainings undertaken and protocols signed with other public institutions.[66]

In particular, important investments were made to develop computer systems within the Agency, providing for an effective case management system, assisting with the standardisation of procedures and enhancing the efficiency and effectiveness of the work of ANI's inspectors. Such investments and efficiency savings have been especially important given the reduction in the total number of personnel – in particular integrity inspectors – in recent years, reflecting austerity measures faced by the public sector as a whole.[67] ANI has also established a public portal where all asset and interest declarations submitted by holders of public office are published, an important measure for transparency.[68] In total the Agency and their contractors – the scanning and uploading of these declarations is currently outsourced – process over half a million declarations annually.[69] Steps have also be taken to provide guidance on incompatibilities and conflicts of interest, on the completion of asset and interest declarations, and to train contact points in public institutions, with a view to raising awareness and improving the efficiency and accuracy of the declaration submission procedure.[70]

Work continues to further consolidate the capacity of the Agency, with important further upgrades under way to ANI's information systems, part of a 4 million EUR project financed with European funds. This will simplify the process of filing, archiving and analysing asset and interest declarations, providing for the introduction of electronic completion and submission of declarations. It will also introduce an improved public portal and significant enhancements to the information system used by inspectors, including secure access to other state databases and automated analysis of the data compared to that contained in previous declarations, as well as with information held by other public institutions and with open sources. This should significantly increase the proactive capabilities of the Agency. To help finance the further investments foreseen, ANI has received a significant budget increase this year.[71]

Altogether much progress has therefore been made in establishing suitable infrastructure and capacity within the Agency to perform their tasks and important further steps are already foreseen. These measures should continue. However, the adequacy of the total number of personnel will need to be kept under review, given indications of increased workload, as well the level of remuneration of inspectors and staff retention. [72]

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66 Protocols have been signed with 17 public institutions including the tax authorities (National Agency for Fiscal Administration), the Ministry of Administration and Interior (which provides for ANI's inspectors to have access to the records of persons, passports, driving licenses and vehicle registrations), the National Trade Register Office, and the public procurement agency (the National Authority for Regulating and Monitoring of Public Procurement). In some cases these protocols have granted ANI direct electronic access to the databases of the partner authorities.

67 From a high of 56 integrity inspectors in 2009, by June 2012 the number of integrity inspectors had reduced to 35.

68 As of June 2012, this portal contained approximately 3 million asset and interest declarations.

69 This is based on 2011 figures. In 2011 ANI processed 545,000 asset and interest declarations.

70 Three guides have been drafted on: conflicts of interest and incompatibilities; completion of asset and interest declarations; and on effective methods for identifying incompatibilities and conflicts of interest of locally elected officials.

71 ANI's total budget for 2012 is approximately 43 million RON. Excluding European project funds, their total budget is still over 20 million RON, which contrasts to 13.5 million RON in 2011 and 14 million RON in 2009, their previous highest ever budget.

72 A draft law is in preparation to enhance remuneration for inspectors.

The National Integrity Council

To monitor the performance of the Agency and to guarantee its independence, a National Integrity Council was created, comprising of representatives of key institutions and sectors covered by the Agency's activity. The Council has important attributions including proposing the leadership of the Agency, analysing its performance and making recommendations to improve its performance. To assist them in their tasks, they receive each year an independent external audit report.

However, despite playing an important role during the initial phase of the creation of the Agency, the early years of the Council's existence were marred by controversy and conflict with the Agency.[73] This led the Commission to conclude in 2010 that the Council had not effectively exercised its role and to propose legal amendments.[74]

Since 2010 the legal provisions governing the composition and the functioning of the Council have not significantly changed, nor by July 2011 had the appointment of a new Council in late 2010 addressed significant questions as to the effectiveness of the Council in fulfilling its core responsibilities.[75] Nevertheless, in the last twelve months the Council has responded constructively to the Commission's concerns and has begun to demonstrate a more proactive and effective approach. In October 2011 a new procedure was adopted governing the Council's role in guaranteeing the Agency's operational independence and importantly the Council has begun to translate these intentions into reality. Interventions have included publicly advocating for sufficient resourcing for the Agency, opposing amendments to the Agency's legislation and defending the Agency before Parliament. The Council also successfully organised the contest for appointing the new leadership of ANI. The Council has therefore shown that it can act as a key instrument to defend the independence of the Agency, defending ANI's personnel against outside pressure, and could develop still further its role in promoting integrity more generally.

Track Record, Results and Impacts

The crucial determinant of success under this benchmark is the track record of investigations, referrals, findings and dissuasive sanctions applied. This track record can demonstrate whether the system can deliver efficiency and ultimately impact.

Since 2008 ANI has undertaken a significant number of verifications, issuing a sizeable number of referrals or findings. In total as of March 2012, the Agency had commenced over 7,000 verifications against a full range of office holders, including high-level office holders. Over 70% of these verifications have been commenced ex officio by the Agency, indicating a positive, proactive approach by the Agency. The rest of the cases result from complaints from the public or notifications from other public institutions. Although notifications have been received from a broad range of public institutions, surprisingly few notifications have been received from the judicial and law enforcement authorities, public procurement control bodies, and relatively few from local public administration. This raises questions as to whether other institutions are yet fully exploiting the potential of the Agency, with further efforts apparently required on the part of such institutional partners to ensure that appropriate

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73 This included an attempt by one member of the Council to influence decision making in an ongoing ANI case. These events were detailed in the Commission's Report of 12 February 2009, COM(2009) 70 final, and the Supporting Document to the Commission's Report if 22 July 2009, SEC(2009) 1073. .

74 See the Commission's Report of 23 March 2010, COM(2010) 113 final, page 5, and the Commission's Report of 20 July 2010, COM(2010) 401 final, page 9. Further details were also provided in the Supporting Document to the Commission's Report of 20 July 2010, SEC(2010) 949, page 11.

75 Supporting Document to the Commission's Report of 20 July 2011, SEC(2011) 968 final, page 13.

notifications are made to ANI and that the protocols signed with ANI deliver operational value.[76] The Commission's recommendation of July 2011, to improve the co-operation between ANI and other administrative and judicial authorities, particularly in the area of public procurement, remains valid.[77]

The CVM report of July 2011 also recommended ANI further strengthen its proactive approach.[78] Since summer 2011, ANI has launched risk assessments to identify high risk zones and the first targeted screening of identified high risk sectors. The first screening exercise has been undertaken, focused on local public administration. A significant number of potential cases have been identified which are now being followed up on a case-by-case basis and have already delivered a significant number of findings of integrity violations and referrals of possible criminal offences.[79] A second screening exercise has been launched, focused on authorities managing EU funds. This proactive, systematic approach by the Agency responds directly to the CVM recommendation.

As a result of the total number of verifications launched, as of March this year ANI had completed nearly 4,000 verifications, including issuing over 500 findings of integrity violations or referrals to competent authorities to confirm the existence of unjustified assets, possible criminal offences or other administrative violations. The 500-plus cases included 250 findings of incompatibility, 37 findings of administrative conflict of interest, 24 cases of suspected of unjustified assets referred to the courts and 239 referrals of possible criminal offences to prosecutors. A significant number of these cases have concerned high-ranking officials or dignitaries, including politicians from all the major political parties.[80] Just under half the total findings and referrals have been made under the 2010 law, an indication that ANI has been able to rebuild its track after the interruption caused when its previous legal framework was cancelled by the Constitutional Court. Importantly, the efforts ANI has made since 2010 to focus on the more serious and complex cases of unjustified wealth and conflicts of interest have continued and are delivering results, with the vast majority of conflict of

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76 Between April 2008 and March 2012 ANI received 66 notifications from police and judicial authorities, of which the largest element was supplied by the National Anti-Corruption Directorate (27 notifications). The Anti-Corruption General Directorate supplied a further 18 notifications, whilst only 8 notifications were supplied by other prosecutors' offices. Public procurement control bodies have supplied 5 notifications, including only 1 notification from the National Authority for Regulating and Monitoring Public Procurement. Local public administrations supplied 239 notifications, of which the majority were supplied by prefects offices, with relatively few supplied by local or county councils.

77 The Commission's report of 20 July 2011, COM(2011) 460 final, recommended that Romania "improve the co-operation between ANI and other administrative and judicial authorities, particularly in the area of public procurement".

78 The Commission's report of 20 July 2011, COM(2011) 460 final, recommended that Romania "improve the investigative capacity of ANI through upgrades to their information system and through targeted risk assessments".

79 The screening exercise identified 78 county and local counsellors whom, either personally or in the capacity of their spouse, owned or held shares in 105 companies which had contracts and commercial dealings with their respective county or local councils worth over €8.5m. The screening exercise has so far resulted in 75 findings of incompatibility, 9 findings of administrative conflict of interest, and referrals to prosecutors covering 50 suspected criminal offences.

80 The cases include: findings of incompatibility against 16 Members of Parliament, 1 Minister and 2 judges; findings of administrative conflict of interest against 17 Members of Parliament, 3 County Council Presidents, 1 judge and a former Secretary General of the Government; and referrals concerning suspected unjustified assets of 4 Members of Parliament. ANI has also referred to prosecutors cases involving 31 Members of Parliament, 2 Ministers, 7 County Council Presidents and 5 magistrates for suspected criminal offences.

interest cases and unjustified wealth cases that have been finalised, finalised since 2010.[81] The referrals to prosecutors have also increasingly related to suspicions of more serious criminal offences. The next step would be to further extend this track record, in particular in the fields of conflict of interest and unjustified wealth.

However, whilst the overall scale of ANI's activity is significant, there has also been a notable increase in the length of verifications, in particular for conflict of interest and incompatibilities cases, reflecting in part the reduction in personnel numbers. Despite ANI's efforts, a significant number of cases have also been lost to the prescription periods introduced in the 2010 law, with a large proportion of the cases concerning holders of political office.[82]

Moreover, it is important to note that in the vast majority of circumstances, ANI is not competent to apply sanctions itself. The ultimate impact of the Agency's activity therefore depends upon the prompt and rigorous follow up to their findings or referrals by other administrative and judicial authorities.[83] For a number of years the Commission's reports have consistently flagged inadequate follow up to ANI's cases by other administrative and judicial authorities and made a series of recommendations in this regard.[84] However, whilst there have been some small improvements since summer 2011, notably with the first final court rulings confirming unjustified assets and ordering their confiscation, the final results remain limited. Specifically, as of March 2012, in the four years ANI has been operational:

The Courts have confirmed the existence of unjustified wealth in just four cases.[85] In addition, whilst they had ordered the confiscation of assets totalling 1.1 million EUR in these cases, it is not yet clear whether these confiscation orders have been enforced.

Just two definitive findings of administrative conflict of interest have been reached, one by virtue of a final court ruling and the other having not been appealed.[86] In neither case have the respective contracts signed been cancelled, and in one case the courts have concluded that it is not possible to cancel the contract, meaning the benefits gained through the conflict of interest have not been annulled.

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81 Since autumn 2010 ANI has issued 35 findings of administrative conflict of interest, compared to just two in the period between 2008 and spring 2010. Since autumn 2010 ANI has referred 18 cases of suspected unjustified assets to the Wealth Investigation Commissions, compared to just 6 referred to courts between 2008 and spring 2010.

82 As a result of the prescription periods introduced, 154 cases were closed. A further 217 cases have also so far been affected, with ANI no longer able to pursue alleged integrity violations during earlier mandates. Beneficiaries have included 41 Members of Parliament, 10 County Council Presidents and a significant number of Mayors, County Counsellors and Local Counsellors.

83 This could be the courts adjudicating upon whether assets are unjustified and ordering their confiscation, the courts cancelling contracts signed whilst an official was in a conflict of interest, prosecutors investigating alleged criminal offences, or disciplinary bodies applying disciplinary sanctions for incompatibilities or conflicts of interest.

84 In July 2009, the Commission recommended that Romania "ensure timely follow up by judicial and disciplinary bodies to cases submitted by ANI concerning unjustified wealth, incompatibilities and the conflict of interest". In July 2011 the Commission recommended that Romania "Demonstrate a track record in prompt and dissuasive sanctions taken by administrative and judicial authorities regarding incompatibilities, conflicts of interest and the confiscation of unjustified assets in follow up to the findings of the National Integrity Agency"

85 Two of these cases were cases ANI inherited from the previous mechanisms for pursuing unjustified wealth and therefore were already on trial at the point ANI was created.

86 In one further case the courts have definitively cancelled ANI's finding of administrative conflict of interest.

Prosecutors have issued just one indictment resulting from an ANI referral, whilst the tax authorities have issued just one additional tax demand as a result of an ANI referral.[87]

The track record on incompatibilities cases is more substantial. A significant number of incompatibility findings have become definitive – either through final judgments on appeals before the courts or because of the time period for appeal expiring – and whilst the total number of disciplinary sanctions remains rather limited, there have been a significant number of incompatible officials who have resigned, either before their file is referred to the disciplinary committee or before a disciplinary sanction is applied. In total definitive findings of incompatibility have been reached in 118 cases, resulting in 53 incompatible officials resigning of their own accord and disciplinary committees applying sanctions in a further 24 cases, including 8 dismissals.[88] However, the 24 sanctions applied also included six verbal or written warnings, whilst in a number of further cases disciplinary commissions either refused to take action or took no action before the disciplinary liability was prescribed or the mandate ended.[89]

In general, court proceedings remain lengthy for unjustified wealth cases, conflict of interest cases and even the relatively simple issue of incompatibilities. Some of the unjustified wealth cases now being finally determined by the courts were inherited by ANI and had actually first been referred to the judicial authorities in 2004 and 2005. All the unjustified wealth cases finally determined by the courts pre-date the new law. Other cases have been delayed by a number of retrials and procedural circuits as competence is debated between courts. Whilst trials of appeals to incompatibility findings are in some instances determined relatively promptly in first appeal, in other cases, often but not exclusively involving high profile parties, delays in obtaining hearings mean the trials take far longer. Significant delays are also routinely incurred pending first hearings in final appeals. As a result, the courts can take over two years to reach a final decision on an appeal to a simple case of incompatibility. This is problematic as it can mean that by the time the decision becomes final, the subject may already have served the rest of their mandate and no sanction can be applied. This could be addressed by streamlining the tiers of jurisdiction. Inconsistent jurisprudence also remains an issue between and sometimes within the same courts, indicating that there is not yet a settled interpretation in these domains, including on the elements of the violations or the degree of proof, whilst there have also been a number of controversial decisions raising considerable public comment.[90]

Celerity is also an issue in follow-up by the prosecution.[91] There remains an important need to strengthen co-operation between ANI and the prosecution, in particular the regular prosecution service. Although a protocol was signed with the

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87 In a further 32 cases prosecutors issued administrative fines where they concluded that the criminal act exists, but was not of sufficient social danger to warrant prosecution.

88 In 11 further cases ANI's findings of incompatibility were definitively quashed by the Courts.

89 In five cases the disciplinary committees refused to take action, whilst in 11 cases the disciplinary committees either took no action before the disciplinary liability was prescribed or before the mandate ended.

90 For example, Courts of Appeals judges at the same and different Courts of Appeal have reached conflicting verdicts on whether there is an incompatibility between the function of an MP and that of a University rector. Media attention has focused on judgments in a number of conflict of interest cases.

91 As of March 2012, just one of the 70 referrals made by ANI since autumn 2010 to the prosecution had led to a decision, and this was a decision not to open criminal investigations as the prescription period had been reached for the alleged criminal acts. Of the 138 cases referred by ANI to prosecutors since 2008 in which prosecutors had reached a decision on whether to pursue a prosecution or not, most cases took approximately one year. However, there have also been cases that have taken over two years, and there remain 101 cases pending a decision by the prosecutors.

Prosecutors' Office attached to the High Court of Cassation and Justice, this does not appear to have yet delivered results. ANI should be an important source of investigative leads for the prosecution leading to indictments, whilst ANI should itself receive a significant number of notifications from the prosecution services. It will be especially important that the regular prosecution adopt a proactive and rigorous approach in following up notifications of possible conflicts of interest. Follow up by disciplinary bodies to final rulings of integrity violations also remains inconsistent, with some sanctions dissuasive and prompt, whilst in other cases sanctions are delayed, lenient or not applied at all.[92] Concerns have in particular been raised at the efficiency and dissuasiveness of the sanctioning regime for holders of elected office, including for Parliament.[93]

The CVM report of July 2011 raised specific concerns that the wealth investigation commissions re-established by the 2010 law may delay cases, act as an unwarranted filter – especially given their proceedings are not public and there is uncertainty as to whether their decisions are appealable – and duplicate the role of the courts in ruling on both substance, procedure and to the same standard of proof as the trial court.[94] The report also raised concerns that no steps had been taken to ensure consistent practice across the 15 different commissions. The Commission therefore recommended Romania to "take measures to unify the practice of the Wealth Investigation Commissions and to ensure they handle the cases efficiently without prejudging the decision of the courts". Since last summer, steps have been taken to begin to address the first part of this recommendation, with a series of seminars held for members of the commissions in autumn last year, and a non-binding guideline is preparation. However, the other concerns remain.

Since their re-introduction in 2010, as of March 2012 nine cases have been decided by the commissions, with five sent to court and four dismissed, and a further seven pending. However, the deadline provided in law (three months for the commissions to reach a determination) is exceeded in the vast majority of cases.[95] Concerns that the commissions duplicate the courts have been confirmed.[96] In addition, it has not yet been established whether ANI can appeal their rulings, whilst concerns have been raised at the lenient practices of the commissions in certain cases. Given that the commissions are effectively functioning as a first instance chamber, but without the transparency of a court proceeding, and with one of the parties, the Agency, potentially denied the right of appeal, further changes would appear necessary. These commissions should explicitly constitute a pre-trial procedure and, if the current law is deemed not to provide such a possibility, ANI needs a right of appeal to their dismissal ordinances. Such changes would strengthen the efficiency of the proceedings and, by guaranteeing ANI a right of appeal, ensure the transparency and fairness of the process. The lack of clarity on the role of the Wealth Investigations Commissions makes difficult the task of the judges and prosecutors sitting in these

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92 Three quarters of disciplinary sanctions applied by disciplinary committees were applied within six months of either the finding of incompatibility becoming definitive or, if later, the disciplinary committee being notified by ANI. However, there are also three cases where it took over one year for a sanction to be applied and a further seven cases which have been pending over one year.

93 Parliament is yet to act upon definitive findings of incompatibility and conflict of interest against three of its Members.

94 This is a higher standard of proof that would not normally be required for a pre-trial phase.

95 Decisions are usually forthcoming in approximately six months.

96 The commission apply the Civil Procedure Code and administer evidence in line with the Code.

commissions, who already have to juggle this work with their regular magistrate tasks.

Experience of applying the existing law has also led to the identification of further weaknesses that undermine the efficiency and impact of the integrity system. These include significant questions as to:

- The efficiency of the legal framework and its application in pursuing unjustified wealth. Assets have on occasions been dissipated whilst the investigation and subsequent legal proceedings are under way, with preventive measures not currently provided by law at the point of initial verifications and subsequent preventive measures not being taken by the judicial authorities. This may mean that there are no assets to confiscate when a final ruling is reached.

- The efficiency and dissuasiveness of the sanctioning of conflicts of interest. At present, separate legal processes are required to adjudicate on any appeals lodged against a finding of conflict of interest, and then to enforce that decision and cancel any legal acts signed whilst an official was in a conflict of interest. This can add years to the legal proceedings before sanctions are applied. Recent court jurisprudence has also called into question the ability of the courts to cancel contracts in such circumstances. So far not a single contract has been cancelled or prejudice rectified in the case of a conflict of interest. This is a clear shortcoming in terms of the efficiency and dissuasiveness of mechanisms to pursue and sanction conflicts of interest.

The follow-up to ANI's findings or referrals therefore continues to raise questions as to its celerity, rigour and dissuasiveness, with a negative impact on the dissuasiveness of ANI's activity. Despite ANI's endeavours, the end results of the integrity system are therefore not yet convincing and the asset and interest verification procedure is not yet delivering the results and impacts expected. There are also systemic weaknesses which undermine the efficiency of current efforts. These weaknesses are known to the Romanian authorities and a working group established by the Agency and the Ministry of Justice has produced a series of legislative proposals. These include streamlining the degrees of jurisdiction, strengthening sanctions and addressing deficiencies in the legal provisions governing the Wealth Investigation Commissions and the handling of conflict of interest cases. However, these proposals have not yet been proposed in new legislation. This reflects persisting concerns over the stability, sustainability and political support for the Agency and its activities, in particular concerns as to the tendency of debate on ANI in Parliament to turn into a fundamental challenge to its functions and powers. These concerns have increased in the light of the events of recent weeks. The experience of the past five years suggests that improvements to integrity in public office requires not only ANI, but also other key actors in the executive, the legislature and the judiciary, to be committed to a comprehensive framework for addressing integrity.

4. BENCHMARK 3: BUILDING ON PROGRESS ALREADY MADE, CONTINUE TO CONDUCT PROFESSIONAL, NON-PARTISAN INVESTIGATIONS INTO ALLEGATIONS OF HIGH-LEVEL CORRUPTION

The second component of the combating of corruption monitored under the CVM is the pursuit of high-level corruption. At the point of accession, the quantity and quality of non-partisan investigations into allegations of high-level corruption was increasing and progress was continuing to be made in the fight against corruption, particularly in the form of indictments. However, it was noted that no final convictions had yet resulted from these cases and it was considered that further indictments, trials, final convictions and dissuasive sentences in high-level cases were needed to ensure sustainability and irreversibility of the recent progress. Concerns also remained as to the political commitment to ensuring the sustainability and irreversibility of the progress made.[97] The key objectives that Romania therefore needed to address with a view to fulfilment of this benchmark were to maintain the legal and institutional stability of the anti-corruption framework and to consolidate and further expand the track record of prosecuting high level corruption.

Legal and Institutional Framework

The stability of the legislative and institutional anti-corruption framework has been closely monitored under the CVM over the past five years. On the legislative side, there have been a number of proposals to change the criminal and criminal procedural law on aspects related to corruption. Some of these attempts to weaken the framework were successful – such as the decriminalisation of certain bank fraud offences. Others have not succeeded, including recent proposals in Parliament to take elected and appointed officials out of the scope of corruption offences and to effectively decriminalise conflict of interest.

On the institutional side, in 2007-2008, there were concerns about attempts to change the nomination and revocation procedures for the leadership of General Prosecutor's Office and the National Anti-Corruption Directorate (DNA).[98] So far these procedures have remained intact and the DNA leadership has remained in office, whilst the DNA's budget and staff has also remained stable.[99] However, in recent months there have been calls by some politicians to amend the nomination and revocation procedure, including references to institutional change floated by members of the new ruling coalition. Persistent doubts therefore remain as to whether there is a broad based political consensus in support of the anti-corruption framework.

Results achieved by DNA

Since 2007 DNA has continued to build a convincing track record of impartial investigations. It has taken forward cases against persons from all political parties. It

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97 Communication from the Commission, Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania, COM(2006) 549, pages 34 – 35. The report suggested that "all political actors need to demonstrate their commitment to a serious and effective fight against corruption and ensure that non one is perceived to be above the law…and to ensure stability in the legal and institutional anti-corruption framework".

98 Supporting Document to the Commission's Report of 22 July 2009, SEC(2009) 1073

99 The annual budget was maintained in the range of €15 to 17 m. Also, the level of staff occupancy was constantly around 90% of the total posts covered by the organisational chart (including prosecutors, judicial police, specialists, clerks and administrative staff).

handles some 2,000 files on average per year and sends to courts roughly 200 cases per year.[100] DNA has shown a high degree of proactiveness in its actions, illustrated by the steady rise in the number of DNA investigations opened ex officio.[101] The average time from pressing charges to indictment is 9-10 months, with roughly 60% of the investigations taking less than 6 months.[102]

Over the past five years, DNA has established good *cooperation with other institutions*, notably with the Directorate for Investigation of Organised Crime and Terrorism within the General Prosecutor's Office (DIICOT), the General Anti-Corruption Directorate (GAD) within the Ministry of Administration and Interior and the public prosecutors' offices countrywide. Overall, there has been a substantial increase in the number of notifications received by DNA over the past five years.[103] Most notifications have been submitted by the local prosecutors' offices (60-67%), GAD (15-20%), followed by DIICOT, the General Prosecutor's Office, the Financial Guard, the police units and inspectorates, the National Agency for Fiscal Administration and the National Office for Prevention and Fight against Money Laundering and Financing of Terrorism. However, notifications from other important institutions in this field, such as the National Authority for Regulating and Monitoring Public Procurement (ANRMAP) and the Customs Authority, have been few. There have also been few notifications from other internal control services of public institutions.

In total, as a result of their investigations, DNA can demonstrate significant results. Between 2008 and 2011 DNA sent to trial cases with a total estimated damage of approximately €1.13 billion. In the last five years DNA has indicted a considerable number of current or former high-level officials, including 14 MPs, 9 ministers (including a former Prime Minister), 11 officials with rank of state secretary or under state secretary, 104 mayors and deputy mayors, 6 presidents and vice-presidents of county councils, 9 prefects and under-prefects, and 18 directors and general directors of state owed companies. DNA has also robustly pursued corruption within the judiciary, indicting 40 magistrates, including pursuing a number of important cases against senior judges.[104]

However, these successes have not been achieved without difficulties. The independence of the magistracy has been challenged on numerous occasions by comments by politicians on particular cases. This has included a number of calls to dismiss senior DNA prosecutors, protests against the arrest of senior politicians,

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100 The number of cases solved annually by DNA progressively increased over the past five years from 1,506 in 2007 to 2,014 in 2008 and 2,270 in 2011. There has also been a constant year-on-year increase in the number of indictments, from 167 cases against 415 defendants in 2007 to 220 against 937 defendants in 2010 and 233 against 1,091 defendants in 2011. The significant proportion of cases which do not lead to indictment (roughly 90% of the registered cases) can be seen as a reflection of the criminal procedure, and the fact that prosecutors are currently obliged to register and deal with all complaints, irrespective of whether there exist solid grounds for investigation.

101 From 45 investigations opened ex officio in 2007 to 88 in 2010 and 120 in 2011.

102 This has proven to be a rather stable trend over the past five years. A small increase in the number of investigations taking over 18 months (from 6.5% in 2007 to 16.3% in 2011) is considered to reflect the rise in the overall number of cases handled and the increasing complexity of the files.

103 An 80% increase between 2007 and 2011.

104 These have included indictments of a number of High Court judges, including the former President of the Civil Section who was indicted in May 2010 and was convicted in first instance on 1 June this year. Investigations are also underway into alleged criminal acts by the former Presidents of the Administrative and Criminal Sections.

apparent requests to undertake disciplinary investigations into judges who have tried high-level corruption cases, and attempts to influence the conduct of cases in court. Concerns regarding political challenges of judicial independence have increased in the light of the events of recent weeks (see main report). A recent criminal case has been opened following evidence of an attempt to unduly influence the position of a state body in an emblematic case. The state body had made a civil claim as an important part of the case but, following a change in the institution's leadership and their hierarchical subordination by the new Government, surprisingly withdrew the claim. The public controversy which resulted led to the dismissal of the institution's leadership and the reinstatement of the civil claim but the chain of events raised many questions.[105]

The dissuasiveness of judicial decisions against corruption

CVM reports have consistently pointed to the importance of effective prosecution and dissuasive sanctions in addressing the problem of high level corruption. Over the past five years, there has been a substantial increase in the number of both final and non-final convictions in corruption cases investigated by the DNA.[106] In particular, a major increase in the number of court decisions could be noted in 2011 following a number of legislative and administrative measures taken to accelerate court proceedings. Just 13% of the total number of cases decided upon by the courts have ended in acquittals, some of these acquittals resulting from the decriminalisation of certain offences.[107] Expert opinion consulted by the Commission has concluded that this illustrated a professional and robust approach by the DNA.

Among the defendants convicted for corruption offences through final court decisions between 2006-2011 were a number of influential defendants, including four current or former MPs, one former State Secretary, 12 mayors and deputy mayors, one under-prefect, 24 magistrates and 20 directors of national companies and public institutions. An increase in the number of high-level officials convicted for corruption can be noted in particular from 2010. However, until 2011, virtually no decisions were reached in cases involving the more politically influential defendants.

The dissuasiveness of sanctions applied has also been a recurrent concern over the five years. This remains an issue of concern. Despite some small improvements, with an increase in penalties of over five years imprisonment, statistics for the last four years show that approximately 60% of the imprisonment sentences set penalties at the minimum level or below.[108] The percentage of penalties imposed at or below the

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105 Criminal investigations were started for favouring an offender.

106 Final decisions reached in 63 DNA cases against 109 defendants in 2007 as compared to 85 cases against 154 defendants in 2010 and 158 cases against 298 defendants in 2011. So far in the first six months of 2012 alone, 451 defendants have been convicted by final decision. The increase is even more striking when it comes to non-final convictions: from 66 cases decided upon against 119 defendants in 2007 to 127 against 786 defendants in 2010 and 181 against 879 defendants in 2011.

107 The number of acquittals totalled 23 final acquittals involving 54 defendants in 2007, as compared to 24 final acquittals involving 41 defendants in 2010 and 24 final acquittals involving 62 defendants in 2011. As regard non-final acquittal decisions: these ranged from 31 cases involving 80 defendants in 2007 to 24 cases and 60 defendants in 2010 and 52 cases and 150 defendants in 2011. The increase in the absolute number of non-final acquittal decisions in 2011 has to be matched with the overall increase of court decisions rendered in 2011.

108 Penalties over five years' imprisonment rose from around 1% of the penalties imposed in 2008 to over 7% in 2011.

minimum level provided by law was actually higher in 2011 than 2008 and if this trend were continued, reduced penalties for corruption in the new Criminal Code would reduce dissuasiveness still further.[109] Similarly, despite a fall in the percentage of suspended sentences since 2008, over 60% of sentences for high level corruption cases are still suspended.[110] In 2011, all three of the current or former MPs convicted by final decision received suspended sentences. In the current legal framework, suspension of the execution of penalties applies to all penalties, not only to prison sentences. If judges decide on a suspended prison sentence they cannot, for example, apply a sentence affecting the right to run for public office. This means two of these MPs, despite final convictions for corruption, remain sitting Members of Parliament.[111] A further current Member of Parliament, who was convicted of corruption by final decision this year, also remains a sitting Member of Parliament by virtue of having received a suspended sentence.

Nevertheless, in a sign of potential change, since summer 2011 there has been an acceleration in the number of decisions against high ranking defendants, including the first final decisions against the more politically influential defendants, and the first prison sentences for high ranking defendents. In 2012, the courts convicted and sent to prison one former Minister and two current Members of Parliament, one of whom is a former Prime Minister. These defendants became the first former Ministers and current Members of Parliament to be sent to prison for corruption.[112] In July 2012 a former State Secretary was sentenced to five years in prison for abuse of office – a case which also showed the HCCJ making a critical examination of decisions by lower courts.[113]

Efforts to promote consistent, proportionate and dissuasive penalties have also been taken. A compilation of court decisions relevant to penalties in corruption cases issued by High Court of Cassation and Justice (HCCJ) and the courts of appeal was published on the HCCJ website in 2010 and has twice been updated. In 2011, the HCCJ issued two studies accompanied by guidelines on individualisation of penalties for certain corruption offences. The guidelines covered passive bribery, active and passive trading in influence. Guidelines on aggravating and mitigating circumstances on a wider range of crimes were also published by the HCCJ in 2011. These recommendations and guidelines were well received by practitioners, with requests to extend this action to cover all corruption offences.

Dissuasiveness of judicial action also relies on the effective pursuit, seizure and confiscation of criminal assets. During 2008-2011, DNA estimated damages of €1.13 billion in cases that reached the courts. The prosecutors seized during the reference period assets worth €532 million. In 2011, DNA issued seizure orders for assets

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109 In 2008, 58% of the penalties imposed were at or under the minimum level provided by the law. In 2010, 57% of the penalties imposed were at or under the minimum level provided by the law, whilst in 2011 64% of the penalties imposed were at or under the minimum provided by the law.

110 Only around a quarter of sentences given in 2007-09 were served in prison, while this rose to 40% of the penalties in 2010-2011.

111 This issue will be solved through the entry into force of the new criminal code but this will apply only to future cases.

112 In March 2012 one then current Member of Parliament received a 5 year prison sentence. In May 2012 one former Minister received a seven year prison sentence. In June 2012 one Member of Parliament, a former Prime Minister, received a two year prison sentence.

113 The lower court had restricted the offences concerned in this case, with the effect that the prescription period was reached for some aspects of the case, but the HCCJ restored the original scope.

worth €212 million and effectively seized €167 million. In the same year, the courts ordered convicted defendants to pay €33.3 million in damages to public authorities and state owned companies. €14.7 million was voluntarily returned by defendants during investigations or trials, whilst a further €1.9 million have been returned to the bribe givers who denounced the bribery act.[114] However aside from these compensations to civil parties, in corruption case the courts ordered the confiscation of just €320,000. Furthermore, no information is available on the amounts actually recovered by the fiscal authorities. Overall, the track record on asset recovery in the courts appears to fall short of expectations. Third-party confiscation remains problematic and with no common vision of practitioners of how to deal with it. The Constitutional provision according to which the licit origin of property is presumed further contributes to a non-unitary practice and cautious approach towards other forms of confiscation. Whilst ANI can assist, and has assisted DNA to pursue unjustified wealth of public officials, ANI cannot follow assets transferred to third parties, nor independently freeze assets.

A new law on extended confiscation was passed by Parliament in 2012. This law could add to the dissuasiveness of penalties and may contribute to a change in mentality. It could also lead to more pro-activeness of law enforcement and judiciary in carrying out financial investigations and adjudicating on asset recovery.

Parliamentary immunities

Although parliamentarians do not enjoy full immunity, parliamentary approval is required to approve the opening of criminal investigations into parliamentarians who are Ministers, as well as to authorise the arrest or search of any parliamentarian. Over the past five years, there were no improvements in the framework regarding immunities, whilst the immunities offered to existing Ministers were extended to former Ministers by the Constitutional Court.

Since 2007, DNA, through the General Prosecutor, filed 8 requests to the Parliament for lifting immunity from investigation of MPsand 5 to the Romanian President with regard to the investigation of Ministers and former Ministers who are not MPs. [115] The Parliament approved 5 of these 8 requests, dismissed two and a decision is pending on one request, while the President approved all the requests. In another case regarding an MP (and former minister), the extension of the criminal investigation to other offences was dismissed by the Parliament. As far as search is concerned, the Parliament rejected a request against an MP (and former minister). Since 2007, there were three requests for preventive arrest of MPs: in one case the request was dismissed and in two other cases admitted.[116] The refusal to allow the opening of criminal investigations establishes a de facto immunity, whilst refusal to allow the

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114 According to the Romanian criminal legislation, the perpetrators of active bribery and trading of influence are automatically granted impunity in case of effective regret and they can recover the bribe given. GRECO, in its third round evaluation of incriminations of corruption, recommended for such provisions to be abolished: see para 112 and recommendations of GRECO report, p. 38-40: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)1_Romania_One_EN.pdf

115 The MPs were ministers or former ministers.

116 The MPs for whom preventive arrest was requested belonged to different chambers of Parliament: two to the Chamber of Deputies and one to the Senate. The most recent case was in 2012, when the Chamber of Deputies approved within 24 hours the preventive arrest of an MP investigated for organised crime.

arrest or search of parliamentarians can make it very difficult for investigations to proceed in a normal way.

The length of time taken by Parliament to reach decisions to lift immunities has been extremely variable,[117] and the fact that there is no requirement for Parliament to motivate its decisions means that the consistency of decision making cannot be established. In one case, Parliament approved the opening of an investigation, but did not approve search. In 2011, the Commission recommended that clear procedural rules should be put in place for Parliament's decisions to lift immunity.[118] The new National Anti-Corruption Strategy includes measures pointing to the reform of the immunities regime. It could also stimulate change concerning the approach of Parliament towards parliamentarians with convictions for serious offences: Currently, there are three MPs with final convictions for corruption offences who are still active in Parliament.

The pursuit of corruption in the courts

Over the first four years of the CVM monitoring, the energy with which DNA pursued corruption cases was in stark contrast to the follow-up of the high-level corruption cases in the courts.[119] By 2009, there had been no first instance decision in the corruption files of highest public interest. As an example, a case against a former Deputy Prime Minister indicted in mid-2006 has seen a series of procedural steps to little effect. It was returned to DNA to complete the investigation, sent to the Constitutional Court for two unconstitutionality challenges and afterwards from HCCJ to the first instance court and then to tribunal level for jurisdictional reasons. It took three years before the indictment was even read in court[120]. By the third quarter of 2011, only procedural aspects had been touched upon in the case.

The increase in court decisions from 2011, notably in first instance, followed a number of legislative, administrative and operational measures. Certain legal obstacles were removed, such as the abusive recourse to unconstitutionality exceptions in order to delay court proceedings. Over time, almost all important high-level corruption cases were suspended for unconstitutionality claims; for some, the suspension lasted over one year. The frequent recourse to these options in corruption trials made the improvements introduced by amendments to the Law on the Constitutional Court in 2010, as well as other amendments introduced by the Small Reform Law the same year, of particular importance. The Small Reform Law introduced measures which accelerated court proceedings, including improved summoning rules, new provisions on sanctioning the abuse of procedural rights by

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117 In a recent case, the General Prosecutor requested Parliament to allow criminal investigation of a Minister on 4 April 2012. Although the Minister resigned the next day, the request for investigation is still pending Parliamentary decision. In contrast, another recent case, concerning an arrest request, saw a reaction from Parliament within 24 hours.

118 CVM report July 2011, SEC(2011) 968, page 9

119 Report on Romania's progress on accompanying measures following accession, June 2007, COM(2007) 378 final, page 15; CVM Report July 2008, COM(2008) 494 final, pages 4 and 6; CVM Report July 2009, COM(2009) 401 final, page 8; CVM Report July 2010, COM(2010) 401 final, pages 3 and 6.

120 See the Supporting Document to the Commission's Report of 22 July 2009, SEC(2009) 1073, page 11, footnote 19; and the Supporting Document to the Commission's Report of 20 July 2010,, SEC(2010) 949, page 13, footnote 19.

the parties, elimination of the suspension of the criminal trial for illegality challenges, and the possibility to plead guilty.[121]

Nevertheless, in mid-2011, there were still serious concerns as to the overall duration of court proceedings: by that stage, whilst 70% of DNA trials were finally determined in less than 3 years of court proceedings, in the remaining 30% of cases, many of which involved high level defendants, few had reached a first instance court decision in that time, let alone a final decision. A disproportionate number of these cases concerned high level officials.[122] The Commission report of July 2011 raised concerns as to the capacity of the judiciary to deal with complex and high profile cases and called for urgent measures to be taken to improve trial management and judicial practice, and to allocate sufficient resources.[123]

In line with the Commission's recommendations of July 2012, in the last twelve months the High Court of Cassation and Justice (HCCJ) has taken a series of steps seeking to improve the celerity of high level corruption trials. The HCCJ plays a particularly important role, both as the responsible court for many key cases, and in terms of an example to the court system as a whole. Since summer 2011, building upon their own analysis undertaken in 2010-2011 and the Commission's assessment, the HCCJ implemented a number of managerial and administrative measures to ensure a more effective use of courtrooms, as well as arranging to use spare rooms from other courts. New premises were allocated to HCCJ in November 2011 and should be ready for use in the coming months.

The HCCJ visibly accelerated the hearings in a number of high-profile cases, setting a weekly hearings in some instances, strengthening judicial practice and sometimes challenging apparent delaying tactics such as the absence of defence lawyers in court. The result was a significant increase in the number of both first instance and final verdicts.[124] There was a particular effort to focus on cases where the prescription term was approaching (see below). These improvements in management and practice need to be continued and expanded. Even today, there are still cases where the duration of proceedings remains excessive.

The improvements made by the HCCJ over the last year have shown that the courts have discretion to take a more robust approach to ensuring that the course of justice is not unjustifiably delayed. For example, the HCCJ leadership asked for additional budget from the Ministry of Justice in order to secure payment of expertise from the

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121 In 2011, for 35 of the 36 defendants who pleaded guilty, the court proceedings lasted a maximum of 1.5 years.

122 By mid-2011, of 37 cases against current or former Members of the Parliament or Government which reached the court between 2005 and 2010, 10 reached first instance decisions and 4 a final decision. In the case of a former Minister indicted in 2003, the first instance decision was reached in 2011.

123 See the Supporting Document to the Commission's report of 20 July 2011, SEC(2011) 968,, pages 13 – 15. Specific problems identified included: organisational issues; an excessive leniency in admitting postponement requests from the defence; a passive approach to the admission of evidence, including to determining at court level whether all proposed witnesses need to be heard or whether additional expertises are required; and the handling of procedural irregularities.

124 By mid-2012, of 37 cases against current or former Members of the Parliament or Government which reached the court between 2005 and 2010, 14 reached first instance decisions and 9 a final decision. Between 5 September 2011 and 30 March 2012, HCCJ held 295 hearings in high-level corruption cases tried in first instance. Comparative data show a clear progress in the number of decisions taken in first instance by the Criminal Section of HCCJ: i.e. from 2 first instance decision in high-level corruption cases in 2009 and 2 in 2010 to 12 in 2011 and 7 only in the first quarter of 2012.

budget of the courts, avoiding the risk that experts would rely on the defence for payment.[125] Also, some HCCJ judges applied new solutions to avoid the risk that expertises would bring unnecessary delays.[126] Training sessions on the use of special investigation measures were held to help judges deal more swiftly with the challenges of the defence regarding the use of such evidence. The new criminal procedure code will give more discretion to judges in dealing with potential abuses of procedural rights. This will be an important opportunity to address the perception that the courts are too ready to allow the course of justice to be delayed.

A particular problem identified in relation to the celerity of court proceedings, with particular implications for corruption cases, is related to the *statute of limitations*. In July 2011, the Commission report mentioned that in three cases sent to court in 2006-2007, full or partial prescription had been reached and also warned about the risk of impending statute of limitation in a number of other high-level corruption cases. Since then, the HCCJ issued its interpretative ruling to exclude from the time period used to calculate the prescription date, time periods during which a trial was suspended pending the ruling of the Constitutional Court on an exception of unconstitutionality. This led to an extension of the prescription periods in a number of cases. By focusing the acceleration of hearings on cases approaching prescription, the HCCJ was able to reach a number of first instance rulings and some final rulings in key high-level corruption cases.[127]

In the new Criminal Code, the level of penalties for certain corruption offences is lower than in the current Criminal Code: because of the way in which prescription is calculated, this will consequently lead to shorter prescription periods. Due to the principle that the most favourable law applies, there might be a risk that some ongoing cases not yet finalised on entry into force of the new criminal code may become statute-barred. An analysis of 26 ongoing high-level corruption cases showed that with the entry into force of the new criminal code, in 10 of these cases, the statute of limitations will decrease by roughly 20%, reducing some prescription terms to 2013-2014 rather than 2016-2017 as it is the case now. In one case against a former Deputy Prime Minister which, according to the current legal provisions, has a prescription period of 22.5 years, the entry into force of the new criminal code would lead to a drastic reduction of the prescription term to 7.5 years and consequently to the dismissal of the file.[128]

A new calculation method of the prescription period was introduced through amendments to the existing Criminal Code adopted in 2012 with a view to offsetting this effect. Also, some further increase of penalties is reportedly being considered through the implementing law of the new Criminal Code. However, there are different views among practitioners as to the application of the most favourable law principle when both determining the penalty and calculating the prescription.[129] It

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125 Following the request of the HCCJ, in a Government Decision issued on 11 April 2012 the HCCJ received a supplementary budget of approximately 100-120,000 Euros.

126 For example, hearing the prosecution's experts under oath or using confrontation in court so as to avoid the ordering of unnecessary additional expertise which would have further delayed the proceedings.

127 These rulings included a final decision against a former Prime Minister and a final decision against another former Minister. A further case against the former Prime Minister remains threatened by prescription, which is due to be reached next year.

128 According to the new Criminal Code, prescription in this case would have been reached in 2011.

129 Some magistrates and practitioners, including the Ministry of Justice, consider that the most favourable law principle should be applied in two separate steps to both the determination of the penalty and the

would be important to have clarity on this issue before the entry into force of the criminal code, to ensure unitary practice and to allow measures to be taken to prevent ongoing criminal files reaching prescription.

Experts consulted by the Commission have also noted a more fundamental issue. The way in which prescription works in Romania, with no interruption of prescription on indictment (or even on first instance verdict) as is the case in many other legal systems, opens up the opportunity to use delays in court to escape justice. A study carried out by Transparency International in 2010 on the statute of limitations and prosecution of corruption in the EU underlined that even though the limitation periods seem to be sufficient, the procedures stipulated by law create diverse possibilities for offenders to avoid prosecution.[130] The study recommends that the Romanian statute-barred regime extends and better defines the grounds for interruption and suspension of statute of limitations. When identifying recurrent weaknesses in the statutes of limitations regimes in the EU, the study notes the risk of including the appeal stage in the calculation. The study points to a number of options which might contribute to a debate in Romania on how to reform prescription.[131]

One of the areas where weaknesses persist in the judicial practice in courts and where not much progress has been made in the last five years regards *corruption in public procurement*. In 2010 and 2011, DNA handled 54 cases of public procurement.[132] In these cases, 24 indictments were issued[133]. By mid-2011, of the 43 DNA cases on public procurement sent to courts between 2006 and 2010, final decisions had been reached in only two cases. Since July 2011, five convictions were issued in first instance against 13 defendants in public procurement cases. Training sessions for magistrates focused on public procurement cases were held, notably in the last couple of years.

Ombudsman

The Ombudsman plays an important role in the fight against corruption in Romania. This post is empowered to conduct investigations concerning alleged illegal acts of the administration. It is an independent body, which can act on the basis of an appeal by any person or on its own initiative. The Ombudsman is also entitled under Article 26(2) of Law 35/1997 to report to the parliament or to the prime-minister on "*grave cases of corruption*" he finds in the course of his investigations.

The Ombudsman is also the only institution that can challenge directly an Emergency Ordinance in front of the Constitutional Court. On 3 July 2012, Parliament took a decision to terminate the mandate of the Ombudsman. This raised

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calculation of the prescription, whilst others consider only one Code, be it the old Code or the new Code, is applied depending on which cumulatively is the more favourable law. A further interpretation is that the rules for the calculation of the prescription should be those in force irrespective of which would be the most favourable penalty regime.

130 '*Timed out, statutes of limitations and prosecuting corruption in EU countries'*, Transparency International, November 2010. http://transparency.ie/sites/default/files/Statutes%20of%20Limitation_web.pdf

131 For example, flexibility regarding the start of statute of limitations, very long or elimination of absolute statute of limitations, prioritising cases close to statute of limitations, suspension or interruption of statute of limitations when a defendant commits another crime, availability of data and statistics.

132 32 cases in 2010 and 22 in 2011.

133 15 in 2010 and 9 in 2011.

issues about the ability of the Ombudsman to perform its important functions without political interference.

5. BENCHMARK 4: TAKE FURTHER MEASURES TO PREVENT AND FIGHT AGAINST CORRUPTION, IN PARTICULAR WITHIN THE LOCAL GOVERNMENT

The final element of the anti-corruption efforts monitored under the CVM is corruption prevention and measures to tackle corruption in the public sector. The key objective that Romania needed to address with a view to fulfilment of this benchmark was to establish an effective strategic, proactive and preventive approach to reducing corruption, to minimise the risk of corruption occurring and to detect irregularities when they happen. This Benchmark also provided for the follow up of horizontal corruption-prone sectors, such as public procurement, as well as the law enforcement response.

Corruption perception and indices

Most recent perception surveys, such as the Eurobarometer on attitudes of Europeans towards corruption published in February 2012, show that the confidence of Romanian citizens in the effectiveness of anti-corruption measures by the Romanian authorities is very low. From 2007 to 2011, a clear majority of Romanians participating in the Eurobarometer surveys considered that corruption is a major problem in their country (from 93% to 96%).[134] In addition, 67% of the Romanians considered that corruption increased in the last three years in their country. Institutions perceived by the public as suffering high levels of corruption include customs, police, the judiciary, and politicians at national and local level. Healthcare is also considered vulnerable to corruption.

In terms of international indices, Romania's rating for corruption in the Freedom House Nations in Transit ratingshas shown no visible progress over the past five years[135]. The latest report published in 2012 concludes that there has been a rather slow development across the board. The Global Competitiveness Report 2011-2012 of the World Economic Forum identifies corruption as the fifth biggest obstacle to doing business in Romania.[136]

National anti-corruption strategies

From 2005 until 2011, the anti-corruption efforts of the Romanian authorities were guided by two strategies: from 2005-2007, a strategy coordinated by the Ministry of Justice and, from 2008-2010, a strategy coordinated by the Ministry of Administration and Interior, which was extended up to 2011 to allow a new strategy to be finalised. In 2010, acting upon a recommendation by the Commission, Romania commissioned an independent study to assess the impact of these two anti-corruption

134 http://ec.europa.eu/public_opinion/archives/ebs/ebs_291_en.pdf; http://ec.europa.eu/public_opinion/archives/ebs/ebs_325_en.pdf; http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf

135 http://www.freedomhouse.org/report/nations-transit/2012/romania . Between 2007 and 2012 corruption scored 4 from a scale from 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest.

136 http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf .

strategies, which would serve as a basis to draft a new strategy.[137] The study concluded that whilst these strategies had been implemented to a large extent, their impact was significantly less noticeable. The study identified shortcomings including the absence of indicators to measure practical impact, a top-down approach in the drafting and implementation of the strategies, the lack of ownership of the main players and the insufficient involvement of the legislative and judicial branches. The study recommended that a new strategy should take a multidisciplinary approach, involving all three branches of the state and civil society. It also recommended to strengthen the focus on prevention and risk assessment, as well as to ensure stronger coordination at the highest political level and better monitoring.

The new National Anti-Corruption Strategy was adopted by the Government in March this year, re-endorsed by the new Government in May without change and further endorsed by the Parliament in a declaration adopted by the Parliament in June. The new strategy drew on a wide consultation process involving civil society, as well as the recommendations of the independent assessment of the previous strategies. The new strategy revolves around four general objectives: preventive measures, anti-corruption education (including awareness raising), administrative and criminal measures, well as monitoring.[138] Sectorial plans are to be adopted at all levels of all public institutions within three months from the adoption of the strategy. Public institutions are also required to identify vulnerabilities and associated risks.

The strategy will be monitored by the Commission for monitoring the progress in the field of judicial reform and fight against corruption, which involves most relevant stakeholders. Co-ordination meetings will be organised every six months, with overall implementation co-ordinated by the Minister of Justice. Five co-ordination platforms have been established, representing the main categories of stakeholders (independent authorities, central public administration, local public administration, business and civil society). A number of monitoring tools are provided for, ranging from self-assessment mechanisms to thematic assessment missions. Despite possible gaps identified, including the absence of budgets devoted to the different measures, a number of imprecise deadlines, and a lack of clarity over impact indicators, the strategy represents a comprehensive framework with dedicated monitoring, in line with the Commission recommendation of July 2011. If now effectively implemented and the potential gaps addressed, it provides a substantial framework for strengthening Romania's anti-corruption efforts.

Anti-corruption measures in public administration and by civil society

The General Anti-Corruption Directorate (GAD) within the Ministry of Administration and Interior is one of the pioneers of anti-corruption measures applied at regional and local level. Established in 2005, GAD is unique in being competent to apply both preventive and, as judicial police, repressive measures against corruption within the police, as well as other structures within the Ministry of Administration and Interior (MoI).

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137 The Commission's report of 20 July 2010, COM(2010) 401 final, recommended that Romania "strengthen the general anti-corruption policy…on the basis of an independent impact evaluation of the results of the last two anti-corruption strategies implemented since 2005".

138 Measures covered include increased transparency, integrity of the judiciary (under the remit of the SCM), transparency of financing of political parties and electoral campaigns, integrity of MPs, public procurement, integrity of business environment, and local public administration.

Over the last five years, GAD can demonstrate increasing results in the identification and pursuit of corruption within the MoI, with an expanding number of prosecutors' investigations and indictments resulting from their notifications. Between 2007 and 2011, GAD submitted 1,047 notifications to the DNA. This represents approximately 20% of the overall notifications received by DNA from law enforcement, prosecutors' offices and public institutions.[139] As a result of GAD notifications, DNA have issued indictments in 222 cases, whilst GAD also submitted 6,388 files to the public prosecutors' offices (other than DNA), leading to 836 indictments.[140] In the courts GAD investigations have led to 538 final decisions against 717 defendants.[141]

In recent years GAD can also demonstrate an exponential increase in the number of *ex officio* actions, indicating a proactive approach.[142] They have also shown proactiveness in their willingness to look beyond their immediate responsibilities for police and MoI staff, and accept frequent delegations from prosecutors to undertake investigative tasks in other fields, given their expertise, equipment and use of special investigative measures.

GAD can also demonstrate several important large scale investigations undertaken in co-operation with the DNA, including a large-scale operation targeting border crossing points, linked in particular to cigarette smuggling. Over 230 border police and customs officers from six border crossing points were prosecuted for bribe taking and participation in an organised crime group. A recent research study commissioned by FRONTEX on anti-corruption measures in EU border control has estimated that the border guards in this dismantled network made roughly €500 per day from bribes.[143] The bribes taken were shared with fellow officers who were not in the shift, and with their superiors.[144] This case followed earlier, sizeable investigations into corruption in the issuing of driving licenses and has been followed by further smaller-scale smuggling cases, investigated in co-operation with DIICOT, indicating significant corruption networks targeted. However, there remains important further scope to expand GAD's track record in pursuing other areas of serious and complex corruption within the Ministry including cases involving high level officials and corrupt links between police and organised crime, where there are currently few reported investigations.

Aside from their corruption investigations, GAD has also been at the forefront of developing preventive activities. For the past five years, GAD has monitored the MoI

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139 The number of notifications submitted by GAD has constantly increased over the last five years, ranging from 180 in 2007 to 241 in 2011.

140 Approximately 70% of indictments issued for corruption by the regular prosecution result from notifications submitted by the DGA, compared to just 20% from the Fraud Investigation Service of the Romanian Police.

141 The Directorate also carried out an analysis of the level of sanctions applied which showed that 649 defendants were sentenced to prison (155 with execution and 494 with suspension), 7 were ordered to pay a criminal fine, 45 were acquitted and in 7 cases the court proceedings were terminated.

142 Of the overall 8,358 files submitted by GAD to DNA and other prosecutor's offices, 2,835 were based on ex officio actions, 1,354 based on other notices (notably intelligence services) and 4,169 from citizens' complaints. The number of ex officio actions increased from 391 in 2007 to 686 in 2010 and 811 in 2011.

143 'Study on anti-corruption measures in EU border control', Centre for the Study of Democracy, March 2012. The full text of the study can be found at the following webpage: http://www.frontex.europa.eu/assets/Publications/Research/Study_on_anticorruption_measures_in_EU_border_control.pdf .

144 Estimates suggest that the head of the border crossing point benefited to the tune of €10,000 per month.

activity in the field of prevention through a number of performance indicators ranging from the reporting of corruption to awareness raising, training activities and cooperation with NGOs. Starting in 2009, GAD introduced a clear-cut risk assessment system to identify vulnerable areas where priority actions are needed. The risk assessment methodology has been implemented within all MoI structures.[145] GAD has also carried out a number of broader activities, including research studies looking at issues like patterns of corruption in specific areas and the links between corruption and organised crime. It has also run several successful awareness campaigns and promoted more user-friendly channels for the reporting of corruption. A reporting hotline (TELVERDE) is fully operational and has proven its effectiveness through an increasing number of reports received and criminal files initiated as a result.[146] Plans have been developed to establish a public sector wide anti-corruption hotline, but this has not yet become operational.

Aside from the MoI, activities by other institutions have been less substantial. The *National Customs Authority* and the *National Agency for Fiscal Administration* (NAFA*)* have implemented a number of preventive measures, notably focused on use of e-government tools to reduce the risk of corrupt behaviour. However, the Customs Authority in particular has a less proactive attitude when it comes to detection of corruption cases, which are seen entirely under the remit of other authorities. Between 2007 and 2011, only 15 notifications were submitted by the National Customs Authority to DNA. Within the same reference period, NAFA submitted 132 notifications to DNA, with a substantial increase in 2010-11.[147] NAFA requested the Court of Accounts to conduct an audit targeting vulnerabilities to corruption. Between 2007 and 2011, 38 disciplinary sanctions were applied to NAFA staff, with 15 reprimands and only one dismissal. Given the high level of risks related to corruption and other irregularities in the tax administration sector, expert advice has identified this figure as low.

Specific risk areas prone to corruption identified by the Ministry of Finance concern tax-related matters and the issuance of documents (i.e. licensing/authorisations). The aim for the future is to limit as much as possible the direct contact between the taxpayers and tax officials. A significant step was taken in this regard, by allowing the submission of tax declarations online.

The Ministry of Finance has recently finalised an internal risk assessment analysis. Internal control bodies are functioning within NAFA, the Financial Guard and the Customs Authority, conducting hierarchical checks on the reports and the activity of the officials. This has had to be taken forward at a time of substantial reorganisation for NAFA, Financial Guard and Customs, with a considerable reduction of staff[148]. In July 2012, NAFA set up an integrity directorate tasked with the prevention and fight against corruption within the Agency. The detailed responsibilities of the new directorate are still to be determined.

The *Fraud Investigation Service within the Romanian Police* focused in recent years on number of vulnerable/risk areas (e.g. public procurement, healthcare sector,

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145 The risk areas identified following this assessment were: traffic police, border police, structures of directorate for driving license and vehicle registration, public order police and public procurement.

146 During 2007-2011, 209 criminal files were initiated based on the reports registered through this line.

147 There were38 notifications from NAFA to DNA in 2010 and 73 in 2011, as compared to only 2 in 2007, 10 in 2008 and 9 in 2009.

148 In the last two years approximately 4,000 posts were cut.

education). This approach has not however been followed as a systematic, nationwide approach. Between 2007 and 2011, the Fraud Investigation Services notified 9,205 criminal files regarding corruption offences to the prosecutors' offices (including DNA). Surprisingly, the number of ex officio actions dramatically decreased from 100% in 2007, 85% in 2008 and 95% in 2009, to 50% in 2010 and 28% in 2011. Financial investigations remain a weakness and access to databases across the country is still problematic, although some efforts are being taken in this regard (e.g. setting up of a national centralised database of immovable property).

Over the last five years, a series of measures have been taken by the General Prosecutor's Office to intensify the fight against petty and medium level corruption by the regular *prosecutors' offices* countrywide. In 2008, the Public Ministry carried out an assessment of the indictments issued in corruption cases and concluded that at the time prosecutors had a more reactive rather than proactive approach in the prosecution of these cases. Consequently, the Prosecutor General issued an order through which a network of prosecutors specialised on corruption cases was set up nationwide. The Prosecutor General also required county prosecutors' offices to develop their own anti-corruption strategies, based on risk assessments and in line with the intelligence-led policing model. The General Prosecutor's Office monitors the implementation of the local anti-corruption strategies. Moreover, new evaluation criteria for prosecutors were adopted. Some changes have resulted in the prosecutors' approach, delivering operational improvements, reflected by a significant increase in the number of investigations and indictments by the regular prosecutors' offices.[149] The General Prosecutor's Office also reports an increase in the complexity of cases handled. Nevertheless, these measures and their effective implementation remain in their infancy. The introduction of similar approaches (i.e. prioritising corruption cases, setting up police networks specialised on corruption and encouraging activeness in detection of corruption cases) by the police would assist in this task.

The *incrimination of conflict of interest* proved to be ineffective so far. Between 2007 and 2011 there were very few such cases in which indictments were issued. Just 25 indictments were issued, the vast majority by DNA and very few by the regular prosecution.[150]

Looking back over the past years at the actual impact of the overall anti-corruption measures taken, there is a clear imbalance between repressive and preventive measures. The main focus of the anti-corruption drive so far has been on law enforcement. While the criminal law side is crucial in setting a clear regime which will help to encourage a change of mentality, a successful anti-corruption policy cannot succeed without effective and coherent preventive mechanisms. In this context, in the last five years the progress made in the effectiveness of internal control mechanisms is rather limited and inconsistent, with considerable variations in the results reached from one sector to the other and major gaps in internal control bodies and procedures.

In spite of a number of *inter-institutional cooperation* protocols and well established cooperation channels between some of the institutions, overall cooperation and coordination of anti-corruption actions is still weak. There seems to be an

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149 The number of persons indicted for corruption offences increased from 541 in 2007 to 934 in 2010 and 1119 in 2011.

150 DNA issued 16 indictments. The regular prosecution issued only 9 indictments.

environment of mutual distrust notably between control institutions and law enforcement.

The control mechanisms should also be one of the main suppliers of information for law enforcement on public corruption. Nevertheless, the control mechanisms submit a very limited number of notifications to prosecutors' offices. In respect of the information provided to the DNA, with the exception of GAD, the Financial Guard and the money laundering authorities, all other control mechanisms provided very few notifications in the past five years. Just five notifications were forwarded by the National Authority for Regulating and Monitoring of Public Procurement (ANRMAP), 27 from the Court of Accounts and even less from internal control bodies of various ministries and national agencies.

There are wide discrepancies between the anti-corruption strategic approaches and commitment from one sector to the other.

The *National Integrity Centre* (NIC) is an independent public advisory body on corruption run in cooperation with civil society. In order to further support its activities, a Protocol was concluded between the Association for Implementing Democracy (AID) – the civil society partner – and the Ministry for Administration and Interior in November 2007 and new premises and facilities ensured the Centre's continued activity. Since then, the Centre has promoted a number of initiatives. These have included training but also the establishment of anti-corruption action groups and the hosting of debates in each county, bringing together representatives of anti-corruption institutions and civil society. NIC promoted new preventive actions in a number of risk areas, such as video-surveillance on traffic police cars; video-surveillance of the baccalaureate exam; a joint project with the Ministry of Health focusing on integrity and good governance in the healthcare system; measures agreed with the Ministry of Regional Development and the Ministry of Transport; training on public procurement for civil servants from the Ministry of Education, Ministry of Health, Customs and the Financial Guard; and preventive measures in the educational system, working with high-school students. The work of the NIC has been supported by EU funds. The current project financing is due to expire this summer. Future financing has not yet been confirmed.

European funds have also financed a recent study on corruption in local public administration commissioned by the Ministry of Administration and Interior's Central Unit for Public Administration Reform. This study was accompanied by the production of best practice guides. EU funds have also been obtained to assist the Ministry of Regional Development and Tourism in strengthening its anti-corruption mechanisms.

In the *education* sector some important measures were taken in recent years, from enhanced checks and more rigorous prevention measures applied at important exams such as the baccalaureate or the accreditation exam for teachers, to robust measures to improve accreditation of private universities. For the baccalaureate exam, video-surveillance was used in exam rooms. Following a pilot project in Galati, video-surveillance was introduced countrywide in 2011. At the 2011 baccalaureate exam the success rate decreased by 50% as compared to the previous year. The sanctions were also increased in the cases where the legal requirements for the exam were not met. In two counties, prosecutors were notified in relation to potential criminal cases. Another vulnerable sector where new measures were taken concerns the accreditation exam for professors for primary and secondary education. Due to

additional safeguards introduced in the verification process, for the first time in the history of this exam a number of positions open for competition were not filled. Another risk area identified by the Ministry of Education concerned the university graduation diplomas. A new obligation was introduced for cancelling the diplomas issued fraudulently. Over the past five years, the Ministry of Education carried out several evaluations of corruption vulnerabilities in order to ensure a holistic anti-corruption policy and to focus notably on prevention measures, including establishing ethics councils and commissions. An updated risk assessment will form the basis of the sectorial anti-corruption strategy for the education system. The Ministry of Education is also the beneficiary of a structural funds project on the development of the sectorial anti-corruption strategy, which provides the opportunity to deepen the work to develop an effective policy for prevention of corruption in the education sector.

Prevention measures in other sectors, notably healthcare, public procurement, local administration remain less comprehensive.

In the *health sector* some important projects have now been launched or are in preparation, but results remain to be seen. One such project is supporting the creation of an integrity department within the Ministry of Health. This department was formally created in July 2011 and is tasked to prevent and combat fraud in the procurement of medical services and equipment, and monitor the budgetary process for each health institution subordinated to the Ministry of Health.[151] Some first controls have been launched, in partnership with the Ministry's control unit, identifying important variations in units' costs. However, the operationalisation of this structure has been slow. It has been held back in particular by a lack of human and financial resources.

This integrity department will also not address the issue of informal payments. A further project is therefore now foreseen to raise awareness about patients' rights, with a view to tackling the supply side of informal payments to medical practitioners. Following the adoption of a law on co-payment of certain medical services, as of 2012 Romanians will have to pay a share of the medical services costs through coupons. The Ministry of Health has also adopted a centralised risk register and identified a number of sensitive positions within the Ministry and its subordinated units for which rotation schedules were developed. However, despite these initiatives, there are still considerable obstacles to vigorously fighting corruption in this sector, with an established tradition of petty bribes.

In 2008, on the occasion of the *local elections*, the civil society Coalition for a Clean Governance carried out a monitoring of the electoral campaign for presidents and county councils and found systemic integrity problems. Fifty-four of 150 candidates had integrity issues, but nevertheless 11 of these candidates were elected. A similar exercise was carried out by the Coalition for a Clean Romania for the local elections of 2012, singling out candidates in a number of counties who had integrity issues[152].

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151 Its role is to detect fraud and corruption, propose rules on incompatibilities, conflict of interest and integrity of staff within the healthcare system, take preventive measures, monitoring the outcome of corruption cases within healthcare, carry out risks assessments, and develop sectoral anti-corruption strategies and action plans

152 For example, candidates under investigation or indicted for corruption offences, candidates investigated by ANI for conflict of interest and incompatibilities.

In the local elections of 2012, two mayors were elected whilst under preventative detention agreed by the courts.

Except the Ministry of Interior who implemented a mechanism for whistle-blowers' protection, over the past five years the progress made in the implementation of *whistle-blowers policies* in public administration was almost non-existent.[153] The cases based on whistle-blowers' reports sent to court, including by the Ministry of Interior, remain very scarce.[154]

The *National Agency for Civil Servants (NACS)* organised various trainings and implemented a corruption risk management system based on which a Corruption Risks Register was set up in 2010 and updated in December 2011. The register now comprises 17 risk areas.

The independent assessment of the previous national anti-corruption strategies appreciated in particular the introduction of *ethical counsellors* at central and local level as an important step towards introducing more preventive-based anti-corruption efforts in public institutions. The 'ethical counsellors' concept was institutionalised in 2007. All public institutions and authorities are obliged to appoint such counsellors. The overall network expanded from 36 members in 2007 to 915 in 2011, yet this remains significantly less than the number of public institutions. Since 2008, NACS assesses on a regular basis (i.e. twice per year) the compliance with the rules of conduct for civil servants, ethical standards and disciplinary proceedings.

In the past five years (2007-2011), 3,678 complaints were registered by NACS against civil servants at both central and local level. There is no particular trend in the evolution of the number of complaints. 2011 in particular registered a considerable decrease in the overall number of complaints received (50% lower than previous year). Of these, disciplinary sanctions were applied in 1,992 cases. There are no available statistics on the nature and seriousness of breaches found. The reprimand remained the main disciplinary sanction applied (50% of the overall sanctions applied). Dismissals were ordered in only 6% of the cases when disciplinary sanctions were applied.

Asset recovery and the prosecution of money laundering

As far as *asset recovery* is concerned, some measures were taken by the General Prosecutor to encourage a more proactive approach in financial investigations for the detection, freezing and recovery of tainted assets. Through a joint order of the General Prosecutor and the Minister of the Interior, standardized procedures were established for identification and seizure of assets during investigations, including a checklist of main steps to be taken in a financial investigation. Training sessions on

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153 MoI reported 338 notifications from 243 whistle-blowers between 2006 and 2011. Most notifications (144 from 97 whistle-blowers) come from GAD. In November 2009, a Transparency International study on whistle-blower protection, *'Alternative to Silence, Whistle-blower Protection in 10 European Countries'*, concluded that in Romania, 'since 2004, public sector whistleblowers have been protected by a comprehensive law which takes priority in case of conflict with other legal provisions. However, the number of whistle-blower cases in Romania is still low, owing largely to the socio-cultural context. Whistle-blowing is not well known by the public or not sufficiently appreciated. Civil society has tried several approaches to improve the take-up of the law, but the promotion of whistle-blower mechanisms still requires concentrated effort. Weaknesses remain at the internal enforcement level of institutions or in the levels of media coverage and awareness of whistleblowing'.

154 One case sent to court by MoI and six by the Ministry of National defence. No other cases reached courts from other institutions.

this topic were also organised for the prosecutors countrywide, notably within the framework of EU-funded projects. However, European Commission expert missions have explored the degree of common understanding of how to follow areas of particular interest such as financial investigations and money laundering when visiting the prosecutors' offices outside Bucharest, and have concluded that this is as yet far from being realised.

Steps were taken to establish central electronic databases of movable and immovable property. An integrated electronic cadastre and land book system, centralised at national level, has been established following a process which started in 2006 and ended in December 2011. Approximately 30% of the land books are currently in electronic format. Further input of data and conversion of data into electronic format is ongoing. However, the National Agency for Cadastre and Land Register faces serious budgetary challenges in the finalisation of this process. Currently, a rather cumbersome access to data on both movable and immovable property countrywide also acts as a deterrent for a more proactive approach of the prosecutors.[155]

The new law on extended confiscation adopted by Parliament in March 2012 may open new opportunities for a change in attitude of the prosecutors in indentifying tainted assets and in interpreting in more open way the provisions of the Constitution regarding the presumption of licit origin of property.

New legal provisions were adopted to improve the management of seized assets, granting powers to realise frozen property, including when it is likely to decline in value or become uneconomical to maintain and ensure that the value of the assets is secured for later confiscation.

As far as statistics on seizures, the General Prosecutor's Office reported assets worth approximately €587 m seized between 2007-2011, with €234 m frozen in 2011 alone, nearly seven times more than in 2007. However, it would seem that this increase is also predominantly due to certain specialised prosecution offices and a number of large scale operations and not necessarily to an overall intensification of successful financial investigations across the board in all cases[156]. Moreover, despite large scale seizures, these seizures have not translated into a convincing track record of confiscations. Despite improved results on 2010, in 2011 courts ruled the confiscation of just €4.75m, whilst a mere €340,000 was actually confiscated (see above)[157]

In order to comply with Council Decision 2007/845/JHA an Asset Recovery Office (ARO) was established within the Romanian Ministry of Justice and became operational in January 2011. The new ARO's tasks are as follows: operative exchange of data with other AROs in the EU and CARIN Member States, identification and dissemination of good practices and promotion of public policies in the criminal field, notably as regards fight against corruption and organised crime.

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155 Such data can be accessed, but through separate requests addressed to various county registers and not through a single user-friendly electronic database or interface.

156 In the *Annual Report of the Public Ministry for 2011*, as well as the *Follow-up Evaluation Report on the Fifth Round of Mutual Evaluations on financial crimes and financial investigations, GENVAL, EU Council, April 2012,* it is reported that in a single case, in 2011, there were 135 immovable properties seized along other assets for the recovery of a prejudice of approximately 80 million euros.

157 In 2010 the Courts ruled the confiscation of approximately €1.8m of criminal assets, whilst approximately €200,000 was actually confiscated.

The ARO dealt with 86 requests in 2011 (57 from corresponding AROs in EU Member Statesand 29 from Romanian authorities).[158] In the first two months of 2012, 17 files were registered (10 from foreign AROs and 7 from Romanian authorities).

Prosecution of money laundering remains scarce. The General Prosecutor took some measures to ensure that money laundering is now treated as a priority area by the prosecutors, including the prosecution of money laundering as a stand-alone offence. With regard to the latter, there was a single court decision issued on such a case in 2009 in first instance that remained final in 2011. Another case is in court. The General Prosecutor issued an order in 2011 requiring all prosecutors' offices to designate prosecutors specialised on money laundering, tax fraud and smuggling cases. A legal opinion of the General Prosecutor distributed to all prosecutors countrywide concluded that prosecution of money laundering as a stand-alone offence is possible under the current legal framework and made a number of recommendations on how evidence may be gathered in this case.

An increase in the number of overall indictments in money laundering offences may be noted in the last year, from 23 indictments against 96 defendants in 2007 and 21 against 89 defendants in 2010 to 49 indictments against 230 defendants in 2011. However, there have been no further reported indictments of money laundering as a stand-alone offence. Overall, during 2007-2011 only 42 convictions against nearly 100 defendants were achieved for money laundering offences.

The National Office for Prevention and Fight against Money Laundering and Terrorism Financing (NOPFMLFT) has focused on improving the quality of their notifications and responses to the prosecutors. The prosecutors seem to appreciate the responsive nature of the Office, though experts have indicated that it could be more proactive.

Fraud against EU funds

In 2007 and 2008, through various legislative amendments, the competences of the *Department for the Fight against Fraud (DLAF)* were further streamlined, including regarding its role as anti-fraud coordinating service in Romania. In 2009 and 2010, DLAF entered a period of legal vacuum, due to unconstitutionality rulings on its legal basis. In May 2011, DLAF legal basis was restored through the adoption of a new law on its organisation and functioning and a government decision on its international regulation, which includes provisions on cooperation with OLAF.

In 2007-2011, DLAF carried out 497 checks. Of these checks, 91 were carried out ex officio. However, there were no ex officio checks in 2009 and 2010, and in 2011 there were only two such cases. Most of the checks are conducted following notifications from prosecutors (40%) and managing authorities (24%). DLAF submitted 256 control reports to prosecutors between 2007 and 2011. In the same reference period, prosecutors issued 73 indictments which led to 42 convictions by the courts. Scope for further improvements remains.

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158 These requests regarded 256 natural persons (of whom 108 Romanian citizens and 157 foreign citizens) and 80 legal persons (41 from Romania and 39 from abroad). Following the requests, the following assets were identified: 12 vehicles, 6 buildings, 16 apartments, 17 land properties, 75 bank accounts, 17 companies in which the persons in question had shares and 3 authorised natural persons.

Between 2007 and 2011 prosecutors opened investigations in 223 cases of EU fraud. The overall track record in prosecuting offences against the financial interests of the EU could be further strengthened and steps taken to ensure a more proactive approach and less rigidity when interpreting the procedural rules.

In 2011, the Commission drew attention to over 60 cases of possible fraud (i.e. suspected manipulations of tenders and submission of false offers) brought by OLAF to the attention of the Romanian authorities. It remains to be seen what follow-up will be given to these cases.

Within the CVM, the Commission evaluates progress in the implementation of public procurement rules, as weaknesses in this area are recognised as an important source of corruption. Administrative capacity and practice and the ability of the administrative control authorities and the judiciary to protect against irregularities, misuse of funds and fraud are elements of the Commission's considerations in this context.

Since 2010, several audits by the Commission highlighted substantial shortcomings in the Romanian public procurement system which were not prevented, detected or corrected by the national management and control system and hence reflect systemic deficiencies. Some of these shortcomings led to temporary interruptions of payments within Structural Funds to protect the financial interests of the EU. In order to address these weaknesses, the Commission carried out an assessment of the Romanian public procurement system in 2011.

The Commission's evaluation of the Romanian public procurement legislation identified a lack of legal stability, due to frequent changes and legal inconsistencies and recommended the creation of a stakeholder committee and to launch a process of legal consolidation. The Commission also identified some specific weaknesses in legislation on Public Private Partnerships (PPP) regarding the absence of an efficient coordination mechanism between the National Public Procurement Agency (ANRMAP) and the newly created PPP Unit. Moreover, there is a risk of duplication between certain provisions of the PPP law and the existing general law on public procurement[159].

The Commission's assessment also identified inconsistent practices and shortcomings in cooperation among the key institutions in the public procurement area.[160] This concerns issues such as an insufficient effectiveness of the annual public procurement plans and overlaps in tasks, inconsistent practices and misalignments between the competent bodies in this area. These weaknesses are compounded by a deficit of resources among these institutions, inefficient internal procedures and substantial difficulties with a proper use of the main IT tool in this area, the Electronic Public Procurement System (SEAP).[161] These difficulties at the administrative level of the public procurement system together with insufficiently unified and streamlined procedures contribute to excessive administrative burden for contracting authorities and are a source of delays and irregularities.

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159 Government Emergency Ordinance 34/2006.

160 The main public bodies in this area are the National Authority for Regulating and Monitoring of Public Procurement (ANRMAP), the Unit for Coordination and Verification of Public Procurement (UCEVAP) and the National Council for Solving Complaints (CNSC).

161 Problem with SEAP include insufficient accuracy and completeness of data, an architecture which is not sufficiently user-friendly and issues of maintenance and property of the system.

The issue of conflict of interest within public procurement is of particular concern for the Commission and has also been the core issue triggering payment suspensions under the Structural Funds. The Commission's assessment shows that the legislative basis and administrative procedures cannot provide sufficient guarantees for an effective protection against conflicts of interest in public procurement. Current prevention and control mechanisms are difficult to enforce or not sufficiently dissuasive and are overall not suitable for an effective prevention of conflicts of interest. There is a lack of pro-active action by public procurement authorities and insufficient cooperation with the National Integrity Agency and the judiciary.[162] The legislative amendments adopted in 2010 which introduced a wider definition of conflict of interest have not yielded expected results. The number of conflict of interest situations detected by ANRMAP and UCEVAP is low and does not reflect in any way the realities.[163]

Given the large number of complaints and the low quality of tender documents, Romania has taken some corrective measures by introducing ex-ante verifications of all tender documents by ANRMAP.[164] In parallel, ANRMAP has started to prepare standard forms for tender documents covering the main sectors of public procurement, to support contracting authorities and reduce the current high number of errors in procurement documents.[165]

These individual activities will have to be integrated into an overall action plan by the Romanian authorities in response to the evaluation carried out by the Commission in 2011 and its recommendations.

6. DIRECT SUPPORT TO THE REFORM PROCESS FROM THE EU AND ITS MEMBER STATES

Substantial support has been made available to Romania in the area of justice and home affairs in the years before and after accession. Prior to accession, from 2004 the PHARE programme made available over €187m. Since accession a further €46.5m was made available under the Transition Facility, a significant proportion of which was available to support reform in justice and home affairs. These instruments supported numerous projects and capacity building measures, including projects to enhance the capacity of the Superior Council of the Magistracy and the National Institute of the Magistracy, and to strengthen the fight against corruption, with assistance provided to the National Anti-Corruption Directorate, the Public Ministry, the National Integrity Agency, and the Anti-Corruption General Directorate of the Ministry of Administration and Interior.

The deadline for implementation of Transition Facility-financed measures expired in December 2010. Under the current Financing Period, the Commission has also made

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162 These findings are confirmed by complaints received by the Commission in 2012.

163 Since 2007, ANRMAP has notified only five cases to DNA. In 2011, ANRMAP identified only three potential conflicts of interest. In April 2011 allegations of conflict of interest in respect of EU funds led to a resignation of the Minister for Labour. Audits of EU projects led to the interruption in payments under one measure within Structural Funds due to conflict of interest and favouritism in public procurement.

164 Amendments to the existing law on public procurement (see art; 33 of L. 279/2011 of 12 December 2011, amending OUG 34/2006), by which ANRMAP shall verify the legality with regard to public procurement rules of all tender documents, before the publication of a tender notice.

165 These actions are under way in the transport and environment sectors.

available significant support under the Administrative Capacity Operational Programme of the European Social Fund.[166] Judicial reform and anti-corruption projects totalling over €12m have been contracted and are in various stages of implementation. Beneficiaries of these projects include the National Integrity Agency and the Ministries of Justice, Administration and Interior, Regional Development and Tourism, Health and Education.

Many of the projects implemented have directly assisted with reforms necessary for the CVM. A number of projects currently being implemented directly address recommendations the Commission has made in the CVM Reports. Examples include:

- €0.75m financing provided to the Ministry of Justice for an independent analysis on the functioning of the Romanian judicial system. This analysis is being undertaken by the World Bank. It commenced in March and should be complete by the end of the year. The findings and recommendations will provide a foundation for the future direction of judicial reform

- €4.4m financing provided to the National Integrity Agency to upgrade the Agency's information system and to strengthen the efficiency of the processing of asset and interest declarations. Implementation began in February this year and the project will last two years. The investments will strengthen the administrative capacity of the Agency and therefore the efficiency of the fight against corruption

- €1.58m financing provided to the Ministry of Health to support an integrity unit within the Ministry of Health. Once fully operational, the structure will strengthen the prevention and detection of corruption within health sector procurement.

Financing from the European Social Fund has been complemented by grants provided under the Prevention of and Fight against Crime, Civil Justice and Criminal Justice Support Programmes.

Over the years important support has also been supplied by Member States. These bilateral projects have assisted a wide range of institutions and covered a comprehensive range of issues connected to judicial reform and the fight against corruption.[167] Recent projects have included support to improve the pursuit of money laundering and the recovery of the proceeds of crime, strengthen communication between the judiciary and the mass media, and prepare for the implementation of the new codes. A large number of Member States have been involved in assistance to Romania in this area since accession. Significant assistance has also been provided by other states and international organisations.

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166 This Operational Programme has a total value of 244.7 M EUR, of which the Community funding totals 208 M EUR.

167 Beneficiaries have included the Ministry of Justice, the courts, the Superior Council of the Magistracy, the National Institute of the Magistracy, the Public Ministry, the National Anti-Corruption Directorate, the National Integrity Agency, the Ministry of the Administration and Interior and the Customs Authority.