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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

{SWD(2016) 16 final}

1. INTRODUCTION

The Cooperation and Verification Mechanism (CVM) was set up at the accession of Romania to the European Union in 2007.¹ It was agreed that further work was needed in key areas to address shortcomings in judicial reform and the fight against corruption. Since then CVM reports have charted the progress made by Romania and have sought to help focus the efforts of the Romanian authorities through specific recommendations.

Judicial reform and the fight against corruption remain important issues for Romanian society, able to inspire large-scale public demonstrations, and further support to the consolidation of reform is still needed to ensure the irreversibility of progress. The CVM continues to play an important role in Romania as driver for reform and an incentive to maintain consistency in track record. The Commission's conclusions and the methodology of the CVM have consistently enjoyed the strong support of the Council,² as well as benefiting from cooperation and input from many Member States.

The 2015 CVM report noted a number of areas of continued progress showing signs of sustainability, notably through the action taken by the key judicial and integrity institutions to address high-level corruption and the increased professionalism in the judicial system as a whole. At the same time, the report highlighted that there remains a strong sense that progress needs to be consolidated and further secured, with many legislative issues outstanding and doubts about the political consensus behind reform. The Council also concluded that an overall, continued political commitment to sustained reforms and respect for the independence of the judiciary are essential in order to ensure the sustainability in progress towards the CVM objectives.³

This report returns to both trends to assess the extent to which reform has taken root. It is the result of a careful process of analysis by the Commission, drawing on close cooperation with the Romanian authorities, as well as the input of civil society and other stakeholders. It also looks at a number of important tests in 2016 to further demonstrate sustainability. The sustainability of progress is one of the conditions to show that a mechanism like the CVM would no longer be required. The Commission has paid particular attention to these aspects in its monitoring this year and will continue to support Romania to achieve the CVM objectives. Support is already provided to Romania in many areas under the European Structural and Investment Funds.⁴ In addition, the Commission has in 2015 established a new instrument in the form of a Structural Reform Support Service (SRSS) dedicated to providing technical

¹ Conclusions of the Council of Ministers, 17 October 2006 (13339/06); Commission Decision establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption, 13 December 2006 (C (2006) 6569 final).

² http://ec.europa.eu/cvm/key_documents_en.htm.

³ <http://data.consilium.europa.eu/doc/document/ST-7281-2015-INIT/en/pdf>

⁴ In the 2007-2013 period Romania has implemented a number of projects in the anti-corruption and judicial reform area. The total amount of funding from the European Social Fund (ESF) is EUR 16 million. The main beneficiaries have been the Ministries of Public Administration, Justice, Education and Health. European Regional Development Funds (ERDF) were invested in actions relating to integrity control projects (including the ex-ante control system PREVENT), capacity of public procurement agency for a budget of about EUR 15 million. In the 2014-2020 period the Administrative Capacity Programme (ESF) will provide funding of about EUR 103 million for judicial reform projects, including EUR 35 million specifically for anti-corruption, and EUR 35 million to support improvements in public procurement. ERDF resources up to EUR 15 million will be invested in capacity building and technical assistance in public procurement, in fraud prevention for Management Authorities and in the Fight Against Fraud Department (DLAF).

assistance to the reform efforts of EU Member States in a broad range of areas. The Commission encourages Romania to make full use of all the possibilities provided.

2. STATE OF PLAY OF THE REFORM PROCESS IN ROMANIA

2.1. Judicial independence

Appointments

Recent CVM reports have noted the role of the key institutions of the magistracy – the High Court of Cassation, the Public Ministry and the National Anti-Corruption Directorate, and the Superior Council of the Magistracy – in building up the credibility and professionalism of the judicial system through establishing a track record. Clearly the leadership of those institutions has played an important part in this, sometimes in the face of strong personal criticism. Hence the emphasis placed on transparent and merit-based selection procedures⁵ as a way to provide robust leadership, avoid political interference in senior appointments and support judicial independence.

The 2015 report saw the nomination of a new Chief Prosecutor for the Directorate for Investigation of Organised Crime and Terrorism as an important test case.⁶ The procedure was eventually finalised with little controversy: it was characterised by increased transparency and predictability (publication of post, criteria publicly defined, names of candidates published), and benefitted from clear cooperation between the Minister of Justice (responsible for choosing the candidate) and the Superior Council of the Magistracy. It therefore provided a good example of how clear and robust procedures, with the full involvement of the key authorities, can be the most important factor in a credible appointment process (although procedures must also be strong enough to cope with a situation where the key institutions are in disagreement⁷).

2016 will see a series of appointments to key posts and both the process and the results will be a key test of the ability of the judicial system to maintain the reform process through a time of change.⁸ The President of the High Court of Cassation and Justice, the General Prosecutor and the Chief Prosecutor of the National Anti-Corruption Directorate are all posts which need clear, open, and predefined procedures.⁹

In the longer term, a more robust and independent system of appointing top prosecutors should be settled in law: no criteria exist at legislative level for ensuring the highest level of professional skills and integrity, and the current procedure includes a strong political element in terms of the role it gives to the Minister of Justice. Past appointment procedures have been the subject of considerable controversy and subject to clear political influence. Using

⁵ COM (2015) 35 final; COM (2014) 37 final; COM (2013) 47 final; COM (2012) 410 final.

⁶ The former chief prosecutor of the Directorate (DIICOT) is in preventive detention on corruption charges, highlighting the need to bring any integrity issues to the surface.

⁷ For example, the appointments to the senior posts of the prosecution in 2012-13 were a source of controversy.

⁸ General Prosecutor and Chief Prosecutor of the DNA: May 2016, President of the High Court of Cassation and Justice: September 2016, Superior Council of Magistracy: elections in Q4 2016.

⁹ The nomination procedure for the Chief Prosecutor of DIICOT also applies to all senior prosecutors, their deputies and includes the level of heads of sections in the Public Ministry and the DNA. In total, there are 15 prosecution posts to be chosen by the Minister of Justice this year.

guidance from the Council of Europe, the Minister of Justice and the Superior Council of the Magistracy should lead the debate about whether it is appropriate for the key decision to rest with a government Minister,¹⁰ particularly when it comes to appointments at levels below the top management of institutions.

Respect for judges and the judicial process

The successful prosecution and conviction of many prominent politicians in Romania for high level corruption is a sign that the underlying trend of judicial independence is positive, and that no one committing a crime is beyond the reach of justice. But there has also been a reaction to this trend: criticism of magistrates by politicians and in the media and lack of respect of judicial decisions remain frequent.¹¹ This year there has been an increase of requests to defend the independence of justice, following attacks in the media and by politicians, including the Prime Minister and the President of the Senate.¹² There were also still cases of pressure on judges of the Constitutional Court.¹³ As the 2015 report noted, in the wake of the election of the President of Romania, there seemed some shift towards a more responsible approach. But this dissipated in the spring, notably following the opening of an investigation by the National Anti-Corruption Directorate (DNA) into the Prime Minister. Criticism targeted the Heads of both the DNA and the High Court of Cassation and Justice (HCCJ) personally.¹⁴

The Superior Council of Magistracy (SCM) and the Judicial Inspection have continued in 2015 to defend the independence of justice and the professional reputation, independence and impartiality of magistrates.¹⁵ There continue to be several examples notified to the SCM of attacks in the media and by politicians, and the SCM has had to issue many critical conclusions as a result. But the SCM cannot secure an equivalent level of coverage for its press statements compared to the initial criticism; and beyond this moral support, the SCM offers no financial or legal help for magistrates seeking redress in court.

There is also a potential role for parliamentary authorities in monitoring the comments of parliamentarians. The Commission recommended last year to "*ensure that the Code of Conduct for parliamentarians includes clear provisions so that parliamentarians and the parliamentary process respect the independence of the judiciary*".¹⁶ This recommendation has not been followed. It also noted that the debate on possible changes to the Constitution could give an opportunity to consolidate judicial independence at Constitutional level.

The Constitutional Court and respect for court decisions

¹⁰ The Venice Commission has undertaken specific work in this area to find the right balance (see technical report section 2.1, pp 6-8).

¹¹ As also reported in previous CVM reports: COM (2013) 47 final, p4; COM (2014) 37 final p3; COM (2015) 35 final, p2.

¹² Technical report, section 2.1, p5.

¹³ For example in the context of an ongoing case on the way the Constitutional Court took a decision concerning the organisation of the 2012 referendum on impeachment of the then President of Romania. Technical report, section 2.1, p5.

¹⁴ For example, in a public letter to the President of Romania, the President of the Senate, referring to a case of a person acquitted in first instance but in preventive arrest for 6 months, requested the revocation of the President of the HCCJ and of the Chief Prosecutor of DNA. Technical report, section 2.1, p5.

¹⁵ Technical report, section 2.1, pp 5-6.

¹⁶ COM (2015) 35 final, p.13; COM (2014) 37 final.

The Constitutional Court (CCR) has an important role in the rule of law and in the consolidation of an independent justice system. The Court's rulings in 2015 included 24 decisions concerning the provisions of the new Criminal Code and Code of Criminal Procedures, and some important rulings linked to the balance of powers and respect for fundamental rights. These included resolving a conflict between the Senate and the judiciary concerning a request for preventive arrest.¹⁷ Many CCR decisions on the Criminal Codes aimed at reinforcing respect for fair trials and rights of the parties in line with ECHR case law. Though judges and prosecutors had to quickly adapt their practices to the CCR's decision, the general appreciation is that such decisions improve legal certainty and the rights of litigants. The decisions of the High Court of Cassation and Justice (HCCJ) on the interpretation of the law also play an important role in the institutional checks and balances.¹⁸

2.2. Judicial reform

New Codes

The new Criminal Code and Code of Criminal Procedures entered into force two years ago, on 1st February 2014. The 2015 CVM report looked forward to a stable legislative environment for the new Codes, a clear objective of the Codes on adoption. However, almost two years on, this stability seems no closer.

A persistent source of instability has been recurrent parliamentary proceedings on the Codes. Some amendments are inevitable and in consultation with the judiciary, the Government proposed amendments to address identified problems as early as spring 2014. However, these amendments have not yet been adopted by Parliament. At the same time, parliamentary attention has been given to a number of amendments which have been the source of controversy. Amendments have attracted criticism from the judicial authorities, civil society and Member States on the grounds that they would harm the fight against corruption and reduce the capacity of law enforcement authorities and courts to prosecute or sanction. Whilst some of these could be characterised as maverick amendments, others have been passed by one chamber of the Parliament and have been given the benefit of urgency procedures whilst the Ministry of Justice amendments have had to wait. Some of the past year's amendments recalled the amendments passed in December 2013, though it is to be noted that in contrast to that occasion, the amendments have not been agreed by the legislature.¹⁹ All amendments need again to be considered by the Chamber of Deputies as decisional chamber. The debate has not resumed after summer recess though new amendments continue to be tabled, maintaining an ongoing state of uncertainty. Parliament should resolve the situation by respecting the opinion of the judicial authorities.²⁰

A series of Constitutional Court judgements raised important issues about the Codes and required amendments to be made. Some of the issues raised address fundamental issues in the new Codes, such as the idea that a preliminary procedure to clear more technical issues in a case could take place without the presence of the parties. Although the judiciary and the

¹⁷ Technical report, section 2.1, p4.

¹⁸ For example, decisions on whether doctors in public hospitals are public servants.
Technical report, section 2.1, p4.

¹⁹ Amendments passed by the Parliament in December 2013 attracted criticism from judicial authorities and the international community, notably to the extent that they had the effect of exempting parliamentarians from the scope of legislation covering corruption offences like bribe taking, trading in influence and abuse of office (see COM(2014) 37, pp 10-11).

²⁰ Technical report, section 2.2, p10.

government have immediately adapted practice or proposed legislative amendments, legal uncertainty cannot be avoided as long as the amendments are pending in Parliament.

At the same time as these discussions on the legal framework, work has continued on implementing the Codes as adopted. The general perception is that judges and prosecutors have expressed their satisfaction with the new legal framework, and that the judicial institutions, judges and prosecutors, and court clerks, have continued their efforts to make the reform work.

The High Court of Cassation and Justice, the General Prosecutor, the Superior Council of Magistracy, the National Institute of Magistracy and the Ministry of Justice have all made specific efforts to offer intensive support to all courts and prosecutor offices targeted on helping the transition and tackling obstacles.²¹ The Minister of Justice continued to take steps to supplement the number of positions, in particular court clerks and investigators. This work has been supported also by thorough training programmes by the National Institute of Magistracy and the National School of Clerks.

In general, this is also true for the implementation of the civil codes, with the transitional period needed to tackle cases predating the new codes in parallel with new cases now largely complete. There is evidence that the goal of greater effectiveness in the provision of justice has been achieved.²² However, the logistical arrangements needed to implement provisions that should have entered into force on 1 January 2016 are well behind schedule,²³ with less than a quarter of the necessary premises ready. The result is that the entry into force of these aspects of the Civil Procedure Code has been delayed by one year. It will be important to have a clear plan in place and implemented to avoid a further postponement.

Consistency of jurisprudence

In line with its constitutional role, the High Court of Cassation and Justice (HCCJ) has the primary responsibility for developing the consistency of jurisprudence and enforcing uniform interpretation of law and practice. This has become an increasingly important aspect of the HCCJ's work, triggered through defined legal mechanisms but also encouraged through managerial steps such as meetings and discussions at national level with representatives of courts of appeal, the Superior Council of Magistracy and the National Institute of Magistracy. Such meetings focus on issues where divergent interpretations exist and common solutions are communicated to all courts through guidelines.

The HCCJ has two legal mechanisms at its disposal for developing consistency of jurisprudence and providing a unitary interpretation: the preliminary ruling and the appeal in the interest of the law. The number of requests for preliminary rulings continues to increase and an increasing share of the work of the HCCJ's sections is dedicated to the solving of preliminary questions.²⁴ This suggests that the mechanisms work well and that judges in lower courts make use of it. The other consistency mechanism, appeals in the interest of the

²¹ Technical report, section 2.2, p10.

²² Technical report, section 2.2, p12.

²³ Notably the provision of premises to allow for the solving of cases in Council chamber.

²⁴ In criminal matters, there were 35 preliminary questions lodged and 33 settled in 2015, compared with 31 preliminary questions lodged and 28 settled in 2014. There is a strong increase in civil and administrative matters: there were 51 preliminary questions lodged and 47 settled in 2015, compared with 17 questions lodged and 13 settled in 2014.

law, also continues to provide a substantial contribution to unification.²⁵ The use of the preliminary ruling should continue to be encouraged for settling unclear provisions in the new Codes.

Despite all these measures and signs of a cultural shift in favour of consistency, inconsistent decisions are still frequently reported. Whilst some issues relating to the new Codes should be resolved through the passage of time, some more structural problems require further attention from court managers and each magistrate, and continued training, also involving lawyers.

Finally, the availability of online open and searchable access to all court decisions has been a recommendation of CVM reports, as one of the means to help magistrates and all parties to refer to similar cases and decisions.²⁶ A project (to publish all court decisions online, under discussion for some years) has finally been put in place.

Strategy for the Development of the Judiciary 2015-2020

The action plan 2015-2020 for the implementation of the Strategy is nearly finalised and consultations with all stakeholders have been organised. It will be important for this action plan to enjoy real common ownership between all the key actors if it is to serve as an operational tool: the process to reach the action plan has been lengthy and there is a sense that renewed momentum is needed. For example, it will be important to be clear to what extent the new Superior Council of Magistracy sees this as a blueprint for its own action.

More generally, the elections to the new Superior Council of Magistracy (SCM) could be used to give further momentum to reform.²⁷ Even if some of the current Council continue in post, it would seem important that the new Council has a clear collective philosophy on the basis of a new programme. Candidates should be expected to give a clear vision of how they see their role, and expect to be held accountable for the results – the election process should provide the opportunity for candidates to debate how they see the future of reform. The new Council should address concerns from many magistrates that the SCM is disconnected from the profession.²⁸ More than thousand magistrates had to sign a petition for the SCM to be persuaded to organise a consultation of all courts on a new system for appointing, evaluating and promoting magistrates. The next SCM could demonstrate further its commitment to transparency and accountability, for example by being ready to set out and explain its policies and decisions in regular open meetings with assemblies of judges and prosecutors at all levels, as well as with civil society and professional organisations. Agreeing an annual report to be discussed in courts' and prosecutors' general assemblies would also be a practical demonstration of more transparency in the Council's work.

Resource management and efficiency

²⁵ In 2015, 18 appeals were lodged and 19 were settled in civil matters; 6 appeals were lodged and 7 were settled in criminal matters. This mechanism can also be used for procedural questions, which is not the case for preliminary rulings.

²⁶ COM (2014) 37, p13.

²⁷ SCM elections are planned in autumn 2016, with the new Council expected to take office in January 2017. It is not clear whether the elections will renew all members or only those that finished their six year mandate.

²⁸ Technical report, section 2.5, p21.

The Minister of Justice successfully made the case for the importance of reform of the justice system and the government supported for example 390 additional posts while the budget increased by 46% since 2013.

The effective use of such resources will be assisted by the development of useful management tools for the judicial system. Statistical information tools have been installed in all courts and are being used to improve service delivery. Other electronic tools such as e-files for parties and judges are being piloted in several courts. Structural reform of the justice system also needs to be accompanied by the modernisation of the buildings and IT systems: a number of construction or rehabilitation works in courts supported by World Bank loans are ongoing.

However, the challenges to effective resource management were underlined when a (relatively modest) proposal to close small courts stalled in Parliament. The Superior Council of the Magistracy and the Ministry of Justice have been exploring alternative solutions such as changing the boundaries of jurisdictions to share the burden of cases better – a decision which can be made at their level. In October the Government approved a decision of reassigning the jurisdiction localities within the area of jurisdiction of the Court of Appeal of Cluj. At prosecution level, the General Prosecutor has proposed to regroup prosecutors at Tribunal (second instance) level and close prosecutors' offices at first instance, looking at offices which are too small or have low workload, and finalised an impact study in December 2015 to be consulted with the system. However the finalisation of the process and deadline for implementation are unclear.

Amendments to the civil code of last year provided that court judgments could be enforced directly by bailiffs, aiming at speeding up the procedure. However, these were annulled by the Constitutional Court in December. In fact, the Superior Council of Magistracy reports an increase of the number of non-litigious enforcement cases pending in court. Steps are planned under the action plan for 2015-2020 to improve the enforcement of judgments, such as setting up an electronic database to monitor cases of forced execution of cases, but there is clear evidence that the enforcement of judgments, including final court decisions against the state (central or local authorities), often remains problematic. This is an area which could be relevant in the context of wider efforts by the Romanian government to modernise public administration.

2.3. Integrity

The National Integrity Agency and the National Integrity Council

In March 2015, the President of the National Integrity Agency (ANI) resigned following the launch of an investigation by the National Anti-Corruption Directorate (DNA).²⁹ The Vice-President of ANI acted as interim President and was appointed in December as President following a competition organised by the National Integrity Council (NIC). Though the procedure was lengthy, it appeared open and transparent.

The NIC is the oversight body for ANI. Its mandate expired in November 2014. The initial process for appointing a new NIC was subject to a number of controversies.³⁰ These initial

²⁹ The former President of ANI has been indicted in a case of abuse of office when he was a member of the Commission for Restitution of Properties. The case is not linked to his mandate at the National Integrity Agency. He resigned immediately after the start of the investigation.

³⁰ COM (2015) 35, p9.

controversies were eventually resolved and the Council started its work in February 2015. The NIC elected the representative of civil society as its President, a helpful message in terms of independence. The main task of the NIC in 2015 has been the selection process of the new ANI President.

Despite the resignation of its President, ANI has continued to process a high number of cases during the reporting period.³¹ ANI continued to initiate a substantial number of cases on conflicts of interest and incompatibility issues, many of them concerning local politicians.³² This shows a problematic feature of low acceptance and even resistance to integrity rules within a substantial number of local authorities, with implications for public procurement.³³

A high percentage of ANI decisions are challenged in court – ANI has about 3000 files to defend in court – but the confirmation rate of ANI decisions in court is still above 80%. The administrative section of the High Court of Cassation and Justice has made efforts to speed up the treatment of ANI files (which represent some 10% of its workload) and has reduced the deadlines for solutions from 18 to about 9 months. Regarding criminal conflicts of interest, ANI has further developed the cooperation with the prosecution to help streamline investigations and exchange information.

The follow up of ANI's final decisions and their confirmation through final court rulings remained an issue in 2015. Two cases in Parliament saw significant delays before final decisions on incompatibility were carried through into the ending of a parliamentarian's mandate.³⁴ ANI had to resort to applying contravention fines or notifying the prosecution.³⁵ The Commission's 2015 recommendation to "look again at how to ensure that court decisions requiring the suspension from office of parliamentarians are automatically applied by Parliament" therefore remains valid.

The "Prevent" IT system for ex-ante check of conflicts of interests in public procurement has been taken forward and when implemented, should make a real contribution to avoiding conflicts of interest by automatically detecting conflict of interests in public procurement before the selection and contract award procedure. To ensure compliance with the obligations of the new EU public procurement Directives, further legislative and institutional steps will be needed to ensure that verification applies to all relevant decision-makers, in line with the definition of conflicts of interest in the Directives.³⁶ The Directives also require that the relevant institutions have the power to prevent the signature of contracts in case of suspicion of conflict of interests. ANI estimates that almost all the conflict of interest cases it pursues are relatively straightforward cases which could be avoided by use of this system. Though implementation has taken longer than expected, the law was adopted by the government in September and is being discussed in Parliament. It will be important that the law maintains the principle that contracting authorities are under an obligation to act when they are notified of a potential conflict of interest. "Prevent" should be ready to start operating as soon as the

³¹ Technical report, section 3.1, pp 22-23. ANI's overall track record was stable compared to 2014.

³² In 2015, 84% of the incompatibility cases, 66% of the administrative conflicts of interest cases and 66% of the criminal conflicts of interests cases concern mayors, deputy mayors, local councillors or county councillors.

³³ This trend is confirmed in the work of the National Anti-Corruption Directorate.

³⁴ Technical report, section 3.4, p25.

³⁵ The National Integrity Agency imposed fines on members of the Legal Committee of the Chamber of Deputies for failure to follow up on an incompatibility decision which was not challenged in the courts.

³⁶ Technical report, section 5.4, p37.

law is adopted.³⁷ It would apply first to public procurement involving EU funds, but be extended rapidly to all electronic public procurement.

The integrity framework

The 2015 CVM report noted that moves to codify the legal framework for integrity in the interests of coherence and clarity had been put on hold due to concerns that existing rules might be watered down.³⁸ The desirability of such a step has been confirmed by several parliamentarians and the President of Romania. However, the fact that one chamber of Parliament has adopted an amendment which would in effect take away the three-year election ban for elected officials found incompatible reinforced these concerns.

A key test case will come with the forthcoming local elections (June 2016) and Parliamentary elections (November 2016). The new electoral law expressly states that persons excluded from election through a judicial decision cannot stand in elections. ANI has the specific responsibility to process the wealth declarations of all candidates. It plans to have meetings at local levels with those responsible for dealing with wealth declarations, and to provide guidance and information on recurring errors. It also intends to step up its awareness campaigns so that all candidates are well aware of potential incompatibilities and conflicts of interest. Candidates are also required to present a statement that they fulfil the legal requirements for being nominated. Subsequently, there are checks and the possibility for legal challenge for the electoral committees, for the political parties and for the citizens. The bodies responsible for electoral management at both national and local level clearly have a responsibility to work with ANI to ensure that potential contraventions of the law are avoided or identified as early as possible.

In the meantime, the judicial system has been working to improve the uniform interpretation of the existing legal framework. Recognising that there were particular issues of consistency in such cases, including inside the Court itself, the High Court of Cassation and Justice has put specific mechanisms in place to address the issue.³⁹ This has helped lower courts, and also ANI in its own interpretation of the laws. ANI is also compiling a codex of all relevant court decisions.

2.4 The fight against corruption

Tackling High-level corruption

The track record of the institutions involved in fighting high-level corruption remains strong, with regular indictments and conclusion of cases concerning senior politicians and civil servants. The National Anti-Corruption Directorate (DNA) reported an increased number of signals from the public: this seems to reflect a public confidence in the institution which is also reflected in opinion polls.⁴⁰ Public support for action against corruption was recognised to be a strong factor in the demonstrations leading to the Prime Minister's resignation in November 2015. DNA indicted over 1250 defendants in the course of 2015, and this included the Prime Minister, former Ministers, Members of Parliament, mayors, presidents of county

³⁷ A budget of 23 million Lei (€5.1m), partially funded through EU funds, has been foreseen.

³⁸ COM (2015) 35, p9.

³⁹ Technical report, section 3.2, p 23.

⁴⁰ DNA reports that 85 to 90 % of cases originate from citizens' complaints, 5 to 10% are ex-officio or complaints from other institutions and less than 5% of cases originate from notification of the intelligence services.

councils, judges, prosecutors and a wide variety of senior officials. It has also increased its interim asset freezing measures relating to these cases, to reach a figure of €452 million.

A particular trend has been the identification of corruption at local level. Since 2013, the total numbers of local officials sent to trial for corruption amount to almost 100 mayors, over 20 county council presidents and dozens of other local officials. The arrest of the Mayor of Bucharest in 2015 was the strongest illustration of this problem.

As for the trial phase, the High Court of Cassation and Justice has maintained its track record in terms of bringing corruption cases to conclusion. In 2015 the Penal Chamber settled, at first instance, 11 high-level corruption cases and the panels of five judges settled, as final instance, 11 high-level corruption cases. Even in cases with a high number of witnesses and complex evidence, the HCCJ judges have underlined their efforts to ensure respect of procedural rights for all parties. Proceedings have also been kept relatively short: the majority of cases finalised were registered in 2014 and 2015, while the oldest case goes back to 2011. Amongst the high profile defendants convicted were those who had served in the positions of Ministers, Members of Parliament, mayors, judges and prosecutors.

In 2015, Parliament has refused about one third of requests from DNA for the lifting of immunity of Members of Parliament to allow for the opening of investigations or the application of preventive detention measures – an issue monitored in previous CVM reports. Whilst a majority of requests were admitted, it remains the case that Parliament's response to DNA requests lacks objective criteria against which to give a clear and consistent motivation in each case, in particular for refusals. There are also still no clear rules established to follow up the CVM recommendation to ensure swift application of the Constitutional rules on suspension of Ministers on indictment and to suspend parliamentarians subject to negative integrity rulings or corruption convictions.⁴¹ The fact that, as noted in the 2015 report, Ministers have remained in office after indictment on criminal charges, and parliamentarians with final convictions for corruption have stayed in office, remain current. Steps that have been taken here have been taken by some political parties rather than by Parliament.

Combatting corrupt practices in the judiciary have been a priority for DNA and the judicial authorities. The number of cases brought to light has increased in recent years⁴² and there has been an increasing sense of the judiciary wanting to show that it has high standards of integrity. In this respect, it is important that the judicial hierarchy is attentive to any risk of integrity for judges and prosecutors, and that magistrates receive proper guidance with regard to impartialities, conflicts of interest or incompatibilities.

The integrity of parliamentarians and of judges and prosecutors was the theme of the 4th evaluation round of the Council of Europe Group of states against Corruption (GRECO). The follow-up on the GRECO recommendations will be important to advance the above issues.⁴³

Tackling Corruption at all levels

The challenge of tackling corruption in Romanian society as a whole is well-known. The tragic fire in Bucharest in October was seen by many as revealing the consequences of local corruption, and the evidence of the problem is widespread.⁴⁴ Risk areas identified include

⁴¹ COM (2013) 47 final, p7.

⁴² Technical report, section 2.4, p20.

⁴³ http://www.coe.int/t/dghl/monitoring/greco/default_en.asp

⁴⁴ Technical report, section 5.1, p30.

education, health and local public procurement, involving decisions with direct financial consequences. Cases have included rigging exams, fraud against health insurance, and rigged procurement procedures, sometimes involving large numbers of officials.

The National Anti-Corruption Strategy⁴⁵ is the core instrument to encourage the prioritisation of preventative action by public administration at national and local level. Concrete prevention projects within ministries, some supported by EU funds and NGOs, continue to bring a useful contribution to fighting corruption within the administration.⁴⁶ However, if the corruption prevention measures of the strategy have been put in place, their application is more piecemeal, due to insufficient capacity of the institutions, lack of knowledge and expertise of the staff and lack of political will from the top of the institutions. The limited results of the strategy, in particular at local level, are attested by the considerable number of corruption cases confirming perceptions of systemic corruption. The small number of signals received by DNA from the former public procurement authority ANRMAP also reflected a lack of inter-institutional cooperation. An extension of the National Anti-Corruption Strategy for the next two years is being prepared. It will need to remedy the weaknesses found out in the review, focusing notably on establishing effective control bodies with the necessary human and material resources.

The overall administrative reform planned by the government will also be an opportunity to implement effectively the measures to fight corruption across the administration.

The progress noted in the 2015 report⁴⁷ in terms of the pursuit and prosecution of lower level corruption has continued, notably in the work of the General Prosecutor and the Anti-corruption Directorate General of the Ministry of Internal Affairs.⁴⁸ The General Prosecutor has prioritised anti-corruption work and it will be important that resources are available to continue this work.

Concerning asset recovery, the Romanian Government tabled a draft law in June to set up an agency to manage seized and confiscated criminal assets. This was approved by the Parliament and promulgated in December. This is an important step towards an answer to the long-standing recommendation of the Commission to improve the enforcement of confiscation orders (it appears that only around 10% of the value of confiscation orders is actually collected, thus hindering the dissuasive effect of the sanction). Effective results from the new agency can only be expected in the second half of 2016 at the earliest.

The Romanian authorities, with the support of the Commission⁴⁹, have designed a strategy to structurally improve the public procurement system and adapt it to the new EU rules, and have set up a new agency for ex-ante controls. The strategy includes addressing the risks of integrity and corruption and its implementation would be a significant step towards tackling public procurement as a major risk area for corruption.⁵⁰

⁴⁵ <http://sna.just.ro>

⁴⁶ Technical report, section 5.2, p31.

⁴⁷ COM (2015) 35, p11.

⁴⁸ Technical report, section 5.3, p33.

⁴⁹ In the context of the implementation of the new EU Directives and the fulfilment of the conditions of the European Structural and Investment Funds.

⁵⁰ The strategy would also benefit from the implementation of the "Prevent" programme, see page 9 above.

3. CONCLUSION AND RECOMMENDATIONS

The Commission's 2014 and 2015 CVM reports were able to highlight a number of areas where reform was being consolidated through a strong track record. The continuation of this trend is in itself a sign of developing sustainability. The track record of the key judicial and integrity institutions to address high-level corruption has remained impressive. The judicial system as a whole has continued to show its professionalism, including a capacity to adapt to significant changes in the civil and criminal codes, efforts to unify jurisprudence and a willingness to defend the independence of the judiciary. Romania has made further progress towards the CVM benchmarks.

At the same time, the fact that several recommendations of the 2015 CVM report remain valid shows that reform does not enjoy the full consensus necessary to assure sustainable progress. Judicial independence and respect for court decisions continue to face challenge. The Criminal Codes reform is put into question in Parliament. Decisions in Parliament on whether to allow the prosecution to treat parliamentarians like other citizens still lack objective criteria. There are improved steps to tackle general corruption, but not on the scale and with the political will required to address what is widely recognised as a systemic problem. Judicial reform and the fight against corruption remain important issues for Romanian society, able to inspire large-scale public demonstrations, and further support to the consolidation of reform is needed to ensure the irreversibility of progress.

The Commission welcomes the constructive cooperation it has had with the Romanian authorities over the past year as well as the political commitment of the government to pursue reform and fight corruption. 2016 will be a test year in many respects. The extent to which integrity issues prevail in the appointments to the senior positions in the judiciary and the scrutiny of candidates for forthcoming elections will be key signs of the extent to which reform is taking root. The continuation of the trend of reform will also be a signal of sustainability. The Commission looks forward to continuing to work closely with Romania to secure the CVM's objectives.

The Commission invites Romania to take action in the following areas:

1. Judicial Independence

Public confidence in the judiciary is in part a reflection of its willingness to play its part as an independent actor in the governance of Romania. Open and merit-based appointment procedures will play a particularly important role in 2016. Steps should also be taken to address the continued tendency for magistrates to be subject to personal criticism in the exercise of their proper functions.

- Ensure that clear and robust procedures are in place in time for the appointments to senior positions in the magistracy foreseen in 2016. This would imply that several months before each procedure, the different steps and the criteria which will govern the decisions will be set out. Use a different approach for appointments below the top leadership of the prosecution services, with the newly-appointed Heads playing an important role in selecting their own team. Ensure transparency of all procedures;

- Subsequently, a more robust and independent system of appointing top prosecutors should be settled in law, with the support of the Venice Commission;
- As recommended in 2015, ensure that the Code of Conduct for parliamentarians includes clear provisions so that parliamentarians and the parliamentary process respect the independence of the judiciary;
- The new Superior Council of the Magistracy should determine if more could be done to provide appropriate support to individual magistrates facing criticism undermining judicial independence.

2. Judicial reform

Work should continue to promote reforms which can be seen to have consolidated the professionalism of the magistracy. This would be helped by a stable legislative framework. Previous recommendations on rationalisation of the courts and on improving the follow-up of court judgements remain valid.

- As recommended last year, the current phase in the reform of Romania's legal codes should be concluded swiftly by an agreement in Parliament to amend the codes, passing only those amendments which respect the opinion of the judicial institutions, as presented by the government;
- The Government and the Superior Council of the Magistracy should set up a clear plan to ensure that the new deadline for the implementation of the remaining provisions of the Code of Civil Procedures can be respected;
- The incoming Superior Council of the Magistracy should put in place clear measures to promote transparency and accountability, including by ensuring a regular programme of open meetings with assemblies of judges and prosecutors at all levels, an ongoing dialogue with civil society, and an annual report.

3. Integrity

Integrity should be the guiding principle in public life and the legal framework and integrity institutions are designed to promote this goal. It is important to improve public acceptance and effective implementation of incompatibility rules and to put an emphasis on upstream prevention of incompatibility and conflict of interest.

- Pursue efforts towards consistency of jurisprudence of integrity decisions and make consolidated jurisprudence available to lower courts;
- As recommended before, look again at how to ensure that court decisions requiring the suspension from office of parliamentarians are automatically applied by Parliament;
- Implement the ex-ante check of conflict of interests in public procurement through the "Prevent" programme;

- Take steps to ensure the respect of the rules on integrity in the organisation of the local and general elections in 2016.

4. Fight against corruption

Maintaining the effort of the judicial institutions addressing high-level corruption remains the most important sign of consolidating the fight against corruption. Corruption laws must apply equally to all and be applied at all levels.

- Use EU funds to the full in spreading effective prevention measures against low-level corruption through the National Anti-Corruption Strategy and through general reforms to public administration;
- Ensure that the new Asset Recovery Agency is set up with strong leadership, sufficient resources and the support of all other institutions to improve effective recovery. Other parts of the public administration should be clearly accountable for failure to pursue these issues;
- Implement the new public procurement strategy and action plan, ensuring a robust anti-corruption framework in terms of the legal framework, institutional arrangements, and administrative capacity, applying the measures to prevent and detect conflicts of interests, and showing that transgressions are followed up in full.
- Adopt objective criteria for deciding on and motivating lifting of immunity of Members of Parliament and ensure that immunity is not used to avoid investigation and prosecution of corruption crimes.