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

**on Romania's progress on accompanying measures following Accession**

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## on Romania's progress on accompanying measures following Accession

### 1. INTRODUCTION

#### 1.1. Context

When Romania entered the EU on 1 January 2007, special provisions were made to facilitate and support its smooth accession while, at the same time, safeguarding the proper functioning of EU policies and institutions.

As required of all Member States, on joining the EU, Romania took on the rights and obligations of membership. As is normal practice, the Commission monitors the application of law (the *acquis communautaire*) to ensure that these obligations are being met.

In addition, in line with the arrangements made for those countries which joined the EU in 2004, provisions were made in the Accession Treaty for safeguards and transitional arrangements (for example, restrictions on free movement of workers, on access to road transport networks; provisions on veterinary, phytosanitary and food safety rules). The Accession Treaty made clear that if there are serious shortcomings in the transposition and implementation of the *acquis* in the economic, internal market and justice and home affairs areas, safeguard measures can be taken<sup>1</sup> for up to three years after accession. Romania's accession was also accompanied by a set of specific accompanying measures, put in place to prevent or remedy shortcomings in the areas of food safety, agricultural funds, the judicial reform and the fight against corruption. For the last two a cooperation and verification mechanism was established, setting out benchmarks to provide the framework for monitoring progress in this area<sup>2</sup>.

This mechanism was put in place to improve the functioning of the legislative, administrative and judicial system and to address serious deficiencies in fighting corruption. The purpose of the Cooperation and Verification Mechanism is to ensure that measures are taken to provide assurance to Romanians and to the other Member States that administrative and judicial decisions, legislation and practices in Romania are in line with the rest of the EU. Progress on judicial reform and the fight against corruption will allow Romanian citizens and business to enjoy the rights they are due as EU citizens. Without irreversible progress in these areas, Romania risks being unable to correctly apply EU law.

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<sup>1</sup> Articles 36, 37 and 38 of the Act of Accession.

<sup>2</sup> Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ L 354, 14.12.2006, p. 56).

The Commission was asked to report on these accompanying measures on a regular basis. In the case of the Cooperation and Verification Mechanism, reports were requested on a six monthly basis, starting in June 2007. This report presents a comprehensive overview of the state of play on the accompanying measures and is the first report on the Cooperation and Verification Mechanism. It looks at all areas in which accompanying measures were put in place, focusing on judicial reform and the fight against corruption.

## **1.2. Methodology**

This report has been drawn up from an array of information sources. The Romanian Government has been a primary source of information. Information and analyses were also received from the EC Representation Office and Member State diplomatic missions in Romania, civil society organisations, associations and expert reports. The Commission organised missions to Romania during April 2007, under the Cooperation and Verification Mechanism. They were supported by individual experts from Member States and Commission services. The purpose was to seek independent assessment of progress. The experts drew up reports which subsequently were transmitted to Romania for correction of any factual inaccuracies.

Romania submitted a first report on progress achieved under the Cooperation and Verification Mechanism by 31 March 2007 and has continued to update the Commission on pertinent developments since then.

## **2. ACCOMPANYING MEASURES: STATE OF PLAY**

Accompanying measures for Romania cover agricultural funding, food safety, judicial reform and the fight against corruption. This chapter briefly examines developments in the first two of these areas, elements of which are also subject to separate reporting requirements. Progress in the areas of judicial reform and the fight against corruption is assessed in Chapter 3.

Further information is provided in annex on the state of play of safeguard clauses and other provisions in these areas. Given the established implementation structures and reporting mechanisms in the agriculture, animal health and food safety areas, these subjects will not be covered in the future in this horizontal report. If further decisions are needed in these areas they will be taken on an individual basis in accordance with the rules governing these sectors.

### **2.1. Agricultural funds**

For agricultural funds, Member States are obliged to have accredited and efficient paying agencies to ensure the sound management and control of agricultural expenditure. Member States are also required to operate an integrated administration and control system (IACS) for direct payments to farmers and for parts of rural development expenditures (in order i.a. to avoid fraudulent practices and irregular payments). If Member States fail to operate such control systems properly, the Commission decides ex-post on financial corrections on an annual basis. Given the risk that IACS would not function properly from the point of Romanian accession was too high, the Commission established a safeguard mechanism that could be

applied to Romania if the elements of IACS (integrated administration and control system) or the other elements necessary to ensure the correct payment are not set-up or are seriously deficient. The safeguard mechanism foresees that IACS related expenditure could be provisionally reduced by 25%. The main concerns related to IACS were the connection between farm register and the LPIS (land parcel identification system), administrative capacity and logistics, IT system and the quality of data recorded. From the report received by the Romanian authorities in March 2007 it seems that the system is not yet fully in place: two out of the four IACS modules are only available as prototypes. Furthermore the administrative checks module does not appear to have all the needed functionalities. The report reveals considerable problems in the functioning of the IT-systems. Decisions on whether it is necessary to apply safeguard measures (which could potentially entail a reduction in IACS related expenditure) will be taken based on the results of audits the Commission will perform in June-July 2007 and an assessment of the report the Romanian Authorities submitted in March 2007.

## **2.2. Animal Health and Food Safety**

In the area of animal health, transitional measures concerning classical swine fever have been taken and eradication plans have been approved. A review of these efforts is planned for September 2007. The Commission has also invoked an additional safeguard to limit intra-community trade in horses from Romania. Romania is upgrading its rendering plants and a progress report has been requested. In the meat, fish and milk sectors, transitional measures have been granted to a large number of establishments and they are allowed to market only on the national market in Romania. Specific measures have been adopted for raw milk.

## **3. JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION**

### **3.1. Summary overview**

Reform of the judiciary and the fight against corruption has been closely monitored under the Cooperation and Verification Mechanism. The follow up provides a summary analysis and a detailed explanation of progress in relation to the benchmarks under the Cooperation and Verification Mechanism. The detailed explanation is structured on actions which were used as indicators of progress towards meeting benchmarks.

Romania has made progress in varying degrees in meeting the benchmarks set out in the Cooperation and Verification Mechanism. It is important to see these benchmarks as representing more than a checklist of individual actions that can be ticked off one by one. They are all interlinked. Progress on one has an impact on others. Each benchmark is a building block in the construction of an independent, impartial judicial and administrative system. Creating and sustaining such a system is a long term process. It involves fundamental changes of a systemic dimension. The benchmarks cannot therefore be taken in isolation. They need to be seen together as part of a broad reform of the judicial system and fight against corruption for which a long term political commitment is needed. Greater evidence of implementation on the ground is needed in order to demonstrate that change is irreversible.

The Romanian Government is committed to judicial reform and cleansing the system of corruption. In all areas, the Romanian authorities demonstrate good will and determination. They have prepared the necessary draft laws, action plans and programmes. However, the real test can only be met through determined implementation of these actions on the ground every day. There is still a clear weakness in translating these intentions into results. Romania has stepped up efforts at the highest levels in the fight against corruption. While recognizing these efforts much remains to be done. Progress in the short time since the Cooperation and Verification Mechanism was set up is still insufficient.

Deeply rooted problems, notably corruption require the irreversible establishment and effective functioning of sustainable structures at investigative and enforcement level capable of sending strong dissuasive signals. In addition, the structural changes which are needed impact on the society at large and require a step change which goes much beyond the mere fulfilment of the benchmarks. This requires a strong long term commitment by Romania and can only be successful if the strict separation of the executive, legislative and judicial power is respected and if stable political conditions and commitment are in place.

## **3.2. Assessment**

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

All measures of the action plan of the Superior Council of the Magistracy (SCM) have been implemented and show first results notably regarding the establishment of a coherent jurisprudence. The absence of a unified practice for property restitution cases however remains a concern.

Evidence of the monitoring practice to date regarding the impact of amendments to the civil and criminal procedural codes provides assurance for a credible commitment of the authorities to an integration of practitioners' comments into the new draft procedural codes. There is good progress in work on the Civil Procedure Code and little progress on the new Criminal Procedure Code.

Further efforts are needed to complete the staffing and organisational reforms of the judicial system and to assure their sustainability. Reforms in this area have only been implemented partially. A needs-based staffing policy is complicated by existing legal guarantees of tenure of judges and prosecutors. The option currently envisaged of filling vacancies through "fast track" admission procedures alongside the annual competitions raises concerns as to the quality of all new recruits to the Romanian judiciary.

**Overall, Romania has achieved some progress in the reform of its judicial system.**

## Detailed Assessment

- Implement any necessary measures, including those provided for in the relevant Action Plan of the Superior Council of the Magistracy adopted in June 2006, that ensure a consistent interpretation and application of the law at all levels of court throughout the country following adequate consultation with practising judges, prosecutors and lawyers; monitor the impact of recently-adopted legislative and administrative measures

Actions and measures included in the Action Plan adopted in June 2006 by the Superior Council of Magistracy (SCM) have been adopted and implemented to ensure the necessary conditions - legislative, administrative or otherwise – are in place for courts to become more aware and more engaged in ensuring that their jurisprudence is consistent with that of other courts at the same level of jurisdiction as well as with that of the High Court of Cassation and Justice (HCCJ).

The Appeal in the interest of law is the central instrument in that respect<sup>3</sup>. Remodelled in 2005, it is now accessible to Courts of Appeal (which have been the greatest source of contradictory jurisprudence), and a binding effect is given to the rulings issued by the HCCJ in the adjudication of these appeals. Judging by the pace of filing and ruling on the appeals in the interest of law in the second half of 2006 and the first months of 2007, this procedure has become a meaningful instrument towards unification of jurisprudence. As such, this instrument may well prove sufficient and further legislative initiatives with the aim of creating new mechanisms for unification of jurisprudence should be carefully weighed against the positive results attained by the appeals in the interest of law<sup>4</sup>.

Access of magistrates to jurisprudence has been improved: availability of the HCCJ's Digests is ensured to all courts and full texts of HCCJ decisions are now accessible on the Court's website. The intensive process of court automation in the past years has increased access to legal materials and jurisprudence for magistrates. At horizontal level, Courts of Appeal publish and distribute among themselves the so-called Quarterly Leaflets comprising relevant case law from their respective jurisdiction.

National Institute of Magistracy (NIM) continuous training curriculum and a decentralised training programme are in place. The 2007 NIM continuous training curriculum comprises 19 such seminars for 120 magistrates (as compared to 9 seminars in 2006) and the 2007 decentralised continuous training programme provides for a minimum of 3 seminars/year to be organised for court/prosecutors'

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<sup>3</sup> This is a special appeal aimed exclusively at unifying the jurisprudence since it does not stem from a specific proceeding. The power to file such an appeal is entrusted to the General Prosecutor's Office attached to the HCCJ and to the leading boards of the Courts of Appeal.

The decisions made by the HCCJ in an appeal in the interest of the law are binding for all courts and the established jurisprudence can only be changed by the law.

<sup>4</sup> The SCM, the Ministry of Justice and the HCCJ continue to work on a draft legislation that would introduce a new procedure before the HCCJ, giving lower courts the possibility to seek a guiding interpretation of the law via a preliminary ruling of the High Court. The new mechanism is, however, still controversial among practitioners and its opportunity remains questionable.

office (as compared to a minimum of 1 seminar/year in 2006, when 135 such seminars were organised).

The SCM established a mechanism for monitoring the effects that the measures have on the jurisprudence country-wide. A regular consultation mechanism among courts has been established on matters related to uniformity of court practice. Since January 2007, carrying on the implementation of the 2006 Action Plan of the SCM, regular meetings of the presidents of the sections of the HCCJ with their counterparts from the appellate courts are held in order to harmonise the practise and discuss possible proposals for appeals in the interest of the law. In February 2007, the SCM stipulated an obligation for each court to hold monthly meetings of the judges at each level of jurisdiction, to ensure appropriate communication among practitioners at local level. The Council has also conceived a central mechanism whereby it holds regular meetings with presidents of sections from each Courts of Appeal as well as the HCCJ. The purpose of the meetings is to create a forum where all courts ruling on final appeals (HCCJ and Courts of Appeal), and thus setting cassation practice, discuss those legal matters that are commonly identified as causing contradictory jurisprudence.

Finally, it has to be mentioned that achieving a unified practice is sometimes hampered by the frequent changes in the legislation, some of which are linked to the consolidation of the justice reform.

- *Design and implement a rational and realistic staffing model for the justice system on the basis of the ongoing needs assessment*

The situation of human resources in the Romanian judicial system, as well as the management capacity at central level and at court or prosecutor's office level, continue to challenge the authorities. The SCM and the General Prosecutor's Office (GPO) are addressing these tasks<sup>5</sup>. Staff rationalisation and institutional restructuring are currently under way.

Judicial authorities are usually to decide, at conceptual level, what matters fall within the general term of "court management" and how various managerial tasks under this concept will be distributed between the court presidents/chief prosecutors, the economic directors, the clerks, the magistrates themselves and,

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<sup>5</sup> There are at present 428 vacant positions for judges (106 of which are leading positions) out of a total of 4 469 judicial posts and 604 vacancies for prosecutors (120 of which are leading positions) out of a total of 2 784 prosecution posts.

A UK bilateral technical assistance programme on court management, has initiated an assessment of possible avenues for improving court management. In addition, a study on the workload of courts and prosecutor's office served as a basis for an initiative of the Ministry of Justice and SCM to rationalise the staffing structures of those offices with workloads well below average. For its part, the General Prosecutor's Office, attached to the HCCJ, concluded a restructuring strategy, endorsed by the SCM and adopted by the Ministry of Justice in April 2007, which aims to reduce the number of GPO Sections from 9 to 4 and adopt a more flexible and modern prosecutorial service.

In December 2006, the SCM approved a study on the workload of the courts compiled on the basis of statistical data collected in 2005 and 2006. The report shows significant growth in the activity of the courts in 2006, at the level of first instance courts and tribunals, as well as of the workload per individual judge, mainly at the level of tribunals. The same report indicates that at the level of the courts of appeal the volume of activity continued to decrease. Romania aims to take into consideration the main findings when completing the study on the optimal volume of cases per judge.

possibly, a court administrator/manager. Moreover, an overhaul of the human resources strategy and the concrete operation of a reformed staffing table require a degree of flexibility in the management of magistrates' careers that is greater than the current legislative framework allows for.

The phenomenon of the secondment of magistrates appears to be problematic. About 200 judges and prosecutors are seconded from their judicial positions to different institutions (SCM, Ministry of Justice, NIM, NSC etc.). In several cases the original positions of the seconded magistrates are not considered formally vacant and thus not filled because the concerned magistrates have a right to retain their positions within the judiciary. The only possible solution is to second a judge from another court in order to temporarily cover the *de facto* vacant position. Moreover, the legislation does not provide for any numerical limit on the number of secondments, and they are very attractive due to the higher salaries that seconded magistrates earn. The SCM is however becoming stricter in granting secondments to magistrates. Another related topic is the way the competent authorities<sup>6</sup> may modify the personnel scheme of the judiciary. The elimination of a position from the personnel scheme is allowed only if the position concerned is vacant. As a result, the government could not reduce the number of positions in a court which had all its assignment positions occupied, even if the workload of the court showed that most of them were redundant.

The draft conclusions of a study of small courts' activity, which is under analysis by the SCM and Ministry of Justice confirm that many of the small courts require a rationalisation of their staffing structures (for some even the discontinuation of activity); hence, the re-arrangement of human resources to better reflect the actual workload of each court requires a careful balance of administrative and legislative initiatives, which have not yet materialised (a recent draft piece of legislation prepared by the Ministry of Justice, in which it aimed to provide for an exceptional transfer procedure in cases of courts' or prosecutor's offices' reorganisation, was opposed by the SCM).

Another remedy considered by the SCM within a longer-term human resources strategy is to lower the admission standards for magistrates as a temporary solution until vacancies are filled. Following the 2004 and 2005 legislative reforms, magistracy in Romania comes with life-tenure and a considerable amount of career protection rules. Potentially lower-standard recruits may prove difficult to eliminate should they be later found incapable of meeting the expectations of the system.

- *Develop and implement a plan to restructure the Public Ministry that addresses the existing managerial shortcomings and human resources issues*

A plan to restructure the Public Ministry was developed and its implementation is ongoing. The process is nevertheless hindered by the lack of an efficient staffing model for the justice system.

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<sup>6</sup> Articles 120 and 121 of Law n. 304/2004 on the Organisation of the Judiciary.



The Plan for the Reorganisation of the Public Ministry was drafted based on the analysis of the 2005 and 2006 activity reports of the Public Ministry.

On 2 October 2006 the new General Prosecutor of Romania was appointed by the President, proposed by the Minister of Justice, and endorsed by SCM.

The main shortcomings concern managerial deficiencies and an uneven and inefficient distribution of prosecutors within the offices of the Public Ministry, taking into account the workload per prosecutor.

The Plan is therefore organised into the following 5 steps: (1) Restructuring the Prosecutor's Office attached to the High Court of Cassation and Justice (POCCJ); (2) Drafting and approving the new Internal Regulation of the Public Ministry; (3) Redistribution of prosecutors' positions; (4) Filling the vacant leading positions; (5) Filling the vacant non-leading positions.

The first two steps have been accomplished already.

The third step is ongoing and the deadline is the end of 2007: the majority of the cases are dealt with by the prosecutor's offices attached to the courts of first instance. Consequently, the personnel scheme has to be reorganised by transferring some positions from the higher prosecutor's offices to the lower ones. As currently the redundant positions may not be redistributed if they are occupied, the reorganisation requires some time.

The fourth step is ongoing and is a "permanent measure". In autumn 2006 open competitions for leading positions were held and 17 leading positions at prosecutor's offices were filled. Between January and March 2007 five more leading positions have been filled at the POCCJ. Further competitions for leading positions are scheduled for spring and autumn 2007.

The fifth step is also ongoing and is also a "permanent measure". The normal way of recruiting prosecutors does not permit the vacancies to be filled as the NIM only enables 180 candidates per year to graduate and only 40% of these become a prosecutor.

- Monitor the impact that the newly-adopted amendments to the Civil and Criminal Procedure Codes have on the justice system so that any necessary corrective measures can be incorporated in the planned new Codes

The Law n. 459/2006 amending the *Civil Procedure Code* was adopted in December 2006 and entered into force in January 2007. The main changes concern (a) the transfer of competence for solving unfounded claims for challenging judges to the court before which the claims are submitted, (b) the simplification of the coercive enforcement procedure.

The Ministry of Justice monitored the impact of these amendments by requesting the assessment of the concerned courts and gathering spontaneous suggestions submitted by judges. As only a short period has passed since its entry into force, the courts mostly referred to the law's potential impact.

The Law n. 356/2006 amending the *Criminal Procedure Code* was adopted in July 2006 and entered into force on 9 September 2006. Further amendments had been made by the Government Emergency Ordinance (GEO) no. 60/2006. The main amendments concern (a) the strengthening of alternative measures to detention on remand, (b) the restriction of the grounds for challenging judges, (c) the elimination of the direct committal for trial in case of minor offences prosecutable upon victim's request (at present a prosecutor has to investigate the case and often the victim's request is withdrawn), (d) the restriction of the courts' possibility to return the case to the prosecutor for further investigation.

The Ministry of Justice monitored the impact of the amendments by collecting the opinions of the concerned judges, who made a list of suggestions for the new Criminal Procedure Code. The SCM also contributed. Nevertheless, the contributions mentioned have not been taken into consideration yet. Some concerns include the possibilities for prosecutors to intercept correspondence and tap telephones for 48 hours without an order from a judge, or the encroachment on the lawyer-client relationship through the interception of telephone calls.

The criminal legislation reform was jeopardised by the Senate's Legal Committee decision in March 2007 to submit for the Plenum's vote the Criminal Code which was adopted in 2004 and suspended in 2005, due to its incompatibility with the procedural norms and other substantial inconsistencies identified by practitioners. If it had entered into force, the 2004 Code would have caused significant difficulties for the criminal courts and the prosecution services and run a serious risk of rendering the entire criminal justice system non-operational. The Plenum of the Senate decided in late March to remit the 2004 Criminal Code back to the Legal Committee for further consideration. This will allow for a debate of the new proposal for the Criminal Code as well as for the Criminal Procedure Code. Romania expects this for public debate by autumn 2007.

- Report and monitor on the progress made, as regards adopting the new Codes including adequate consultations and the impact it will have on the justice system

The situation is very different for the two new procedure codes. The process is under way and well advanced for the Civil Procedure Code but only starting for the other one although progress has been made. The composition of the commission for drafting the new Criminal Procedure Code was finalized and approved by Order of the Minister of Justice no 1251/C of 17 May 2007.

#### *New Civil Procedure Code*

The Commission for Drafting the New Civil Procedure Code was established in 2006<sup>7</sup>. The Commission has drafted about 250 articles (of 7-800 articles in total), which concern the trial at first instance. The structure of the code has been decided upon.

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It is composed of 21 members. 11 of them are staff of the Department for Drafting Normative Texts, Studying and Documentation of the Ministry of Justice; one is a State Secretary of the Ministry of Justice and nine are professors, practising lawyers and judges. Many contributions have been received from judges all over the country. The Commission divided itself into subgroups working on a specific area of the new code. The subgroups meet at least once a week.

Romania expects the work to be finalised by the end of December 2007. After the governmental approval that should follow a public debate, the text will be sent to the Parliament. Adoption is foreseen by the summer of 2008 and a *vacatio legis* of at least 6 months will be provided.

As for the new courts' jurisdiction, the following is foreseen: (1) the courts of first instance will have a limited jurisdiction; (2) the tribunals will have a mixed jurisdiction, acting as first instance courts in specified matters and as appellate courts on the appeals lodged against the decisions of the lower courts; (3) the courts of appeal will decide the appeals against the judgments of the tribunals and will act as a first instance court in administrative claims; (4) the HCCJ will decide only the second appeals (*recurs*) against any decision made at the second instance level. In this way the HCCJ will become a real court of cassation, dealing only with legal issues. A strict filter of admissibility of cases is foreseen to avoid overloading the HCCJ. Romania expects that the High Court, being the only court in the country competent to make a final decision on legal questions, will lead the jurisprudence and substantially contribute to unification of the practise.

The Commission for Drafting the New Civil Procedure Code is considering a solution to the problem of the exceptions of unconstitutionality as a way to delay the proceedings<sup>8</sup>. The chosen solution is that when the parties raise a question of constitutionality of a law, which is relevant in the case, the question is sent to the Constitutional Court but the trial proceeds. If the law is declared unconstitutional the concerned party will file an appeal or a motion for revision.

#### *New Criminal Procedure Code*

The Commission for Drafting the New Criminal Procedure Code started its work in January 2007.

At the moment, the members of the Commission<sup>9</sup> are working on outlining the new Code. They have elaborated some rough drafts of the scheme but the final version is not ready.

The new criminal procedure will be mainly adversarial. For serious and middle level crimes the prosecutions will be mandatory whereas for petty offences the prosecutor will be given the discretionary power not to prosecute.

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<sup>8</sup> When an exception of unconstitutionality is raised, the court is allowed only to check if the challenged law is relevant in the case. If it is so, the court shall hand the file to the Constitutional Court and the main trial shall be automatically suspended. Hence, also totally unfounded exceptions can cause a substantial delay, given that the Constitutional Court is overloaded.

<sup>9</sup> Initially composed of five members, the Commission now comprises 17 members. Following the Order of the Ministry of Justice of May 2007, out of those 17 members, are one state secretary in the Ministry of Justice, three law professors, four judges (one from the HCCJ, two from courts of appeal and one from a tribunal), two prosecutors (one from DNA and one from a prosecutors' office attached to a court of appeal), one attorney, one expert from the Legislative Council, one academic assistant and four legal advisors from the Legislative Department within the Ministry of Justice. Initially meeting twice a month, Romania reports that the Commission works now on a permanent basis and meets daily, as from 23 May.

So far, the Commission has had no contact with the other Drafting Commission in order to facilitate timely solution of potentially divergent positions on common principle such as exceptions of unconstitutionality.

- Enhance the capacity of the Superior Council of the Magistracy to perform its core responsibilities as well as its accountability. In particular, address the potential conflicts of interest and unethical actions by individual Council members. Recruit judicial inspectors, according to the newly-adopted objective criteria, who should also have a greater regional representation

The administrative capacity of the SCM to discharge its competences under the law has now been fully achieved. The Council operates coherently in all its areas of responsibility and employs a system of Working Groups, under the coordination of one permanent member of the Council, for the monitoring and implementation of activities in each respective area. The new management team of the SCM, elected in January 2007, committed itself to a functional relationship with the Ministry of Justice and other state authorities as well as to greater involvement of the SCM in those legislative debates that concern the judicial system.

The accountability and ethical standards of the Council and its individual members remain issues of concern. The same applies for the potential conflict of interests of the SCM members. The law allows the present Council members to choose between being permanent and exercising the function of Council member and that of leadership in a court or prosecutor's office concurrently<sup>10</sup>. Moreover, on matters such as ethical standards for individual members or the potential conflict of interests, the Council has consistently adopted a formalistic position whereby there cannot be a presumption of lack of integrity for SCM members and that allegations of unethical behaviour would be treated on a case by case basis.

With regard to the recruitment of judicial inspectors, the Council used a well-defined and objective procedure in all of its recent recruitment rounds. The SCM was also mindful of the geographical representation among the newly recruited inspectors and broke the monopoly which magistrates from Bucharest courts/prosecutor's offices held until recently.

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

The law on the National Integrity Agency amended by government emergency ordinance entitles the agency to verify assets, incompatibilities and potential conflicts of interest of a large number of higher public- and elected officials. It also provides for issuing mandatory decisions on the basis of which dissuasive sanctions may be taken. The agency is expected to be operational by October 2007.

Legal concerns in relation to the independence of the agency and to the effectiveness of its powers to investigate and impose dissuasive sanctions are only partially

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<sup>10</sup> Seven SCM members have chosen permanent activity; the president of the SCM has *de jure* permanent activity during the one year leadership mandate.

mediated by the amendments imposed by the government emergency ordinance. This ordinance only stays in force until confirmed or changed by Parliament.

**Romania has made substantial progress in reaching this benchmark. It is however too early to assess the effectiveness of the Agency in achieving its objectives until it has been set up and has established a track record.**

#### *Detailed Assessment*

- *Adopt legislation establishing an effective and independent integrity agency with responsibilities for verifying assets, potential incompatibilities and conflicts of interest, as well as issuing mandatory decisions on the basis of which dissuasive sanctions can be taken*

The Ministry of Justice drafted the law on setting up the National Integrity Agency (NIA) with jurisdiction over verifying assets, incompatibilities and potential conflicts of interest.

The draft law was approved by Government, in July 2006, and finally adopted by the Romanian Senate in May 2007<sup>11</sup>.

Under the law, President and Vice-Presidents of the agency are to be appointed by the Senate, upon proposal of the National Integrity Council, for a four-year mandate, following a competition/an exam<sup>12</sup>. At the proposal of the National Integrity Council the President and Vice-Presidents are also removed from office by the Senate.

The NIA carries out verification activities in wealth, conflict of interests and incompatibilities<sup>13</sup>.

The law provides for an annual independent external audit, financed from its own budget. All dignitaries and public officers from national and central level are under the obligation to submit wealth and interests statements<sup>14</sup>.

The integrity inspector shall proceed to the control of wealth, verification of the conflicts of interests or incompatibilities, *ex officio* or upon request from an interested party, in compliance with the requirements provided by the law thereof. The beginning of the control procedure will be notified to the person subject to verification who has the right to be assisted or represented by an attorney.

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<sup>11</sup> Law n. 144 of 25 May 2007 on the establishment, organisation and functioning of the National Integrity Agency, as published in the Official Journal of Romania, Part I, no 359 of 25 May 2007.

<sup>12</sup> The National Integrity Council is a body without legal personality that does not function on a permanent basis, staffed by Government representatives, senators and members of the Chamber of Deputies, representatives of the magistrates' associations and of the elected leaders of the local public administration bodies, of the public officers and of civil society. The Council submits an annual report regarding the Agency's activity to the Senate.

<sup>13</sup> During their investigation activity, the integrity inspectors may order witness hearings, expertise, and may request all documents and information necessary for the drafting of the ascertaining act from all the public institutions and bodies involved, as well as from other public and private law entities.

<sup>14</sup> Failure to publish the wealth or interest statement results in a fine provided by law as does failure to submit the statement and late submission. The submission of false wealth or interests statements is considered a crime and is punished with imprisonment.

In order to protect the dignitaries and the public officers against abusive actions, the law provides for an imprisonment sanction against persons who make false statements or declarations.

The integrity inspector shall notify the court if, on the available evidence, there is a notable difference between the possessed wealth and the declared one, which cannot be reasonably justified<sup>15</sup>. In this case, the court may order the confiscation of a part of the wealth or of a certain asset. If the court, through a definitive and irrevocable decision, declares that the wealth was illegally acquired and orders the confiscation measure, the law provides the sanction of removing from office and prohibition from exercising a high-ranking or public office position, for a period of 3 years after the removal from office, except for those occupying elected offices. The definitive and irrevocable decision declaring the conflict of interests shall be submitted to the disciplinary commissions or, as the case may be, to the authorities, for the disciplinary sanctioning of that person or for the removal from office.

Several concerns have already been expressed regarding the final version of NIA, and in particular:

- Originally, the goal of the draft was to set up an Agency able to verify and take action in a zone not covered by any other institution in Romania – wealth that cannot be justified by the incomes of the verified person. However the adopted form retains the concept of "illicit" wealth instead of "unjustified" wealth. "Illicit" wealth can be confiscated but needs to be proven before hand to result from an illegal/illicit action. This zone nevertheless, on the one hand, is already covered by prosecutors/police (for criminal acts) and fiscal authorities, police etc. (misdemeanour, civil) and, on the other hand, there might be a considerable number of cases where, although the assets unjustifiably overpass the incomes, "illegal" acts cannot be proven.
- The percentage defining the "notable difference" between the possessed wealth and the declared one, upon which the integrity inspector shall notify the court (at least 10% but not less than the equivalent in lei of 20.000 Euro<sup>16</sup>) seems particularly high compared to the 2% originally proposed.

On some aspects of those two points, the GEO nr 49/01/06/2007, entered into force in June 2007, does make some positive changes. In particular, it replaces "illicit wealth" with "unjustified wealth". It also allows investigations to begin when a 10 000 Euro discrepancy between wealth and income is found.

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<sup>15</sup> The notable difference is defined under the law as the difference between the existing wealth and the acquired incomes which is higher than 10% but is not less than the equivalent in lei of 20 000 Euro. A Government Emergency Ordinance amending and supplementing Law n. 144/2007 on the establishment, organisation and functioning of the National Integrity Agency (GEO no. 49/01/06/2007) changed the amount for which a wealth check can be triggered to the equivalent in lei of 10 000 Euro. Romania expects this GEO to be validated in Parliament.

<sup>16</sup> The equivalent in lei of 10 000 Euro under the GEO.

Nevertheless, this GEO has still to be confirmed by the Parliament to remain in force in a durable way<sup>17</sup>.

The actual functioning of the agency remains to be assessed.

- Establish such a National Integrity Agency, ensure it has the necessary human and financial resources to fulfil its mandate

This part of the Benchmark can not be assessed before effective implementation of the newly set up NIA.

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

There has been continued progress in the prosecution of high-level corruption cases. The specialised prosecution services for corruption (National Anti-Corruption Department - DNA) have been established throughout the country and show a positive track record concerning investigations and indictments for high-level corruption. This includes high-profile cases with the indictment of well-known and influential public figures. However, rigour in prosecution is not reflected by judicial decisions. Data provided on sentences show that penalties on average are not dissuasive and a very high-number of suspensions of these penalties in cases of high-level corruption. The rationale for these suspensions, including awareness and attitudes among the judiciary towards dissuasive sentences of cases of high level corruption needs to be clarified. This undermines recent progress in investigation and affects negatively public perception of the political commitment to tackle corruption. In addition, a series of recent events could have negative impacts on the fight against corruption. These include the decriminalization of bank fraud, the intention of parliament to shorten the maximum duration for penal investigations and the request for dismissal of a senior member of the DNA.

**Overall, progress in the judicial treatment of high-level corruption is still insufficient.**

#### *Detailed Assessment*

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

In March 2006, the Romanian Parliament ratified law n. 54/06 that restored the competence of the "National Anti-corruption Department" to investigate all cases of high-level corruption. The office is now named the National Anti-corruption Directorate (DNA). It is established as a legal entity within the Prosecutor's Office at the HCCJ. The General Prosecutor of the Prosecutor's Office attached to the

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<sup>17</sup> The legal Committee passed on 13 June the GEO, which remains to be finally approved by the Parliament.

HCCJ directs the DNA through the Chief Prosecutor of the matter. DNA has a budget and a staff of its own.

The commitment and capacity of the DNA in prosecuting high level corruption cases continued. The number and profile of the new investigations initiated by the DNA in this period contributed to a good track record of non-partisan investigations into high level corruption.

The timeframes in which DNA conducts and concludes its investigations continues to illustrate a high level of professionalism in the Department's multi-disciplinary investigating teams. 84 new indictments have been filed since September 2006, concerning 195 defendants. During the same period, courts have rendered 47 non-final convictions in corruption trials, as well as 33 final convictions. Three cases were finalised with acquittal.

However, the efforts and results of the DNA in the prosecution of high level corruption are not upheld by a similar output of the court system. There are several elements in the practice of the courts that indicate either insufficient awareness of the corruption phenomenon or lack of training/knowledge.

First, the sentences applied by courts in corruption cases do not have a dissuasive effect and fail to fulfil their preventive function. With an average length of sentence for corruption offences at 1-2 years imprisonment and the vast majority of the convictions having the execution conditionally suspended, the courts fall short in demonstrating that they understand their essential role in the efforts to curb corruption in Romania.

Second, in all of the most important corruption cases investigated by DNA and brought before the court in the past half-year, the courts suspended the proceedings and referred the cases to the Constitutional Court for its ruling on various unconstitutionality claims submitted by the defence. While procedurally correct, questions could be raised about the tendency of the courts to refer cases to a higher level of jurisdiction instead of dealing with them at a lower level. Consequently, trials of two high level former politicians, which had both been acknowledged at the time as a convincing signal of commitment towards investigating high level corruption in Romania, are now left pending for the duration of a constitutionality verification procedure that may take well over a year.

With regards to the nomination and revocation procedures, the early departure or replacement of officials holding key positions to the reform process can be damaging to the continuity of the reform process. As to the nomination and revocation procedure of the General Prosecutor and the Chief Prosecutor of the DNA, the decision of the Senate's Legal Committee to activate an older proposal pending in the Senate since 2006 was reversed by the Plenum in late March 2007. It remains to be seen whether the intent to modify the nomination procedure is abandoned irreversibly. The number of personnel changes in the past months is not reassuring in that respect. Examples are the departure of figures of the GAD and



the nomination for dismissal of leaders of DNA and of NIM<sup>18</sup>. In addition, several high officials of the Ministry of Justice have resigned.

Moreover, another concern relating to the fight against corruption is the potential amendments of the Procedural Code, currently being discussed within the Parliament. This might have a substantial negative impact on the fight against corruption, particularly with reference to the following three issues: (1) Notwithstanding concerns expressed, the abolition of the possibility for the Public Prosecutor to authorise suitably motivated provisional interception for urgent cases even though authorisation of the judge is required - *in any case* - within the next 48 hours; (2) the limitation of the investigation to a maximum period of six months; (3) the limitation of running wire tapping to a maximum of 120 days. These amendments would seriously limit the potential of the investigators in collecting evidence, particularly when tackling well established criminal groups or powerful governmental representatives deeply involved with corruption.

Finally, a new law was passed in late March 2007<sup>19</sup>, decriminalising certain aspects of bank fraud previously under the jurisdiction of the DNA<sup>20</sup> challenges the legal stability of the anti-corruption framework. If the law is being applied retroactively, which appears to be the case, decriminalisation would apply to bank officers that received kick-backs for granting questionable and illegitimate loans. This would have as a result the dismissal of numerous pending cases by the DNA<sup>21</sup>.

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

Romania has made progress with "flagship" projects to raise public awareness on corruption such as the successful "green" corruption-helpline and the National Integrity Centre, an independent public advisory body on corruption run in cooperation with civil society. In addition, Romania has organised a number of corruption awareness campaigns for the general public, the judiciary and public officials in different sectors of activity. The General Anti-corruption Directorate of the Ministry of Administration and the Interior (GAD) has taken a number of pro active measures such as integrity tests and inspections. Training programs for public officials were organised and preventive measures were established in areas such as health and education. However, a comprehensive local anti-corruption strategy based on risk assessments targeting most vulnerable sectors and local administration is missing. The dissemination of successful pilot-activities has not been reported. In addition, concerns remain as to the continuing political support for important high-profile projects such as the National Integrity Centre.

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<sup>18</sup> CSM however advised that none of the proposal for dismissal is sufficiently grounded; therefore both requests are pending until more evidence is gathered.

<sup>19</sup> Law n. 69/2007 of 26 March 2007, modifying Law n. 78/2000 (the Law for Preventing and Investigating Corruption).

<sup>20</sup> The law decriminalises the granting of loans in violation of bank policies and the use of loans for purposes other than as declared in the loan application (other than loans involving public funds). These offences were originally placed under the DNA jurisdiction because of their relationship to corruption and because of the negative impact of bank fraud on Romanian banks.

<sup>21</sup> Currently 52 cases are potentially concerned and around an equal number of cases in the DNA that will be taken off criminal investigations.

**Overall, some progress against this benchmark has been achieved.**

*Detailed Assessment*

- 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

There were several anticorruption campaigns initiated in 2006 and continued in 2007. The awareness and information campaigns run by GAD have produced tangible results. Between September 2006 and March 2007, the green helpline (TELVERDE) of the GAD recorded 6 237 calls and voice messages. Also during this period, the GAD forwarded 142 criminal investigations to the DNA, which in turn filed indictments in 17 cases originating from the said unit. The Ministry of Justice launched another awareness campaign, targeting both the beneficiaries of the justice system as well as the judicial staff (“don’t bribe and don’t let yourself be bribed”). The campaign is ongoing and there have been no measurements so far of the impact that it had on any of the target groups.

- 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

With regards to the use of measures to reduce the opportunities for corruption and increase transparency of local government, the National Civil Servants Agency (NCSA) is the beneficiary of a substantial PHARE twining project initiated in December 2006, which will assist the Agency in re-defining human resources policies and internal practices. One of the main objectives of this project is to enhance the transparency and integrity of the civil servants’ performance in public office.

GAD reported at the end of January 2007 on measures used by the unit for preventing and combating corruption within the ranks of the Ministry of Interior and its services. For the Border Police alone, which has been the main focus of GAD in 2006, the unit resorted to more than 6 000 integrity tests, undercover operations and un-announced inspections, which had the highest number of border officers reporting attempts of corruption (60% higher than 2005). There have been 67 cases of bribery attempts reported by border police officers to GAD, and the highest amount of money offered as a bribe and refused by an officer was 5 000 Euro (a case of cigarette smuggling on the Romanian-Ukrainian border).

GAD also engaged in a consistent preventive campaign, both by activities with staff of the Ministry of Interior as well as in partnership with civil society by trying to involve various segments of the general public (such as student organisations) in the efforts of the public institutions to reform their administration and personnel.

As far as the fraud of EU funds is concerned, the Department for Fight against Fraud (DLAF) reported 13 new cases begun in January 2007. The total number of cases under investigation by DLAF between 1 September 2006 and 15 March 2007 is 84, 63 cases being opened in the reference period. 22 files were forwarded

to NAD on the basis of the cooperation agreement between the two institutions, and 17 were forwarded to the regular prosecutors' offices.

The concrete results of the preventive measures adopted by public institutions are hard to assess in the absence of analytical instruments built into the awareness/information campaigns conducted so far. A comprehensive anti-corruption campaign, funded through a PHARE 2004 project, equipped with all the conceptual elements to provide a good reflection of where the central and local administration is in preventing and combating corruption is only at an inception phase and will run throughout 2007.

Out of all central or local institutions, the GAD of the Ministry of Administration and Interior appears as the central anti-corruption structure.

#### **4. FOLLOW-UP UNDER THE COOPERATION AND VERIFICATION MECHANISM**

Concerning judicial reform and the fight against corruption, Romania should continue to move towards meeting the benchmarks and in particular,

- Finalise the adoption of the new Civil Procedure Code, continue the adoption process of the new Criminal Procedures Code and strengthen the new Criminal Code.
- Resolve the current staffing and organisational problems of the Romanian court system and follow-up on the results of studies and pilot projects to set performance indicators for the judiciary.
- Demonstrate the effectiveness of the National Integrity Agency.
- Assure the legal and institutional stability of the anti-corruption framework including key institutions such as the DNA and promote dissuasive decisions in cases of high-level corruption. Stronger dissuasive measures such as tightening the legal conditions for applying the conditional suspension of penalty execution and corresponding judiciary training should be developed.
- Establish a coherent country wide anti-corruption strategy targeting most vulnerable sectors and local administration and monitor its implementation.
- In order to achieve the above, strengthen the capacity of the judiciary at all levels, including professionalism, independence, resources and powers.

The Cooperation and Verification Mechanism will continue to be used to monitor progress in Romania. In order to facilitate cooperation and verification, it would be useful for the Romania authorities to prepare an action plan, with milestones, by October 2007 showing how Romania intends to meet the benchmarks. The plan should be based on a coherent strategy in fighting corruption at all levels and a credible plan to strengthen professionalism, independence, powers and resources of the judiciary. It is important that the Romanian authorities foster an open dialogue with Romanians by enhancing transparency on reforms undertaken under the Cooperation and Verification Mechanism, including on corruption. A continued

political commitment to the reform of the judiciary and the fight against corruption is essential.

#### **4.1. Support**

Support will be provided to assist Romania in its efforts to reform the judiciary and combat corruption. This will involve focusing and targeting existing EC funding under the different programmes available to Romania on support for institution building and training programmes related to judicial reform and the fight against corruption.

The European Commission invites other Member States to step up their assistance and valuable practical support to Romania by cooperating with the Romanian authorities in joint investigative teams on corruption, sharing financial intelligence and methodologies with the relevant authorities, seconding experts and advisors to key ministries and bodies (such as the future National Integrity Agency and the Superior Council of Magistracy) and providing high level training to Romanian police, customs officers and prosecutors at their national police and customs academies, schools of magistrates or national justice institutes and other centres of excellence for the public service.

The primordial importance of the principle of rule of law for the EU implies that all actors – Commission, Romania and the other Member States- have to cooperate to ensure that Romania is effectively reforming its judiciary and fighting crime and corruption at all levels. By October 2007, the Commission will examine assistance offered from the Member States so as to identify gaps and ensure that a full range of support is provided to Romania.

#### **5. CONCLUSION**

In the first six months of accession, Romania has continued to make progress in remedying weaknesses that could prevent an effective application of EU laws, policies and programmes. More time is needed to demonstrate that important legislative progress is translated into results in key areas. Continued attention will need to be paid to all areas in which accompanying measures are in force. In particular, there is a need to step up efforts in the pursuit of judicial reform and the fight against corruption. In the light of the analysis contained in this report, the Commission does not consider that it is warranted at this stage to invoke the safeguard provisions of the Accession Treaty.

The Commission will continue to work in close partnership with Romania to support its efforts meeting the benchmarks under the Cooperation and Verification Mechanism. The Decision establishing the Cooperation and Verification Mechanism provides that the Commission report every six months. The Commission will update this report at the beginning of 2008. It will prepare the next detailed report on the Cooperation and Verification Mechanism in mid 2008. In order to provide input for that report, Romania should report to the Commission on further progress achieved by 31 March 2008.

## ANNEX

### **State of play regarding safeguard measures and transitional arrangements applicable on Romania**

#### **Economic safeguard clause**

Not applied

#### **Internal market safeguard clause**

Not applied

#### **Justice and Home affairs safeguard clause**

Not applied

#### **Agricultural funds**

##### ***a) Safeguard measures***

Not applied

##### ***b) Transitional arrangements***

*Commission Regulation (EC) No 1423/2006 of 26 September 2006 establishing a mechanism for appropriate measures in the field of agricultural spending in respect of Bulgaria and Romania*

#### **Food safety**

##### ***a) Safeguard measures***

*Commission Decision 2007/269/EC of 23 April 2007 on protective measures with regard to equine infectious anaemia in Romania*

##### ***b) Transitional arrangements***

*Commission Decision 2006/779/EC of 14 November 2006 concerning transitional animal health control measures relating to classical swine fever in Romania*

*Commission Decision 2006/802/EC of 23 November 2006 approving the plans for the eradication of classical swine fever in feral pigs and the emergency vaccination of those pigs and of pigs in holdings against that disease in Romania*

*Commission Decision 2006/805/EC of 24 November 2006 concerning animal health control measures relating to classical swine fever in certain Member States (last amended by Commission Decision 2007/152/EC of 6 March 2007)*

*Commission Decision 2007/16/EC of 22 December 2006 laying down transitional measures for intra-Community trade in semen, ova and embryos of the bovine, porcine, ovine, caprine and equine species obtained in Bulgaria and Romania*

*Commission Decision 2007/23/EC of 22 December 2006 amending Appendix B of Annex VII to the 2005 Act of Accession as regards certain establishments in the meat, milk and fish sectors in Romania*

*Commission Decision 2007/27/EC of 22 December 2006 adopting certain transitional measures concerning deliveries of raw milk to processing establishments and the processing of this raw milk in Romania with regard to the requirements of Regulation (EC) No 852/2004 and 853/2004 of the European Parliament and of Council*

*Commission Decision 2007/29/EC of 22 December 2006 laying down transitional measures for certain products of animal origin covered by Regulation (EC) No 853/2004 of the European Parliament and of the Council introduced into Bulgaria and Romania from third countries before 1 January 2007*

*Commission Decision 2007/30/EC of 22 December 2006 laying down transitional measures for the marketing of certain products of animal origin obtained in Bulgaria and Romania (amended by Commission Decision 2007/264/EC of 25 April 2007)*

*Commission Decision 2007/228/EC of 11 April 2007 laying down transitional measures for the system for the identification and registration of ovine and caprine animals in Romania provided for in Council Regulation (EC) No 21/2004*