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TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

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

ROMANIA: Technical Update

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Note:

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

1. 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

Codes

Preparation for the implementation of the four new codes has continued.[1] The implementing laws, which facilitate application of the new legal framework by amending other legislation and establishing transitional provisions, are in the process of finalisation. An implementing law for the Civil Code was adopted by the Parliament in May and established an entry into force date of 1 October this year. This decision was initially opposed by some stakeholders within the judiciary who requested more time to prepare for implementation. Implementing laws for the Criminal, Civil Procedure and Criminal Procedure Codes are in various stages of drafting and adoption.[2]

Work on the impact study of the new codes by a consortium of consultants has continued and completion is foreseen by the end of the summer.

Pending the finalisation of the impact study a comprehensive implementation plan for the codes has not yet been drafted. Once the impact study is complete, the preparation of such a plan will be a crucial requirement to ensuring the smooth implementation of the new codes. It will also be a means to reassure practitioners that the system will be prepared for the implementation of the new codes.

Despite no additional funds from the State budget being provided to the National Institute of the Magistracy for training on the new codes, a number of seminars are being prepared in different counties and financed from existing national funds diverted from other continuous training activities. A more extensive package of training is foreseen to be financed by external funds. At present little training has been undertaken and the bulk of training is not envisaged to be delivered until 2012. An initiative by the Superior Council of the Magistracy to create an online resource containing annotated versions of the codes, commentaries, relevant jurisprudence and international comparisons, is a welcome approach to complement traditional training. Financing has still to be secured for this initiative.

Significant challenges remain ahead in preparing for the implementation of the new codes, including potential human resourcing, logistical and structural adjustments. Adequate financing will need to be ensured to meet these challenges.

In advance of the implementation of the Codes, the Small Reforms Law, adopted in October and in force since November 2010, has brought a number of improvements for the celerity of the judicial process. Although it is too early to fully assess the impact of the amendments, positive effects appear to have resulted on the efficiency of investigations by the prosecution, in particular through the possibility to take over motivations of the police in simple cases where the prosecutor decides not to open an

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1 New Criminal and Civil Codes were adopted by the Parliament in summer 2009 and the accompanying Procedure Codes in summer 2010.

2 The draft implementing law for the Criminal Code is under debate in Parliament. The draft implementing laws for the Criminal Procedure and Civil Procedure Code were published for public consultation and are now being finalised prior to sending to Parliament for debate and adoption.

investigation, as well, to a lesser extent, greater possibilities for the prosecution not to pursue cases where existing evidence does not warrant further investigation.[3] Some positive effects are noted on the celerity of trials (for instance introducing a guilty plea procedure which shortens trials). Other provisions in the law meant to reduce the delay between hearings cannot demonstrate equal success as this depended already before the adoption of the new law on good practice in court, notably effective case management and the availability of sufficient resources.

Unification of Jurisprudence

The Commission's report of July 2010 recommended Romania to revise the competence of the High Court of Cassation and Justice (High Court) in order to enable the High Court to function more effectively as a cassation court and to concentrate on unifying jurisprudence. The Small Reforms Law has in part addressed this issue by reducing their jurisdiction to try certain criminal cases in first instance.[4] However, these reforms do not go far enough to effectively tackle the problem of non-unified jurisprudence. The new procedure codes introduce a new mechanism for unifying jurisprudence, the preliminary ruling, which will complement the existing appeal in the interest of the law.[5] The application of strict rules to accompany the new mechanism will be necessary to avoid that unfounded requests for preliminary rulings unduly delay trials.

In line with a recommendation from the Commission of July 2009, the Small Reforms Law streamlined the process for determining appeals in the interest of the law. The amendments extended the categories of persons competent to lodge such appeals, revised the composition of the competent panel of judges, enshrined in legislation the role of a rapporteur judge to report to the panel, and introduced deadlines for rendering decisions, their motivations and publication. To facilitate the efficiency of the procedure, a working group of judges and assistant magistrates has been set up to proactively identify cases where an appeal in the interest of the law is needed.

Further population of the national jurisprudence portal, Jurindex has continued. However, further efforts are still needed to meet the recommendation of the Commission of July 2010 to ensure the full jurisprudence of the courts is published in a user-friendly and easily searchable database.

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3 The impact was greatest at the level of the Prosecutors Offices attached to the Courts of First Instance, which deal predominantly with less serious crimes. The number of cases solved in the last three months of 2010 and first three months of 2011 show a 14% rise compared to the last three months of 2009 and first three months of 2010.

4 The rationae personae competence of the High Court in criminal matters was reduced by the Small Reforms Law such that only Members of the Government, Parliament, Constitutional Court, Superior Council of the Magistracy, senior military officers and High Court judges and prosecutors will be tried in first instance by the High Court. As a result of the Small Reforms Law, competence to try in first instance a number of other categories of high officials has been transferred to the Courts of Appeal.

5 Under this procedure, a panel, when judging a case in the final instance and having found diverging jurisprudence on a matter of law upon which the solving of the case in question depends, will notify the competent section of the High Court to deliver a decision on the point of law. The decision of the High Court will be binding both for the referring court and for all other courts, and should have the effect of unifying jurisprudence for ongoing cases, as opposed to only for the future in the case of the appeal in the interest of the law.

Human Resourcing and Structural Reform of the Judicial System

Despite the recommendation of the Commission of July 2010 to adopt immediate measures to reduce capacity imbalances, few measures have been taken. The total number of vacancies in the magistracy has fallen slightly with a reduced retirement rate,[6] some isolated measures have been taken to address individual capacity pressures,[7] and for the first time the number of positions opened for promotion has sought in part to reflect capacity issues.[8] However, the number of new recruits has also fallen[9], no further positions have been identified for redistribution (and only a limited number of already identified positions redistributed and occupied), nor efforts to comprehensively review the existing distribution of personnel.[10]

A pilot court optimum workload programme implemented by the Superior Council of the Magistracy (SCM) appears to have achieved mixed results, with some indications from the judiciary that the programme has ensured a more equal distribution of cases between panels within (but not between) each court, but at the expense of reported unreasonable delays in court proceedings. The Ministry of Justice has opposed the programme on grounds that the programme has caused an unacceptable extension of the duration of trials, especially in courts with high workloads. The programme has been used by the SCM to identify locations requiring supplementary resources, but does not appear to have been used to identify scope for reallocating of existing resources.

A legislative proposal which sought to close small, non-viable courts and related prosecution offices was significantly watered down in Parliament. From 24 courts (and their accompanying prosecutors' offices) proposed by the Government, the law as adopted by the Parliament foresees the closure of only 12 courts, the vast majority of which are not currently functioning and whose closure will do little to ease pressing capacity issues in other courts.[11] No further consideration appears to have taken place of a second tranche of rationalisation, even though such measures might be necessary to implement the new codes.

Proposals recommended by the Commission in July 2009 to modernise the internal operation of courts by introducing court managers and transferring certain

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6 As of 1 June 2011 there were 396 vacant judge positions and 493 vacant prosecutor positions. This compared to 416 vacant judge positions and 527 vacant prosecutor positions 12 months previously, indicating a net fall in total vacancies of 54 magistrate positions.

7 For instance in March 2011 the Government approved a request of the Ministry of Justice to supplement the personnel scheme for the Bucharest Tribunal and the Bucharest Court of Appeal.

8 In March 2011, following consultation with the General Prosecutor, the SCM decided to open for promotion contest only those vacant prosecutor positions in Prosecutors' Offices with more than the national average (18%) of vacancies.

9 In the twelve months since 1 July 2010 125 judges and 154 prosecutors entered the magistracy. This compared to 293 judges and 245 prosecutors in the twelve months from 1 July 2009.

10 In the nine months from 1 July 2010 a small number (eight positions for judges) of already earmarked positions have been redistributed and the majority occupied.

11 Of the 12 courts (and accompanying prosecutors' offices) approved for closure, 9 are not currently operational and therefore have no personnel scheme or magistrates allocated. This means that whilst their closure will in certain cases deliver a small financial saving, their closure will make available no magistrates or positions for reallocation, and therefore make no significant contribution to tackling pressing resourcing difficulties elsewhere within the judiciary. The Government's original proposal was itself significantly less than was originally proposed by external experts in 2005.

administrative tasks to auxiliary personnel, have still not yet been adopted nor implemented. Draft legislation was published for consultation in March.

Despite the Commission's recommendation of July 2010, no steps have been taken to strengthen the capacity of the National Institute of Magistracy (NIM). Capacity constraints continue to limit the number of new recruits that can be trained each year.[12] Budget cuts since 2007 have nearly halved the amount of continuous training seminars delivered. There are 20% fewer continuous training seminars foreseen in 2011 than in 2010. Proposals developed in the autumn of 2010 to strengthen the recruitment and initial training of magistrates have not so far been further progressed. Consistent professional standards for all new magistrates – as recommended by the Commission – cannot therefore yet be guaranteed as the majority of new recruits neither benefit from comprehensive training at the NIM nor sit a capacity exam to confirm their professional standards as they enter into the magistracy through the extraordinary direct entry exam.[13]

Nevertheless, despite the limited tangible progress, the need for structural reform is acknowledged. The Ministry of Justice has taken steps to act upon the recommendation made by the Commission in July 2010 to undertake a review of the functioning of the judicial system. Preparations for launching such a review are underway. Such an independent assessment will help identify measures necessary to improve the efficiency of the system. Its conclusions should feed into revision of the draft Justice Development Strategy and accompanying action plan, whose adoption was postponed by the Government due to the lack of resources.

Superior Council of the Magistracy

Contrary to the recommendation of the Commission of the July 2010, the elections for the new Superior Council of the Magistracy (SCM) were partially undermined by legality and legitimacy issues, which were only decided by a Constitutional Court ruling which quashed the validation of four ineligible members.[14] Pending new elections and appointments to the invalidated positions, a Government Emergency Ordinance was required to temporarily ensure the SCM's functioning with a reduced quorum.[15] Elections were held for the three vacant magistrate positions in June. The two vacant civil society positions were also filled by the Parliament in June.

Despite this challenging start, the SCM has taken a number of steps to address various outstanding deficiencies. The SCM has notably adopted a new regulation governing the recruitment of judicial inspectors, new procedures to handle requests for the search or arrest of magistrates and proposed a new procedure for selecting judges for promotion to the High Court.[16] The successful impact of the new

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12 Capacity constraints limit the annual intake of new recruits via the National Institute of the Magistracy to 200 places. In the short term this is insufficient to meet the resourcing needs of the magistracy.

13 In 2010 nearly two thirds of all new magistrates recruited entered the magistracy through the extraordinary direct entry exams for legal professionals with five years experience which are considered less thorough and comprehensive than the selection process for students to the NIM.

14 Three magistrates had held office in the previous SCM, making them ineligible to hold a second term of office. One civil society representative had previously been found incompatible and therefore was ineligible to hold public office.

15 The Government Emergency Ordinance of 23 February 2011 temporarily reduced the quorum from a qualified majority (of 15 members) to a simple majority.

16 The adoption of new procedures governing the handling of requests to allow the search or arrest of magistrates followed the controversial decision of the new SCM to reject such a request in the opening weeks of their mandate. The judge was under investigation for bribe taking.

procedures in improving transparency, thoroughness and objectivity will be demonstrated through their application in practice. The adoption of the new procedures for promotion to the High Court has been hindered by opposition from the High Court both to the form of adoption and to the content. Emergency legislation remains pending in Parliament. As a result, promotions to the High Court are currently blocked, which exacerbates staff shortfalls in this Court.

SCM plenum meetings are now broadcast live, documents to be discussed at plenary meetings are published online in advance and more information is made publicly available on the activities of the SCM members to strengthen their accountability to the magistracy. A new code of ethics for members is currently under preparation. An action plan on integrity within the judiciary and a new code of ethics are foreseen. At the same time, major challenges remain ahead for the SCM, including preparing the magistracy for the new codes and addressing resourcing issues. The SCM will need to ensure they maintain a principled approach and act with transparency and accountability in each and every decision.

Judicial Inspection

Although a comprehensive reform of the disciplinary system has not yet been realised[17], since last year a number of steps have been taken by the Romanian authorities with a view to strengthening the capacity and operation of the Judicial Inspection, in line with the Commission's recommendation of July 2010.

Firstly, financing has been provided to allow for the filling of the significant number of vacancies and a competition is underway.[18] Secondly, efforts are being made to target future inspections of courts and prosecutors' offices, in particular to follow up on deficiencies identified in earlier controls, and filter disciplinary complaints received in order to focus on the most pertinent.[19] Efforts have also been made to strengthen the recruitment procedure for inspectors, and therefore their independence, as well as to enhance the Inspection's transparency and accountability.[20] Meetings have been organised between inspectors to promote unification of practices.

Despite these reform measures, significant questions remain as to the impact of the Judicial Inspection's activity, for example as regards the monitoring of delays in high level corruption trials. The Inspection has checked a number of cases following critical media reports, but did not inspect many other high level corruption trials raising celerity issues. No concrete recommendations in terms of judicial practice, structural measures or legal amendments resulted from these inspections. Potential instances of disciplinary violations in these cases were reportedly closed due to expiry of prescription periods.

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17 Initial, draft proposals have been recently published by the Ministry of Justice and their relative merits are now being further debated with the judiciary.

18 As of 20 April 2011, 22 inspector positions were vacant within the Judicial Inspection.

19 An agreement has been reached with the General Prosecutor that the Judicial Inspection may refer complaints to designated prosecutors at the Courts of Appeal for preliminary verifications. The Inspection has also proposed the transformation of auxiliary personnel positions into a number of legal adviser positions who could also undertake preliminary filtering of complaints.

20 For the first time the Inspection produced its own, separate annual activity report and presented the report at a public session. The Inspection has also launched its own website which is intended to provide information on the attributions of the Inspection and to provide updated information on their results.

Proposals to adapt the types of disciplinary sanctions and to categorise disciplinary offences to ensure the application of consistent, proportionate and dissuasive penalties, in line with the recommendation of the Commission of July 2010, remain pending. In addition, the legal loophole or practice that allows magistrates to escape disciplinary liability through retirement has not been addressed.

Public Ministry

The General Prosecutor has continued to take steps to reform and enhance the efficiency of the prosecution. Steps taken have complemented efficiency gains brought by legislative amendments, including in the Small Reforms Law with practical measures. These include training on the new legislative amendments concerning the prosecution and creating a virtual library of cases to share best practices. The Prosecution received direct access to 17 state databases to facilitate investigative work. Statistical data collection has been improved to strengthen monitoring of the performance of the prosecution as a whole. The possibility of transferring the Judicial Police to the Public Ministry is under consideration. A formal proposal in this regard was sent to the Ministries of Justice and Administration and Interior at the beginning of 2011 and is pending agreement.

A host of measures have also focused on strengthening the performance of the prosecution in tackling financial crime. In 2010, a specialised network of prosecutors on tax fraud was created. Best practices guides on financial investigation and asset recovery, and a revised guide on corruption investigations were drafted. An asset recovery check-list has been developed to strengthen the focus on asset recovery from the outset of an investigation. These efforts are a response to weaknesses in the use of financial investigations, pursuit of money laundering and low levels of the confiscation of the proceeds of crime.

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.

Legal Framework and Track Record

Romania responded swiftly to the Commission's recommendation by adopting a new law on the National Integrity Agency (ANI),[21] which re-established the possibility to seek the confiscation of unjustified wealth. The law also sought to address various procedural shortcomings and enhance transparency.[22]

ANI has been operational under its new legal framework for over six months and begun to re-establish the track record of investigations.[23] Efforts will be needed to

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21 The new law, adopted by the Parliament on 24 August 2010 and promulgated by the President on 31 August 2010, came into force on 6 September 2010.

22 The new law: extends prescription periods; re-introduces daily fines for non-submission of requested information; re-establishes a single asset declaration form and a single interest declaration form, including for publication; and increases the period of time during which declarations forms will remain published online. Furthermore the new law introduces a requirement to declare contracts financed from public funds.

23 As of 6 June ANI had completed 323 cases under the new law, issuing findings or referrals to other institutions of 68 infringements. This included: 38 findings of incompatibility (including against 8 Members of Parliament); 9 conflicts of interest findings or referrals (including findings of conflicts of

consolidate and expand this new, emerging track record. ANI is seeking to focus on more serious and complex cases of conflicts of interest and unjustified assets.[24] The planned investment to upgrade software is aimed to further strengthen ANI's capacity.

Whilst ANI is beginning to rebuild its track record of investigations, the actual impact of their work is in many cases still missing, as the follow up to ANI's referrals or findings by competent institutions and courts is often slow or deficient.[25] As a result, in the three years ANI has been operational:

- No final determinations of unjustified assets have yet been reached by the Courts and therefore no assets finally confiscated.
- Only one case of administrative conflicts of interest was confirmed by a final court decision and the legal process to cancel contracts signed by the official concerned is still ongoing.
- Whilst a number of final decisions were reached in incompatibility cases (confirmed either based on ANI's decision or by court decision following appeal), with some leading to voluntary resignations by officials, where the official did not resign in few cases were sanctions imposed by competent authorities.[26]

Court proceedings in many cases (even relatively simple ones) cases tended to be lengthy. This is illustrated by the track record in determining incompatibilities cases. For more complex case the judicial proceedings are even longer.[27] Inconsistent practices have also emerged, with for instance some trials pending at the time of the April 2010 Constitutional Court decision continuing, in accordance with the transitional provisions in the new law, whilst in other cases the courts have cancelled the trials.

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interest against two Members of Parliament and two Presidents of County Councils); and 4 referrals for unjustified assets (including against one former Member of Parliament and one former county police chief). They have also referred a number of cases concerning high ranking officials to prosecutors and to tax authorities.

24 ANI has identified more conflict of interests in the six months since November 2010, than in the entire two year period they were operational under their previous legal framework. Since November 2010 they have issued findings of administrative conflict of interest in seven cases, compared to just two cases between 2008 and April 2010. They have also already referred four unjustified wealth cases since November 2010, compared to six in the two year period between 2008 and April 2010.

25 ANI issues findings of incompatibilities and administrative conflicts of interest. However, these decisions are subject to appeal in the courts and furthermore the application of sanctions rests with the courts or disciplinary bodies. Under the new legal framework unjustified wealth cases are referred by ANI to Wealth Investigation Commissions attached to Courts of Appeal, who in turn are competent to refer the cases to the Courts for determination and applying the sanction of confiscation.

26 As of 14 April 2011, since 2008 and the beginning of ANI's activity 82 definitive findings of incompatibility had been reached. Whilst a significant number (35 in total) of these persons resigned of their own accord indicating a certain persuasive pressure of ANI's activity, disciplinary commissions applied only 14 sanctions of which 5 were merely warnings. In only 5 cases was the incompatible person dismissed from public office.

27 This is illustrated by unjustified wealth cases. So far no cases have been finally determined. A number of cases were determined in first instance in 2009, but these decisions were quashed following the Constitutional Court ruling. New first instance decisions have been reached in two cases this year; two further cases have been rejected by the Courts. The potential length of such trials is illustrated by cases dating from 2004 and 2005 which ANI inherited from the previous integrity arrangements. The case dating from 2004 received a first instance decision in December 2010 and is now on appeal.

Regarding the disciplinary commissions, problems of delay and leniency persist. Few sanctions have been applied and in some cases disciplinary commissions refused to consider definitive findings of incompatibility.[28] ANI applies small administrative fines to institutions whose disciplinary commissions do not adjudicate such referrals but by law it cannot challenge disciplinary decisions issued.

Co-operation between ANI and the prosecution should be further strengthened. Since its inception, ANI has made a significant number of referrals to prosecutors, predominantly for false statements concerning wealth and interest of public officials.[29] However, these signals have so far only led to one single indictment.[30]

The insufficient follow-up to ANI's findings and referrals by administrative and judicial authorities undermine the effectiveness of the entire process to strengthen the integrity of public administration and limit the impacts of ANI's work. Prompt and thorough follow-up by administrative and judicial authorities is necessary to ensure the integrity system achieves results in this regard.

ANI's work also appears jeopardised by two elements of the new legal framework:

- Introduction of prescription periods applying to investigations, which did not exist under the previous law and were introduced by the Parliament last summer, though not required by the Constitutional Court decision. The prescription period is absolute and requires ANI to complete their investigations within three years of the end of a mandate of a public official. As a result of the new prescription periods, a host of important cases eligible under the old law had to be closed with more cases soon to be closed on these grounds.[31] In effect, the new law has created a de facto amnesty in certain cases for unjustified wealth and other integrity violations.
- Wealth Investigation Commissions were created at the level of Courts of Appeal to address concerns of the Constitutional Court regarding confiscation of unjustified assets. The new procedure obliges ANI to refer cases of suspected unjustified wealth to these Commissions, who are in turn competent to decide on their transmission to courts. Although the track record is so far limited, concerns have emerged as to how the new legal arrangements are being applied in practice. There are concerns that the Commissions may delay cases reaching the courts and act as an unwarranted filter, in particular as the procedure is not public and

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28 Of definitive findings of incompatibility reached since 1 August 2010, as of 14 April 2011 disciplinary commissions had applied one sanction (a dismissal concerning a public official in a prefect's office) and in one case decided to take no action (this case concerned a local councillor and his fellow councillors repeatedly left the council chamber every time this issue was to be discussed). All other cases remained pending. There are also cases pending since 2009 and 2010 for action.

29 As of 14 April 2011, since 2007 of 169 referrals made by ANI to general prosecution offices for false statements, just one indictment had resulted and 117 cases had been closed. In recent months, in a promising new development, ANI has also begun to refer specific allegations of criminal conflicts of interests and other corruption offences to prosecutors. These referrals are still pending but indicate a positive trend.

30 ANI has contested many of the non-indictment decisions in court but in a number of high profile cases – reportedly contrary to previous jurisprudence – the High Court of Cassation and Justice has ruled that ANI does not have legal standing to challenge non-indictment decisions in these cases, despite having been the body which submitted the notification

31 The list of closed cases includes cases against Members of Parliament, Government officials, mayors and county counsellors. In total ANI has so far identified 150 cases that have reached prescription. However, this number is expected to increase significantly.

their decisions are reportedly not appealable, only through an appeal against the judgement of the court. There are concerns that the Wealth Investigation Commissions duplicate the role of courts of appeal and reportedly adjudicate the merits of the case to the same standard of proof as the trial court and therefore to a higher standard of proof than should be applicable for a pre-trial phase.. No steps have been taken to ensure consistent practices across the 16 different commissions.

Finally, whilst the new law adopted last summer has allowed ANI to recommence its administrative verifications of assets and interests, challenges to the new law are already pending with the Constitutional Court.

Institutional Developments

ANI has continued to consolidate its institutional capacity. An action plan of priorities was adopted in October 2010. Particular focus is placed on strengthening the efficiency of ANI's activities. Since summer 2010 operational training has been delivered to each integrity inspector and the computerised case management system has been further upgraded. Further software enhancements foreseen could make a significant contribution to improving ANI's operational capabilities[32] and compensate for the reduced staff capacity. The number of integrity inspectors in particular had been reduced, with 17 released, leaving 36 inspectors in total.

ANI has also taken steps to develop prevention activities, delivering training courses for local authorities and publishing guides on incompatibilities and conflict of interest and on the completion of asset and interest declarations.

ANI's initial budget settlement for 2011 was below 2008 figures and was considered insufficient to guarantee the operation of the Agency. Following the Commission's Interim Report of February 2011, additional financing has been made available, which appears to have in part allowed for the continued operation of ANI. Further financing remains necessary to allow for further investments.

Despite the Commission's recommendation, the legal provisions governing the National Integrity Council have not been significantly altered. The Council adopted a new Strategy, however, questions remain as to their effectiveness in fulfilling their core responsibilities to scrutinise ANI's performance, to ensure ANI's good functioning and to promote its further development. The Council has not taken a proactive stance in for instance actively ensuring a sufficient budget. It has also not been vocal in defending ANI from political attack. In all these tasks the annual independent external audit report should provide a valuable source in providing the Council and other stakeholders with a periodic independent assessment of ANI.

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

Since July 2010, in line with recommendations from the Commission, certain legislative measures were taken to remove a number of causes of delay in high level

[32] Workflow management tools have been incorporated within the system, facilitating more standardised procedures and efficiency savings. Future upgrades will introduce intelligent data analysis modules and more efficient handling of declaration forms. Financing has not yet been confirmed for these upgrades.

corruption trials, notably through amendments to the Law on the Constitutional Court, adopted in August 2010, eliminating the mandatory suspension of trials whilst challenges of unconstitutionality are determined.[33] Moreover, the Small Reform Law, adopted in October 2010, brought a number of amendments aiming at improving the celerity of trials, such as new provisions on pleading guilty, reducing the number of cases in which the High Court rules in first instance, eliminating the suspension of the criminal trial in case of challenges of illegality, amending summonsing arrangements and acknowledgement of civil claims.[34]

In the last twelve months, the National Anti-Corruption Directorate (DNA) has maintained a good track-record of investigations and indictments in high-level corruption cases, including against current or former Members of the Parliament or Government.[35] In a large scale operation jointly carried out by DNA and the Anti-Corruption General Directorate (DGA), in cooperation with the border police and the prosecution, over 230 border police and customs officers from six border crossing points were indicted for bribe taking and participation in an organised criminal group. This operation showed a good potential for close cooperation between law enforcement bodies. New criminal investigations were recently opened against 30 defendants, including a Member of Parliament and a secretary general of a ministry, for corruption offences linked to import-export operations conducted in Constanta harbour.

An internal review covering the last five years has highlighted that in 90% of cases, DNA's investigations lasted no more than 18 months and that 90% of their cases decided by courts led to convictions. This confirms the efficiency of DNA's activity.

Since summer 2010, the overall number of final convictions reached in DNA cases remains steady.[36] However, acute problems remain regarding the celerity of court proceedings in high level corruption cases. Whilst 70% of DNA's trials are finally determined in less than 3 years of court proceedings, in the remaining 30% of the cases, many of which involve high level defendants, few have reached a first instance court decision in that time, let alone a final decision.[37] In files against current or

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33 The Romanian authorities reported that, following the entry into force of these amendments, none of the corruption cases pending at the High Court was suspended following the invoking of new exceptions of unconstitutionality. An interpretative ruling by the High Court in July should prolong the special statute-barred period of a case such that the deadline is extended by the period during which a trial was previously suspended pending resolution of an exception of unconstitutionality.

34 Since the entry into force of the Small Reform Law, as of May 2011 three final conviction decisions and twenty non-final conviction decisions were rendered in DNA cases following guilty pleas.

35 Between 1 July 2010 and 1 April 2011, DNA opened investigations in 269 cases. Within the same reference period, DNA sent to trial 159 cases regarding 611 defendants, including three ministers, one Member of the European Parliament, two state secretaries, seven directors of national companies and 12 mayors. Since April 2011, indictments were issued against two Members of Parliament, a president of a city council, two mayors, one director and one deputy director within two ministries, three general directors of state companies, and one president of a trade union.

36 Between 1 July 2010 and 1 April 2011 final convictions were achieved in 68 cases against 105 defendants, including directors of state owned companies, county and local councillors and police officers. During the same period 17 final acquittals regarding 30 defendants were reached. In addition, 1,068 defendants were convicted through non-final court decisions and 92 defendants were acquitted through non-final judgements. Since 1 April 2011, one Member of Parliament, one bank president and 1 president of the National Investment Fund were convicted through final decisions and two Members of Parliament and one former minister through non-final court decisions.

37 Out of 51 high-level corruption cases against high level officials, in which an indictment was issued more than 3 years ago, in only 28 cases was a first instance decision reached, and in only 15 was a final

former Members of the Parliament and Government, of 36 indictments filed between 2005 and 2010, only 4 have reached a final decision and in only 10 further cases has a decision been reached in first instance. Particular problems of celerity have also been encountered with public procurement corruption files.[38]

As a result of the excessive duration of court proceedings, the statute of limitations has emerged as a high risk for dismissing certain high-level corruption cases before justice is served. In three such cases sent to court in 2006-7, the statute of limitations was reached in full or in part.[39] The risk of prescription is threatening a number of other high-level corruption cases, including two cases against a former prime-minister for which the prescription period may expire in 2012-2013 and where no first instance decision has yet been reached. As the new Criminal Code and its implementing law provides for lower penalties for certain corruption offences, the prescription periods will be further diminished with the risk of affecting a higher number of corruption files. The Criminal Code also provides for the so-called 'special prescription' which runs irrespective of the number of interruptions and delays that have intervened, including those attributable to the defendant.[40] It also continues to run even after the rendering of a conviction decision in first instance. Amendments to the provisions on 'special prescription' may be necessary in order to avoid the risk of denial of justice in cases facing excessive lengths of court proceedings.

The considerable delays in the court proceedings in a number of high-level corruption cases illustrated above raise serious concerns as to the capacity of the judiciary to deal with complex and high profile cases, including cases of political corruption and files involving economic-financial offences. While certain procedural obstacles have been removed, the courts, and notably the High Court of Cassation and Justice, still show weaknesses in promoting an efficient case management for these files.

Specific problems include:

- Organisational issues: workload allocations between panels and allocated time and frequency of hearings are not routinely prioritised according to complexity of cases and to the need to guarantee a reasonable duration of proceedings, even when acute, objective grounds exist (such as impending statute of limitations). There are also significant delays in certain cases in motivating decisions.
- Handling postponement requests: there is an excessive leniency in admitting requests from the defence, leading to a high number of adjournments of court hearings on procedural grounds without a thorough consideration of the actual grounds which justify the request. Sanctions for abusive requests are rarely

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decision rendered. In one case against a former minister indicted in December 2003, it took until 2011 to receive a first instance decision, which was subsequently appealed.

38 Between 2006 and 2010, out of 43 DNA cases on public procurement fraud sent to courts (with an estimated prejudice of 125 million EUR), in only 2 cases were final decisions reached.

39 In one of these two cases a first instance decision had been reached, condemning the defendant (former Member of Parliament and leader of the mining trade union) to 3 years imprisonment with suspension of execution. The verdict was confirmed in appeal, but before the final decision could have been rendered in second appeal, the prescription period was reached.

40 An interpretative ruling by the High Court in July 2011 may in part diminish, albeit not eliminate, the risk of terminating cases due to prescription by extending the special prescription by the period during which a trial was previously suspended pending resolution of an exception of unconstitutionality.

applied, despite explicit provision in the law.[41] The new Criminal Procedure Code also encourages the bar to take action to ensure appropriate conduct by defence lawyers. The system for appointing ex officio lawyers in the absence of the chosen lawyer does not seem to be effective.

- Admission of evidence: there is a passive approach to the admission of evidence, with insufficient efforts to consider and determine at court level whether, for instance, all proposed witnesses need to be heard. In files where interceptions are involved, challenges filed by the defendants against authenticity of recordings are almost automatically admitted by the court. Requests for additional expertises by the defence are also routinely admitted, leading to frequent duplication of expertises. Moreover, despite legal provision to the contrary, due to financial restraints, the expertises ordered by the courts are regularly paid by the defence, raising questions about their independence, notably given that in certain cases they led to controversial acquittals.[42]

- Handling procedural irregularities: in a number of cases, files are sent back to the DNA on grounds of procedural irregularities found during investigations or in the act of indictment after a considerable time has passed since the beginning of the court proceedings, thus rendering useless all the preceding hearings.

The High Court is also confronted with a significant number of vacancies in the Criminal Section and with inadequate premises and insufficient number of courtrooms. No significant steps have been taken by the government to strengthen the capacity of the High Court in this regard.

In response to the Commission's recommendation, some further steps have been taken to analyse the causes of delay in corruption trials. An analysis carried out by the High Court identified a number of causes, some of which are considered to be already addressed, as well as a number of possible solutions.[43] However, the measures taken so far do not sufficiently address the extent of the existing problem and further urgent measures are needed to ensure better case management.[44] In April 2011 the Ministry of Justice established an inter-institutional working group, which now needs to act rapidly upon the problems identified.

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41 The Small Reforms Law introduced into the Criminal Procedure Code specific provision to sanction parties or lawyers who commit abuse of law by exercising their procedural rights in bad faith. This complemented pre-existing provisions which included specific provision to sanction the unjustified absence of defence lawyers, as well as non-observance of requests.

42 Article 190 of the Criminal Procedure Code provides for the cost of expertises to be paid for out of the Judicial Expenses Fund.

43 Causes of delays included: frequent challenges of unconstitutionality, high number of defendants in a case, lengthy indictments, the need to hear a high number of witnesses, the need to order additional expertises, procedural irregularities in the summoning of defendants and civil parties, unjustified absence of defence attorneys, insufficient number of courtrooms, insufficient number of judges. Solutions proposed and in many cases implemented included: streamlined summoning arrangements for hearings in cases older than 1 year; temporary use of courtrooms belonging to other sections; frequent meetings with prosecution services; addressing the Bar Association to improve the ex officio legal assistance system; and more efficient scheduling of trials.

44 Some positive examples of efficient case management can be drawn from some lower profile corruption cases. In one case at the level of a court of appeal a judge was convicted in first instance to four and a half years in prison for bribe taking after a trial lasting only five months. In this case the court held hearings every week or every two weeks.

Urgent measures are therefore required to improve trial management and judicial practice, prioritise cases approaching prescription, and the allocation of sufficient resources to allow more time for judges to prepare and to try high level corruption trials, including allowing for "in continuance" hearings.

For those trials which reach a final decision, available statistics indicate that a trend towards more dissuasive penalties observed in 2010, with fewer suspended penalties, has not been maintained in 2011.[45] Shortcomings have also been noticed in the application of complementary measures, which currently cannot be enforced in case of suspended execution of the penalty.[46] A working group set up at the level of the High Court to study penalties applied in corruption cases has finalised its first analysis and the High Court elaborated an annex to the guide on individualisation of penalties in corruption cases, comprising relevant decisions of the High Court and the courts of appeal. The results of the study should be utilised to further improve the guidelines on individualisation of penalties, and increase awareness among judges.

The Parliament's decisions on waiving immunity for opening investigations of current or former Ministers, and search or arrest requests against Members of Parliament continue to be inconsistent and unpredictable. The Parliament rejected a DNA request to allow the opening of a criminal investigation on a new set of charges against a former minister and current Member of Parliament, as well as the request to search the computer of the same Member of Parliament in an already approved ongoing investigation. As a consequence, DNA was only able to pursue and indict the former minister in one case, based on the evidence collected, and had to dismiss a second case. The Parliament also voted against the pre-trial arrest of a Member of Parliament. The decisions on waiving immunity need to be taken against objective criteria and be motivated. The insufficient consensus to support the anti-corruption fight was further illustrated by vehement protests of a number of politicians against the decision of the judicial authorities to seek and approve the pre-trial arrest of a president of a county council charged with bribery and trading in influence.

The effectiveness of the fight against high-level corruption is also hindered by significant weaknesses of the asset recovery system. Whilst significant assets are identified and seized, little is ultimately finally confiscated.[47] Some of the seized assets are used to compensate civil parties in the trials.[48] However, the confiscated amounts still appear extremely low and confirm wider problems in confiscating the proceeds of crime. Particular difficulties derive from the limited criminal confiscation possibilities, with the strict requirement to prove that assets derive (or are of the equivalent value of assets deriving) from the specific criminal offence for which a conviction is achieved, as opposed to the full extent of their related criminal activities.[49] Further difficulties are encountered in confiscating assets in the hands of

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45 Statistics provided by the Romanian authorities indicate that, until 2009, the courts ordered penalties to be served in prison in approximately 20-30% of convictions, whilst for other convictions the execution of the prison sentence was suspended. In 2010, there was an increase in the number of imprisonment penalties without suspension of execution reaching over 40%. However, data provided for the first quarter of 2011 indicates that this trend has no been maintained.

46 This is remedied by the new Criminal Procedure Code.

47 During 2010, assets amounting to EUR 75 million were seized and the courts ordered confiscation of assets and money amounting to EUR 200,000 in DNA cases in which a final conviction was reached.

48 Statistics are not available as to the total amount paid in compensation in 2010.

49 Additional assets suspected to deprive from similar criminal activity can not be confiscated unless there is a conviction achieved for each and every act that generated the proceeds in question.

third parties. Admittedly, where the convicted person holds public office, ANI in part should be able to assist the prosecution in confiscating any unjustified assets. ANI is however less well suited to substituting for more extensive, post-conviction criminal confiscation powers. ANI cannot follow the assets transferred to third parties nor independently freeze assets. Moreover, the rate of final court decisions on confiscations in cases referred to courts by ANI is still very low. Complementary mechanisms are therefore required.

Confiscation could also be facilitated through the enforcement of money laundering legislation. However, no case has been identified in which money laundering was prosecuted as a stand-alone crime, and which could have facilitated additional criminal asset confiscations. It is unclear if the explanation lies primarily in the legislation, its interpretation, or judicial practice as there is no established case law. Given the DNA is better placed in terms of capacity for financial investigations than the other prosecutor's offices,[50] which is reflected in the significantly higher volume of assets seized, obstacles encountered by DNA confirm wider problems in confiscating the proceeds of crime and appoint to a problematic issue for the entire criminal justice system.

Weaknesses in the recovery of the proceeds of crime appear to have multiple causes. Efforts are being made to strengthen the practice of the prosecution and need to be continued and expanded.[51] An asset recovery office has been designated within the Ministry of Justice.[52] It does not possess investigative powers, but seeks to assist information exchange internally and internationally. It is too early to assess the effectiveness of its functioning. The ability to effectively to pursue the proceeds of crime is severely hampered by limited confiscation powers. Therefore even if in many cases suspected criminal assets are identified and seized, confiscations are ultimately not achieved.[53] To address this problem, the General Prosecutor called for the introduction of extended, post conviction confiscation powers, in line with international best practices. More trained financial investigators have also been requested. The Government has recently adopted a legislative proposal on extended confiscation which is currently pending in Parliament. Ensuring an effective regime for recovering the proceeds of crime is essential for tackling serious, organised and financial crime.

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50 During 2010 interim, seizure measures were imposed by DNA against assets totalling 315 million RON. In comparison, the specialist organised crime prosecutors' office, the Directorate for the Investigation of Organised Crime and Terrorism seized 27 million RON. Other prosecutors' offices seized assets totalling 29 million RON.

51 In 2009 there were 31 counties where no safeguarding measures were taken to seize or freeze assets for potential future confiscation. In 2010 this had significantly reduced, but there were still 14 counties where this was the case. These figures indicate the early identification and preventive seizure of assets to facilitate future confiscation are not being routinely pursued.

52 The asset recovery office does not possess investigative powers, but seeks to assist information exchange internally and internationally. It is too early to assess the effectiveness of its functioning.

53 Though not directly comparable, in 2010 prosecutors' offices froze or seized assets totalling approximately 370 million RON. Confiscation orders were achieved in court for assets totalling just under 6.6 million RON, of which a mere 0.8 million RON were actually confiscated.

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

In accordance with the recommendation of the Commission of July 2010, Romania commissioned an independent evaluation of the impacts of the two most recent anti-corruption strategies (2005 – 2007 and 2008 - 2010). The evaluation concluded that, while at output level the strategies have been largely implemented, the actual impacts resulting are difficult to demonstrate. The study also noted: the haste in adopting a number of measures; the top-to-bottom approach in the development of the strategy, which was identified as one possible cause of a weak coordination process and ownership, notably at local level; and insufficient involvement of legislative and judicial branches. It also stressed that, in spite of some progress achieved, public trust in the integrity of public administration remained low. The experts commended the setting up of ethical counsellors at central and local level as a good step forward towards a more prevention-oriented anti-corruption policy.

The study called for a thorough preparation of the next strategy based on a sound analysis of the results achieved and the specific needs of the system. It also recommended the establishment of an effective coordination mechanism at the highest political level as well as an effective policy coordination system at regional and local level. The evaluation also made a number of specific proposals, including introducing legislation for extended confiscation and setting up of a clear legal basis for the use of integrity testing.

Following the completion of the evaluation, work is now underway to produce a new comprehensive anti-corruption strategy. Key stakeholders from public institutions and from civil society have been invited to support the drafting process. Further efforts are needed to ensure full political commitment for promoting a new policy for prevention and combating corruption as a high priority at central level and consider follow-up of the recommendations of the evaluation.

Pending completion of a new strategy, in March the Government approved the extension of the 2008-10 Strategy, following a final internal evaluation report which had identified a number of outstanding measures. Both under the auspices of the existing strategy and separately, various prevention activities have continued, in particular in the Ministry of Administration and Interior (MAI). The General Anti-Corruption Directorate (DGA) developed a corruption risk assessment for MAI, including the police, resulting in the setting up of a Corruption Risks Register within all MAI structures and the identifying of measures to manage these risks. This is the first such exercise carried out in a Romanian ministry and can be used as a good practice when developing the methodology for the new national anti-corruption strategy. DGA has also developed joint action plans on prevention of corruption with the police and the border police, continued training activities on prevention of corruption for MAI staff, and continued awareness campaigns for the general public in cooperation with several national and private companies providing postal, transport and telecommunication services. Work to establish a public-administration wide anti-corruption call-centre is ongoing.

Other MAI units and agencies have continued to pursue their activities in the fight against corruption. The Central Unit of Public Administration Reform is continuing to co-ordinate work to prepare an administrative code. The National Agency for Civil Servants (NACS) delivered trainings on ethics and corruption topics for civil servants. It also held a series of public debates on transparency and integrity in public

administration, sought to promote best practices and supported the establishment of local action groups. Further steps for implementing the programme on ethical counsellors were taken and draft legislation envisaged to strengthen the office of ethical counsellor is being finalised. NACS has continued to actively monitor the application of rules of conduct for civil servants. According to official statistics, fewer disciplinary cases were reported as solved and sanctions applied than in previous years. Furthermore, a very large percentage of the sanctions applied were overturned by the courts.[54] This calls for a thorough assessment of the strengths and weaknesses of the disciplinary sanctioning system.

At the level of public administration, there is no visible progress in terms of whistle-blowing policies and the commitment to take measures that would improve the institutional framework and the practice in this regard remains insufficient. Application of various transparency and integrity tools developed and piloted during 2008-9 remains unclear.

The National Integrity Centre organised regional meetings of anti-corruption action groups in all counties countrywide to discuss the implementation of the National Anti-Corruption Strategy and elements of the new Strategy, putting forward some concrete proposals, part of which were further followed up by the responsible authorities.

However, in spite of such examples of good practice, prevention and fight against corruption in vulnerable areas such as healthcare, local administration, fiscal administration and public procurement are still not sufficiently targeted. The Ministry of Health has set up an expert group to prepare a project to be undertaken with civil society partners to implement various measures designed to strengthen integrity and accountability in the healthcare system. However, the outcome of this initiative is yet to be seen.

A recently set up civil society initiative, 'Alliance for a Clean Romania' (i.e. '*Romania curata*'), built on previous monitoring initiatives targeting integrity of Members of Parliament, good governance and a clean academic environment, strongly promoted a wide participatory approach, grouping together NGOs, academia, unions, professional associations, journalists, aiming at building up a strong watchdog community.[55]

DGA has further expanded its track-record of identified corruption cases and continues to show a pro-active approach.[56] This is confirmed by an assessment undertaken of the judicial finality of DGA's notifications. The instrumental role the DGA played in the instigation and undertaking of high profile investigations into corruption in the border police (see benchmark 3) is especially noteworthy and

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54 During the first semester of 2010 disciplinary commissions solved 479 cases and proposed 254 disciplinary sanctions. During the same period, 178 disciplinary sanctions were applied, including 13 dismissals. Roughly 90% of the disciplinary sanctions imposed and challenged in courts are quashed. The disciplinary bodies notified the criminal investigation authorities concerning 20 civil servants on suspicions ranging from abuse of office to identity theft.

55 The initiative has also launched an interactive anti-corruption website: http://www.romaniacurata.ro/ .

56 Between 1 August 2010 and 31 May 2011, 1,905 notifications were submitted by DGA to DNA and other prosecutor's offices regarding 4,084 persons (of whom 1,870 MAI staff). More than 50% of these cases resulted from ex-officio actions. In total as a result of DGA's activity, during the same period criminal investigations were opened in 408 cases against 1,530 persons (of whom 496 MAI personnel) and indictments were issued in 245 cases against 912 person (of whom 359 MAI personnel).

indicates a new level of institutional capability. This should provide a springboard also for building a track record of cases in other areas of serious and complex corruption including public procurement, corrupt links between the police and organised crime, and cases involving high level officials, which will also be important to their fulfilling their potential and in which there are currently few reported investigations.

The Fraud Investigation Service of the Romanian Police has focused its activities on identified corruption prone sectors and has continued to supply a significant, though decreasing number of notifications to prosecutors.[57] However, whilst available data for 2010 indicates that 45% of the ex-officio criminal investigations prosecutors' commence are based on notifications from the Fraud Investigation Service, only 20% of the indictments are based on such notifications. As indicated in 2010, more efforts are therefore needed to ensure an improved outcome of the notifications from the Fraud Investigation Service, notably by increasing their capacity, ensuring further specialisation of police officers on corruption cases and exchanges of experience with the prosecution to ensure the supply of actionable intelligence.

Steps by the General Prosecutor to strengthen the approach of county prosecution offices to combating petty and medium level corruption are continuing to deliver improvements. The county prosecutorial strategies for combating corruption are being implemented and their results reviewed biannually. The number of indictments in such cases has continued to rise, with a 14% increase in 2010 and a higher proportion of investigations leading to indictments.[58] A positive trend in terms of the complexity of cases and the range of investigative techniques deployed has also been maintained. However, there has been a significant fall in the number of investigations commenced ex-officio, which may need to be reviewed. The vast majority of ex officio investigations and indictments derive from information supplied by the DGA and Fraud Investigation Service, with virtually none from other public institutions.[59] Given the nature of DGA and the Fraud Investigation Services, it is to be expected that most notifications should come from these authorities. At the same time, the rate of notifications coming from other public institutions is low, showing a rather weak system for detection of corruption in the public administration.

The indictments for petty and medium level corruption have started to be reflected at court level. However, in three quarters of cases where the defendants are sentenced to imprisonment the execution of the penalty is suspended and an analysis of the penalties applied by the courts countrywide reveals a wide variety of practice.[60] This

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57 Between July 2010 and February 2011 the Romanian Police notified the prosecution services of 2,659 alleged corruption offences committed by 1,826 persons. A significant proportion of these files concerned persons in public administration. Other cases concerned health, education and construction sectors.

58 In 2010, the prosecution services indicted 334 persons for corruption offences.

59 Approximately 25% of investigations and 10% of indictments are the result of ex officio actions. Approximately 50% of the ex officio investigations and 80% if the resulting indictments are based on notifications from the DGA. In contrast 45% of the ex officio investigations and 20% of the resulting indictments derive from information supplied by the Fraud Investigation Service. Just 3% of such investigations and 1% of resulting indictments derive from notifications from other public institutions.

60 In 2010 there were 165 final conviction court decisions in 2010, 9 final acquittals, 108 non-final convictions and 18 non-final acquittals. In total 293 defendants were convicted, either in first or final instance.

shows the need for a more pro-active and dynamic approach to ensure a consistent practice in this regard.

After a period of legal vacuum, the law on the organisation and functioning of the Department for Fight against Fraud (DLAF) was adopted. DLAF received 142 notifications between 1 July 2010 and 1 April 2011 and referred 41 cases to the prosecution services. Given the relatively high number of cases of suspected fraud investigated by OLAF, these numbers are rather low. The track-record in prosecuting offences against the financial interests of the EU could also still be further strengthened, with for example further steps to ensure a more pro-active approach in pursuing these cases.[61] In over 60 cases of possible fraud (i.e. suspected manipulations of tenders and submission of false offers) recently brought by OLAF to the attention of the Romanian authorities a proper follow-up has not yet been ensured by the latter, mainly due to an over-formalistic interpretation of the procedural rules.

Public Procurement

The Commission's assessment revealed little progress as regards prevention and sanctioning of conflict of interest in relation to public procurement. Last year's amendments to the law on conflict of interest have not yielded expected results.[62] Conflict of interest cases are not systematically detected by the control bodies.[63] Checks in tender proceedings are based on formal verification of conflict of interest declarations, without further cross-examination with existing data bases. Although members of evaluation committees and civil servants are prohibited to work for companies whose bids they evaluated, this provision is difficult to enforce in practice.[64] In April 2011 allegations of conflict of interest in respect of EU funds led to a resignation of the Minister for Labour. Audits of EU projects led to the interruption in payments under one measure within Structural Funds due to conflict of interest and favouritism in public procurement.

Romania took steps to improve the legal framework on public procurement. The amendments to Law 30/2006 governing the ex-ante control body, the Unit for Co-ordination and Verification of Public Procurement (UCEVAP) have been adopted through a government ordinance. Responding to Commission proposals, the amendments provide notably for a standardised reporting system, risk analysis for ex-ante checks and the removal of the value threshold, which under the current law is a condition for such checks. These amendments should allow UCEVAP to better target their control activities and improve the reporting methodology.

Following amendments adopted in July 2010 to Government Emergency Ordinance 34/2006, the National Council for Solving Complaints (CNSC) became the first

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61 Thirty-five investigations were opened by DNA between 1 July 2010 and 1 April 2011 and 24 indictments were issued for offences against the financial interests of the EU. In the same reference period, the court ruled 14 convictions against 20 defendants.

62 Government Emergency Ordinance 76/2010 adopted on 30 June 2010 introduced a broader definition of conflict of interest.

63 Between July 2010 and May 2011, the CNSC received one such signal. UCEVAP forwarded two signals concerning an alleged conflict of interest to ANRMAP.

64 The enforcement of this ban is difficult as employment contracts are secret. There is no system of compatibility declaration upon termination of employment in public bodies.

obligatory level of jurisdiction for complaints related to public procurement.[65] Decisions by the CNSC can be appealed before administrative courts. It will be important that the CNSC ensures a uniform practice in its decisions.

While steps taken to improve the legislative framework go in the right direction, shortcomings persist in the practical implementation of public procurement rules, which are further aggravated by staff shortages.[66] Romania also identified a large number of public bodies, which failed to register tenders carried out.[67] The results of measures taken to address these problems are yet to be seen.

Access to public data bases has still not yet been established for all the control bodies. The existing data base of tender procedures (SEAP) faces shortage of funding and governance problems. A project to develop an integrated data base for public procurement procedures with financing from the European Social Fund is in early stages of preparation under the leadership of the National Authority for Regulating and Monitoring of Public Procurement (ANRMAP). If implemented, such a data base could significantly strengthen the analytical capacity of the public procurement control bodies. EU financial support is also being used to develop standardised tender documentation and model contracts for different types of projects. Since last summer, ANRMAP developed a standardised methodology for checking public procurement procedures, which should be applied by managing authorities and by intermediate bodies.

The Commission's recommendation concerning benchmarking of control and prevention activities has not yet been addressed. Some steps have been taken to improve the cooperation with administrative bodies and judicial authorities, however, further efforts are needed in this respect.

Considering the persisting problems in public procurement practice, it is laudable that the Romanian authorities decided to carry out a functional review of the public procurement system. It is expected that the results of such a review will help Romania to identify and target the existing shortcomings in a comprehensive manner.

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65 CNSC (National Council for Solving Public Procurement Complaints) should solve claims within a 20 days deadline (extendable in special circumstances), following which a contract can be signed.

66 ANRMAP and UCEVAP can fill limited vacancies subject to a special authorisation procedure.

67 Omissions by public bodies to register tender procedures in the public procurement data base (SEAP) occur despite a legal obligation. Failure to register tender procedures can lead to annulment of contracts.