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EUROPEAN COMMISSION

Brussels, 18.2.2011  
COM(2011) 80 final

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

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

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

### 1. INTRODUCTION

When Romania entered the EU on 1 January 2007, a *Co-operation and Verification Mechanism (hereafter CVM)*<sup>1</sup> was set up to help Romania remedy shortcomings in the areas of judicial reform and the fight against corruption and to monitor progress in these areas through periodical reports.

The present report is an *interim* report providing a technical update on significant developments which occurred during the last six months in Romania under the CVM. It focuses on Romania's response to the Commission's recommendations and does not contain a full assessment on progress achieved. The update is limited to measures that have either been completed or where their finalisation can be expected shortly.

The last progress report adopted by the Commission on 20 July 2010 and its recommendations remain the point of reference for the assessment of progress achieved against the benchmarks and the identification of the remaining challenges. The Commission will provide its next assessment in summer 2011.

### 2. JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION: SUMMARY OF DEVELOPMENTS

Since the Commission's last report, Romania has taken several important steps to improve the celerity of the judicial process by adopting and implementing the "Small Reform Law" (a procedural law to speed up the handling of cases) and by amending the Law on the Constitutional Court, as recommended by the Commission. Romania also continued preparations for the implementation of the new legislative framework in civil and criminal law by launching an impact assessment of the new codes and by advancing on implementing legislation. During the same time, Romania also prepared proposals to close non-viable courts and prosecutors' offices and to reallocate staff from these locations. In addition, Romania prepared proposals to strengthen the recruitment and initial training of magistrates.

During the last six months, the National Anti-Corruption Directorate (DNA) maintained its convincing track record in investigating high level corruption. During this period an increase in the number of non-final convictions and dissuasive sentences could be observed and an independent impact evaluation of the last two anti-corruption strategies was launched. However, important high-level corruption cases have seen little movement in court since the Commission's last assessment.

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<sup>1</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).

Following recommendations by the Commission, Romania adopted an improved law to secure the functioning of the National Integrity Agency (ANI). However, during the same period, while the authorities continued to improve the legal framework and the operation of the justice system, Parliament decided on significant budget cuts regarding ANI in the context of general budgetary constraints. The Parliament also prevented investigations into allegations of corruption by a former minister. The elections to the Superior Council of the Magistracy were overshadowed by legal challenges and led the Constitutional Court to annul the election of four members of the SCM.

### **3. OUTLOOK**

Since the Commission's last assessment, Romania responded in a constructive way to recommendations by the Commission.

In order to consolidate the momentum of reform which has been re-invigorated, Romania should focus on the thorough preparation for the implementation of the new Codes, and should also commission a comprehensive review on the functioning of the judicial system in order to support the implementation of the further necessary structural adjustments and investments that are needed to ensure the celerity, quality and consistency of the judicial process. The entry into office of a new Superior Council of Magistracy provides an important opportunity for a close and constructive co-operation between the different political and judicial actors in this regard.

Until the Commission's next assessment in summer 2011, Romania should focus in particular on the launch of an independent review of the judicial system, the reform of the disciplinary system for magistrates and on measures improving the celerity of high-level corruption trials and strengthening general anti-corruption policy.

The Commission will continue to support Romania in this endeavour and provide its next in-depth assessment of progress by summer this year.

### **4. UPDATE ON THE STATE OF PLAY**

#### ***Reform of the Judiciary***

Since the Commission's last assessment, Romania adopted the "*Small Reform Law*" in order to improve the celerity of judicial proceedings and advance the implementation of certain reforms included in the new codes. The Small Reform Law introduces the principle of opportunity which provides for greater possibilities for the prosecution not to pursue cases, for example where existing evidence does not warrant further investigation; it also introduces the possibility for the prosecution to take over reports submitted by the police in some minor cases. It simplifies judicial procedures and allows for a possibility to admit guilt and thus shorten the duration of a trial. The Small Reform Law also streamlines the procedure of appeal in the interest of the law which is foreseen to remain the major means for legal unification.

In the last six months, Romania has taken a number of structural measures to address the pressing *capacity shortfalls of the judicial system*. Further measures to ensure a redistribution of resources will be required once the impact assessment of the new

codes is available. Since the Commission's last report, Romania finalised a proposal to close twenty-four courts and related prosecution offices, which were either not operational or had insufficient workload.<sup>2</sup> In addition, Romania developed proposals to strengthen the recruitment and training of magistrates. However, the capacity of the National Institute of Magistracy has not yet been increased in line with the resourcing requirements of the magistracy and their budget for 2011 has been cut (as part of the necessary national fiscal consolidation). Proposals to transfer certain administrative tasks from judges to auxiliary personnel and to introduce court managers remain pending.

Initial considerations have taken place in Romania regarding a *review of the functioning of the judicial system* which has been recommended by the Commission; however it has not yet been launched. An independent assessment of the performance of the judicial system would help to identify the measures which are necessary to enhance the efficiency of the system. A recent report on the vulnerabilities of the Romanian judicial system prepared by a team of magistrates, lawyers, academics and civil society representatives provides a useful contribution to this work.

Since the Commission's last report, Romania has taken steps to respond to the Commission's recommendations regarding the *disciplinary system* of the magistracy. Proposals have been prepared by the Superior Council of the Magistracy to classify the gravity of disciplinary offences, to increase the range of sanctions and to introduce a scale of appropriate penalties. Legislation is required to implement these proposals. In addition, a number of evaluations of the Judicial Inspection and its inspectors have been undertaken, some of which are foreseen to be repeated periodically in the future.<sup>3</sup>

Regarding the *elections to the Superior Council of the Magistracy*, the legality of the mandates of several members of the Council has been contested and challenged in court, where final decisions remain pending. The decision by the Constitutional Court in January to invalidate the elections for some members creates the possibility to ensure the new Council's credibility. It will be important to ensure the functioning of the Council in the interim, pending new elections for the invalidated positions.

A recommendation by the Commission to ensure that the *full jurisprudence of the courts is published in a user-friendly and easily searchable database* requires continued efforts. Further decisions have been published on the online jurisprudence portal, Jurindex, but at present the collection is limited to Court of Appeal judgments (and judgments of one Tribunal) for 2008, 2009 and the first two months of 2010.

Romania's main challenge in the coming months regarding judicial reform will be to prepare successfully for the *entry into force of the four new codes*. The codes introduce an entirely new legislative framework and procedures in civil and criminal

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<sup>2</sup> The number of courts proposed for closure represents an increase of nine on the number of courts earmarked in the summer, but is significantly less than was originally proposed by external experts in 2005. The proposal will release 50 positions of judges (of which 38 are currently occupied) and 47 prosecutor positions (of which 38 are currently occupied) for reallocation.

<sup>3</sup> The reviews include: an activity report prepared by the management of the Judicial Inspection and covering the first six months of 2010; an evaluation report on each individual inspector; and an audit report on the management of the Judicial Inspection, undertaken by the audit unit of the Superior Council of the Magistracy.

law which presents an important challenge given the existing shortcomings regarding capacity and consistency of the judicial process. Romania has taken an important step in launching an impact assessment<sup>4</sup> of the new codes with a view to evaluating implications regarding staff and the necessary legislative and structural adjustments. Work on the implementing legislation has advanced: draft implementing laws for the Civil and Criminal Codes have been submitted to Parliament<sup>5</sup>, whilst the implementing laws for the Procedure Codes are being drafted. Once the Romanian authorities receive the final impact assessment, a comprehensive implementation plan will need to be prepared and training will need to be undertaken to ensure a smooth and effective implementation.

### ***Fight against Corruption***

Since the Commission's last report, the *National Anti-Corruption Directorate (DNA)* has continued its good track record of investigations into high-level corruption, sending to trial a significant number of defendants, including a Member of the European Parliament, three former ministers, two former secretaries of state and a number of magistrates.<sup>6</sup> During the same period, Parliament voted against the search of a personal computer in an ongoing investigation into alleged corruption by a former minister. The prosecution will therefore have to use all other available evidence in this case. In another case of alleged corruption against the same person, Parliament voted against allowing an investigation. In another ongoing investigation of alleged corruption against a Member of Parliament, Parliament did not endorse the request of the prosecution for preventive arrest.

Data on *court decisions for high-level corruption* in the first three quarters of 2010 indicate an increase in conviction decisions as well as prison sentences. This may indicate a trend towards more dissuasive sentences if confirmed over a longer period of time. A proposal by the High Court of Cassation and Justice to monitor jurisprudence in high-level corruption cases shows a more active engagement of the Court in promoting the unification of jurisprudence in this area. However, an initiative by a number of judges from Bucharest Court of Appeal which published detailed sentencing guidelines including for corruption cases has not yet been followed up by the High Court of Cassation and Justice.

Romania has removed an important cause of delay in high level corruption trials through the adoption of *amendments to the Law on the Constitutional Court*. These amendments, which follow recommendations by the Commission, eliminate the suspension of trials when exceptions of unconstitutionality are raised. The first positive effects on specific cases have already been observed. Provisions in the Small

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<sup>4</sup> The consultants initiated work with an inception report approved in December 2010. The final Impact Assessment report is expected in April 2011.

<sup>5</sup> The implementing law for the Civil Code was approved by the Senate on 8 December and is currently before the Chamber of Deputies. The law implementing the Criminal Code is under discussion in the Senate.

<sup>6</sup> On 2 November DNA indicted a former Minister of Defence, a former State Secretary in the Ministry of Defence, and a current Member of the European Parliament. On 15 December DNA indicted a former Minister of Justice (currently a Member of Parliament) and a former Minister of Communications, along with four other defendants. Thirteen magistrates had been sent to trial in the first three quarters of 2010 compared to three in 2009. Eleven of the thirteen have been sent to trial since May in including a High Court judge and a Chief Prosecutor of a Prosecutors' Office attached to a Court of Appeal.

Reform Law are also intended to assist, in particular through simplifying judicial procedures, eliminating the suspension of criminal trials when illegality exceptions are raised, and reducing the workload of the High Court.

A comprehensive analysis of the specific delays of high-level corruption cases, as recommended by the Commission, still remains to be realised. A number of institutions including the High Court, the Judicial Inspection, the DNA and the Ministry of Justice have to varying extents reflected on the issue. These initiatives provide a useful basis for reflection on future solutions.

Romania responded swiftly to the Commission's recommendation by adopting a revised law on the *National Integrity Agency (ANI)*.<sup>7</sup> The new law was adopted at a special session of the Romanian Parliament convened at the request of the President. The new law addresses the key points of concern of the Commission notably by re-establishing the possibility to confiscate unjustified assets. The revised law also introduces some new provisions aimed at enhancing the effectiveness of the legal framework.<sup>8</sup> The efficiency of the new legal framework will need to be demonstrated through a new track record.

In December, in the context of the general budgetary constraints, Parliament significantly reduced the budget of ANI for 2011. This budgetary reduction may impede the publication of declarations of assets and interests. This would constitute a setback for the transparency of assets and the effectiveness of ANI's checks which rely in part on public signals.

DNA prosecutors carried out criminal investigations of border police and customs, which led to a large scale *anti-corruption operation at the borders* in February resulting in numerous arrests. It is very important that the human resourcing is provided for in respect of the vacant positions, while the proper judicial follow-up is taking place.

The increase in the number of *investigations and indictments for petty and medium-level corruption at the local level* has continued since the Commission's last report.<sup>9</sup> Most of the cases continue to result from cooperation with the General Directorate for Anti-Corruption of the Ministry of Administration and Interior (DGA). Reportedly measures are also foreseen to strengthen co-operation between the prosecution and the Fraud Investigation Service (FIS) of the Romanian Police.

In the last six months, Romania has launched an independent *evaluation of Romania's national anti-corruption strategy* in response to a recommendation by the Commission. An internal evaluation of the interim results of the strategy completed earlier confirmed another recommendation by the Commission on the need to

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<sup>7</sup> The new law, adopted by the Parliament on 24 August and promulgated by the President on 31 August, came into force on 6 September.

<sup>8</sup> One example is the introduction of a requirement upon holders of public office to declare contracts funded from state, local and external funds that they benefit from directly or indirectly. ANI believes this will assist in bringing to light conflicts of interests.

<sup>9</sup> During the first nine months of 2010 local prosecutors' offices indicted 406 defendants for corruption offences, compared to 193 during the equivalent period of 2009 and 115 during the equivalent period of 2008.

strengthen general anti-corruption policy through coordination at high-level.<sup>10</sup> No concrete steps have as yet been taken in this respect. Various corruption prevention measures continued during the last six months.<sup>11</sup>

Romania prepared a number of legal amendments to *public procurement* legislation in response to the Commission's recommendations in this area. As already indicated in the Commission's last report, Romania introduced new provisions that define conflict of interest more broadly in the law on public procurement.<sup>12</sup> These provisions cover cases where persons holding executive positions in a tendering company have family relationships or commercial relations with persons holding decision making positions within the contracting authority. Further modifications, streamlining the administrative and legal remedy system are designed to speed-up procurement.<sup>13</sup> Procurement contracts may now be signed after complaints are rejected by the administrative complaints body, even if a legal appeal is launched. The National Authority for Regulating and Monitoring Public Procurement (ANRMAP) envisages concluding protocols for administrative cooperation in order to access to databases that allow identifying possible conflict of interest situations. The concrete impact of these provisions must still be demonstrated in practice.

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<sup>10</sup> The review furthermore identified a lack of national and unitary approach in preventing and fighting corruption, insufficient monitoring and reporting mechanisms and an absence of impact indicators which impedes evaluation of the strategy.

<sup>11</sup> Measures include: continued work to implement a new methodology for identifying corruption risks and vulnerabilities in the Ministry of Administration and Interior; further proposals arising from anti-corruption debates hosted by the National Integrity Centre; conferences to promote best practices in public administration organised by the National Agency of Civil Servants; and proposals being devised to strengthen mechanisms for preventing and detecting corruption in health sector procurement.

<sup>12</sup> These provisions were added through Government Emergency Ordinance 76/2010, which was approved by Law 278/2010.

<sup>13</sup> These provisions are also included in Law 278/2010.