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

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

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1. INTRODUCTION

The Co-operation and Verification Mechanism¹ (CVM) has been established on the accession of Romania to the EU to help Romania put in place an impartial, independent and effective judicial and administrative system. Changing the legal and judicial system to further align it with other Member States is a national task. It requires the government to prepare and propose the key framework laws, the Parliament to adopt them and the judiciary to change its procedures and practise to implement them as intended. Since 2007 the CVM has played a supportive role in helping Romania put in place the structures of a modern judicial system. At times the CVM has been contested and criticised by one or other element of this necessary national consensus but today it is widely acknowledged that it has helped promote change in a positive direction. The Romanian Government has shown determination and commitment in driving the reform process. The Parliament or, until recently, the judiciary have not always showed the same determination. In five years the emphasis has shifted from the preparation and adoption of laws to their implementation. The elements of the legal framework needed for the reform are now largely in place, even if not complete. As will be seen from this report the next necessary steps in this process should focus on implementation by the judiciary of the new laws.

This report is the fifth annual report since the CVM was set up². In summer 2012, five years after the inception of the CVM, the Commission will make an overall assessment of Romania's progress under the CVM since accession, and will make appropriate proposals in the light of this assessment. The present report includes a number of specific recommendations in order to help Romania to prepare for this overall assessment.

¹ 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).

² The report is based on regular input received from the Romanian authorities notably in response to detailed questionnaires from the Commission. The Commission has been assisted in its work by independent experts and has drawn on documentation and input provided by a variety of sources. The accompanying supporting document sets out the Commission's detailed assessment of progress in each of the benchmarks set by the decision on the CVM.

2. STATE OF THE REFORM PROCESS IN ROMANIA

Achievements and Challenges

Since the Commission's last annual report, Romania took significant steps to improve the efficiency of judicial procedures and continued preparations for the entering into force of four new codes which are the foundation for a modern judicial process. In advance of the implementation of the new codes, the Small Reform Law has brought improvements for the celerity of the judicial process. Romania also responded swiftly to the Commission's recommendation by adopting a new legal framework for the National Integrity Agency. The National Integrity Agency has been operational under this new legal framework and started to re-establish its track record of investigations. Although not part of the CVM benchmarks, the authorities decided to carry out reviews of the judicial system and of public procurement and to make an evaluation of anti-corruption policy. During the same period, the National Anticorruption Directorate (DNA) showed a continuously convincing track record in the investigation of high-level corruption cases.

Despite this progress since July 2010, consistency and results in a number of areas remain a challenge. Progress in the fight against corruption still needs to be pursued. Several important high-level cases remain delayed in court for several years and have also seen little movement during this period. Urgent action must be taken to accelerate these trials and prevent them being struck down because of reaching statute-barred periods. The fight against corruption should remain a top priority and be coordinated with the help of a new comprehensive and robust anti-corruption strategy. Urgent measures are needed to improve the recovery of the proceeds of crime, the pursuit of money laundering and protection against conflict of interest in the management of public funds. Better results should be demonstrated in the confiscation of unjustified assets and in delivering dissuasive sanctions for incompatibilities.

In order to increase the pace of judicial reform during the next period, Romania should take active steps to accompany the entry into force of the Civil Code and adopt an implementation plan for the remaining three new codes to be introduced in 2012, as well as create a framework of cooperation with the judiciary and civil society to facilitate the necessary structural adjustments to the judicial system. For this purpose, Romania's judicial reform strategy should be formally adopted following completion of the functional review and complemented with an action plan, a timetable and adequate budget. The newly constituted Superior Council of the Magistracy still needs to demonstrate its commitment to reform through concrete results.

Reform of the Judiciary

Since the Commission's last assessment, Romania improved the *efficiency of the judicial process* through a simplification of some judicial procedures and the introduction of new legal tools, such as greater possibilities for the prosecution to dismiss cases where existing evidence does not warrant further investigation, or the possibility for a defendant to plead guilty in court and shorten trial proceedings. These legal amendments have contributed to strengthening the efficiency of the

prosecution and to speeding-up a number of cases in court.³ In addition, Romania has started preparations to carry-out an independent *functional review* of the judicial system. This review should define measures for a more comprehensive reform of structures, procedures and human resources, which will be necessary to accompany the entry into force of the new codes.

The *four new codes* must be considered a significant step in judicial reform and in improving the consistency and efficiency of the judicial process. Since the Commission's last assessment in July 2010, some delays have appeared in the preparations for the implementation of the new codes. Although the date of implementation on 1 October has been fixed for the Civil Code and implementing laws for the other codes are being drafted and finalised, impact studies are not foreseen to be completed until the end of the summer, little training has been delivered and a comprehensive implementation plan is still missing. It will be important to avoid diverging practice and good preparation will be essential for the smooth implementation of the other codes.

Since the Commission's last annual assessment, some progress has been made to establish a transparent dialogue between the Government, the judiciary and civil society on judicial reform. However, the *strategy for justice reform* developed in spring 2010 has not been endorsed by the Government and has still not been complemented by an action plan and a timetable. The foreseen functional review of the judicial system should provide a catalyst for this process. An interesting initiative for a judicial reform strategy by a group of magistrates, lawyers, academics and civil society representatives also presents a useful contribution to this work.

Little tangible progress has been made since last summer in addressing recommendations by the Commission to tackle pressing *capacity imbalances of the judicial system*: A proposal by the Government to close a smaller number of non-viable courts was diluted by the Parliament. In addition, the Commission's call for immediate measures to reduce capacity imbalances has not been followed up systematically. Likewise, proposals to strengthen the *recruitment and training of magistrates* which were also developed in autumn have not yet been adopted. The National Institute of the Magistracy (NIM) has not been strengthened despite its important role in preparing for the implementation of the new codes.

Through the Small Reform Law, Romania has revised the attributions of the *High Court of Cassation and Justice* with a view to enabling the Court to function more effectively as a cassation court. 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,⁴ which will complement the existing appeal in the interest of the law. An interpretative ruling by the High Court in July should prolong the special statute-barred period of a case when a decision on a Constitutional exception is pending. The application of strict rules to accompany the new mechanism will be necessary to avoid that unfounded requests for preliminary rulings unduly delay trials. Romania

³ For instance, since January 2011, as of May 3 final convictions and 20 non-final convictions were rendered after guilt was accepted by the defendant in high-level corruption cases.

⁴ Under this new procedure, judges may request a preliminary ruling of the High Court of Cassation and Justice (HCCJ) in an ongoing case if conflicting jurisprudence can be identified.

has not yet achieved a full electronic publication of jurisprudence. Furthermore, court motivations are often issued with considerable delay after the verdict is pronounced.

Improving the *accountability of the judiciary* remains an important challenge. Since the Commission's last annual assessment, new recruitment rules for judicial inspectors were adopted and some steps were taken to improve the efficiency and transparency of the Judicial Inspection and to unify its practice. However, the capacity and track record of the Inspection has not improved significantly. An analysis of a sample of high-level corruption cases which remain delayed in court by the Inspection has not led to any significant findings or recommendations regarding judicial practice. Romania has not yet engaged in a thorough reform of the disciplinary system. An important reform of appointments to the High Court of Cassation and Justice, with the aim of increasing the objectivity, thoroughness and transparency of procedures has been proposed by the Government in May and is under debate in Parliament.

A new *Superior Council of the Magistracy* has taken office in January, although its full establishment was delayed pending legal challenges and partial re-elections. Since entering into office, the Council has taken some first welcome initiatives to strengthen the Judicial Inspection and to facilitate the entering into force of the Civil Code. Progress in a number of areas relevant for the CVM will depend on the Council's commitment to judicial reform during the next period. This should be demonstrated by transparent and objective appointment decisions, the strengthening of the National Institute of the Magistracy and progress in human resources management.

Fight against Corruption

The track record of the *National Anti-Corruption Directorate (DNA)* in investigating and prosecuting high-level corruption cases including against current or former Members of Parliament or Government, has remained convincing and an increase in the number of convictions could be observed.⁵ However, the results by courts continue to show a mixed picture. Although the majority of high-level corruption trials are decided within a period of three years, a significant number of important cases involving dignitaries are currently pending before courts for more than three years. A number of these cases have already reached the statute-barred period in full or in part and several other cases approach these deadlines.

Since the Commission's last annual assessment, Romania identified typical causes of *delays in high-level corruption cases* and created a joint working group to address them. Some important procedural obstacles have been removed since last July.⁶ Other reasons relating namely to capacity, internal organisation⁷ and judicial practice must still be effectively addressed. Furthermore, the analysis by the Commission

⁵ Overall since July 2010, as of 1 April DNA had opened 269 new cases and had filed 159 indictments against 611 defendants. Statistics of DNA show that during the last 5 years over 90% of its indictments have lead to convictions and that 90% of all investigations last for a maximum of 1.5 years.

⁶ These include amendments contained in Law 177/210 to the Law on the Constitutional Court to remove the suspension of trials pending the resolution of exceptions of unconstitutionality and provisions in Law 202/2010 (Small Reform Law).

⁷ There is an important shortage of courtrooms and significant numbers of vacancies at the criminal section of the High Court of Cassation and Justice where many high-level corruption cases are pending.

showed that courts tend to adopt a permissive and excessively cautious approach to procedural challenges raised by defendants, such as requests for additional expertise, postponement of hearings or procedural exceptions. Basic case management measures such as giving priority to important or complex cases are not routinely applied. In order to meet its commitments regarding the fight against high-level corruption, Romania must take urgent measures to assure that final decisions are taken swiftly in important high-level corruption cases and prescriptions are avoided in all cases.

Results in the fight against corruption depend on *political will* and the *commitment of the judiciary*. There are several good examples that show an efficient treatment of high-level corruption cases in court and demonstrate how investigations in complex cases can be carried out effectively in the cooperation of different authorities.⁸ Strong political support to the fight against corruption by Parliament is crucial in this respect. Since the Commission's last assessment, Parliament voted against allowing an investigation on corruption charges against one former Minister and current Member of Parliament, vetoed a search in another ongoing investigation and refused the preventive arrest of another Member of Parliament. However, both cases went to trial.

Since the adoption of its new legal framework in August 2010, the *National Integrity Agency (ANI)* has begun to re-establish its former track record and forwarded a number of cases regarding conflict of interest, incompatibilities and unjustified wealth for decision to the competent institutions. Although ANI has improved its methodology and the efficiency of its investigations, the follow-up by competent judicial and administrative bodies should be significantly improved. Few sanctions have been applied as a result of ANI's findings and those applied are rarely dissuasive.⁹ Most conflict of interest decisions by courts in the area of public procurement generally come too late. It appears that the Wealth Investigation Commissions established under the revised ANI law at the level of courts of appeal *de facto* rule on merits of cases transmitted by ANI to the same evidential standard as the trial court. Such a procedure not only delays the judicial decision-making process but also duplicates the role of the Courts of Appeal, which should be competent to rule on ANI cases. For this reason, measures will need to be taken to avoid inconsistent practice by the Wealth Investigation Commissions. There is a need for a further amendment to the law to allow ANI to appeal decisions of the Wealth Investigation Commission. Since the Commission's last annual assessment, only two cases of unjustified assets have been confirmed by courts in first instance. At the same time, a number of important cases investigated under the old law have been lost due to reaching statute-barred periods which were introduced in the revised law on ANI last August.

⁸ In an important operation at the borders at the beginning of the year, widespread corruption among border police and customs was uncovered through a well planned joint operation of different police forces and the judiciary. In May, a first instance decision against a judge in a high-level corruption case was achieved after only 6 months with hearings set weekly including on Christmas Eve and 30 December.

⁹ For instance, out of a total of 82 decisions of incompatibility confirmed by courts, disciplinary commissions applied sanctions in only 14 cases of which 5 were dismissals and 5 merely warnings.

Since the Commission's last assessment, Romania prepared an *independent impact evaluation* of its anti-corruption policy. The recommendation contained therein put emphasis on giving high political priority to the fight against corruption, developing a comprehensive new anti-corruption strategy with long-term objectives and involving stakeholders from the three branches of power and civil society.

The effectiveness of the fight against corruption is hindered by *serious weaknesses in recovering the proceeds of crime*. The track record of confiscated criminal assets in Romania is very low¹⁰ mainly due to limited confiscation possibilities provided by law, restrictive court practice and a lack of pro-active behaviour by the prosecution.¹¹ Efforts are being made by the General Prosecutor to address the last point, but they are hindered by resourcing and in particular by the legal framework.¹² In practice, criminal assets can only be confiscated if they are the direct proceeds of crime for which a conviction had been achieved or when they are linked to damage caused by a proven criminal offence. Problems are also encountered in confiscating assets passed on to third parties. In this way a substantial amount of criminal assets escapes legal scrutiny which has been illustrated recently in the case of large-scale corruption investigations among border police and customs where only a relatively small sum of assets are expected to be confiscated although it can be assumed that these criminal activities have been carried out in a systematic way over a long period.

Since the Commission's last assessment, Romania took steps to provide for more effective verifications of public tenders against irregularities following risk assessments. Since the Commission's last assessment, Romania re-established the legal base for the Department for the Fight against Fraud (DLAF), the counterpart of OLAF to carry out investigative actions. These improvements are welcome, but at the same time, administrative capacity and the quality of administrative action remain weak, and are the main challenges in the field of public procurement.

3. CONCLUSIONS

Since the Commission's last assessment in July 2010, Romania took significant steps to improve judicial efficiency, re-established the legal basis of the National Integrity Agency, continued preparations for the implementation of four new codes, launched preparations for a functional review of the judicial system and carried out an impact analysis of its anti-corruption policy. Continuous commitment over the next period will be necessary to implement the new codes, to take the necessary decisions to further restructure the judicial system, to consolidate the anti-corruption policy and to deliver better results in the confiscation of unjustified assets and in delivering dissuasive sanctions for incompatibilities.

Urgent action is needed to accelerate a number of important high-level corruption trials and to prevent their collapse because of reaching statute-barred period. The

¹⁰ Statistics supplied by the Romanian authorities indicate that in 2010 final confiscation orders were ruled against criminal assets deriving from all types of criminality totalling EUR 1.8 million, of which EUR 0.2 million was actually recovered.

¹¹ Elements of Article 44 of the Romanian Constitution, including one clause which establishes that all wealth is presumed to be legally acquired, hinder effective asset transparency and asset recovery.

¹² A draft law regarding extended confiscation has recently been submitted by the Government to Parliament.

fight against corruption should remain a top priority, with support from Parliament, and urgent measures should be taken to improve the recovery of proceeds of crime, the pursuit of money laundering and the protection against conflict of interest in the management of public funds.

4. RECOMMENDATIONS

The Commission invites Romania to take action in the following areas in the light of its assessment of progress achieved in Romania since July 2010. These recommendations should help Romania to focus its efforts in preparing for the Commission's overall assessment of progress in Romania under the CVM in summer 2012.

1. Reform of the judicial system

- (a) Actively accompany the entry into force of the Civil Code and adopt a comprehensive implementation plan for the remaining three new codes, provide sufficient resources for training and the re-organisation of courts and prosecutors offices, increase the capacity of the National Institute of the Magistracy and adopt its proposals to improve training and recruitment standards;
- (b) Complete a detailed analysis of the imbalances of workload within the judicial system in preparation of the upcoming functional review of the judicial system;
- (c) Finalise the proposed functional review of the judicial system and follow-up on its recommendations;
- (d) Create a framework to monitor progress in judicial reform involving stakeholders from the judiciary for the implementation of this action plan;

2. Accountability of the judicial system

- (e) Demonstrate a track record in transparent and objective management decisions within the judiciary, for example through appointments, disciplinary decisions, appraisals and the promotion system to the High Court of Cassation and Justice;
- (f) Demonstrate a track record by the Judicial Inspection in the analysis and improvement of judicial practice and continue the reform of the Inspection;
- (g) Achieve the electronic publication of all jurisprudence and apply measures to assure that court motivations are issued in accordance with the law in a timely manner.

3. Effectiveness of judicial action

- (h) Take urgent measures to improve judicial practice and case management and accelerate important high-level corruption cases to avoid reaching statute-barred periods in all cases;
- (i) Continue the reform of the High Court of Cassation and Justice in order to strengthen its cassation role and to increase its capacity to deal with high-level corruption cases;
- (j) Continue to improve the dissuasiveness and consistency of court sanctions in high-level corruption cases and demonstrate better results in investigating, prosecuting and judging cases of fraud of EU funds and in public procurement;
- (k) Adopt clear procedural rules for decisions of Parliament to lift the immunity of its members based on best practice in other EU Member States.

4. Integrity

- (l) Demonstrate a track record in prompt and dissuasive sanctions taken by administrative and judicial authorities regarding incompatibilities, conflicts of interest and the confiscation of unjustified assets in follow-up to the findings of the National Integrity Agency (ANI);
- (m) Take measures to unify the practice of the Wealth Investigation Commissions and to assure that they handle cases efficiently without prejudging the decision of court;
- (n) Improve the cooperation between ANI and other administrative and judicial authorities, particularly in the area of public procurement and improve the investigative capacity of ANI through upgrades to their information system and through targeted risk assessments;

5. Fight against corruption

- (o) Improve coordination of anti-corruption policies at highest-level and develop a new robust multi-annual strategy to prevent and sanction corruption following the recommendations of an independent impact assessment; and create a monitoring group together with civil society to oversee implementation of the strategy;
- (p) Demonstrate convincing results in the recovery of the proceeds of crime by following best practice in other EU Member States, adopting a new law on extended confiscation and strengthening judicial practice. Romania should also demonstrate a proven track record in pursuing money laundering as a stand-alone offence;
- (q) Develop rules for the prevention of conflict of interest in the management of public funds and within the authorities that regulate, verify and decide on complaints in the area of Public Procurement; strengthen the procedures and capacity of the competent authorities, including by following up on the ongoing functional review in this area.