

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.7.2008
COM(2008) 494 final

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

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

{SEC(2008)2349}

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

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

1. INTRODUCTION

When Romania joined the EU in 2007, it still faced serious challenges in ensuring the functioning of its judiciary and in fighting corruption. These challenges were judged by the Commission and the other Member States to be surmountable and the Romanian authorities committed to remedy shortcomings in these areas so that Romania could fully assume the rights and obligations of EU membership. Romania and the other Member States recognised that far reaching judicial reform which ensures the accountability and efficiency of the judicial system and the other law enforcement bodies was necessary if Romanians were to be able to exercise their rights as EU citizens and benefit from the financial support that EU membership would bring. More broadly, they recognised that principles which are at the heart of the EU – respect for the rule of law, mutual recognition and cooperating on the basis of a fundamental bargain of trust – could only be put into practice if these problems were tackled at source.

Against this background, the Commission and the other Member States saw the need to work closely and cooperatively with Romania following accession to ensure that the necessary reforms were put in place to strengthen the judicial system and to fight corruption. A Cooperation and Verification Mechanism (CVM) was set up by the Commission to monitor progress and extend support in dealing with these shortcomings. Based on inputs from the Romanian authorities, complemented by expert missions, this report presents a summary and detailed assessment of how far Romania has come in meeting the benchmarks set out in the CVM. It is the third report in a six monthly reporting cycle.

The assessment points to efforts which the Romanian Government and authorities are making to reform the judicial system and investigate corruption. The institutional and procedural changes introduced in recent years to tackle these problems are starting to produce first results. But achievements are fragile. A broad based political consensus behind the reforms is lacking as is the unequivocal will across all political parties to root out high level corruption. The commitment of Romania to eradicate corruption is reflected at pre-trial stage but does not carry through to increased numbers of convictions or deterrent sanctions. The performance of the Romanian judicial system is hampered by legal uncertainty due to many factors, including an uneven application of the law and the excessive use of emergency decrees. It will take some time for the reform to take firm root. The need for verification and cooperation will hence continue for some time.

2. THE REFORM PROCESS IN ROMANIA

2.1. Achievements

Since the adoption of the last interim report by the Commission in February, Romania has stepped up its efforts. Despite a period of intense political debate and pressure, the Government has managed to restore a reform drive and relative stability in the legal and institutional framework for the fight against corruption. The appointment of a new Minister of Justice in February 2008 is an important element.

Concerning the **reform of the judiciary**, the Superior Council of Magistracy (SCM), as guardian of the independence of the judiciary, has been allocated the human and financial resources necessary to allow it to assume its core responsibilities for judicial reform including to advise and act on pressing human resource problems.

With respect to the **fight against high level corruption**, a number of steps have been taken. The Public Ministry and the National-Anti Corruption Directorate (DNA) of Romania have established a good track record in the prosecution of cases and started procedures for launching investigations on a number of high level cases involving former ministers and members of Parliament. It remains to be seen how successful Romania will be in completing these investigations, pursuing due legal process and delivering dissuasive sentences, if appropriate.

In the first half of 2008, Romania made an important step forward with the establishment of the National Integrity Agency. This body now has to demonstrate that it can monitor financial asset flows, detect and sanction unjustified increases in assets and regulate conflicts of interest.

Romania has pursued awareness raising campaigns and continued to introduce preventive measures to counteract **local corruption**. In particular, measures have been recently introduced to improve the quality of public services thus reducing opportunities for corruption. A national corruption strategy to combat corruption in local public administration was adopted in June 2008.

2.2. Results

After a period of uncertainty Romania has been able to re-establish its commitment to judicial reform and the fight against corruption. The legal and institutional framework is fragile. It needs to stabilise and consolidate. Administrative capacity needs to be nurtured and strengthened. Importantly, the Parliament has to demonstrate an unequivocal commitment to rooting out high level corruption. In moving further, the laws, procedures and institutions which are in place have to be allowed to build a track record – to show that they are capable of producing results in a longer term perspective.

Judicial reform is moving ahead but progress is uneven. The human resource situation in the judiciary is improving. The number of recruits in the National Institute of Magistracy has increased and the number of vacancies has dropped. New judges have been assigned to the Courts of First Instances. However, there are

chronic and serious staff shortages in the public ministry and recruitment practices do not always work to guarantee quality of staff.

The quality of the jurisprudence is improving. Appeals on points of law are increasing and efforts to improve access to and consistency of jurisprudence have been made. But these positive developments are countered by recent inconsistencies in jurisprudence by higher courts, including the High Court of Cassation and Justice in some high level corruption cases. Uniform and consistent application of law has been hampered further by the frequent resort to emergency ordinances. This practice creates overlaps and contradictions and results in procedural flaws in implementation. Inconsistent jurisprudence by higher courts in turn leads to legal uncertainty. All these factors weaken the judicial system, often resulting in lenient court decisions and frequent suspensions of sentences. This is particularly problematic in corruption cases.

While the *Superior Council of Magistracy (SCM)* is well established, it has not yet consistently exercised its full mandate, notably as regards pro-active investigations into disciplinary cases. The Judicial Inspection of the SCM still has to develop guidelines and establish a track-record for ex-officio investigations. The SCM is slow in coming to management and disciplinary decisions. The sanctions it imposes are often inconsequential.

Romania has also made progress with the establishment of the *National Integrity Agency (ANI)*. Since the Commission's last assessment in February, ANI has recruited core staff and started to investigate cases. It is too early to accurately judge its performance on cases and the quality of its decisions (e.g. on sanctions). It is likewise too early to judge if the legal mandate of the National Integrity Agency is sufficiently robust. The supervisory role of the National Integrity Council can only be judged on the basis of its future track record.

Despite good progress on the investigative side, Romania can show few tangible results in its ***fight against high-level corruption***. Although the National Anticorruption Directorate (DNA) continues to show a consistently positive track record for prosecution of high level corruption cases, court sentences remain lenient and inconsistent. Measures that could be taken to improve the way corruption cases are handled (such as a comparative analysis of court decisions; the application of sufficiently deterrent mandatory minimum sentences or alternatively the development of guidelines on such sentences) have either been delayed or have not been launched. No real progress has been made in ten key cases involving former ministers. This is partly due to Parliament having blocked the investigation and partly to dismissal of the cases by the High Court of Cassation and Justice which overturned previous decisions. Failure to move on these cases undermines the positive efforts undertaken at pre-trial level.

The intense political debate on the 'anti-corruption' institutional framework has subsided and the role of DNA has been preserved. However, efforts by DNA to continue investigations in some important cases have stalled as Parliament has not recommended that judicial procedures be launched. The reluctance of the judiciary and Parliament to allow investigation of these high profile cases results in a loss of public confidence. Parliamentary debate on the amendments to the Criminal Procedure Code aiming at restricting the collection of certain evidence creates legal

uncertainty and negatively influences ongoing investigations. This legal uncertainty also results in reluctance on the part of the judiciary to proceed with cases - given that it is unclear whether evidence gathered today will be acceptable tomorrow.

Romania continues to make progress in the **fight against corruption at local level** but needs to produce more results. Public awareness campaigns, training sessions and other preventive measures have been carried out. The number of corruption investigations within the police has increased. However, in areas such as health and education where there are clear indications of corruption, few measures have been taken. A poll conducted by Transparency International in the first half of 2008 suggests an increase in 'every day corruption' compared to the previous year. Signals from whistle blowers are rarely followed up. The Romanian government adopted a national strategy on counteracting local corruption in the beginning of June, with the aim of developing a more transparent and efficient local administration.

2.3. Improvements Needed

Judicial reform and progress in the fight against corruption are closely interlinked. Improvements are still needed in both areas.

The commitment to reform among key judicial institution needs strengthening: The Superior Council of the Magistracy has to take steps to foster the transparency and efficiency of the judiciary and to improve its own accountability. It must take an unequivocal position on the fight against high level corruption in the context of the current controversial political debate in Parliament. The Council still needs to develop credibility with the judiciary by offering sustainable solutions to staffing and management deficiencies.

A continuing effort needs to be made to develop administrative capacity in the judiciary. Serious staff shortages in the public ministry may call for emergency measures such as a temporary re-assignment of posts. Some elements of the recruitment procedure need to be improved to attract suitably qualified recruits.

The National Integrity Agency will now have to demonstrate its operational capacity to effectively sanction unjustified assets and to verify incompatibilities and conflicts of interest. It has to show that it can build a strong track record in terms of cases and sanctions.

Consistency and coherence in the preparation of laws and in their application needs to be ensured. There is a need for public consultation in the preparation of laws. Recourse to emergency ordinances should be reduced. More effort needs to go into applying the law consistently and uniformly.

So as to stabilise the legal framework under which investigations can be launched the government should finalise a new Criminal Procedure Code (CPC) and make progress on the draft Criminal Code. This would provide a clearer and effective framework for prosecution and allow better cooperation with other Member States. In addition, the controversial amendments to the emergency ordinance amending the

existing Criminal Code and the Code of Criminal Procedure introduced in Parliament should be dropped¹. They would seriously restrict meaningful investigation.

The fight against corruption needs to be de-politicised and Romania must affirm its unequivocal commitment to fight against high-level corruption. Independent investigation of former ministers and members of Parliament by the judicial authorities must be allowed to proceed in order to restore public confidence in the fight against corruption and in respect for the rule of law.

Romania needs to establish an accessible and comprehensive system to allow individuals to notify suspected cases of corruption. Rules to protect confidentiality of whistle blowers need to be developed.

Commitment to and ownership of reform needs to take root across the entire political spectrum and within the judiciary. Public trust in the fight against corruption will only be restored by delivering results and convictions in high level cases.

3. CONCLUSIONS

The CVM and its related benchmarks were designed to allow Romania to demonstrate, on a regular basis, that it has made progress on reform of the judicial system and in fighting corruption. The onus is on the Romanian authorities to show that the judicial system works and that investigations into corruption lead to arrests, prosecution and, depending on the court's judgement, convictions with dissuasive effect and seizure of assets. The nature of the reform process in Romania is still unsteady and final convictions in high level corruption cases are still missing.

Romania presents a mixed picture. It has put the fundamental elements of a functioning system in place. But the foundation is fragile and decisions on corruption are highly politicised. Each step in the right direction engenders a divisive internal political debate, fostering legal uncertainty. Commitment to reform by Romania's key institutions and bodies as well as with regard to different benchmarks is uneven. For example, while there is a strong will by the prosecution to achieve tangible results at the pre-trial phase the same determination is not demonstrated throughout the judicial process. Urgently needed legislative proposals such as a new Criminal Procedures Code and anti-corruption measures such as sufficiently deterrent mandatory minimum sentences for high level corruption cases do not get a sufficiently strong push from the government. Politicisation of corruption cases by the Romanian Parliament and the failure of the judicial system to deliver sentences in high level corruption cases has weakened the public perception of respect for the rule of law. Genuine efforts by the administration at local, regional or central level to fight corruption are too often frustrated at political level.

The positive reform efforts by the government, the DNA or the General Prosecutor can only be successful if they receive unequivocal support from all actors at all levels. Sustained reform requires that these efforts be complemented by effective implementation. Only firm and deterrent convictions in high profile cases will demonstrate in a convincing manner that the system works. The existing structures– should allow Romania to produce effective results in the fight against corruption.

¹ Government Emergency Ordinance 60/2006.

Romanian citizens deserve access to the full benefits of EU membership which should contribute to strengthening the rule of law and eliminating corruption. Progress under the CVM and in dispelling doubts about Romania's ability to deal with corruption will enable Romanian citizens to reap these benefits and enhance their confidence in the rule of law. It will have long term positive effects on the Romanian economy. Romania has responsibilities vis-à-vis other Member states, for example as part of Justice and Home Affairs policy as well as in the common management of EU funds. Adequate administrative capacity and effective control of conflict of interest, fraud and financial irregularities is a necessary condition for Romania to fully benefit from EU pre-accession and structural funds.

Continued need for cooperation

It is not only in Romania's but in the EU's wider interests to have a healthy administration and judiciary in Romania which is able to successfully deal with corruption. That is why cooperation and support is essential. The Commission considers support to be a more effective than sanctions and will not invoke now the safeguard provisions set out in the Accession Treaty. The continuation of the Cooperation and Verification Mechanism will be needed for some time.

The February report under the Cooperation and Verification Mechanism highlighted the significant amounts of assistance Romania has received in recent years from Member States and the Commission in either financial terms or technical expertise. It is important to ensure that the support provided is put to good use. All sides have to make a renewed effort to help Romania succeed in its reform process. The Commission is ready to work in cooperation with Romania and the other Member States to provide this assistance – but it requires that those on the receiving end use the advice strategically and effectively so as to move forward with reform and change.

Outlook

Romania has started to move into the right direction. The new institutions and processes need time to prove their effectiveness and should be allowed to continue on a steady course. That being said, an unequivocal and renewed commitment is needed at all levels – across the political spectrum, the administration and the judiciary - to cleanse the system of corruption and to fully respect the rule of law. The Commission strongly encourages Romania to intensify its reforms and to maintain its close cooperation with the other Member States and the Commission so that the significant remaining challenges can be tackled successfully together.