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EUROPEAN COMMISSION

Brussels, 23.3.2010
COM(2010)113 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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1. INTRODUCTION

When Romania entered the EU on 1 January 2007, a *Co-operation and Verification Mechanism (hereafter CVM)*¹ was set up to help Romania remedy certain 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 6 months in Romania under the CVM. It does not contain an 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 22 July 2009 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 2010.

2. JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION: STATE OF PLAY

During the last six months, Romania has not been able to keep the momentum of reform it had established by mid-2009. The recent electoral period led to a delay of the parliamentary discussion of the draft civil and criminal procedure codes, whose adoption will be a vital next step in the reform process. In addition, the capacity of the judicial system has been put under further strain by net staff losses and the protests during September.

In the last six months, the National Anticorruption Directorate (DNA) has continued to maintain a good track-record. The reappointment of the General Prosecutor for a new term has offered the possibility to build on the achievements of the first mandate. The progress of the National Integrity Agency (ANI) has been consolidated and extended.

Limited results can be shown in judicial reform. Jurisprudence in high-level corruption trials remained inconsistent and not dissuasive. High-level corruption trials continued to suffer from procedural delays. In response to recommendations by the Commission, Romania took some steps to strengthen the implementation of the national anti-corruption strategy at local level.

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).

3. OUTLOOK

After a difficult second half of 2009 with limited progress, Romania should in particular aim at a swift adoption of the civil and criminal procedure codes, implementing legislation and impact studies in order to prepare the successful implementation of all new codes. For this purpose, close and constructive co-operation between the different political actors and the judiciary to back the necessary reforms is indispensable and should be considered an issue of national importance.

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

4. TECHNICAL UPDATE ON BENCHMARKS

4.1. **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**

Following the adoption of the Civil and the Criminal Codes in June last year, discussions on the Civil Procedure Code have started at committee level in Parliament, however progress stalled in October 2009 and resumed only in February 2010, at the same time as the debate on the Criminal Procedure Code commenced.

Preparatory work on the implementing legislation necessary for the entry into force of the four codes has started. Members of the drafting commission have been selected and a legislative analysis with a view to ensuring the coherency and consistency of the relevant legal framework is being prepared by the Ministry of Justice (MoJ). Some initial preparations for impact assessments of all four codes, a requirement for their implementation, has been undertaken.

Romania reports ongoing progress in the unification of jurisprudence resulting in part from the regular meetings on non-unitary jurisprudence organised countrywide. The procedure for appeals in the interest of the law at the High Court of Cassation and Justice (HCCJ), establishing binding jurisprudence, remains burdensome. However, streamlined practices do exist and could be further developed.²

Whilst the HCCJ continues to publish the full text and summaries of selected decisions on its website and publishes quarterly cassation collections, and some other courts are publishing certain decisions, between summer 2009 and January 2010 no further court decisions were added to the national web-portal (Jurindex).³

² The administrative and fiscal contentious section of the HCCJ has developed the following best practice: when an appeal in the interest of the law falling under the competence of the section is lodged, the section prepares a report proposing options and possible solutions to the plenum. This allows for well prepared discussions involving judges who know the topic best and for greater efficiency of appeals in the interest of the law.

³ By publishing all court decisions in one location Jurindex was intended to ensure the full jurisprudence of courts are published and accessible to all, increasing transparency in the act of justice.

Since mid-2009, no effective improvement could be noted for the difficult human resourcing situation in the judiciary. The two-fold increase of retirements among magistrates in 2009 has off-set the increased number of recruitments and produced a substantial negative staffing balance, which adds additional stress to the system. Moreover, the judicial protests of September have aggravated delays and are reported to have considerably increased the number of cases pending.

The Superior Council of Magistracy (SCM) has adopted a provisional study on the optimal workload of judges, the conclusions of which are being implemented on a one-year pilot basis in courts from December 2009 onwards. This system is meant to ensure a fairer allocation of work within courts and to provide a basis for the reallocation of positions beginning in 2011. A pilot project on court managers has been successfully completed and requires follow-up to be implemented countrywide. In the follow-up to another pilot project, the SCM has taken initial steps to facilitate the transfer of certain administrative tasks to auxiliary personnel. Once implemented, these two measures should increase the efficiency of court procedures and improve the administrative management of courts.

Judicial inspectors have been recruited since early 2009 following revised recruitment procedures to assure better geographical representation. The recruitment procedure for inspectors was however challenged in court by the General Prosecutor as insufficiently objective and therefore compromising the independence of the inspectorate. Work to review the guidelines of the judicial inspection is ongoing as is the preparation of a collection of jurisprudence on disciplinary decisions. In addition, the SCM has committed to publish all disciplinary decisions when issued, from the beginning of this year.

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

The encouraging track record of the National Integrity Agency (ANI) continued in the second half of 2009.⁴ Courts confirmed the determination of unjustified wealth in two cases, ordering the confiscation of significant assets. These decisions are subject to appeal. Decisions in four other confiscation cases are pending. The agency has also sent a significant number of cases to prosecutors for criminal investigation and to different disciplinary authorities for disciplinary follow-up. In the courts, ANI has established a track record of defending their findings of incompatibilities or conflicts of interest.

The agency has now established its interim staffing level and should be fully operational once the IT system to process asset and interest declarations will be

⁴ From 22 May 2009 to 4 January 2010, ANI finalised 769 verifications and referred 174 additional files to competent institutions to apply sanctions or pursue criminal investigation. Of these 174 files, two files have been sent to the courts to confiscate unjustified wealth 60 files to disciplinary bodies to sanction ANI's findings of incompatibilities or conflicts of interest, and 112 files have been referred to prosecutors to investigate suspicions of false statements or other crimes. As of 22 February, sanctions have been applied by disciplinary bodies in eleven cases concerning incompatible officials.

completely implemented in 2010. All asset and interest declarations received in 2009 are publicly accessible via a portal on the ANI website.

The Agency issues press releases to publicise its findings of incompatibilities, conflicts of interest and unjustified wealth as well as the outcome of resulting court cases and disciplinary action. The status of ongoing cases in courts is also available online. ANI has entered into cooperation with two NGOs to develop awareness-raising and preventive activities.

The role of the National Integrity Council (CNI) as a control organ of ANI has not been effectively exercised.

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

The National Anticorruption Directorate (DNA) has maintained its good track record of impartial investigations into high level corruption cases.⁵ This is beginning to be reflected at court level with an increase of the total of final convictions by one-third in 2009 compared to 2008. A conviction in first instance was achieved against a current Member of Parliament who is also a former State Secretary. A final conviction decision was reached against a mayor and a former deputy mayor for bribe-taking. They will serve their sentences in prison. However, at the same time, penalties applied by courts for high-level corruption still appear generally too lenient and non-dissuasive as in previous periods: for half of all final convictions the minimum penalty has been applied and for three quarters of final convictions the penalties are suspended.

This analysis is confirmed by a study of a joint working group on the individualisation of corruption offences which was presented in June 2009.⁶ As a first follow-up to the study, a draft guide for courts has been developed by the High Court for Cassation and Justice (HCCJ). At this stage it is too early to assess the operational usefulness of this guide. Practitioners suggested that the final version of the guide, which the HCCJ will produce following a consultation process, would need to be sufficiently precise and e.g. include examples or cases to assist judges in sentencing. The final version of the guide would also have to address not only inconsistency but also leniency in jurisprudence on corruption as stated by the study of the joint working group. The follow-up to all nine recommendations included in the study should be closely monitored.

As regards the duration of the court phase, trials in high-profile cases remain lengthy. In all cases concerning high-level defendants, exceptions of unconstitutionality were

⁵ Between 1 July and 31 October DNA sent to trial 122 defendants in 45 cases including one former Prime Minister and current Member of Parliament, one former councillor of a Prime Minister and former Member of Parliament, one Parliamentary expert and former Member of Parliament, a former President of the National Office for the Prevention and Combating of Money Laundering, four mayors, one deputy mayor, one deputy prefect, two directors of public agencies and five directors of national companies.

⁶ The joint working group included representatives of the Superior Council of Magistracy, the National Anticorruption Directorate, the High Court of Cassation and Justice, the office of the Public Ministry and the Ministry of Justice.

raised at least once. Although the Constitutional Court has rejected virtually all such claims to date, many cases have been delayed by more than 6 months whilst the trial is suspended pending resolution of the unconstitutionality exceptions. Two alternative legal amendments to restrict the suspensive character of exceptions of unconstitutionality have been pending in Parliament since September 2009.

Since mid 2009, Parliament allowed the opening of criminal investigations at the request of prosecutors in one case involving a former Minister who is a Member of Parliament.

The definition of the scope of public funds in a high-level case of alleged abuse of office and infringement of the public procurement law in a state-owned company raises concerns as to the legal follow-up of alleged acts of high-level corruption in a number of similar cases which are being investigated or have reached court.⁷

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

Since mid-2009, Romania took some steps to strengthen the coordination and monitoring mechanisms for the national anti-corruption strategy in response to recommendations of the Commission. The monitoring committee met more frequently; a new technical working group comprising representatives of the implementing sectors and of the local public administration has been established. Specific municipalities and town halls volunteered to pilot anti-corruption measures in their localities. It is also foreseen to extend the anti-corruption strategy to other vulnerable sectors currently not covered such as labour inspection, which falls within the remit of the Ministry of Labour.

The local strategies for combating corruption prepared by the county prosecution offices appear to be delivering results, with an increase in the number of indictments and investigations commenced ex-officio.⁸ For the first time, the Public Ministry's budget includes the creation of a fund for the performance of sting operations by county prosecution offices. Instances of successful co-operation between prosecutors and the General Anti-Corruption Directorate (DGA) of the Ministry of Administration and Interior (MAI) have been reported.

In terms of prevention, DGA developed and started applying a new methodology for identifying corruption risks and vulnerabilities within the MAI and has continued awareness-raising campaigns, targeting citizens to discourage them from paying bribes. The MAI intends to utilise and reinforce the role of the National Integrity Centre, with funding secured for the next two years, enabling it to strengthen its network of anti-corruption action groups and to increase the intensity of the training the Centre provides.

⁷ The case concerned an alleged abuse of office with an estimated prejudice of EUR 3 million. The defendants, including a current Member of Parliament, were finally acquitted by the HCCJ on 28 September 2009, following an earlier acquittal on 19 February 2009.

⁸ Statistics show 173 indictments involving 273 defendants in 2009 compared to 81 indictments involving 180 defendants in 2008.

Work by the National Agency of Civil Servants to review and strengthen the role of ethics councillors in public institutions is progressing, with draft legislation expected to be forwarded to Parliament shortly.