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

INTERIM REPORT

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

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1. INTRODUCTION

This report is an interim report under the Cooperation and Verification Mechanism ("CVM")¹ providing a technical update on significant developments during the last six months in Romania since the Commission's last report in July 2011. The update focuses on measures that have been completed or will be completed shortly, while also identifying actions which remain to be taken.

The recommendations of the last progress report adopted by the Commission on 20 July 2011 are the point of reference for the assessment of progress achieved against the benchmarks and the identification of the remaining challenges. In summer 2012, the Commission will provide an overall assessment of progress in Romania under the CVM since accession.

2. JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION: SUMMARY OF DEVELOPMENTS IN THE LIGHT OF THE COMMISSION'S RECOMMENDATIONS

Romania's response to the Commission's recommendations shows several developments. The new civil code entered smoothly into force in October 2011 and the civil procedure code is foreseen to follow in June 2012. The acceleration of high-level corruption trials by the High Court of Cassation and Justice has helped to respond to the Commission's recommendation concerning the risk of some high level corruption cases reaching statute-barred periods. This could have a longer-term impact in terms of streamlining the judicial process and securing timely final court decisions. Draft legislation on extended confiscation has made progress in Parliament. The National Anticorruption Directorate (DNA) and the National Integrity Agency (ANI) have continued to carry forward a series of important cases, including with regard to a significant number of senior politicians and officials. The new laws on the reform of appointments to the High Court of Cassation and Justice and on the disciplinary responsibility of magistrates set out frameworks which aim at more clarity and rigour. A comprehensive National Anti-Corruption Strategy has been drafted.

Developments in Romania over recent months also point to a number of areas where further action is needed in line with the Commission's recommendations.

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).

Preparations to implement the criminal code and criminal procedure code should continue in areas like targeted recruitment and rebalancing resources between courts, and should be put in the framework of a clear and comprehensive implementation plan. The ability of the leadership of the judiciary to adequately respond to problems concerning integrity and accountability within the judiciary remains an issue of public concern. Decisions in key court cases will need to further contribute to effectively dissuading high-level corruption. The welcome given to the draft National Anti-Corruption Strategy should be backed up by a clear endorsement by all institutions, to maximise the leverage of this strategy. Further efforts are needed to secure more convincing results in the recovery of the proceeds of crime.

Ongoing efforts are therefore needed during the coming months in order to demonstrate convincing results in view of the Commission's overall assessment of progress achieved by Romania under the CVM since its accession to the EU in summer 2012. The Commission will continue to support Romania in this endeavour.

3. UPDATE ON THE STATE OF PLAY

Reform of the Judiciary

In order to pursue judicial reform, the Commission notably recommended to Romania to adopt an implementation plan for the Civil Procedure Code, the Criminal Code and the Criminal Procedure Code, to provide sufficient resources for the necessary re-organisation of the judiciary, improve training and recruitment, strengthen the capacity of the National Institute of the Magistracy and create a framework of cooperation with the judiciary and civil society to monitor progress in judicial reform.

The new civil code entered smoothly into force on 1 October and was accompanied by various training and awareness-raising initiatives. On the basis of the impact studies finalised in November 2011, the entry date of the civil procedure code has recently been announced for June 2012. The remaining codes will enter into force in March 2013, giving time to recruit large numbers of magistrates and clerks and to restructure the court system. Steps have been taken in recent months on the implementing legislation for the civil procedure code, the criminal code and the criminal procedure code, and the impact studies for all codes were finalised in November. The recent announcements on implementation should now be followed up by adoption of the implementing legislation and in the finalisation of a comprehensive implementation plan, involving all stakeholders in Parliament, Government, the judiciary and civil society, including the necessary preparatory measures, such as prioritising recruitments, reorganisation of the court system, and training.

Since the Commission's last report, Romania has launched a project to develop optimal workload standards for courts, and first results are expected in the summer of this year. A functional review of the judicial system will be launched shortly and finalised by the end of 2012. Some vacancies have been reallocated by the Superior Council of the Magistracy; however important imbalances persist in the workload between different courts and prosecution offices.

A proposal to harmonise entry exams and to strengthen the initial training given to magistrates is awaiting approval by the Superior Council of the Magistracy. Proposals to allocate additional positions to the National Institute of the Magistracy and to improve training facilities have also been made. Financing has been provided for 15 additional trainers at the Institute.

In order to improve the accountability of the judicial system, the Commission notably recommended to Romania to demonstrate a track record of transparent and objective management decisions, to continue the reform of the judicial inspection and achieve the electronic publication of all jurisprudence and the timely issuing of motivations by court.

Since the Commission's last report, Romania adopted legislation seeking to strengthen the disciplinary responsibility of the judiciary. This law amends the scheme of disciplinary offences, increases sanctions, and strengthens the independence of the Judicial Inspection. It also eliminates the possibility of magistrates escaping disciplinary sanctions through retirement whilst a disciplinary process is ongoing. In November the Superior Council of the Magistracy adopted a strategy and action plan to improve integrity within the judiciary. However, some recent criminal investigations involving senior magistrates raised public concern regarding the Council's resolve and ability to safeguard integrity and accountability within the judiciary. In one important case of alleged high-level corruption, the judicial authorities did not remove the judge in question from a management position. Disciplinary investigations in this case were initiated, but were subsequently suspended on the grounds of a pending criminal investigation. This case revealed clear shortcomings in the ability of the judicial leadership to take action when faced with serious risks to the reputation of the judiciary. There have been few significant developments to address the Commission's recommendations concerning the effectiveness of the Judicial Inspection.

Appointments to positions in the High Court of Cassation and Justice in August were criticised for a lack of transparency and objectivity. However, Romania adopted a new law in December which had been re-introduced by the government to reform appointments to the High Court of Cassation and Justice. The law introduces substantial improvements to appointment procedures and can make an important contribution to the reform of the High Court. The impact of this law will depend on the commitment of the competent institutions to ensure its implementation. It should be followed by a swift filling of vacancies, in particular within the criminal section, through a transparent and merit-based recruitment process. A further reorganisation of the High Court would help to strengthen the Court's capacity to deal effectively with the procedure of preliminary ruling, which will be introduced as a key instrument for legal unification by the new codes.

There is still no comprehensive, up-to-date online publication of motivated court decisions. The release of motivations for court decisions within the legal deadlines need to be generally enforced, especially as there is a risk that in some high-level corruption cases, delayed motivations could trigger the statute-barred period by delaying any appeals.

Fight against Corruption

In order to improve the effectiveness of judicial action regarding high-level corruption, the Commission notably recommended to Romania to improve case management and judicial practice in the trial of high-level corruption cases and to improve the dissuasiveness and consistency of court sanctions in this area. The Commission also recommended continuing the reform of the High Court of Cassation and Justice, to demonstrate better results regarding fraud in public procurement and to adopt procedural rules for the lifting of Parliamentary immunity.

Since the Commission's last report, the High Court of Cassation and Justice has taken a number of managerial and administrative measures to improve the celerity of high-level corruption trials, notably those which risked reaching statute-barred periods. These measures included the prioritisation of cases closer to statute-barred periods and the temporary use of spare court rooms in other courts, to allow for more frequent hearings. An additional building was allocated to the High Court in November 2011. These measures led to the acceleration of a number of cases which were pending at the High Court and also resulted in an increased number of verdicts. During 2011, 15 cases were solved in first instance at the level of the Penal Chamber of the High Court of Cassation and Justice, compared to two cases in 2010. The High Court issued final decisions in nine high-level corruption cases.

The High Court of Cassation and Justice published sentencing guidelines regarding certain corruption offences on the basis of an analysis of final court decisions. These guidelines are considered useful by practitioners and could be expanded, further disseminated and integrated into training curricula, with their application monitored. Analysis of court sentences for high-level corruption indicate that verdicts often remain close to the legal minimum, and over 60% of sentences are suspended.

The DNA continued to act as an effective prosecution service in high level corruption cases. 2011 saw increases in the number of indictments, court decisions and convictions. With the acceleration of cases in the High Court of Cassation and Justice, this was shown most notably in final court decisions: 158 final court decisions in DNA cases were concluded in 2011, compared to 85 in 2010. This activity continued to include significant numbers of senior politicians and officials. The Anti-Corruption General Directorate of the Ministry of Administration and Interior has taken steps to consolidate its work to tackle corruption.

Since last July, there have been 5 convictions in first instance against 13 defendants in public procurement cases. Regarding offences committed against the financial interests of the European Union, there have been 5 final convictions and 4 non final convictions since July. The importance of public procurement in the Romanian economy suggests that a special effort is needed to ensure that cases are taken forward efficiently and expeditiously. Improving financial and accountancy expertise among magistrates and increasing the availability of qualified external experts remain necessary to ensure the efficiency of court proceedings. A proactive approach to developing consistent jurisprudence in public procurement trials would also help to ensure that cases can be brought successfully to court.

To address weaknesses in judicial practice in high-level corruption trials, several seminars, meetings and training sessions have been organised by the National Institute of Magistracy and the High Court, supported by DNA. These steps could usefully be applied in a more systematic manner and consolidated in a

comprehensive action plan in order to achieve general improvements to judicial practice of high level corruption trials. Particular attention could be given to enhancing the standards for authorisation and funding of expert evidence in court and to the justifications used to postpone court hearings.

Romania has prepared a comparative analysis of practice in other Member States regarding the procedure for lifting immunity of Members of Parliament and included the issue in the draft new National Anti-Corruption Strategy. As the competent authority to adopt new rules, the Parliament now needs to take this issue forward.

In order to improve the effectiveness of the implementation of integrity policies, the Commission recommended to Romania to demonstrate a track-record of sanctions in follow-up to decisions of the National Integrity Agency (ANI), to improve and unify practice of Wealth Investigation Commissions and to improve the investigative capacity of ANI and its cooperation with other institutions.

Since the Commission's last report, the National Integrity Agency (ANI) has received a significant increase in its budget and attracted substantial EU funds to improve its information system and procedures. ANI concluded a number of cooperation agreements with other institutions and carried out a first targeted risk assessment and large-scale checks regarding conflict of interest in public procurement on local and regional level.

The track record of ANI has developed further in recent months. Under its new legal basis, since 2010 ANI has identified 18 cases amounting to a total of EUR 5.7 million of potential unexplained assets, 23 cases of administrative conflict of interest and 118 cases of incompatibilities. The judicial and administrative follow-up to these cases has been mixed. In two first cases which were raised by ANI under its old law, final decisions by the High Court confirmed the existence of unjustified assets and ordered their confiscation. As a result of findings of incompatibility issued under the new law, one holder of public office was dismissed, sanctions were applied in two other cases and six other holders of public office resigned.

A host of other cases, in particular cases related to conflict of interest, are still pending before judicial authorities. The process has been complicated by the establishment of the Wealth Investigation Commissions, created in August 2010 as an intermediary between ANI and the courts. Common guidelines or rules of procedure aimed to improving the efficiency of proceedings and unifying practice are currently being developed. A number of training seminars have been carried out in recent months to encourage best practice. A test case will still need to be decided by courts in order to establish whether or not ANI has the power to launch an appeal against the dismissal ordinances issued by the Commissions.

The potential dissuasive effect of ANI cases is hindered by the delays and lack of consistency in the judicial and administrative follow-up to ANI cases. Attempts at reopening ANI's legal and institutional independence have also diverted attention from consolidating ANI's track record. The forthcoming appointment of a new ANI President provides an opportunity to underline ANI's institutional stability and integrity.

In order to reach better results in the fight against corruption, the Commission recommended to Romania to improve coordination at the highest level, develop a new multi-annual anti-corruption strategy and create a monitoring group for this purpose. The Commission also recommended demonstrating convincing results in the recovery of proceeds of crime and money laundering, adopting a new law on extended confiscation, developing rules for the prevention of conflict of interest in the management of public funds and strengthening procedures and capacity of competent authorities in the area of public procurement.

Since the Commission's last report, Romania has developed a new draft anti-corruption strategy which has been well received by experts and practitioners. The effective implementation and the impact of the strategy will depend on broad political support and endorsement. The adoption of the strategy by Parliament would be an important positive signal. A visible monitoring mechanism could further enhance its impact, as well as a requirement for all parts of government to implement the strategy in their own areas, and report on results. Since the summer, financing has also been obtained from EU funds for a number of anti-corruption projects, including in the Ministries of Education, Health and Administration and Interior. Implementation has started and results are now awaited. In terms of dissuasiveness, the exclusion of a politician from his party upon the launch of investigations for high-level corruption in November has been recognised as a strong example of effective public accountability. However, six other members of Parliament with convictions for corruption remain as sitting members of Parliament.

If the draft law on extended confiscation currently under discussion in Parliament is adopted as proposed, it would add significantly to the dissuasiveness of penalties. It would need to be accompanied by measures to ensure that court sentences imposing financial penalties are effectively collected. Convincing results have still to be demonstrated in the recovery of the proceeds of crime. Steps taken by the General Prosecutor led to a significant increase in the amount of frozen assets in 2011. A guidance note has been disseminated to prosecution offices to encourage the pursuit of money laundering as a stand-alone offence within existing legislation.

In December, Romania adopted a code of conduct concerning incompatibility and conflict of interest in the management of EU funds. A working group has been tasked to develop monitoring mechanisms to enforce the provisions of this new code of conduct.

Since the Commission's last report, legal amendments and administrative measures were taken to strengthen the protection against irregularities and conflict of interest in the management of public funds. Measures include developing standardised tender documentation and strengthening the capacity of the National Authority for Regulating and Monitoring Public Procurement (ANRMAP) to carry out ex-ante verification. The ANRMAP concluded cooperation agreements with other institutions. Further steps are now under discussion which could help to enhance the effective application of the public procurement rules.