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**INTERIM 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

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 having occurred during the last 6 months in Romania under the CVM². 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 Communication adopted by the Commission on 23 July 2008 remains the point of reference for the assessment of progress achieved against the benchmarks and the identification of the remaining challenges. The Commission will make its next assessment in summer 2009.

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

The pace of progress noted in the Commission's report of July 2008 has not been maintained. Although there have been some positive signals in judicial reform, results are difficult to demonstrate. The Government has finalised draft amendments to the Civil Code, a draft of the Criminal Code and drafts of the Criminal and Civil Procedures Codes, but they still need to be adopted. The intentions of the Superior Council of the Magistracy to accept more ownership for judiciary reform are encouraging but need to be translated into deeds. The National Integrity Agency has established an operational record of cases. This needs to be maintained.

In most other areas, shortcomings identified by the Commission in July remain. Although the Constitutional Court has recently rejected amendments to the Penal Procedure Code³ which would severely restrict the rights of the prosecution, the legal situation remains unresolved and ambiguous. Some investigations of high level cases remain blocked by the Romanian Parliament. In addition, access to and unification of

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 and organised crime (OJ L 354, 14.12.2006, p. 56).

² The cut-off date of this report is 15 January 2009.

³ Introduced by the law on approval of emergency ordinance 60/2006 and further amended by Parliament.

jurisprudence, the accountability of magistrates and the shortcomings in staffing and management of the judiciary still await significant improvement.

It is important that the Romanian authorities regain its momentum on judicial reform and the fight against corruption so as to reverse certain backward movements of recent months⁴.

3. CONCLUSION - OUTLOOK

The next assessment of progress by the Commission in summer 2009 will show to which extent Romania has been able to successfully address the shortcomings identified in the reform of the judiciary and to produce convincing and tangible results in the fight against corruption.

It will be crucial for Romania to achieve significant, irreversible progress by then. Romania must demonstrate the existence of an autonomously functioning, stable judiciary which is able to detect and sanction corruption and preserve the rule of law. This means in particular adopting the remaining laws needed to modernise the legal system and showing through an expeditious treatment of high-level corruption cases that the legal system is capable of implementing the laws in an independent and efficient way.

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**

Romania has finalised draft amendments to the Civil Code, a draft of the Criminal Code and drafts of the Criminal and Civil Procedures Codes. The new government decided to withdraw the drafts from Parliament in January 2009. Political agreement on the drafts must be found. An assessment of the impacts of the codes and a meaningful consultation process must still take place. The successful implementation of these codes will depend on the allocation of sufficient financial resources, the recruitment and re-allocation of staff. On 14 January 2009, the Constitutional Court declared that the controversial law adopted in October 2008 approving the Government Emergency Ordinance (GEO) 60/2006, which would restrict the rights of the prosecution in the investigation of serious cases, is unconstitutional. The problems surrounding this ordinance will be fully solved when the new Criminal Procedure Code is adopted.

The capacity of the judicial system in Romania is still weak. The number of vacancies remains unacceptably high - 433 vacancies for prosecutors and 344 vacancies for judges at 31

⁴ Romania went through legislative elections and the formation of a coalition Government towards the end of the reference period.

December 2008⁵. The statistics provided by the SCM as to 10 December 2008 indicate that about half of all vacancies relate to managerial positions⁶.

The Human Resources Strategy adopted by the SCM in November 2008 does not propose appropriate emergency measures such as a temporary reallocation of staff between court levels and locations to address the pressing staffing shortfall⁷. The strategy does not yet take into account the necessary reorganisation of courts and prosecutors' offices. The important numbers of active magistrates who are currently entitled to retire at any moment add uncertainty to the staffing situation and reduce the margin for structural reform⁸. Furthermore, the high level of secondments of magistrates to various public institutions creates temporary vacancies which cannot be filled by a reserve fund established for this purpose⁹. While maintaining a high quality of recruitment and training, Romania must urgently address the pressing capacity problems of the judiciary.

The High Court of Cassation and Justice (HCCJ) needs to improve its practice as guardian of jurisprudence¹⁰. The lack of unified and clear jurisprudence remains of high concern in relation to legal certainty and transparency¹¹. Romania has established a working group in order to improve the uniformity of jurisprudence on the level of penalties in cases of corruption. First results of this working group are expected in May. The impact of other activities to promote legal unification, such as periodic meetings at appeal court-level, cannot yet be assessed.

With regard to transparency, the authorities have focused on the publication of judgements on the courts' websites. On 27 November 2008, the Superior Council of Magistracy (SCM) adopted a decision which obliges courts to publish all relevant judicial decisions on the internet. However, criteria to ensure data protection and the consistency of the type of decisions published by Courts do not yet exist. An IT tool that would allow swift publication of all judgements has not yet been put into operation.

Out of 53 positions for judicial inspectors, 44 were filled as of January 2009. The over-representation of inspectors seconded from Bucharest remains, despite the adoption of new

⁵ Although prosecutors vacancies decreased by 107 overall in 2008 and vacancies of judges remained almost stable with a decrease by 3 vacancies in 2008, the trend in the last six months of last year has been particularly negative with a net increase of 99 vacancies for judges (rising from 245 to 344) and a net increase of 16 vacancies for prosecutors (from 417 to 433).

⁶ On 10 December 2008 there were 154 vacant managerial positions in the courts out of total 309 vacant judges' positions and 219 vacant managerial positions of prosecutors out of total 475 vacant prosecutors' positions.

⁷ The General Prosecutor reported in December that the number of the prosecution offices unable to function properly rose from 22 to 49 in the last months. Two prosecution units have no prosecutors.

⁸ 662 judges and 360 prosecutors met the legal conditions and were eligible for pension December 2008. The precise number of active magistrates with pension decisions is not known but estimated at several hundreds.

⁹ The number of secondments (84 judges and 75 prosecutors as to 16 December 2008) exceeds the number of posts in the reserve fund by more than 60%.

¹⁰ The European Court of Human Rights stated in two cases published in 2008, violations of human rights resulting from inconsistent judgements of the High Court of Cassation and Justice which were in contradiction to the principle of legal certainty. See: cases *Beian v. Romania* no. 30658/05, *Driha v. Romania* no. 29556/02.

¹¹ For instance, the motivation of the High Court of Cassation and Justice in a highly-publicised appeal in the interest of the law concerning property restitution (determined in June 2008) has not yet been issued.

rules for secondments of inspectors by the SCM on 27 November. Recent secondments to the inspectorate indicate in addition that these rules have not yet been fully applied.

The Inspectorate conducted general inspections of the entire activities of some judicial bodies and thematic inspections of various courts and prosecutor offices. It also submitted to the Ministry of Justice an unreported number of proposals for legislative changes. Until now, some of its disciplinary inspections¹² resulted in the imposition of disciplinary sanctions by the SCM¹³.

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 National Integrity Agency (ANI) has reached its initial staffing goals with the recruitment of 60 inspectors. However, further investment in logistics, equipment, case management software and human resources is needed for ANI to achieve full operational capacity. By the beginning of December, ANI had performed checks on 1500 cases and applied 470 fines for failure to comply with submission deadlines for declarations of assets and declarations of interest. At the same time, ANI had submitted one case to court and 16 cases to prosecutors' offices for follow-up. The range of individuals under investigation included Members of Parliament, ministers, mayors, magistrates, university professors and police officers.

The agency succeeded in rejecting an attempt by a member of its supervisory body, the National Integrity Council, to influence its decision making on an individual case.

ANI will need to demonstrate that it is able to extend its investigations without outside interference and with the full cooperation of other state authorities. It is too early to see whether its investigations will be effectively followed up by the judiciary.

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) continues to show a stable and positive track record for prosecuting cases of high-level corruption¹⁴.

Parliament needs to improve its handling of high-level corruption cases and allow the investigation of all appropriate cases by the judicial authorities. Although investigations were

¹² Between 1 January and 19 December 2008 Judicial Inspection took on 5987 notifications on misconduct of magistrates and verified 34 cases started on the initiative of the SCM. Consequently, it sent 311 notifications for a possible disciplinary follow-up to the discipline commission for judges in the SCM and 128 notifications to the discipline commission for prosecutors in SCM.

¹³ These disciplinary sanctions were imposed on 18 magistrates (13 judges and 5 prosecutors) and included 3 dismissals, 1 disciplinary transfer and 10 reductions in salaries and 4 warnings.

¹⁴ Between the beginning of May and the end of November 2008 DNA brought 16 important cases to court, the defendants included 4 Members of Parliament, a former Minister of Agriculture, directors of national companies, police officers and prefects. Between 30 November 2008 and 21 January 2009, the DNA indicted e.g. a former Vice Prime Minister, a former Minister of Labour, three Members of the Parliament and a former Prime Minister.

allowed to be continued in two cases since July 2008, they were rejected in two other cases and deferred in three more cases.

Instances of lengthy trials, leniency by courts and inconsistent jurisprudence in cases of high-level corruption continue to be reported.

The stability of the Romanian anti-corruption framework suffered several serious challenges during the second half of last year. The Parliament's initiative to change the nomination procedure of senior prosecutors would seem to openly challenge the effectiveness of the system¹⁵.

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

The General Prosecutor adopted a set of measures to increase the effectiveness of local prosecutors' offices in corruption cases. These measures included an analysis of relevant indictments issued between 2007 and 2008, a manual of best practice applicable to corruption investigations and local strategies for combating corruption drafted by all 41 regional prosecution offices.

Several initiatives by civil society have been reported such as integrity screening of candidates for national elections, regional anti-corruption action groups, recommendations for integrity tests in the health sector, and the monitoring of public universities for administrative and academic probity, good governance and sound financial management. In addition, several governmental projects to prevent corruption were carried out.

The Anti-Corruption General Directorate (DGA) of the Ministry of Administration and Interior reported an increase of about 14% of corruption investigations within the ministry in the first eleven months compared to the whole of 2007.

Efforts to achieve progress under the National Anti-corruption Strategy adopted last summer need to be accelerated. An extension of the competence of DGA to investigate corruption cases within local public administration would appear contentious within the government and criticised by parts of the judiciary and civil society.

A call-centre within the government has been set-up in line with the National Anti-Corruption Strategy 2008-2010. No further plans have been reported yet to establish a general hotline to signal corruption offences, able to guarantee independent and impartial follow-up of signals.

¹⁵ This legal initiative was declared unconstitutional on procedural grounds by the Constitutional Court.