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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**

{SWD(2014) 37 final}

## **1. INTRODUCTION**

In July 2012, the European Commission reported with an overall assessment of Romania's progress, five years after the inception of the Cooperation and Verification Mechanism (CVM).<sup>1</sup> It noted that many of the building blocks required were in place, and that the CVM had made a major contribution to reform in Romania. The focus was shifting to the implementation of reforms. The report, its methodology and conclusions were also endorsed in conclusions by the Council of Ministers.<sup>2</sup>

The report was also coloured by the events of July 2012 in Romania, raising specific questions about the rule of law and the independence of the judiciary in Romania. The Commission devoted an interim report to these issues in January 2013.<sup>3</sup> The report concluded that Romania had implemented several, but not all, of the Commission's recommendations on these issues. It also noted the need to accelerate progress on the Commission's recommendations on the reform of the judiciary, integrity and the fight against corruption.

This report assesses the progress made by Romania since these reports in the two core CVM areas of judicial reform and anti-corruption work. The history of the CVM so far shows that progress is not straightforward, so that advances in one area can be constrained or negated by setbacks elsewhere. In December 2013, decisions in Parliament served as a reminder that the core principles and objectives of reform are still being challenged – the intervention of the Constitutional Court was required to reiterate these principles. This makes it particularly difficult to assess the sustainability of reform and to judge how much domestic momentum exists to ensure that a broadly positive trend is assured.

It is noteworthy that the difficult circumstances of 2012 did not blunt the determination of many institutions and individuals in Romania to continue to consolidate progress. The Commission believes that the monitoring process of the CVM, the opportunities provided by EU funds and the constructive engagement of the Commission and many Member States continues to be a valuable support to reform in Romania. The next report will come in around one year's time.

## **2. STATE OF THE REFORM PROCESS IN ROMANIA**

### ***2.1 The Judicial System***

Judicial independence and the rule of law was a particular theme of the July 2012 report and its follow-up in January 2013.<sup>4</sup> It has also been a consistent issue in the Romanian domestic

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<sup>1</sup> COM(2012) 410 final

<sup>2</sup> 24 September 2012

<sup>3</sup> COM(2013) 47 final. Its analysis and recommendations was endorsed in conclusions adopted by the General Affairs Council on 11 March 2013.

<sup>4</sup> COM(2012) 410 final , COM(2013) 47 final

debate, with greater emphasis placed by judicial institutions on this side of their work. This may have influenced the level of trust in judicial institutions in Romania.<sup>5</sup>

### ***Judicial Independence and the rule of law***

#### *The Constitutional Order*

Though not strictly part of the judiciary, the Constitution and the Constitutional Court are at the heart of the rule of law. The challenge to the authority of the Constitutional Court in summer 2012 has not been repeated, and it has rather consolidated its role as an important arbiter. The Court will continue to have a key role in defending key principles like the separation of powers, including any future discussion on Constitutional change.

With the Constitutional debate expected to return this year, it will be important to ensure that the Superior Council of the Magistracy has the opportunity to comment on all areas relevant to the judiciary. In particular, care will be needed to exclude changes which increase the opportunity for politicians to influence the judicial leadership or challenge judicial independence or authority. For this reason, the commitment of the government to consult the Venice Commission in particular is an important sign of Romania's commitment to base any future Constitutional change on European norms. The Romanian authorities have also made clear their intention to keep the European Commission informed.

#### *Pressure on judicial independence*

In the summer and autumn of 2012, the Commission received a large number of representations from judicial institutions concerning direct criticism by politicians and politically motivated media attacks on individual judges, prosecutors and members of their families, as well as on judicial and prosecutorial institutions.<sup>6</sup> The number and strength of such attacks seems to have decreased since 2012, but examples continue. This includes cases where judicial institutions and magistrates have been criticised directly in the wake of judicial decisions about important political personalities.

This contrasts with practice in many other Member States, where respect for the principle of separation of powers and judicial independence, whether through rules or conventions, limit the extent to which politicians comment on judicial decisions.

The SCM is the main defender of the independence of justice and it has pursued this task in a systematic and professional way, which has helped the issue to be taken more seriously by citizens and politicians. This has proved an increasingly important part of the SCM's tasks, and a clear and publicly-available procedure for how the SCM will react in such cases would help to consolidate this role. The SCM could also look at other ways to show institutional backing for applying judicial independence in practice by supporting individual magistrates in such circumstances.<sup>7</sup>

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<sup>5</sup> In Special Eurobarometer 385 on justice, the Romanian public's trust in the judiciary, at 44%, was not far under the EU average(53%) and Romania ranked 17<sup>th</sup> out of the EU-28 in terms of trust

<sup>6</sup> COM (2013) 47 final, p 4

<sup>7</sup> Technical Report Section 1.1.1.

The Minister of Justice has also led a useful initiative to set up a dialogue between the media and magistrates. Better mutual understanding and a professional approach to media handling in judicial institutions can both help to improve relations. But it remains the case that progress will be difficult if criticism by those in authority of magistrates and judicial decisions continues.

### *Respect for court decisions*

This is linked to an important aspect of the separation of powers and the rule of law, the respect for court decisions. This operates on many different levels. Failure to implement court orders or cases where the public administration unjustifiably challenges court decisions constitute challenges to the binding nature of court decisions.

This is a problem which touches the highest organs of the state. Since July 2012, the judiciary has more than once had to refer to the Constitutional Court following unwillingness of the Parliament to terminate mandates as a result of final court decisions on incompatibility of a parliamentarian. The most recent ruling of the Constitutional Court on this issue dates from November 2013, however the Senate has as yet taken no action.

### *High-level appointments*

Appointments in the judicial system are one of the clearest ways for judicial and prosecutorial independence to be demonstrated. The CVM process has underlined the importance of clear, objective and considered procedures to govern such appointments:<sup>8</sup> non-politically motivated appointments of people with a high level of professionalism and integrity are essential for public trust in the judicial system.

The record of the last year is mixed.<sup>9</sup> In the case of the leadership of the High Court, there was no sign of interference in the process. The situation is more difficult in the case of the prosecution, where the nomination process launched in September 2012 had a strong political flavour which subsequent changes in procedure failed to shake off. This may have discouraged some candidates from applying. The final proposal of candidates included some figures with established track records in the field of anti-corruption. However, the overall outcome was not the result of a transparent process designed to allow scrutiny of the candidates' qualities and a real competition. The Commission regretted the decision not to follow a solid procedure, noting that this put the onus of those appointed to show their commitment to pursue the work of these institutions in tackling corruption.

In autumn 2013 another difficult issue arose with the appointments of head and deputy heads of section in the DNA. Again, temporary nominations to ad interim positions were abruptly terminated, and nominations were made by the Minister of Justice which did not fully follow the procedure of consulting the head of DNA. Following criticism by the public and the SCM, a second, more consensual process took place in line with the rules which resulted in a

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<sup>8</sup> For example, COM(2012) 410 final called for "a transparent and objective appointment process [for the anti-corruption institutions], through an open competition using clear criteria, targeting the strongest possible leadership and with the goal of continuity in the functioning of these institutions". See also conclusions from the Council of Ministers, most recently of 13 March 2013.

<sup>9</sup> Technical Report Section 1.5.

different set of permanent appointments. The timing also led to public concerns that a link was being made with DNA decisions on political figures, alongside public political criticism of prosecutors.<sup>10</sup>

### *The legal framework*

#### *The new legal Codes*

Successive CVM reports have followed the process of developing new legal Codes in Romania. The July 2012 CVM report underlines that this represented a substantial modernisation of the Romanian legal framework. Whilst implementation has not been easy, particularly when parallel systems have had to be maintained, there has been an increasing sense that the judicial leadership institutions have been working together with the Ministry of Justice to facilitate the transition. The preparations for the entry into force of the new Criminal Codes have sought to learn from the experience of the past.<sup>11</sup> The Ministry of Justice has also secured additional budget and posts to support the implementation of the new Codes. It has been helpful to set slightly longer, but realistic, deadlines for the process.

The new Code of Criminal Procedure to be implemented from February is a major undertaking: all provisions are directly applicable, and the code introduces two new institutions, the “rights and freedom judge” and the “preliminary chamber” judge. It is therefore particularly important that problems are anticipated and resolved where possible. Regular monitoring of the actual effect and implementation of the new provisions will be important once the new Codes are in force.

A remaining difficulty is the instability of the new Codes a few months before their entry into force. Several legal problems have been identified, which may require amendments of the codes or of the law for the application of the Criminal Procedure Code still to be adopted before the entry into force<sup>12</sup>. In addition, in December the Romanian Parliament voted a series of controversial amendments to the Criminal Code, which were ruled unconstitutional by the Constitutional Court (see below).

#### *Consistency of Jurisprudence*

The introduction of the Codes is also an important opportunity to address the issue of consistency of jurisprudence. Inconsistency and a lack of predictability in the jurisprudence of the courts or in the interpretation of the laws remains a major concern for the business community and for wider society.

The High Court of Cassation and Justice (HCCJ) has taken a number of helpful steps to address this issue. The new Procedure Codes refocus second appeals on their primary cassation purpose and reinforce the role of the High Court in improving consistency. The preliminary ruling procedure will bring a new procedure to allow questions to be put to the High Court for an interpretative ruling that is binding both for the court in question and for

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<sup>10</sup> Technical Report Section 1.5.

<sup>11</sup> Technical Report Section 1.2.2.

<sup>12</sup> Technical Report Section 1.2.2.

future cases. Both in terms of training and the publication of motivated court judgments, the High Court and the SCM have been taking important steps to address this, including giving judges and clerks access to court decisions from all other courts of the country. The next step should be to ensure that the all court decisions are accessible for the legal profession and the public at large.<sup>13</sup>

It remains the case that there is a resistance in some quarters to follow the jurisprudence or guidance of superior courts which impedes the normal functioning of the judicial system. The resulting uncertainty undermines confidence in the judicial system, creating inefficiency and frustration for both commercial operators and citizens. Heads of courts could do more to underline the importance of consistency to their colleagues, and in particular to challenge cases where decisions seem to diverge from High Court practice. For its part, the High Court needs to iron out cases where its own decisions seem inconsistent.

An additional source of difficulties in the uniform application of the law relates to the quality and the stability of the legal framework. The large number of Emergency Ordinances or parliamentary proceedings which fail to respect a minimum of transparency often give no space for proper assessment, consultation and preparation, even when urgency is not clear. As a result judges, prosecutors, lawyers, businesses, administrations and citizens who have to apply the law are confused and errors are made, and there is a higher risk of loopholes that can be used to interpret the law in a diverging way.

### ***Structural reform of the judicial system***

#### *Strategy for the Development of the Judiciary (2014-2018)*

The Ministry of Justice has been working to develop a Strategy for the Development of the Judiciary (2014-2018). The strategy aims at strengthening the current reforms and the judicial institutions and at increasing the trust of the judiciary. The overall goals – greater efficiency, institutional strengthening, integrity, quality, transparency and access to justice – are consistent with the work done in other Member States and at European level. The goal is to have the strategy and an accompanying action plan adopted in February 2014. For such an initiative, close cooperation between government and judicial institutions is essential, and the Minister has succeeded in bringing the institutions together. Consensus will also help to underpin the authority of the strategy. It would also be important to involve other legal professions such as barristers, notaries and bailiffs in the process.

An important element for any future reform of the judicial system would be to increase the capacity of the judicial management for better-informed decision making, based on reliable data collection on the functioning of the judicial system, research and long term planning. Other Member States have also used practices such as court users' surveys and staff surveys to inform about the weaknesses of the system.

#### *Management of workload and efficiency of justice*

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<sup>13</sup> Technical Report Section 1.3.2 sets out the different initiatives taken so far.

Excessive workload in some courts and prosecution offices is recognised as a continuing problem, exacerbated by uncertainties about the impact of the Codes. Several helpful trends in the judicial system, including specialisation, better use of court clerks, and court practice measures to prevent vexatious delays, can all have an impact.

However, it is also important to look at the long-standing issue<sup>14</sup> of rebalancing the available resources by redesigning the judicial map. This change would however require legislative amendment, and despite the backing of the Ministry of Justice, it seems that the support of Parliament remains uncertain.

### *Integrity of the judiciary*

The SCM has underlined its no tolerance policy on tackling problems of integrity within the judiciary and with the help of the Inspectorate, a more consistent and thorough approach has been developing. It will be important that this is also reflected in a consistent approach by the administrative section of the High Court. It seems to have resulted in a larger number of cases,<sup>15</sup> but further monitoring will be needed to establish whether the deterrent effect is working.

## **2.2 The Integrity framework**

The integrity framework is one of the core features of the CVM. It relies on institutions and rules to ensure that expectations are clear and properly implemented. It also rests heavily on a political and cultural acceptance that integrity is an important principle for public servants and that transgressions should bring consequences.

### *The National Integrity Agency (ANI) and the National Integrity Council (NIC)*

Over the past year, the National Integrity Agency (ANI) has continued to consolidate its track record.<sup>16</sup> There are however continued obstacles, and differences between the progress made on incompatibilities, conflict of interest and unjustified wealth. In particular, ANI and its management have faced a series of attacks, which have often seemed to coincide with ANI cases against senior political figures. The National Integrity Council has proved its value as an oversight body capable of explaining ANI's mandate and intervening publicly when required.

ANI has become more established as an institution, with the government supporting improved resources to ensure its effective functioning. Its relations with other agencies of government are key, and ANI has put in place a series of working agreements to govern these relations – even if some of these bear more fruit than others. ANI's rulings are often challenged in court, but the data shows that in over 80% of challenges to ANI rulings on conflict of interest, the courts confirmed ANI's conclusions.

The courts seem to have become familiar with the integrity framework. But case law is still uneven, with contradictory decisions at the level of the courts of Appeal but also at the level

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<sup>14</sup> See for example COM(2012) 410 final, p. 8.

<sup>15</sup> Technical Report Section 1.4.4. This section also notes the large proportion of cases which have been successfully challenged at the High Court, compromising the effectiveness of the measures.

<sup>16</sup> Technical Report Section 2.1.3.

of the HCCJ, and court proceedings on incompatibility cases are still long. A case before HCCJ on whether it can appeal a decision by Wealth Investigation Commission not to forward an ANI case to court is still pending. The length of time taken to cancel contracts signed in breach of conflict of interest, and the poor record of government administration in pursuing these, also reduces the dissuasive force of ANI's work, as well as entailing a loss for the public finances.

The decision to develop a new system for ex-ante verification of conflict of interest in the awarding process of public procurement contracts is a valuable addition to ANI's activities.<sup>17</sup> It is clearly desirable that potential conflicts of interest can be identified and avoided in advance, before contracts are signed. A legal obligation on contracting authorities to respond to problems identified by ANI will be important to make the system work. Also important would be a provision that, if the contract went ahead and the ANI ruling was confirmed, the official in conflict of interest would be liable for a minimum proportion of the cost of the contract. If successful, the approach should swiftly be extended from EU funds to all procurement procedures.

It would be logical to learn the lessons of ANI's current work in order to refine its legal framework. A package now discussed with the government would include important steps such as the immediate cancellation of a contract when a decision on conflict of interest becomes final, more controls at the stage of appointment, and easier access to declarations of interest. This would also be a good opportunity for ANI to steer a codification of the integrity framework, which should also ensure that any perceived ambiguities in the current framework are removed.

However, such sensible steps face the uncertainty brought about by successive attempts in Parliament to undermine the effectiveness of the integrity framework.<sup>18</sup> This includes for example attempts to change the rules on incompatibilities for locally elected representatives in summer 2013 or the recent attempts to modify the Criminal Code, with the effect of shielding entire categories of individuals from rules on integrity, including on conflict of interest (see below). It also includes cases where Parliament has proved unwilling to implement an ANI ruling, even when supported by a court decision. A government proposal to amend the ANI law would therefore need to strengthen and consolidate ANI's role as an important test of political willingness to maintain an effective integrity framework in place.

#### *The integrity framework: Parliament*

Previous CVM reports also pointed to the risk that parliamentary rules were seen to shield parliamentarians from the course of the law.<sup>19</sup> The January CVM report noted that the Parliament had adopted in January 2013 amendments to the statute of the Members of Parliament, changing the procedure for lifting immunities in the cases of the search, arrest or detention of parliamentarians and the prosecution of former Ministers. The Statute seems a helpful step, introducing more clarity about incompatibility bringing about the end of a mandate, and applying deadlines for parliamentary consideration of requests from the

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<sup>17</sup> Technical Report Section 2.1.4. sets out in detail the process intended.

<sup>18</sup> COM(2012) 410 final, p. 14 sets out examples from recent years.

<sup>19</sup> For example COM(2012) 410 final, p 14.

prosecution for detention, arrest or search of parliamentarians. However, it does not require a refusal of a prosecution to be motivated.<sup>20</sup>

Due to a challenge in the Constitutional Court, these provisions took effect only in July, and the implementing regulations and a new Code of Conduct<sup>21</sup> have not yet been adopted. The effectiveness of the Statute will need to be assessed over time. Unfortunately, practice during autumn 2013 did not always indicate that parliamentarians were looking to new rules to provide a new rigour in the proceedings.<sup>22</sup> In particular, in an echo of concern expressed in the January report, a High Court ruling confirming an ANI decision was not implemented by Parliament.<sup>23</sup>

### **2.3 Tackling High-level corruption**

Past CVM reports and Council conclusions have highlighted the track record of institutions responsible for tackling high-level corruption as one of the most important ways in which Romania is advancing the CVM objectives. Since the last Commission reports, both DNA at prosecution level<sup>24</sup> and the HCCJ at the trial stage<sup>25</sup> have maintained significant track records in difficult circumstances. Both in terms of indictments and convictions, the application of the justice system to powerful political figures has been an important demonstration of the reach of Romanian justice.

There have been substantial improvements in court practice, notably in terms of speed of the DNA investigation and of judgement.<sup>26</sup> A significant loophole has been closed, to prevent a case being delayed by a resignation from a post such as a parliamentarian, and duty defence lawyers are on hand at the High Court to prevent the absence of a defence lawyer being used to cause a postponement.

Tackling corruption within the magistracy<sup>27</sup> is a key element for the credibility of the system. Here, efforts have been made to improve both the coherence and the dissuasiveness of sanctions by proposing a draft law to take away the magistrates' special "service pension" after a definitive conviction for intentional criminal offenses, including corruption.<sup>28</sup>

However, it remains the case that tackling high-level corruption faces significant obstacles. Whilst investigations, indictments and convictions are taking place, there is evidence that

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<sup>20</sup> COM(2013) 47 final, p. 7 recommended that "Full justification should be given if Parliament does not let normal law enforcement take its course."

<sup>21</sup> The President of the Chamber of Deputies has expressed an openness for the Code of Conduct to be inspired by international practice, with a draft sent to European Parliament in December 2013.

<sup>22</sup> Technical Report Section 2.2.

<sup>23</sup> Even after clear support from both the HCCJ and the Constitutional Court in a case concerning a Senator.

<sup>24</sup> 2013 has seen a significant increase in the number of indicted defendants (1073 in total). See Technical Report Section 3.2.3.

<sup>25</sup> The High Court reported figures are in a comparable order of magnitude as the 2012 figures. See Technical Report Section 3.1.

<sup>26</sup> Out of the 205 DNA cases in which final decisions were ruled in the reference period the majority (about 73%) received a solution in less than 4 years (among which, most of them within 2 years). See Technical Report Section 3.1.

<sup>27</sup> A few recent cases have been reported by both the HCCJ and DNA.

<sup>28</sup> This draft law has been passed by the Chamber of Deputies but is still before the Senate.

corruption is not always treated as a serious crime. Within the judicial system, the high percentage of suspended sentences seems to illustrate a reluctance by judges to carry through the consequences of a guilty verdict<sup>29</sup> – in contradiction of the sentencing guidelines of the High Court itself. Another important issue in this respect will be to improve track records in confiscation of assets and asset recovery. Extended confiscation, to allow for assets to be confiscated from relatives, still remains a recent and relatively rarely-used procedure.<sup>30</sup>

This reluctance is underlined when Romanian politicians make statements which express sympathy for those convicted of corruption. Inconsistent application of rules on Ministers stepping down from their posts gives an impression of subjectivity. This may also be linked to the amendments to the Criminal Code passed by Parliament in December 2013, without prior debate or public consultation. Romanian judicial bodies including the High Court and the Supreme Council of the Magistracy expressed serious concern about the amendments, on the grounds that they would have the effect of taking parliamentarians<sup>31</sup> out of the scope of legislation covering corruption offences like bribe taking, trading in influence and abuse of office. DNA data shows that some 28 parliamentarians have been convicted or are on trial for corruption.<sup>32</sup>

Another amendment was a modified prescription regime which would substantially reduce the prescription period. CVM reports have frequently commented on the prescription regime in Romania,<sup>33</sup> which includes a relatively unusual provision that prescription ends only with a final instance judgment. Other important provisions included redefining conflict of interest in order to remove a wide range of categories of persons from liability for a criminal offence.<sup>34</sup> Another suggested amendment would appear to have the effect of removing any consequences for corruption from those already convicted and sentenced.<sup>35</sup>

These amendments brought reactions from the Romanian magistracy,<sup>36</sup> and from the international community.<sup>37</sup> One issue raised was the fact that the UN Convention on Corruption states that all public officials holding legislative, executive, administrative or judicial office should be covered by corruption and conflict of interest rules.<sup>38</sup> The

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<sup>29</sup> In cases conducted by the DNA between 1st of January 2013 and 15 October 2013, 853 defendants were convicted to imprisonment penalties. Eventually, 22,2% (189 penalties) were ruled with execution in detention and 77,8% (664 penalties) were ruled with suspension of execution (either - conditioned suspension of execution, or suspension of execution with surveillance). See Technical Report Section 3.6.1.

<sup>30</sup> The Ministry of Justice reported that the 2012 law on extended confiscation had been used by the prosecution between 1 January and 1 September 2013 in 34 cases. Only one court decision involving extended confiscation has been adopted and the case is currently on appeal at the High Court of Cassation and Justice.

<sup>31</sup> As well as the President and persons carrying out professions such as lawyers, notaries or bailiffs.

<sup>32</sup> Technical Report Section 3.2.1.

<sup>33</sup> COM(2012) 410 final recommended suspending prescription periods on the beginning of a judicial investigation.

<sup>34</sup> Over 100 mayors and vice-mayors are currently on trial for infringements within the scope of DNA responsibilities.

<sup>35</sup> Consideration of this amendment was postponed.

<sup>36</sup> See for example DNA's press release: <http://www.pna.ro/comunicat.xhtml?id=4510&jftfdi=&jffi=comunicat>; and the HCCJ: <http://www.scj.ro/sesizari%20CC/Hot%20SU%201%202013.pdf>

<sup>37</sup> Cf. for example the reaction of the Embassy of the United States in Romania: <http://romania.usembassy.gov/policy/media/pr-12112013.html>

<sup>38</sup> Cf. for example, the proposed Article 4(5) of the Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law COM(2012) 363 final of 11.7.2012. This is also in line with

Constitutional Court of Romania ruled in January 2014 that the amendments were unconstitutional, citing in particular the need to respect obligations stemming from international law, as well as the principle of equality before the law enshrined in the Romanian Constitution. The Constitutional Court ruling was an important demonstration of checks and balances at work, but it remains perplexing that amendments were passed which seemed to directly challenge such important principles.

## **2.4 Tackling Corruption at all levels**

The CVM also requires strong efforts to tackle corruption at all levels of Romanian society. Surveys consistently show high levels of public concern about the prevalence of corruption.<sup>39</sup> Whilst bringing to justice high-profile figures facing corruption charges can have a positive impact on perceptions, addressing corruption at all levels also requires sustained efforts to reduce the opportunities for corruption, and then to show that consequences result when it is uncovered. Such managerial and preventive measures are still lagging behind.<sup>40</sup>

The National Anticorruption Strategy (NAS) is an important initiative which has succeeded in extending a common framework to a wide variety of Romanian institutions.<sup>41</sup> Its work to spread best practice and encourage public bodies to devote resource and attention to anti-corruption work are clearly valuable.<sup>42</sup> The next step would be to apply more consistent rules in areas like risk assessment and internal control standards. In the absence of enforcement powers,<sup>43</sup> however, the Strategy depends strongly on the prioritisation of the leadership of the different institutions. There are ways in which a commitment to tackle corruption can be shown, such as the willingness to notify anti-corruption institutions of transgressions: the fact that different institutions have a wide variety of different track records on such measures shows a lack of consistency in approach.

Another important approach would be to ensure that new policies and legislation are already designed with corruption prevention in mind. An example would be initiatives to promote decentralisation and regionalisation, where the devolving of financial decision-making should be accompanied by a risk assessment and steps to offset new vulnerabilities.<sup>44</sup>

Specific anti-corruption projects supported by EU funds, for example in the Ministries of Education, Health, Justice and Regional Development as well as in National Agency for Fiscal Administration have continued, yielding interesting results and possible example of

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the UN Convention on Corruption, which defines public officials to be covered by corruption rules as any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected.

<sup>39</sup> Cf. Eurobarometer n° 374 of February 2012, [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_374\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf) and the Transparency International 2013 Corruption Perceptions Index: <http://cpi.transparency.org/cpi2013/results/>

<sup>40</sup> As an example, it is notable that many mayors were in a situation of incompatibility where no action was taken until ANI started to highlight the problem. Existing administrative controls had therefore failed.

<sup>41</sup> For example, almost 80% local authorities now participate in the Strategy, having nominated contact persons for the activities related to the implementation of NAS.

<sup>42</sup> The NAS also has a portal, which offers the possibility to report data on preventive measures indicators as well as self-assessments of public institutions.

<sup>43</sup> Beyond a blacklist of those who have not published their reports.

<sup>44</sup> The decentralisation law has recently been subject of a successful challenge in the Constitutional Court.

best practices. The Commission is looking forward to building on these initiatives when working to develop specific projects for the next programming period.

In addition to the need to tighten the means to avoid corruption and conflicts of interests in public procurement, streamlining of legislation and ensuring more stability emerge as key issues from magistrates and operators handling public procurement in Romania.<sup>45</sup> Several NGOs, business and independent experts have reported the continuous vulnerability of public procurement procedures to corruption. Whilst this is not a problem unique to Romania, there is also a question of administrative capacity to handle the procedures, in particular at local level, which calls for particular attention, notably from the prevention side. An important issue will be strengthening the cooperation between ANRMAP and ANI for the setting up the ex-ante system of verification of conflict of interest in the awarding process of public procurement contracts, including the swift extension of the approach from tenders with EU funds to all Romanian public procurement.

### **3. CONCLUSION AND RECOMMENDATIONS**

This assessment shows that Romania has made progress in many areas since the previous CVM reports. The track record of the key judicial and integrity institutions has remained positive. Necessary and long awaited legislative changes have remained on track, and a spirit of cooperation between judicial institutions and the Ministry of Justice is helping managerial issues to be tackled. In this sense the situation has benefited from the calmer political atmosphere since spring 2013.

However, concerns about judicial independence remain and there are many examples of resistance to integrity and anti-corruption measures at political and administrative levels. The rushed and untransparent amendment of the Criminal Code in December 2013 sparked widespread concern as a fundamental challenge to the legal regime for tackling corruption and promoting integrity, even if the Constitutional Court showed checks and balances at work in ruling this unconstitutional. The important measure of key appointments shows a mixed picture, with some procedures running in an open, transparent and merit-based way whilst others are open to criticism on the grounds of political interference.

This picture has consequences for the extent to which the reform process in Romania can be seen as sustainable. The resilience of the key anti-corruption institutions in the face of sustained pressure has shown that the reform approach has taken root in important sections of Romanian society. In contrast, the readiness with which the foundation stones of reform could be challenged in Parliament served as a reminder that there is no consensus about pursuing the objectives of the CVM.

The Commission invites Romania to take action in the following area:

#### **1. Judicial Independence**

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<sup>45</sup> For example, several modifications in the General Framework Public Procurement law in less than one year, has created a lot of confusion. In addition, the increase of the ceilings of public procurement process that can be done without open tender procedures increase vulnerabilities.

The defence of judicial independence by the judicial leadership needs to continue. Integrity and professionalism need to be the key factors guiding clear procedures on appointments. In this area Romania should:

- Ensure that the Code of Conduct for parliamentarians includes clear provisions so that parliamentarians and the parliamentary process should respect the independence of the judiciary, and judicial decisions in particular;
- Provide the necessary conditions for the Supreme Council of the Magistracy to consolidate its work in protecting judicial independence and supporting individual magistrates faced by challenges touching on judicial independence;
- Take the opportunity of the possible revision of the Constitution to follow up existing provisions on the separation of powers with a clear statement on the obligation of the executive and legislative branches to respect the independence of the judiciary;
- Step up reliable information/awareness efforts towards press and public on the role and status of judiciary and on on-going cases.

## 2. Judicial reform

The progress made on improving the consistency of jurisprudence and judicial practice should be stepped up, including measures to accelerate court proceedings and to make use of new opportunities like extended confiscation. In this area Romania should:

- Press on with addressing workload issues and pass the legislative measures needed to restructure the court system;
- Equip the judicial management with the necessary information tools on the functioning of the justice system (such as statistical tools, case management, user surveys and staff surveys) for better informed decision making and demonstrating progress;
- Ensure the full and timely online publication and continuous update of all court decisions and motivations;
- Ensure a process which involves all the legal professions and public administration
- Finalise proceedings on the law concerning the pensions of magistrates convicted of criminal offences;
- Improve the follow-up of court judgments at all levels to ensure that rulings and financial penalties are properly implemented..

## 3. Integrity

The progress made on the integrity framework needs to be consolidated by clarifying the legal framework to ensure that no doubts are left about its application. In this area Romania should:

- Ensure that there are no exceptions to the applicability of the laws on incompatibilities, conflict of interest and unjustified wealth;
- The government and ANI should work together to develop and propose legislation to improve the integrity framework;

- Implement the ex-ante check of public procurement in ANI, with a view to extending this from only EU funds to all public procurement procedures;
- Ensure that the implementation of the new Parliamentary Statute maximises the automaticity with which final court decisions are applied.

#### 4. Fight against corruption

The resolution with which the law has been applied to high-level corruption needs to be maintained and extended to small-scale corruption. In this area Romania should:

- Ensure that corruption laws apply equally to all on an equal basis
- Improve the consistency and dissuasiveness of penalties applied in corruption cases in all courts across Romania;
- Step up efforts in the prosecution of petty corruption;
- Develop the National Anti-Corruption Strategy to introduce more consistent benchmarks and obligations for public administration, with results to be made publicly available.