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## FOURTH EVALUATION ROUND

Corruption prevention in respect of members of  
parliament, judges and prosecutors

### EVALUATION REPORT

### ROMANIA

Adopted by GRECO at its 70<sup>th</sup> Plenary Meeting  
(Strasbourg, 30 November – 4 December 2015)

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## EXECUTIVE SUMMARY

1. According to opinion polls, the level of perception of corruption in political institutions and judicial services remains at a relatively high level. Within the European Union, it is often one of the highest of the 27 countries surveyed. Media and civil society, but also prosecutorial bodies at regular intervals point to occurrences of misuse of powers and functions for personal benefit among MPs, judges and prosecutors. At the same time, criminal justice bodies – especially the National Anti-Corruption Directorate within the prosecutor's office – show unprecedented determination in combating corruption-related crimes affecting public institutions. Romania needs at present to undertake determined efforts to develop a more robust and effective system of prevention which would address problematic situations even before they turn into a criminal conduct. Romania has a tendency to adopt and pile-up numerous rules and pieces of legislation dealing with integrity and the prevention of corruption which are often inconsistent or redundant, but do not necessarily address the various desirable policy elements.

2. As regards MPs, Romania is at an early stage of implementation of such preventive policies. It starts with the legislative process, which needs to become more transparent and to limit the use of expedited procedures. Especially now that the EU-accession process is over that it has done the numerous and swift adjustments this had inevitably required. There is no code of conduct in place as yet and the existing rules on gifts and conflicts of interest do not draw the desirable consequences of limitations in those areas (for instance, MPs may accept any gifts and other benefits which are not strictly related to protocol events). For similar reasons, the existing rules on incompatibilities are not effective in practice, and even where court decisions are rendered, it was reported that these are sometimes not complied with. There are also areas which are not subject to any safeguards or limitations: for instance when it comes to relations with third parties including lobbyists who may seek to influence the legislative work, or when it comes to post-mandate employment opportunities emanating for instance from businesses. On the positive side, Romania has a system in place for the declaration of income, assets and interests which can be seen as exemplary in various respects and which is under the supervision of the National Integrity Agency. The latter can be strengthened further through a more proactive approach and better data-processing capabilities. When it comes to enforcement, it is clear that the desirable changes in the above areas will need to be supported by additional awareness-raising and training efforts for parliamentarians. Last but not least, Romania is expected to rapidly improve the system of immunity from prosecution, which has been a problematic area since GRECO's first evaluation round.

3. In contrast, judges and prosecutors – who form a unified body of magistrates – are subject to a career system and procedural rules which limit from the outset a number of risks for their integrity when it comes to incompatibilities, contacts with third persons and so on. That said, the conditions for the appointment and dismissal of some of the holders of top prosecutorial functions exposes them excessively to possible influence from the executive. The added value of the code of ethics adopted in 2005 appears to be limited, especially since it provides no concrete guidance nor examples on how to deal with certain situations which could be problematic. Likewise, developing prevention implies that training and awareness-raising efforts be increased. The conditions of service are sound overall, judges and prosecutors are subject to periodic appraisals and the supervision is ensured by the Superior Council of Magistracy and the Judicial Inspectorate. These bodies need to be more responsive in real time to problems and risks which have been brought to light. For similar reasons, the role and effectiveness of those performing managerial functions at the head of courts and prosecution offices needs to be reinforced.

## **I. INTRODUCTION AND METHODOLOGY**

4. Romania joined GRECO in 1999. Since its accession, Romania has been subject to evaluation in the framework of GRECO's First (in October 2001), Second (in February 2005) and Third (in November 2010) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage ([www.coe.int/greco](http://www.coe.int/greco)).

5. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the public administration, and the Third Evaluation Round, which focused on corruption prevention in the context of political financing.

6. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

7. As regards parliamentary assemblies, the evaluation focuses on members of national Parliaments, including all chambers of Parliament and regardless of whether the Members of Parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

8. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2015) 4E) by Romania, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Romania from 18-22 May 2015. The GET was composed of Ms Natalia BARATASHVILI, Senior legal Advisor, Analytical Department, Secretariat of the Anti-Corruption Council, Ministry of Justice (Georgia), Ms Nina BETETTO, Supreme Court Judge, Vice-President of the Supreme Court, Member of the Consultative Council of European Judges (CCJE) (Slovenia), Mr Aurelijus GUTAUSKAS, Professor at the Law Faculty of Mykolas Romeris University and a judge of the Supreme Court (Lithuania) and Mr Alvilis STRIKERIS, Head of Policy Planning Division, Corruption Prevention and Combating Bureau (KNAB) (Latvia). The GET was supported by Christophe SPECKBACHER from GRECO's Secretariat.

9. The GET interviewed representatives of the National Anti-Corruption Directorate (the special prosecution service dealing with such offences when they involve i.a. members of the judiciary and elected officials), the National Integrity Agency, the Romanian Ombudsman, the Chamber of Deputies (Committee for Legal Matters, Discipline and Immunities), the Senate (Legal Committee for Appointments, discipline, immunities and validations), the Ministry of Justice (department of legislation, Secretariat of the National Anti-Corruption Strategy), the Superior Council of Magistracy, the National Institute of Magistracy, the Judicial Inspection, the General Prosecutors' Office. The GET also met with members of the judiciary (first and second instance courts, Constitutional Court) and the prosecution service of Romania. Finally, the GET spoke with representatives of the National Union of Romanian Bars, Expert Forum, Association for

Democracy Implementation, Centre for Legal Resources, Funky Citizens, Transparency International Romania, the National Union of Romanian Judges, the Romanian Prosecutors' Association. It also met a representative of the European Commission involved in the Cooperation and Verification Mechanism – CVM.

10. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Romania in order to prevent corruption in respect of Members of Parliament, Judges and Prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in Romania, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Romania, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Romania has no more than 18 months following the adoption of this report, to report back on the action taken in response.

## II. CONTEXT

11. The various polls conducted in recent years show that the level of perception of corruption in Romania remains at a high level. According to the 2014 edition of the Corruption Perception Index published by Transparency International<sup>1</sup>, with a score of 43 points (where 0 corresponds to the highest level and 100 to the lowest level of corruption), Romania's rank is 69 of 175 at the international level. This situation has been stable over the last six years. According to the last Eurobarometer opinion poll on corruption published in February 2014 concerning the 27 EU members<sup>2</sup>, 93% of Romanian respondents believe corruption is (still) widespread in their country and more than half of them consider to be personally affected by it in daily life, a proportion reported to have decreased since the previous polls conducted in 2011. The study also points out that Romania is one of the two countries where respondents (28% of them) are by far the most likely to have been asked or expected to pay a bribe. Romania is also characterised by one of the two highest proportion of respondents who are unable to express an opinion as to whether giving a gift (in return for something from the public administration or public services) is acceptable (8% vs. EU27: 1%). 76% of respondents also believe that links between money and politics are too close, which is below the EU average (81%). Romania is also mentioned as a country where the evolution of the proportion of respondents who believe that prosecution efforts have been improved is at the highest (+11%) even though more than 70% of respondents (close to the EU average) still believe that high level corruption cases are still not pursued effectively. The Eurobarometer polls published in 2012<sup>3</sup>, addressing also other variables, showed that Romania was by far the country where respondents expected parliament and government to do more to combat corruption. Also, the level of perception of corruption in political institutions and judicial services was often among the highest of the 27 countries surveyed. The functioning of Romania's core institutions and the implementation of its anti-corruption policies and mechanisms remain under the on-going scrutiny of the European Commission under the so-called Cooperation and Verification Mechanisms – CVM<sup>4</sup>. The successive reports have called in particular for a more effective judiciary and prosecution of corrupt dealings including of elected officials.

12. The on-site visit gave an opportunity to discuss various cases involving integrity and corruption-related acts involving parliamentarians and other senior officials, as well as judges and prosecutors, which had been taken to court and had led to final convictions. Romania has made available figures demonstrating an undeniable increase in the effectiveness of its repressive efforts. It was pointed out that these efforts must now be complemented by similar efforts on the preventive side.

13. The mechanisms in place to prevent corruption of public officials generally and to preserve the integrity of parliamentarians have often been piled up over the years in a way which has resulted in an inconsistent legal framework and a fragile equilibrium. In recent years, there have been several attempts by the parliament to amend the criminal law mechanisms, also to undermine the authority and powers of such agencies as the National Integrity Agency and the National Anti-corruption Directorate. Such attempts have often failed thanks to timely opposition and reactions both from within and from outside the country. For instance, in December 2013 shortly before the entering into force of the New Criminal Code, the parliament passed an ultimate amendment which would have excluded deputies and senators from the criminal law definition of *funcionariul public* (civil servant or public officials, depending on the translations) and thus from the scope of the provisions on bribery, trading in influence, conflicts of interest and so on. Eventually, these amendments were declared unconstitutional in January 2014 as they contradicted the country's international commitments. This case remains in

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<sup>1</sup> <http://www.transparency.org/cpi2014/results>

<sup>2</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_397\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf)

<sup>3</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_374\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf)

<sup>4</sup> [http://ec.europa.eu/cvm/progress\\_reports\\_en.htm](http://ec.europa.eu/cvm/progress_reports_en.htm)



the memories as the "Black Tuesday". But sometimes, such attempts have been successful and the earlier evaluation rounds of GRECO have documented some of these, for instance the abolition of certain banking offences motivated by the involvement of elected officials in a series of on-going financial fraud cases, reintroduction of the immunity from prosecution for former members of government after the closure of GRECO's compliance procedure in the first round<sup>5</sup>. More recently, in May 2015 on the occasion of the final adoption of a law revising the legislation on the financing of political parties and election campaigns, an unexpected amendment was introduced, that creates a problematic derogatory regime for certain financial donations and other forms of support for the acquisition of real estate property by political parties (see the reports adopted by GRECO in Third Round Compliance Procedure concerning Romania). Overall, according to certain estimates from civil society organisations, at the time of the present on-site visit in May 2015, approximately 180 amendments to the criminal legislation were under consideration in parliament, many of which would undermine directly the anti-corruption system should they be adopted.

14. The GET noted that as a result of the above distrust, there is utmost reluctance from major governmental and other bodies involved in anti-corruption policies, to initiate legislative proposals in various areas given the high risks that the process be misused to create additional loopholes, to reduce the powers of certain agencies dealing with corruption-related matters or to legalise/decriminalise ex parte certain acts or situations. They take the view that the top priority should be the effective implementation of the existing framework. The GET understands these concerns but it observed that in daily practice, a number of mechanisms are not effective even as regards basic principles: incompatibilities are not enforced and often confused with the management of conflicts of interest, officials are not familiar with the rules on gifts, there are frequent diverging views as to the implications of the rules in place (partly as a result of the complexity of the regulations) and so on. It was also pointed out during the on-site discussions that in practice, parliamentarians refuse to resign where they have been formally assessed as being in a situation of incompatibility, sometimes with the complacency of their chamber when it refuses to enforce a court verdict. It was also reported that following incompatibility proceedings launched against a few parliamentarians who were also mayors, the law was just amended shortly before the on-site visit so that they can remain in office as a deputy-mayor or a member of the local council.

15. As for the judiciary and prosecutorial services, it would appear that the situation is much different since by the very nature of the activities of judges and prosecutors – who form a unified body of magistrates subject to closer overall supervision (by their peers) – the possible legal loopholes in the legislation carry lesser consequences. However, also in their respect, the visit showed that the relatively negative perception of the judiciary is partly confirmed in practice by the cases brought up in recent years concerning judges and prosecutors, sometimes orchestrated by elected officials and involving senior figures in the judiciary<sup>6</sup>. The working culture has not yet eradicated the risk of occasional corrupt practices tolerated by colleagues. The competent anti-corruption authorities have started to look into this matter by analysing the cases, the context in which they occurred and the factors which have facilitated their occurrence including deficiencies in the supervision by the judges and prosecutors with managerial / senior responsibilities.

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<sup>5</sup> The Constitutional Court found that the amendments contradicted the provisions of the Constitution on the immunity of members of government, considering that these cover all acts committed as a member of government, whether in exercise or not.

<sup>6</sup> See for instance

[http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2013/05/21/feature-03](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2013/05/21/feature-03)

### **III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT**

#### Overview of the parliamentary system

16. The Romanian Parliament is based on a bicameral system comprising the Chamber of Deputies and the Senate with an undetermined number of deputies and senators elected for a four-year term. The maximum number of deputies and senators is currently 400 and 168. Both chambers are elected in constituencies, by universal, equal, direct, secret, and freely expressed suffrage. Special rules are applied for a small number of parliamentarians who represent national minorities. On 24 February 2015, it was decided to return, as from 2016, to a voting by list as opposed to the uninominal voting system currently in place. The identical election system of the two assemblies confers them the same legitimacy. According to the Constitution, each citizen with the right to vote can stand for election if s/he meets the minimum age requirements of 23 years for election to the Chamber of Deputies or 33 for election to the Senate, has the Romanian citizenship and resides in the country. Candidates can be nominated by political parties, political and electoral alliances, coalitions, and organisations representing national minorities, or can run independently. The mandate is terminated in the following circumstances: new election; resignation; death; loss of electoral rights upon a court decision; incompatibility.

17. Article 69 of the Constitution provides that in the exercise of their mandate, parliamentarians are in the service of the people and that any imperative mandate shall be null and void. The authorities explain that the above principle is interpreted in a way that parliamentarians represent first and foremost the interests of the voters of their constituency.

#### Transparency of the legislative process

18. According to article 74 of the Constitution, the right to initiate legislation belongs to the Government, deputies, senators and any group of citizens who has collected 100,000 signatures of citizens entitled to vote. Any such proposal is submitted to the Chamber of Deputies or to the Senate for registration and subsequent processing (certain initiatives, for instance those related to Romania's international commitments, must go first through the Chamber of Deputies). After registration and attribution of a number/reference, the proposals are scanned and posted on the website of the chamber concerned together with a fact sheet. Institutions and citizens can send comments, which are equally posted on-line and thus made available to everyone. Public consultations in the form of symposia or debates can be organised by the plenary or the committees responsible for issuing an opinion. Participation of the ministries which are normally competent for a specific subject-matter is mandatory. As regards committee work, their membership, agenda and working documents, including on their decisions, are posted on the webpage of the committee concerned. Plenary sittings are normally public unless the chamber concerned decides otherwise (article 68 of the Constitution). The same goes for committee work. Plenary sittings and sometimes committee debates are broadcasted on the internet.

19. It would appear that the transparency of the legislative process is a problematic area. The on-site interviews referred to a number of issues including the fact that in practice, the public is confronted with excessive impediments to access the parliamentary buildings (it was reported that persons need to be picked up at the entrance after an appointment, even for accredited NGOs and other organisations), the absence of proper broadcasting outside the parliament's internal media channel (the authorities point out that live streaming over the internet is nonetheless in place), the excessive discretion of parliament to hold sittings in camera even for plenary debates and so on. It was also pointed out that the registration of a draft by the first chamber receiving or launching the initiative does not mean that it is immediately made available publicly: the public would

have access to it only once it is sent to the second chamber because this is when the formal “four eyes” control starts. The authorities, on the other hand, point out that drafts become available within three to seven days and that this applies from the very beginning, when the first chamber is involved. The authorities also take the view that verbatim of meetings are usually available on-line within three days only. Whatever the reasons are for these diverging views about the actual level of transparency of parliament, the GET considers that there is a risk (sometimes confirmed in practice) that the process would exclude those who can play an advisory role on the quality and implications of legislation, or who can raise concerns in case where certain legislative changes pursue interests other than the common good. The GET was also told that in practice, technical advice and quality checks performed by the Legislative Council – an advisory body to the Parliament were rather inadequate or a mere formality, especially considering the high number of incidents encountered in practice. This mechanism therefore appears not to offer sufficient guarantees that would counterbalance the above situation.

20. Concerns were also expressed in connection with the consequences of the excessive use of emergency proceedings for texts emanating from the Parliament including where these have been described as examples of legislative manipulation pursuing purposes other than related to the general interest. Interlocutors of the GET also confirmed that about half of the proposals originating from the executive take the form of government emergency ordinances – or GEOs (or even a majority of government proposals, according to other sources). Although their number has reportedly decreased since the end of the EU accession process and the many rapid changes it implied, it would still reflect an on-going habit. It would appear that only the Romanian Ombudsman can then submit an adopted ordinance for consideration to the Constitutional Court<sup>7</sup>, but reportedly, this is not done in practice. The rules of procedure of the chamber also allow allegedly at any moment to apply the « urgent » or even « very urgent » procedure to many texts. The GET considers that the use of the expedited procedure in Parliament should be subject to clear criteria since inevitably, these accelerated procedures reduce the time for consultation and discussion, they increase the risks for the quality of legislation and they affect the overall transparency of the legislative process. Examples were also given where problematic amendments had been introduced at a late stage of the legislative process and sometimes adopted the same day thanks to the expedited procedure. In such cases, the President can refuse to promulgate a law and ask that it be reconsidered but s/he can do this only once, the Constitutional Court can be involved but this has no suspending effect (contrary to the situation a few years ago). The authorities point out after the visit that for the Senate, the Standing bureau decides on the deadlines for all steps in the discussion / adoption process: these cannot be shorter than five days for the regular procedure, and three days for the expedited procedure. For the Chamber, the deadline for submitting amendments may not be shorter than half the timeframe set for the Committee in charge to draft the report, calculated from the date the draft text was announced in the plenum of the Chamber (article 65 of the rules). It would thus appear that these rules are not adequate enough to guarantee a satisfactory and timely consultation process in all cases and that the rules of the Chamber lack clear timeframes, in particular.

21. In view of the above developments and concerns expressed during the evaluation visit, it is clear that improving the transparency of the legislative process is a priority for Romania. Proper consultations and the involvement of the public constitute elements of supervision which can be important for the control over the behaviour of parliamentarians. Therefore, **GRECO recommends that the transparency of the legislative process be improved (i) by further developing the rules on public debates, consultations and hearings, including criteria for a limited number of**

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<sup>7</sup> A constitutional challenge against an ordinance can also be raised at a later stage when courts of law deal with a contentious procedure.

**circumstances where in camera meetings can be held, and ensuring their implementation in practice; ii) by assessing the practice followed and accordingly revising the rules to ensure that draft legislation, amendments to such drafts and the agendas and outcome of committee sittings are disclosed in a timely manner, and that adequate timeframes are in place for submitting amendments and iii) by taking appropriate measures so that the urgent procedure is applied as an exception in a limited number of circumstances.**

Remuneration and economic benefits

22. The average annual income in the Romanian population is approximately 6 120 euros (net amount, approx.: 4 040 euros). Concerning parliamentarians, the basic elements of remuneration and other benefits are determined in articles 38 and 41 to 48 of Law n° 96 of 21 April 2006 on the Statute of Deputies and Senators, as amended last in July 2013 and republished: these refer to the basic allowance which is at the moment 1 100 euros net plus accruals for special responsibilities (e.g. the President of the Senate: 1 380 euros); accommodation allowance for those who do not reside in Bucharest: a lump sum which is currently approx. 900 euros; daily subsistence allowances in case of travel (2% of the gross monthly income). They also benefit from the right to travel freely by train during their mandate and reimbursement of costs in case they use their own car; the parliament has abandoned the practice of service cars due to the logistical and administrative burden this implied. The above remuneration is subject to taxation and the parliamentarian benefits from the general social security and pension scheme (the time spent as a parliamentarian is counted as a management position for such purposes). After the termination of the mandate, they are also entitled to benefit from the travel support scheme for 30 days for the final settlement of logistical matters. During the on-site interviews, it was indicated that there are no additional attendance fees.

23. Other benefits include a diplomatic passport - which covers also family members in accordance with the chambers’ internal rules (e.g. art 187 of the Senate’s rules). The parliament also bears the office costs including communication, rental of office space and other overhead expenses up to 1 000 euros per month as well as personnel costs for assistants up to 1 000 euros per month (including social contributions). Assistants are employed either on a contractual relationship with the parliament or on the basis of a civil law contract with the parliamentarian for whom they work. Until the amendments of 2013, there was no explicit prohibition to hire relatives; article 38 paragraph 11 of Law 96/2006 now provides for a prohibition for parliamentarians to hire relatives up to the 3<sup>rd</sup> degree. 21 deputies and 1 senator were found in breach of the administrative and criminal rules discussed in paragraphs 26 et seq. in the last three years, for having hired relatives. Other than that, the GET did not come across major recent issues with regard to the above benefits.

Ethical principles and rules of conduct

24. On this matter, the authorities referred to the content of various laws and provide a long list of excerpts of: a) the Constitution; b) Law 96/2006 of 21 April 2006 *on the Statute of Deputies and Senators*, as amended last in July 2013 and republished; c) Law 161/2003 of 19 April 2003 *on certain measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, and for preventing and sanctioning corruption*; d) the rules of procedure of both houses.

Constitution	General principles of representation (art.69); oath (art.70); incompatibilities (art.71); immunities (art. 72)
Law 96/2006	Chapter III on principles and rules of parliamentary conduct (principles of national interest, legality and good faith, transparency, fidelity, observance of the standing Orders); chapter IV on incompatibilities, prohibition of advertising, conflicts of interest; chapter V on immunities; chapter VI on duties incl. participation in sittings, absences and

	their sanction; chapter VII on the rights in the exercise of the parliamentary mandate (right to be elected and to elect bodies, specific political rights, methods of exercise); chapter VIII on participation in activities of the EU; chapter IX on the exercise of mandates in the constituency (office facilities, their equipment and use, resources available; audiences and other relations with citizens); chapter XI on the regime of parliamentary discipline; chapter XII on final and transitional provisions
Law 161/2003	Chapter III on the regime of incompatibilities; chapter VI and article 111 on the filing of declarations of assets and interests, article 114 prohibiting the use of symbols for private purposes and commercial and other advertisements, and the misuse of non-public information for personal purposes and those of others
Rules of the Senate	Section 1 on immunities; section 2 on incompatibilities, conflicts of interest and certain prohibitions (use of image, symbols and names for a private purpose; misuse of non-public information for personal purposes and those of others); section 3 on the oath, official badge ID and diplomatic passport; section IV on vacations, absences and resignation; section V on parliamentary ethics, offences and penalties: the provisions refer to the breach of duties as enshrined in the Constitution and the law on their status, violations of the oath, violation of the rules of procedure, abusive exercise of the mandate, offensive or libellous behaviour, unjustified absences)
Rules of the Chamber of Deputies	Immunities (art. 191-195); incompatibilities (art. 196-204); exercise of the mandate (passes, badges, resignation and so on – art. 205-2011); absences and leave (art.212); sanctions (art. 213-222).

25. At the time of the on-site visit, a Code of conduct for parliamentarians was in the drafting stage and the GET noted that the adoption of such a Code has been a requirement under Law 96/2006 (article 14) since it was amended in July 2013. The draft made available to the GET takes the form of an amendment to the above law, which would make the Code an integral part, as an annex, of the said Law 96/2006. The parliament's intention, as the GET learnt, is to adopt the draft Code by the end of the year. But the actual intentions of its initiators are not fully clear since it was also stated that the future code would take the form of a non-obligatory set of recommendations. This contradicts the logic of the draft Code which foresees a supervision and enforcement mechanism including the applicability of the general sanctions provided for in the Law 96/2006. Overall, the rules mentioned by the Romanian authorities which are summed-up in the above table address a number of issues, but only very few of them have a connection with ethics and the preservation of integrity. An adequately drafted code of conduct, which would fill a number of gaps and not be redundant with the existing legal provisions, would bring added value. The GET was also informed on-site that Romanian officials are not used to codes of ethics or conduct, and do not see their added value. The GET recalls that such a risk exists where codes are drafted in excessively general terms and are not accompanied by concrete guidance, examples and further awareness raising measures on how to deal with concrete situations. Or where it is not made clear that its content has to be abided to. The draft Code currently planned for adoption refers to a series of principles such a responsibility, legality, good faith, independence, honesty, transparency, serving the national interest but it does not spell out their implications. For instance from the perspective of transparency and objectivity of the legislative process discussed in this report, or in respect of other situations at risk<sup>8</sup>, there could be ample opportunities for the future Code to add value to the system. **GRECO recommends (i) developing a code of conduct for the members of parliament and (ii) ensuring there is a mechanism to enforce these when it is necessary.** It is also clear that additional measures to promote such a code and to make parliamentarians aware of the actual conduct expected from them will be needed as an integral part of training and other measures recommended in paragraph 62 hereinafter.

<sup>8</sup> For instance not using the position as a parliamentarian to obtain personal benefits and preferential treatment, especially since former parliamentarians are allowed to keep the pass and badges after the termination of their mandate and at least senators and their family are entitled to a diplomatic passport. Moreover, there have been cases where excessive statements and criticism made in public against magistrates handling specific cases required the intervention of the Superior Council of Magistracy to protect the reputation of the persons concerned and to recall i.a. the independence of the judiciary.

## Conflicts of interest

26. As already pointed out above, the concept of conflicts of interest is present in the Romanian arsenal of measures to prevent corruption of parliamentarians and other public officials. The authorities explained that basically, Romanian legislation defines two types of conflicts of interest: administrative conflicts of interest, defined by Article 70 of Law 161/2003 of 19 April 2003 *on certain measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, and for preventing and sanctioning corruption and conflicts of interest* under article 301 of the New Criminal Code, which entered into force in the beginning of 2014.

**Article 70 of Law 161/2003**

*"The conflict of interests is defined as the situation when a person holding a high official or public position has a personal financial interest, which could influence the objective performance of his/her competencies, as provided by the Constitution and other legal norms."*

**Article 301 of the New Criminal Code**

*The conflict of interests – Act of the public servant which, in the line of duty, performed an act or participated in taking a decision through which a patrimonial benefit was obtained, either directly or indirectly, for himself/herself, for his/her spouse, for a relative or for an in-law up to the 2nd degree inclusive or for another person with whom he/she was in commercial or work relationships in the past 5 years or from which has received or receives advantages of any kind, is punished by imprisonment from 1 to 5 years and the interdiction of the right to occupy a public position."*

27. They also explained that the law does not expressly differentiate between potential conflict of interests (an official has personal interests that might lead to a conflict of interests on the occasion of a public decision) or actual conflict of interests (the official has to make/or makes a decision that generates a benefit for him/her or a relative), the various types of situations being addressed in the aforementioned laws. They also explained that there is no legislative framework regarding the prevention of the administrative conflict of interests for members of parliament, except for situations where they hold the position of member of the Government. In this case, they have the duty to refrain from issuing any administrative document, from concluding any legal document, or from participating in the decision-making which produces any material benefit for himself/herself, for his/her spouse or 1st degree relatives. These obligations do not apply on the issuance, approval and adoption of normative documents.

28. The GET regrets the absence of clear explanations on the actual implications of the above provisions for the parliamentarians specifically. During the discussions on site, the GET also noted frequent confusions made by its interlocutors between the subject of incompatibilities and that of conflicts of interest. In fact, Law 96/2006 of 21 April 2006 *on the Statute of Deputies and Senators* contains an administrative provision on conflicts of interest which sanctions such situations (article 19)<sup>9</sup>. Actually, it appears under a chapter which deals mainly with incompatibilities and the provisions it is meant to protect are not specified. That said, the GET further noted the existence of article 25 of Law 176/2010

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<sup>9</sup> Article 19 of Law 96/2006: Conflict of interest

(1) The act of a deputy or senator who violates the legislation on conflicts of interest commits a disciplinary infraction punishable with a reduction of the allowance by 10% for a maximum period of 3 months. The sanction is applied by the Standing Bureau of the chamber of which the Deputy or Senator is a member.

(2) No Deputy or Senator is in a conflict of interest after the date stipulated in Law no. 176/2010, as amended, from the date of knowledge of the assessment report of the National Integrity Agency, if within that period the Member or Senator challenged the report with the administrative court. Taking note of the communication is done through the National Integrity Agency report, signed receipt, the Member or Senator in question or, if a receipt is denied, by an announcement from the Speaker of the chamber to which s/he belongs.

(3) If the National Integrity Agency has completed an evaluation report on a conflict of interest of a deputy or senator, the evaluation report shall be notified within 5 days of the completion of the person concerned and the chamber to which s/he belongs, in accordance with art. 21 para. (4) of Law no. 176/2010, as amended. The Standing Bureau of the chamber of which the person concerned is a member shall advise through emergency procedure on the case, providing the person concerned with a copy of the report.

*regarding the integrity in exercising public offices and dignities (...)*. It prohibits parliamentarians and other officials to issue an administrative or legal act or to participate in / or take a decision contrary to the legal requirements on conflicts of interest or incompatibility; breaching the requirements constitutes a disciplinary infringement. As a result of the above, it would appear that a definition of conflicts of interest is in place, at least under article 70 of Law 161/2003 albeit it is for the time being limited to personal financial interests. It would also appear that a certain conduct can be expected from parliamentarians, at least under article 25 of Law 176/2010, and that administrative sanctions – as well as criminal ones – are in place under article 19 of Law 96/2006 and article 301 of the New Criminal Code.

29. It is true, that what the legislation does not explicitly require is that occasional conflicts be disclosed *ad hoc* so as to allow for a possible abstention from a decision or act. But the fact that the authorities of Romania consider that there is no (administrative) mechanism for the management of conflicts of interest for parliamentarians thus raises questions on the system in place, its implications and the general awareness of these measures. Moreover, parliamentary interlocutors pointed to the fact that conflicts of interest cannot take place in respect of parliamentarians since the incompatibilities are designed in such a way as to exclude any other professional activity and thus any conflicts of interest. This is not quite correct although the list of prohibited side-activities is a long one; see the subsequent chapter on incompatibilities and other professional restrictions. The GET also recalls that such conflicts can arise from the range of activities that can be carried out within their mandates, in the context of parliamentary resource management, constituency work or legislative work. These may involve interests which are not immediately financial and not necessarily limited to the parliamentarian him/herself. Moreover, there have been several cases where parliamentarians were prosecuted and convicted under article 301 of the New Criminal Code because they had hired relatives as assistants. In fact, these are the only cases of conflicts of interest reportedly handled at the time of the visit and these cases had emerged from the information provided in the declaration of assets and interests with respect to the occupation of the parliamentarians' close relatives. After the visit, the authorities pointed out that additional cases had been handled on an administrative basis. The fact that parliamentarians are meant to be aware of their obligations – they are given a guide on incompatibilities and conflicts of interest at the beginning of the mandate – shows that there is a need for Romania to improve the rules and their effectiveness. GRECO has repeatedly pointed to the need for countries to provide also in respect of parliamentarians for a clear framework on how conflicts of interest are to be prevented and managed when they arise. Romania clearly needs to address this matter through consistent and sound regulations. **GRECO recommends that measures be taken i) to clarify the implications for members of parliament of the current provisions on conflicts of interest independently of whether such a conflict might also be revealed by declarations of assets and interests and ii) to extend the definition beyond the personal financial interests and iii) to introduce a requirement of ad hoc disclosure when a conflict between specific private interests of individual MPs may emerge in relation to a matter under consideration in parliamentary proceedings – in the plenary or its committees – or in other work related to their mandate.**

#### Prohibition or restriction of certain activities

##### *Gifts*

30. Since the system of declaration of assets and interests was introduced by Law 161/2003 mentioned earlier, and Law 176/2010 *regarding the integrity in exercising public offices and dignities, modifying and complementing Law no 144/2007 on the establishment, organisation and operation of the national integrity agency as well as for the modification and completion of other normative acts*, members of parliament (and

candidate members of parliament) have been among the categories of persons who are required to file with the National Integrity Agency, annual declarations of assets and of interests (see the section below on "Declaration of assets, income, liabilities and interests"). These disclosures refer to the undersigned person and his/her spouse and dependent children. The template of declarations for assets specifically, which appears as an annex to Law no. 176/2010, comprises a heading VI for the reporting of gifts, services and other benefits, where their individual value exceeds 500 euro:

*VI. Gifts, services or benefits received for free or at a preferential market value, from persons, organisations, businesses, public corporations, companies / public institutions / national companies, both Romanian and foreign, including scholarships, loans, guarantees, payments for expenses other than those from the employer where the individual amount of the value exceeds 500 EURO\**

*\* Are exempted from statement the goods and treats received from 1st and 2nd degree relatives.*

31. In addition to the above, a specific mechanism on gifts coexists with the above, in accordance with Law no. 251/2004 *on certain measures on the goods received for free on the occasion of protocol events, in the exercise of a public office or function*. It applies to parliamentarians as well and concerns any gifts received at ceremonial events except badges, decorations, insignias and other similar items; such gifts are to be reported to the employer (the parliament in the present case) and the information is to be published annually on the website of the employing institution<sup>10</sup>. The system involves an assessment of individual situations by a commission and it provides that protocol gifts can be kept but where the value is in excess of 200 euros, the person who received the gift may be authorised to keep it if s/he pays for the excess amount of the value:

***Law no. 251/2004 Law no. 251/2004 on certain measures on the goods received for free on the occasion of protocol events, in the exercise of a public office or function***

***Article 1***

*(1) Public dignitaries, persons holding public dignity positions, magistrates and those assimilated to them, persons having management or control functions, public officials within public authorities and institutions, as well as all the other persons subject to the obligation to disclose their wealth, shall declare and present to the head of the institution, within 30 days, the gifts received at ceremonial events, while exercising their mandate or function.*

*(2) The following assets are excluded:*

- a) badges, decorations, insignia and other similar signs of distinction, received while performing the duties of the office;*
- b) office apparel under 50 EUR.*

***Article 2***

*(1) The head of the institution convenes a commission composed of 3 specialists from the institution, in order to appraise and take into inventory the goods mentioned at par. 1.*

*(2) The commission mentioned above keeps a record of the goods received by each official and, until the year's end, shall forward to the head of the institution proposals for solving the situation of each asset.*

*(3) If the appraised value of the asset exceeds EUR 200, the person who received the gift may ask to keep it, paying for the excess over EUR 200. If the appraised value is under EUR 200, the gift shall be kept by the person who received the gift.*

*(4) If the person does not want to keep the asset, the commission may recommend that the asset remain with the institution or be auctioned off or handed over, free of charge, to another public institution.*

*(5) The income obtained from the selling of the asses shall be fed to the state budget, local budget or the public institution's budget, according to the law.*

***Article 3***

*At the end of each year, the public institutions shall publish a list of assets declared under this law, as well as their final destination, on their web page or in the Official Gazette.*

<sup>10</sup> The GET noted that the lists of gifts received by members of the Chamber for the years 2004-2013 and by members of the Senate for the years 2006-2013 (situation in October 2015) are available at <http://www.cdep.ro/pls/dic/site.page?den=decl-bunuri> and <http://www.senat.ro/index.aspx?Sel=93859117-E2CD-4CB2-BA44-A9BBA42135A6>



32. The GET understands that in principle, the two mechanisms in place pursue specific and different objectives which are to regulate gifts received on the occasion of protocol events (the declaration system of 2004) and to assess possible variations in the assets of a parliamentarian to ensure there is no unjustified variation (the declaration system of 2007 as amended in 2010). The GET recalls that it is important for a country to have in place a consistent and robust framework on gifts which would prevent certain situations from evolving into corrupt relationships and would preserve the objective impartiality of the official concerned as well as the reputation and image of his/her institution. As things stand, there is no restriction or prohibition for parliamentarians to accept benefits of different sorts, hospitality, favourable treatment, additional financial support and so on, except where these are related to protocol events. This constitutes a weakness. Also, there is a whole range of additional issues which remain unsolved. For instance, the declaration and appraisal system of 2004 does not take into account benefits other than mere material gifts and it seems hardly applicable to daily parliamentary activities and contacts with members of society and business: in fact, the recent lists published by the two houses only refer to gifts received by a handful of top parliamentarians from other senior official figures. In the absence of clear restrictions on the acceptance of gifts, this situation is problematic. As far as the declaration of gifts under the regime of the law of 2007 is concerned, it takes a more realistic approach as regards the various categories of benefits to be declared including indirect and in-kind benefits (but without any validation by a body). But ultimately, the co-existence of these two completely different regimes results in a framework on gifts which lacks effectiveness. Representatives of the parliament indicated that they would normally expect parliamentarians to use the mechanism of 2007 to declare gifts received in the context of their activities – other than protocol related – but they acknowledged at the same time that this is not a practice. Other interlocutors took the view, on the contrary, that normally the acceptance of any gifts attracts criminal liability under the provisions on bribery. Moreover, the declaratory obligations under the law of 2007 do not take into account assets received from first and second degree relatives: this generates certain risks for the proper assessment of patrimonial variations by the National Integrity Agency<sup>11</sup>. The GET noted that the draft Code of conduct available at the time of the visit contained an article 10 with the proviso that “*Deputies and Senators shall not accept gifts or other advantages in the exercise of their duties other than those stipulated in Law 251/2004*”. This could be a good starting point to streamline the current system, provided such a provision would have the necessary legal authority and that the concept of “other advantages” is understood in an adequate broad manner. Finally, the on-site discussions showed that Law 251/2004 is not sufficiently known in practice. As a result, extra care needs to be taken to make parliamentarians aware of their obligations concerning gifts and other benefits and to ensure the system is effective. In light of the above, **GRECO recommends establishing a robust set of restrictions concerning gifts, hospitality, favours and other benefits for parliamentarians, and ensuring that the future system is properly understood and enforceable.**

*Incompatibilities, accessory activities and financial interests*

33. As the GET observed, incompatibilities and accessory activities fall globally under the same rules which pursue from the outset the objective of excluding parliamentarians from a number of positions with managerial responsibilities in the public and in the private sector. There are no restrictions on holding financial interests, provided of course it does not lead to incompatible senior responsibilities in certain businesses.

34. Incompatibilities are regulated primarily under the Constitution (article 71) according to which “The capacity as a Deputy or Senator is incompatible with the

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<sup>11</sup> Closer relatives are actually the persons most likely to make the largest donations in someone’s private life. Moreover, there is a risk that certain forms of undue advantages from third parties could thus be disguised as donations from such relatives.

exercise of any public authority function, with the exception of Government membership. Other incompatibilities shall be established by organic law”.

35. Law 96/2006 on the statute of deputies and senators (articles 15 and 16) further establishes the following categories of positions as incompatible: a) Member of the European Parliament and any public authority function as defined<sup>12</sup> in law 161/2003 (article 15); b) president, vice president, general manager, manager, administrator, board member or auditor of the trading companies regulated by Law of Trading Companies no. 31/1990, including banks or other credit institutions, insurance/reinsurance and financial companies, as well as of public institutions; c) president or secretary of the general meetings of shareholders or of company associates regulated by Law no. 31/1990 (...); d) representative in the general meetings of companies regulated by Law. 31/1990 (...); e) manager or member of the board of directors of autonomous administrations, companies and national companies; f) individual trader; g) member of a group of economic interest; h) a public office of a foreign state, except those offices specified in the agreements and conventions in which Romania is a party; i) president, vice president, secretary and treasurer of trade unions and confederations; j) positions and activities of persons who, according to their statute, cannot be members of political parties. Article 35 paragraph 3 allows Deputies and senators to be involved in activities of teaching, scientific research, and literary – artistic creation.

36. The replies to the questionnaire also referred to the provisions of Law 161/2003, which recalls some of the fundamental principles contained in the above laws and – as mentioned above – gives a list of “public authority functions”. Its article 82 contains basically the same list of incompatibilities and permitted intellectual/artistic activities as in the Law 96/2006. The final provisions of Law 96/2006 abrogate explicitly a mechanism of the law of 2003 allowing the bureau of each house to authorise certain exceptions (for instance for positions in the board of public companies) – article 82 paragraph 2. They also abrogated any earlier provision contrary to its content. However, the texts made available to the GET and the original versions in Romanian published on the parliament’s website remain un-amended in this respect. Law 161/2003 also contains another provision, introduced in 2004, which is absent from law 96/2006: it allows a parliamentarian to retain or start activities as a lawyer provided s/he does not plead in court and complies with other restrictions concerning for instance not providing advice in corruption-related cases and so on (article 82<sup>1</sup>).

37. The above exclusions / restrictions are also listed to a variable degree in the internal rules of both houses. For instance, although the Senate has taken care in listing the various situations mentioned in the law, the exclusion of senior responsibilities in the trade unions and confederations is absent. The Chamber has a short list comprising just a few incompatibilities. But both lists have a catch all reference to other exclusions as provided for in law.

38. Basically, a situation of unresolved incompatibility leads to the termination of the mandate upon the parliamentarian's own notification to the chamber concerned, followed by a decision of the chamber acknowledging the situation (an advisory body can examine the case). The Incompatibility can also be resolved through a final court decision confirming a statement of incompatibility emanating from the National Integrity Agency (or in the absence of an appeal, within a specific deadline following the NIA's statement) (Article 7 of Law 96/2006). The GET noted that the procedure to terminate a situation of incompatibility is also regulated in different manners in the various texts under

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<sup>12</sup> Article 81 paragraph 2 of Law 161/2003 enumerates in great detail a variety of positions; basically, these concern employments in the public administration subordinated to the top State executive functions and to local authorities, as well as local and county councillor functions, functions as a prefect, mayor, vice-mayor and so on. The list also contains references to “other public authorities and institutions”, and functions the holders of which cannot stand for elections.

consideration. Law 161/2003 only deals with situations generated by its entering into force and refers back to the houses' internal rules for the rest. Law 96/2006, which has the most detailed provisions under its article 17 foresees i.a. a procedure in case a parliamentarian refuses to choose between the positions in conflict, which involves an opinion to be given by the NIA. It then refers for the rest to application of the internal rules of the chambers. As far as the GET can tell, the rules draw no consistent consequences of incompatibilities. For instance those of the Senate provide for two different regimes under articles 179/181 and articles 182/183, but the latter – which is about post-appointment incompatibilities (when the senator starts another side activity) appears to draw no final conclusion for the resignation as a senator.

39. The GET noted that situations of unresolved incompatibilities are a major issue in Romania and parliamentarians have sometimes refused to leave either of their conflicting functions. It is alleged that the house concerned has itself been unwilling, sometimes, to take an incompatibility decision or to execute a decision. The fact that the pertinent rules are addressed in so many different texts which make no appropriate cross-references to avoid redundancies and loopholes is also a source of concern, including for the effectiveness of the mechanisms to resolve situations when these occur. There was a broad consensus during the on-site discussions, including in parliament, that a review and consolidation of the various rules is much needed. There have also been cases when a decision declaring or confirming a situation of incompatibility – even when it was rendered by the High Court of Cassation and Justice – were not implemented by the parliament. Romania needs to sort out these matters in order to restore progressively a more positive image of the parliamentary institution, which is essential in a democracy. Moreover, reference was made to excessive delays in the rendering of court judgements in certain cases. Combined with the use of appeal and cassation possibilities, it has happened that when certain decisions were rendered, the parliamentarian had already left his/her functions. The GET considers that this needs to be addressed in order to preserve the logic and purpose of the system of incompatibilities. **GRECO recommends i) that an adequate assessment of the rules on incompatibilities, especially their consistency and their enforcement in practice be carried out so as to identify the reasons for the perceived lack of effectiveness, and to make the necessary changes; ii) that ways be found to accelerate and enforce the judicial decisions concerning incompatibilities.**

#### *Contracts with State authorities*

40. There are no rules which would specifically restrict or prohibit a parliamentarian from entering directly or through a business interest into contracts with State authorities. The system in place in accordance with Law 161/2003 *on certain measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, and for preventing and sanctioning corruption* follows the logic of declaration and transparency. The template for the declaration on interests, appended to Law 176/2010 which was mentioned earlier, comprises a heading V which requires to disclose (including for the declarant's spouse and 1<sup>st</sup> degree relatives) all the contracts including those on legal consultancy and civil assistance, obtained or running while exercising the functions, which involve a funding from the public budget at State or local level (or from external funds), as well as contracts concluded with commercial companies with State capital, whether the State holds a majority or minority of shares. The same goes for any business entity or non-profit organisation which is in such a contractual relationship where the declarant or the related persons are shareholders or hold a position in the entity in question. The GET believes that the current system in place aims at giving a high level of transparency in the area of contractual relationships with the State. It has the potential to be a powerful tool against the abuse of powers for personal business-related benefits, in particular, once adequate rules are introduced also on the management of occasional conflicts of interest, as recommended earlier.

### *Post-employment restrictions*

41. According to the Romanian authorities, there are no rules or restrictions specifically concerning employment in a certain position or sector, whether paid or unpaid, after the term of office as a parliamentarian. The GET recalls that such measures can be useful to prevent certain risks for the integrity of parliamentary actions and democracy more generally. These measures can appropriately complement conflict of interest provisions that address instances where possible career prospects prevail over the general interest or more bluntly, where promises of an employment in the board of a company are made in return for political support in relation to certain amendments. The authorities indicated after the visit that to their knowledge, there had been no such cases or possibly related controversies brought to light so far. Bearing the above in mind, it might be worthwhile for Romania to conduct a study to identify post-employment restrictions for members of Parliament which might be required to avert conflicts of interest.

### *Third party contacts and lobbying*

42. The same goes for contacts with third parties and other persons seeking to influence the parliamentary and legislative work. This matter is not regulated at the moment and as it was mentioned in the general background information in the beginning of the present report, access to parliament reportedly takes place on a largely discretionary basis in practice. Even for accredited organisations. The authorities explained that draft legislation on third party contacts and lobbying was being considered by the parliament, at the time of the visit. According to some studies, influencing the parliament and other public actors is primarily exerted directly by the entities pursuing specific objectives (NGOs, associations, unions etc.) without the involvement of intermediaries / professionals, but the activity of lobbying as such is reportedly higher than what is commonly believed<sup>13</sup>. The GET noted that in society, some businesses involved in lobbying, public relations, and other similar activities – including lawyers and legal counselling businesses – have already organised themselves and a lobby association was established a few years ago. Some of these actors have also created a register of entities involved in lobbying activities<sup>14</sup>. They advocate for an increase in transparency and for adherence to a code of conduct which puts emphasis on the prohibition of rewards to the target-officials, for the need to comply with the official's rules on post-employment restrictions and to avoid / reveal / solve conflicts of interest and so on<sup>15</sup>. By contrast, the parliament appears insufficiently prepared to respond with its own current practices to the aspirations for transparency from the Romanian society. Moreover, by virtue of the system of parliamentary representation adopted in Romania, parliamentarians are called upon to speak primarily on behalf of their direct constituents rather than to represent the population or nation as a whole. The close ties and concrete presence in the field that this implies need to be borne in mind. **GRECO recommends the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process.**

### *Misuse of confidential information*

43. Provisions of the New Criminal Code criminalise the unlawful disclosure of State secrets (article 303), the disclosure of information classified as State secret or not public (article 304) and negligence in the storing of information (article 305). The Romanian authorities also refer to the general legislation on data protection and access to information of 2002 (Law no. 182 of 12 April 2002 on classified information) and its implementing government decision no. 585/2002. Apart from that, preventive measures

<sup>13</sup> Dr. Dana Oancea, Liviu Mihăileanu, Aurelian Horja: « Lobbying in Romania », June 2012: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2062175](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2062175)

<sup>14</sup> See <http://www.registruldetransparenta.ro/consulta-registrul.html>

<sup>15</sup> <http://registruldelobby.ro/en/the-ethics-code.html>

are contained in the internal rules of the Senate, article 185 paragraph 4 of the Senate, which provide that "(4) It is forbidden for a senator to use or exploit, directly or indirectly, information that is not public in order to obtain advantages for himself / herself or for others." The GET noted that there are apparently no similar provisions in the internal rules of the Chamber of Deputies<sup>16</sup>. And although the above article 304 of the Criminal Code is not limited to the disclosure of State secrets in the strict sense (it deals with information which is not meant to be public), it does not cover situations where a parliamentarian would misuse this kind of information for his/her own benefit. After the visit, the authorities also referred to article 12 of Law n° 78/2000 on the prevention, detection and combating of corruption which criminalises the misuse of information which is not meant to be public in order to generate a profit for oneself or another. Romania thus has the necessary rules in place but it may wish to look further into the above consistency issue and make sure parliamentarians are aware of the broad coverage of law n°78/2000 on the misuse of official information. This also confirms again the importance of further efforts concerning the awareness and training recommended in the present report.

#### *Misuse of public resources*

44. The benefits accorded to parliamentarians mentioned in the earlier section of this report on "Remuneration and economic benefits" are subject to ceilings on spending which are determined by the permanent offices of the two chambers. Any overspending is deducted from the senator's allowance. If the misuse of public resources is criminal in nature, then the specific criminal code provisions may apply concerning the illegal obtaining of funds (article 306), changing the destination of funds (article 307), embezzlement (article 295), abuse of position (art. 297), negligence (art. 298). Leaving aside various media reports on alleged and confirmed criminal acts involving parliamentarians and which may have ultimately affected state resources, the GET did not come across particular issues regarding specifically the resources made available by parliament to its members.

#### Declaration of assets, income, liabilities and interests

45. Romania has put in place an ambitious system of declaration of wealth, income and interests. The legal framework is provided by the Law no. 176/2010. It applies to a large number of categories of public officials, including deputies and senators (as well as candidate-members of parliament). The system is meant to ensure that the officials concerned do not obtain additional sources of illegitimate income and it is designed to assess possible variations in the patrimonial situation of the declarants. The system is also designed to ensure that declarants comply with certain obligations, for instance parliamentarians who can be in a situation of incompatibility by exerting other top responsibilities in the public sector, in the business sector, unions etc. There are thus two sets of declarations. These declarations are received and centralised by a specific agency created specifically for that purpose, the National Integrity Agency (hereinafter, the NIA).

46. The asset declaration form developed by the NIA contain information on 1) real estate; 2) movable assets; 3) assets and financial interests; 4) debts and liabilities; 5) gifts; 6) income and sources thereof.

47. The interest disclosure form includes information on 1) posts and functions or engaging in accessory activities; 2) business contracts with state authorities; 3) any other interest or relationship that may or does create a conflict of interest; 4) shares in companies, commercial/national companies, loan institutions, groups of economic interest, as well as member in associations, foundations or other non-governmental institutions; 5) membership in professional activities and/or unions, 6) involvement in

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<sup>16</sup> <http://www.cdep.ro/pls/dic/site.page?id=241>

management, administration and control within commercial companies, autonomous administrations commercial/national companies, loan institutions, groups of economic interest, as well as member in associations, foundations or other non-governmental institutions; 7) certain categories of contracts signed directly or by an entity in which the declarant exerts responsibilities. The duty to declare assets and income applies to family, spouse and dependent children of the respective public officials. The forms are available to public officials both on paper and electronically and guidelines on filling in the templates were elaborated by the ANI as well. According to Law 176/2010 each agency has to appoint a designated person responsible for implementation of legal provisions with regard to the asset and interests disclosures in that agency. Namely, the responsibility of the designated person includes collection and registering of declarations of assets and declarations of interests submitted by the officials required to file a report and they carry out a preliminary formal check on compliance with the format. The declaring official may then rectify and re-submit the form(s) concerned.

48. The declarations are submitted annually by the public officials concerned, no later than 15 June for the previous fiscal year, as well as at the beginning and/or termination of the office within 15 days. The various declarations are available publicly, on a continuous basis, on the website of the NIA which includes a searchable database, as well as on the website of the public institution to which the official concerned belongs.

49. The GET is pleased to see that Romania has put in place an ambitious mechanism for the declaration of assets and interests for public officials which also applies to members of parliament (as well as judges and prosecutors). The information system has positively evolved from the submission of a single confidential form a few years ago, to a fully-fledged declaration system. Measures have been taken to ensure that declarants comply with the deadlines for submission and as a result a wealth of information is available nowadays on-line, which largely meets the expectations of GRECO. The information includes the income in an accurate format as well as debts/loans, and it applies to the spouse and first degree relatives (children). The next step will probably be to have the data submitted in an electronic format instead of paper versions which are subsequently scanned, but the GET is overall pleased by the above system. It could inspire other countries.

### Supervision

50. The responsibility for the daily supervision of the conduct of parliamentarians lies in the first hand with each house, especially its central bodies (permanent Bureau, Speaker of the house), in cooperation with the specialised committees responsible for disciplinary matters and immunities. No meaningful results whatsoever were reported with regard to possible cases concerning integrity and corruption-related matters.

51. The National Integrity Agency (NIA) is responsible for the implementation of the mechanism of declaration of assets and interests, and for monitoring compliance of parliamentarians in this area. This independent administrative body, comprising nearly 100 members of staff, is supervised by a committee composed of representatives from various political and public bodies of Romania. In 2010, a much discussed decision of the Constitutional Court deprived it from the ability to investigate the wealth of parliamentarians and to publish the declarations of officials other than parliamentarians. Following further reforms and adaptations, it would appear that the system was basically maintained in its original function, as the GET was reassured on-site. In particular, the so-called Wealth Investigation Commissions attached to Courts of Appeal were reintroduced as an intermediary stage between the NIA and the courts to do the formal investigation of unjustified / suspicious variations of assets. But the NIA itself has access by itself to any public and private sources of information, including financial information, in order to perform its verifications and checks.

52. The NIA also provides permanent assistance regarding the completion and submission of declarations of assets and declarations of interests as well as on the legal regime of incompatibilities and conflicts of interest (for instance in 2013, the NAI issued 1593 official clarifications). Additionally, ANI has available on its website a F.A.Q. section.

53. During the on-site visit, the GET noted that the quality and effectiveness of the NIA is perceived in different ways in Romania. Whilst some interlocutors praised the existence of the current system as a whole, others considered that the NIA needed to be more proactive in its function, so as to detect on its own initiative any cases of conflicts of interest, incompatibilities, unjustified wealth and significant variations of assets as regards parliamentarians. The Romanian authorities take the view that the NIA is acting ex officio whereas some interlocutors met by the GET claimed that the 20 cases of conflicts of interest taken to court at the time of the visit had been brought in the first hand to the attention of NIA by external sources, prompting it to act. Beyond the legal requirement for the NIA to detect any significant discrepancies in the data - i.e. those in excess of 10 000 euros (three non-final cases at the time of the visit) - the NIA did not provide during discussions with the GET convincing information illustrating a proactive approach in practice. The Romanian authorities provided after the visit additional and updated data to illustrate the NIA's effectiveness (see paragraph 58 for the general overview). The GET noted that in recent years it has sometimes been alleged that the NIA was confronted with improper pressure from members of the political class. Even the week before the on-site visit, an amendment which had reportedly the potential to impact negatively on the NIA was passed in parliament but rejected by the President. Representatives of the agency referred to limited staff, something the GET cannot agree with since the NIA counts nearly 100 staff members in total (40 of these are inspectors). What is clear, however, is that the submission of declarations in paper format, which are then scanned for publication purposes, prevents the NIA from exploiting the information directly through a data-processing system. Given the amount of information handled by the NIA (more than 5,2 million declarations at the time of adoption of the present report, approximately 350.000 declarations received every year), the submission of information in electronic format would certainly constitute a significant improvement, allowing the NIA to develop new working and data-processing tools. During the plenary discussions on the present report, the authorities pointed to some new developments which appear to go in the right direction<sup>17</sup>. In order to assist in the supervision of the declaration system, which applies to a number of categories of officials including parliamentarians as well as judges and prosecutors who are dealt with in the subsequent chapters, **GRECO recommends that consideration be given i) to further increasing the data-processing capabilities of the National Integrity Agency; ii) to strengthening its proactive approach in the monitoring of declarations of assets and interests.**

#### Enforcement measures and immunity

54. The sanction for incomplete or inaccurate information in the asset or interests disclosures can be either a contravention, which is an administrative fine from 50 lei to 2 000 lei (approximately 12 to 500 euros), or if the integrity inspector observes that there are elements of a criminal or fiscal offence, s/he has the obligation to notify the competent authorities. For instance, in case of false statements, corruption-related crimes, abuse of office, etc. the integrity inspector notifies the Prosecutor's office and in case of a possible money laundering offence, the National Office for the Prevention and Control of Money Laundering. The GET considers that the above amounts of the fines are

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<sup>17</sup> NIA is developing an electronic system (PREVENT) which is meant to detect and prevent potential conflict of interests in relation to public procurement procedures. Various databases, including the assets and interests database, will be interlinked in an integrated environment performing cross-references allowing the inspectors to develop red flag indicators where a conflict of interest may arise. A draft law on the extension of NIA's mandate in this regard is currently in Parliament.

not effective and dissuasive enough in case a declarant would omit important amounts in an "incomplete" or "inaccurate" declaration. Of course, in case of a deliberately false statement, harsher criminal sanctions are applicable but the GET could not be provided with clear criteria how the distinction is made in law or in practice between the administrative fine and the criminal treatment of the case. The Romanian authorities are advised to bear this issue in mind.

55. As pointed out, the conduct of parliamentarians is regulated in different texts and there are thus different regimes of enforcement. Under Law 96/2006 on the statute of deputies and senators, a series of sanctions is provided, such as verbal warning, call to order, withdrawal of the right to speak, exclusion from the room, written reprimand. These apply to any breaches of the duties established under the said law or in the Constitution, violations of the internal rules (standing orders) of the house concerned, abusive exercise of the mandate, offensive or defamatory behaviour, breaching the legal provisions on conflicts of interest. The rules of the Chamber of Deputies adds to the above list also the temporary exclusion from the Chamber sittings for up to 15 days, as well as temporary expulsion. These disciplinary sanctions are applicable to breaches of the internal rules. The rules of the Senate also refer to the possibility to sanction with a disciplinary measure any unjustified repeated absences from the Senate; the sanctions are the same as those provided in Law 96/2006. In general, the milder sanctions are applied by the Speaker of the house, and the more severe ones require a decision of the Bureau or the house.

56. In addition to the above, a number of specific enforcement mechanisms are provided under the different laws concerning conflicts of interest and incompatibilities, which are often confused with each other. These provisions were all mentioned by the Romanian authorities as applying to parliamentarians. See also paragraphs 26 et seq., 33 et seq. A conflict of interest originating from participation in a decision "contrary to the requirements on conflicts of interest and incompatibilities" attracts a sanction of removal from office under article 25 of Law 176/2010 but the provision apparently excludes the applicability to holders of an elected office. On the other hand, breaching the rules on conflicts of interest under article 19 of Law 96/2006 on the Statute of deputies and senators is liable to a reduction of the parliamentarian's allowance amounting to 10% for a period of three months.

57. The GET considers that the above divergences make the enforcement mechanisms in parliament unnecessarily complex and a source of possible legal disputes. Recommendations were issued earlier in this report in respect for instance of improving the regulations on conflicts of interest and incompatibilities. Romania needs to keep in mind the other inconsistencies pointed out above, to ensure the existence of an adequate system to enforce the yet-to-be adopted rules of conduct. In that perspective, the two chambers will probably need to adapt their own internal rules to the current legal provisions and the future new requirements.

58. So far, the National Integrity Agency (NIA) has ascertained that a number of 22 parliamentarians (21 deputies and one senator) have breached the criminal and administrative rules on conflicts of interest after they had employed relatives at their parliamentary offices. The total benefits obtained by the relatives of the 21 deputies and 1 senator after they were employed by breaching the legal provisions on the conflict of interests amount to about 180,000 €. Between 2011 and 2014, the NIA ascertained the equivalent of 563 537 euros of unjustified wealth in three cases concerning two deputies and one senator. The court decisions rendered to date are not final. Since 2009, the NIA also ascertained that 67 actual and former members of parliament breached the legal provisions regarding the legal regime of incompatibilities. After the visit, the authorities provided additional / updated figures concerning a total of 190 cases which were all triggered by the NIA since 2008: 70 cases of incompatibility (where findings remained definitive, most of the MPs found in incompatibility had been dismissed from their



positions); 57 cases of administrative conflicts of interest; 33 cases of criminal conflicts of interest (18 imprisonment sentences pronounced by the Court after the cases were referred to prosecution); 6 cases of unjustified wealth; 25 cases where NIA discovered several potential criminal deeds (false statements, abuse of office, corruption-related offences).

59. Regarding DNA's jurisdiction for members of the Parliament, the following figures are available for the years 2012-2014: a) 24 criminal investigations were launched against members of parliament; b) 15 approvals were requested from both chambers of the Parliament (either for the criminal investigation of MPs who were at the same time ministers, or for an arrest, a detention or a search); c) the parliament responded positively to nine of these requests. As a result, 15 MPs were indicted by the DNA for having committed offences such as: taking bribes; trading in influence; favouring the perpetrator; abuse of office if the public official obtained an undue benefit for himself/herself or for someone else; conducting financial operations incompatible with their position; using information not meant to be disclosed publicly. 16 MPs were convicted to punishments between 1 year and 10 years' imprisonment, mostly without probation.

60. Immunities have been a contentious subject in Romania since GRECO's first evaluation round. As pointed out in the Third Evaluation Round report, there has even been a back-fall when the country reintroduced the immunity for former members of government (see footnote 5). Currently, article 72 of the Constitution provides for a partial immunity in the sense that deputies and senators may not be detained, arrested or searched without the consent of the chamber they are members of, but they can be subject to criminal investigation and trial. According to Law 96/2006 on the statute of deputies and senators, the request for pre-trial detentions for 24 hours or 29 days or for the search of the deputy or senator is submitted by the Minister of Justice to the chamber to which he or she belongs. For deputies or senators who are also members of government (or former members of government), according to article 109 of the Constitution, only the Chamber of Deputies, the Senate and the President of Romania have the right to request a criminal investigation into acts committed in the exercise of their mandate by members of government. If the criminal investigation is requested, the President of Romania may order a suspension from office. The indictment of a member of government entails his or her suspension from office. The High Court of Cassation and Justice has jurisdiction for trying such cases and in accordance with Law no. 115/1999 on ministerial accountability (and relevant constitutional case law), original requests are to be submitted by the Prosecutor General attached to the High Court of Cassation and Justice.

61. The on-site discussions showed that there have been some recent improvements in the above area, in the sense that the parliament has modified its rules to accelerate the rendering of decisions on the lifting of immunity. However, a number of major gaps remain. These include the absence of a duty for parliament to motivate its decision and a lack of criteria which would ensure a fair treatment of all parliamentarians concerned and would limit – above all – excessive discretion of parliament when deciding in a given case (discussions confirmed that decisions remain purely political, on a case-by-case basis). A further source of concerns is that the parliament must be provided with all the information about the case; this means that in practice the prosecutor's office (generally the DNA) submits the whole file which may contain highly sensitive information, for instance concerning other possible suspects. Instances have been reported where the file was returned with the original seals unbroken, which is a further illustration for the arbitrariness of decisions. In addition, in case where the parliamentarian is also a member, or former member of government, both sets of rules on the immunity and their lifting are applicable, and both the consent of the President and of the chamber concerned must be sought by the prosecutorial body. The Council of Europe standards require that (non-violability) immunities should not shield possible corruption offences

and GRECO has repeatedly requested members States to improve their legal framework and practices in this respect. As shown by the figures reported above, and as frequently pointed out during the on-site interviews, the immunity of parliamentarians – including when they are members of government – remains a problematic area in Romania. **GRECO recommends that the system of immunities of serving parliamentarians, including those who are also members or former members of government, be reviewed and improved, including by providing for clear and objective criteria for decisions on the lifting of immunities and by removing the necessity for prosecutorial bodies to submit the whole file beforehand.**

#### Training and awareness

62. It would appear that to date, the main efforts in the field of training and awareness on the obligations of parliamentarians discussed in this report, are to be put to the credit of the National Integrity Agency. As pointed out earlier, NIA issued in that context a variety of guiding documents, some of which concern parliamentarians specifically. Besides this, parliamentarians have never benefited from broader initiatives. Neither house of parliament has reported any training activities and awareness raising initiatives in the area of integrity. Leaving aside NIA's contact persons in parliament who can advise parliamentarians on the declaration of assets and interests, no specific person was appointed to give advice on integrity-related matters – so-called “confidential counsellors” who can be contacted at any time by individual parliamentarians. In the opinion of the GET, this is a gap if one bears in mind the apparent lack of understanding of the implications of the rules in place. Moreover, since a series of changes are likely to take place as a result of the present report, the parliament will need to ensure that its members are aware and understand these, as also pointed out in paragraph 25 with regard to a future code of conduct. Therefore, **GRECO recommends that the parliamentary authorities establish for their members i) a system of counselling through which parliamentarians can seek advice on integrity matters and ii) provide dedicated and regular training on the implications of the existing and yet-to-be adopted rules for the preservation of the integrity of parliamentarians, including the future Code of conduct.**

#### **IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES**

63. In Romania, judges and prosecutors are part of a single body of so-called “magistrates” and therefore, they often fall under the same provisions as regards the career system, their rights and obligations, the supervision and so on. The present chapter thus covers both categories of professionals. Elements which are specific to the prosecution service, in particular as regards its hierarchical organisation and its implications, are discussed in greater details in the subsequent chapter.

##### Overview of the judicial system

64. The principles, structure and organisation of the Romanian Judiciary are established by the Romanian Constitution and Law no. 304/2004 on the judicial organisation, as republished<sup>18</sup>. Justice is carried out in the name of law and is accomplished through the following courts: High Court of Cassation and Justice, Courts of Appeal, tribunals, specialised tribunals, military courts and first instance courts. Prosecutorial offices are attached to each court and jurisdictional level. Judges and prosecutors form a single body of practitioners called « magistrates ». In total, there are approximately 7 800 magistrates: about 4 000 judges (approx. 57% are women) and 3 800 prosecutors (approx. 53% are women). Romania's constitutional court occupies a particular position given its functions and its composition.

##### *Categories of courts and jurisdiction levels*

65. The High Court of Cassation and Justice performs the functions of a supreme court. It is located in the capital city. It comprises four sections (civil and intellectual property, criminal, commercial and fiscal and administrative matters), four panels of five judges and a panel for preliminary rulings. The leadership of High Court of Cassation and Justice is exerted by the president, vice-president and the leading board. There are 15 courts of appeal countrywide each having in its appellate jurisdiction a series of tribunals including specialised ones. Each court of appeal is composed of several sections or, as the case may be, specialised panels, dealing with the different categories of claims (civil, criminal or commercial matters; juveniles and family matters; fiscal and administrative claims; labour conflicts and social insurances; maritime or fluvial cases and other matters). The 42 tribunals are present in every county (Bucharest being also a county for such purposes). Under the jurisdiction of each tribunal are the first instance courts. The tribunals are organised in sections and panels similarly to the appeal courts. Certain pilot tribunals have been established in recent years on specific matters such as the Tribunal for minors and family cases in Brasov, the Commercial Tribunals of Cluj, Arges and Mures. There are 176 first instance courts, countrywide. Depending on the nature and number of cases, special sections or panels can be established (to deal for instance with juveniles and family cases) minors and family cases. The military courts are organised in military tribunals (in Bucharest, Cluj-Napoca, Timișoara and Iași). The Military Court of Appeal is also located in Bucharest.

66. Every court is under the responsibility of a court president with managerial attributions and every section is, in the same manner, under the responsibility of a section president. Within each court, a leading college is dealing with the general matters related to the functioning of the institution. With the exception of first instance courts and specialised tribunals, courts in Romania have legal personality.

67. Attached to every court and at each level of jurisdiction, there is a corresponding prosecutors' office, the organisation of which reflects that of the court system.

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<sup>18</sup> [www.csm-just.ro/csm/linkuri/25\\_01\\_2007\\_7780\\_en.doc](http://www.csm-just.ro/csm/linkuri/25_01_2007_7780_en.doc)

68. As a “political-jurisdictional” institution, the Constitutional Court occupies a particular position, outside the judiciary. This court was established in June 1992, after the communist transition. It is composed of nine judges elected for a non-renewable term of nine years. The President, the Senate and the Chamber of Deputies each appoint one third of the members. The judges are supported in their work by a group of assistant-magistrates. The Court has a variety of tasks, including a) adjudicating on the constitutionality of laws, before promulgation (upon reference i.a. by the President of either Chamber of Parliament, by the Government, by the High Court of Cassation and Justice, by the People's Advocate (Ombudsman), by a number of at least fifty Deputies or at least twenty-five Senators, as well as, ex officio; b) deciding on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law or of commercial arbitration; the objection of unconstitutionality may also be brought up by the Advocate of the People; c) resolving legal disputes of a constitutional nature between public authorities.

#### *Independence of the judiciary and the administration of courts*

69. The principle of independence of judges is enshrined in the Romanian Constitution and in the organic laws. These texts ensure the independence, impartiality and non-removability of judges specifically, i.e. the rules do not refer to the notion of magistrates (which includes the prosecutors).

70. The Romanian Constitution stipulates in article 124 the following: “(1) Justice shall be accomplished in the name of law; (2) Justice shall be unique, impartial and even for everyone; (3) Judges are independent and obey only to the law”. Law no. 303/2004 on the statute of judges and prosecutors provides under article 2 that “(1) Judges appointed by the President of Romania are irremovable according to the present law; (2) The irremovable judges may not be transferred, delegated, seconded or promoted without their consent, and they may be suspended or removed from office only in accordance with the conditions provided by the present law; (3) Judges are independent, are subject only to the law and must be impartial; (4) Any person, organisation, authority or institution has the duty to respect the independence of judges.”

71. No individual or institution may give directives to judges in individual cases. Moreover, judges enjoy life-long tenure.

72. The GET also noted that one of the functions of the Superior Council of Magistracy (SCM) is to guarantee the independence of justice, notably against ill-motivated attacks against the reputation of a magistrate. A procedure was established in 2012, with the involvement of the Judicial Inspectorate, to look into such cases and to allow subsequently the CSM to make a public statement.

#### Recruitment, career and conditions of service

73. As indicated earlier, judges and prosecutors are part of a single body of so-called magistrates.

#### *Recruitment requirements*

74. The career of magistrates is organised by Law 303/2004 on the Statute of judges and prosecutors. The admission to the position of magistrate can only be the result of an open competition organised by the National Institute of Magistracy (NIM). The candidates are examined in writing on specific legal matters, they undergo a test of logic and are interviewed, they also undergo a psychological examination. To participate in the examination, the following pre-conditions must be met: a) Romanian citizenship, permanent residence in the country and full legal capacity; b) law degree; c) no criminal

and fiscal record and enjoying a good reputation; d) mastering the Romanian language; e) medically and psychologically fit to exercise the office (article 14 paragraph 2 of the above law).

75. Exceptionally, depending on the needs of the system, judges may be selected through an open competition directly for some positions in first level courts opened for competition for judicial practitioners such as specialised judicial personnel, lawyers, notaries, police officers with higher legal education, court clerks with higher legal education etc. They must have served for at least five years within the legal field concerned. The competitions follow the same pattern as the ones organised to enter the NIM, but once the exam passed, the candidates have to follow only a certain period of training and they are appointed by the President of Romania at the proposal of SCM at certain first level courts.

76. In Romania, there is a unique body of professional judges. In higher courts, once promoted, as a result of their activity, judges become more specialised in certain areas such as criminal, administrative, civil, or intellectual property matters.

#### *Appointment procedure and career advancement*

77. After the initial training and graduation at the NIM, magistrates are appointed by the Superior Council of Magistracy (SCM) as junior magistrates-trainees. After completion of another year of practical work, they must then take the capacity exam. Once the exam is passed, the SCM submits a proposal to the President of Romania to appoint them as magistrates. The President cannot reject a proposal more than once, with a reasoned decision. If the SCM maintains its proposal, it has to support the renewed proposal with explanations.

78. Junior magistrates begin their career with an appointment to a first level court. Magistrate-trainees are part of the body of magistrates and thus subjected to the general rights and duties attached to the profession.

79. The Romanian authorities pointed out that any career advancement for a magistrate can only take place after a successful examination or competition organised by the SCM through the NIM, and under the conditions set forth by the law (articles 42 to 56 of Law 303/2004): evaluation of documentation, interview with the plenum of the SCM, written examination. These are organised annually at the national level following a public announcement of vacancies and the competition, or at any moment depending on the needs and the number of vacant posts to be filled. Further conditions include a "very good" mark in the last appraisal, and conditions of length of service in the current position - 5, 6, 8 or 12 years depending on the case. These conditions also apply for promotions to the positions of president and vice-president of the various courts and tribunals, including the court of appeal and the High Court of Cassation and Justice (HCCJ).

80. The GET noted that appointments to all leading positions in first instance and appellate courts and the corresponding prosecutor's offices are made for a term of three years, renewable once. Decisions are made by the SCM for the more senior positions as a judge (president and vice-president). For the junior leading positions (heads of sections etc.), it requires a proposal from the president of the court concerned and for appointments as a judge to the HCCJ, the board of the HCCJ issues a prior opinion (article 49). For the more senior leading positions as a prosecutor, the proposal of the Prosecutor General is required and for junior leading positions, the proposal from the chief prosecutor concerned is required (article 50). Appointments to all leading positions in the HCCJ – for three years renewable only once – are made upon the proposal of the SCM by the President of Romania; s/he can refuse the proposal only through a reasoned

decision (articles 52 and 53) and his/her role in the process is mostly formal<sup>19</sup>. Promotions to the highest positions in the prosecution service and some of its special offices are regulated under article 54; they actually follow a specific logic which is examined in the chapter on prosecutors hereinafter.

#### *Evaluation of a judge's performance*

81. According to law, judges and prosecutors must undergo a periodic appraisal carried out every three years in accordance with articles 39 et seq. of Law 303/2004. The system became operational in 2007. A template for appraisals is appended to the Law. It addresses the personal development of the appraisee, the way s/he deals with the work, his/her general conduct including personal qualities and attitude towards others. Last but not least, it refers to the level of observance of the code of conduct for magistrates. These appraisals are conducted by a committee established at the level of each court of appeal and prosecutors' office to that court, on the basis of decisions issued by the SCM. Specific arrangements deal with the appraisals of members of the High Court of Cassation and Justice.

82. The GET welcomes the existence of such appraisals and the fact that they allow to take into account compliance with the code of conduct. Romania has still a limited experience with the process since there have only been two rounds of appraisals carried out so far (that is, at the time of the on-site visit) and these are carried out every three years. Appraisals take into account the quantitative and qualitative performance but it would appear that article 37 places excessive emphasis on the quantitative criteria including the number of rulings or decisions which have been appealed / revised. The GET expresses concerns that such criteria could for instance encourage judges and prosecutors to privilege excessively the simpler cases to the detriment of the more complex cases, including criminal cases involving corrupt acts. Romania may wish to keep this matter under consideration. Moreover, as the GET was told on site including by the SCM, the system of appraisals has led in practice to 98% of appraisees obtaining the highest mark because of the importance of this criterion for the career progression. For most of the remaining percentage of appraisals, these have reportedly been appealed. The GET heard that measures are being taken by the SCM to improve the situation and increase the credibility of appraisals, notably through a review of the criteria for career progression.

#### *Transfer of a judge*

83. Any mobility decision (transfer, temporary secondments etc.) of a magistrate can only be done with the SCM's assent and under the conditions set forth in article 57 of Law 303/2004. The person concerned – whether a judge or a prosecutor – must give his/her written consent to the SCM (article 58 of Law 303/2004).

#### *Termination of service and dismissal from office*

84. Termination of service is regulated under article 65 of Law 303/2004, and foreseen in the following cases: a) resignation; b) retirement, according to the law; c) transfer to another office, according to the law; d) professional incapacity; e) as a disciplinary sanction; f) final conviction or the postponement of the application of the penalty of the judge or prosecutor for an offence; f<sup>1</sup>) dropping of the criminal investigation or of the application of the penalty established by a final decision, when it was decided that remaining in office would not be appropriate; g) violation of the provisions of art.7 on the additional explicit exclusions (e.g. acting as an arbitrator, getting involved into a business through an intermediary); h) failure to succeed in the

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<sup>19</sup> The Romanian authorities indicate that there has only been one such case (in 2009) where the President refused to appoint a candidate.

examination to enter the career of magistrate; i) failure to meet the requirements provided by art.14 paragraph (2) letters a), c) and e) (see recruitment requirements above).

85. The removal of a magistrate from his/her office is decided by the SCM, with the formal endorsement by decree of the President of Romania. The removal from office of junior judges and prosecutors is the sole responsibility of the SCM. A special regime is applicable to military judges and prosecutors.

86. The above decisions of the SCM must be motivated and can be appealed with the SCM on points of law, and subsequently with the High Court of Cassation and Justice.

#### *Salaries and benefits*

87. The salary of magistrates takes into account the level of the court/prosecutor's office, the actual function occupied (management or execution level) and their seniority. A judge or prosecutor at the beginning of his/her career receives a gross annual salary of approx. 12 800 euros. A judge at the High Court of Cassation and Justice has a gross annual salary of approx. 48 300 euros and a senior prosecutor general about 34 300 EUR (at the official exchange rates of February/March 2015). Other benefits include, in accordance with Law no. 303/2004: special retirement pension corresponding to 80% of the last remuneration (art. 82); paid vacation (art. 79 par. 1), reimbursement of travel expenses (art. 80); compensation payment if honourably discharged (art. 81). And according to Ordinance 27/2006: reimbursement of rent (art. 23) or right to lodgement provided by the state (art. 25 par. 1); right to free medical treatment, medication and prosthetics (art. 25 par. 1); compensation in case of death to be paid to offspring (art. 28); per-diem and reimbursement of travel and accommodation expenses for those delegated or seconded to a workplace outside the area of residence (art. 13).

88. The GET considers that the above remunerations and benefits contribute, by their level, to reduce the risks of corruption among judges and prosecutors. The on-site discussions also showed that there is perception that magistrates benefit from an enviable material status.

#### Case management and court procedure

##### *Assignment of cases*

89. According to the provisions of Law no. 304/2004 on the judicial organisation, article 11, "*The judgment activity shall take place with the observance of the principles of random distribution of cases and of continuity, unless the judge is unable, for objective reasons, to participate in a trial.*" The on-site discussions showed that in practice, once a case is forwarded to the competent section of the court, cases are attributed randomly by a computerised system which takes into account the fair distribution of the workload and other criteria. The GET heard that there had been occasional allegations that the system had been abused, including for criminal purposes, by persons who had managed to understand the IT-based algorithm used, for instance to ensure that a given judge would deal with a specific case. But overall it would appear that the random allocation prevails largely in practice.

90. The GET also noted that the Criminal Procedure Code (article 71) makes it possible to transfer a case "when there is a reasonable suspicion that the impartiality of judges of that court is impaired due to the circumstances of the case or specific of the parties, or where there is a threat that the general public order be disturbed. The transfer to another court is to be decided by the High Court of Cassation and Justice in respect of a court of appeal, and by the competent court of appeal in respect of a first

instance court or tribunal. There are safeguards against undue transfers (for instance, a formal court decision is needed and rendered in a public hearing). The GET considers that this is a useful tool to relocate a case where for instance the objective impartiality must be preserved in a sensitive case involving persons who have a high potential of influence within a geographic area.

#### *The principle of hearing cases without undue delay*

91. The law guarantees in principle that cases be heard without undue delays. According to article 10 of Law 304/2004 on the judicial organisation, "All persons are entitled to a fair trial and to the ruling of their cases within a reasonable time, by an impartial and independent court, set-up according to the law." As indicated earlier, the annual appraisals also pay particular attention to this aspect. According to certain figures available in Romania, the proportion of magistrates in relation to the overall population is considered as high, which should limit the risks of backlogs even though Romania is also confronted with certain backlogs.

#### *Publicity of hearings*

92. Judicial proceedings are public. The principle of the publicity of the court session is enshrined in the Constitution. (art. 127 – The public character of the debates: "The court sessions are public, except for the cases established by the law."). Further guarantees are contained in Law 304/2004 on the judicial organisation, especially article 12: « The court sessions shall be public, except for certain cases provided by the law. The judgments shall always be passed during public session, except for the cases provided by the law.

93. Regarding civil law cases, according to the Code of civil procedure, Preliminary Title, Chapter II – Fundamental principles of civil trial, article 17 – Publicity, "the court sessions are public, except for situations provided by the law." According to article 176 of the same code, the act is unconditionally null and void when the rules of publicity are infringed. Exceptions are contained in article 213 and include situations where the public debates would run against the requirements of good morality, preservation of the public order, the interests of the child or the private life of the parties or those of the justice system. However, even in these cases the parties, their representatives, those assisting the minors, the lawyers of the parties, the witnesses, experts, translators, interpreters and any other persons allowed by the court have access during the sessions.

94. As for criminal cases specifically, the Criminal Procedure Code also provides in article 352 for the publicity of hearings. Article 281 provides for the sanction of absolute nullity when the publicity is breached, except where « a public hearing in court were to harm various state interests, morality, a person's dignity or privacy, the interests of juveniles or justice ». The court may then decide, upon a request from the prosecutor, the parties, or ex officio, that the court hearing shall not be public for the entire duration of the proceedings, or only for a certain part of these. Further provisions regulate in detail these matters.

#### Ethical principles and rules of conduct

95. The Romanian authorities refer to Title IV – "the liability of judges and prosecutors" contained in Law 303/2004 on the Statute of judges and prosecutors, according to which they bear civil, criminal and disciplinary responsibility for their actions. Article 99 enumerates a series of specific conducts which constitute a disciplinary offence: a) *deeds affecting the honour, professional probity or the reputation of justice, committed during or outside the exercise of their office duties*; b) *breach of the legal prohibitions of incompatibilities of judges and prosecutors*; c) *un-dignifying attitudes*



*towards colleagues, the other personnel of the court or prosecutor office where they work, judicial inspectors, lawyers, experts, witnesses, litigants or representatives of other institutions, while exercising the office duties; d) carrying out public activities having a political nature or expressing their political opinions while exercising office duties; e) unjustified refusal to receive applications, conclusions, memoranda or documents submitted by the parties to a trial; f) unjustified refusal to fulfil an office duty; g) non-compliance of a prosecutor with the decisions of the hierarchical superior, given in writing and in accordance with the law; h) repeated un-observance and from imputable reasons of the legal provisions on celerity in solving cases, or repeated delays in elaborating the works, from imputable reasons; i) breaching the duty to abstain when the judge or the prosecutor knows that there is one of the cases provided by the law for his abstaining, as well as making repeated and unjustified requests of abstention in the same case, which has the effect of delaying trial; j) breaching the confidentiality of deliberations or of the works, as well as of other information of a similar nature that has knowledge of while exercising the office duties, except of those being of public interest, according to the law; k) unjustified absence from work, repeated or which affects directly the activity of the court or prosecutor office; l) interfering within the activity of another judge or prosecutor; m) unduly breach of the orders or of the administrative decisions ordered in accordance with the law by the head of the court or the prosecutor office or of other obligations having an administrative nature provided by the laws or Regulations; n) use of the office in order to obtain favourable treatment from the authorities or interventions on solving some requests, demanding or accepting solving the personal interests or of those of the family members or other persons, other than within the limits of the legal framework regulated for all citizens; o) serious or repeated breaches of the provisions on random case distribution; p) obstruction of the inspection activity carried out by the judicial inspectors, by any means; q) direct or through intermediaries participation in pyramid-type games, gambling or investments systems for which the transparency of funds is not ensured; r) total lack of grounding the judgments or judicial documents of prosecutor, according to the law; s) use of inappropriate expressions within the judgments or within the judicial documents of the prosecutor or grounding manifestly contrary to the legal reasoning, able to affect the prestige of justice or the dignity of the office of magistrate; ș) un-observance of the decisions of the Constitutional Court or of those rendered by the High Court of Cassation and Justice in the appeal in the interest of law; t) exercising the office with bad faith or serious negligence.*

96. Moreover, a Code of ethics for judges and prosecutors was adopted by the Superior Council of Magistracy by a Decision of 2005, published in the Official Gazette (and thus communicated to the public). This document of three pages contains seven chapters dealing with a) general provisions (stating i.a. that the annual appraisal shall take compliance with the Code into account); b) independence of justice (objectivity and impartiality, political neutrality, permitted participation in publications and academic societies etc.); c) promoting the supremacy of law (avoid discriminating conducts and respecting the dignity of others etc.); impartiality of judges and prosecutors (general impartiality, incompatibilities, prohibited intercessions for the own benefit or that of relatives etc.); d) exercise of professional duties (competence and honesty, speedy processing of cases, solemnity and impartiality, not disclosing information or confidential documents, duty for managers to use resources in an efficient manner and good administration etc.), e) dignity and honour (not compromising dignity, fair relations with the community, not questioning the judgements of colleagues, refraining from any action contrary to impartiality, honesty and law); f) incompatible activities (other functions in the public or private sector, not participating in pyramidal schemes, activities generating a conflict of interest).

97. The GET welcomes the existence of a code of ethics / conduct for magistrates. It notes that also in respect of judges and prosecutors, there is a tendency in Romania to provide for a multiplicity of standards which look impressive on paper but are designed without apparent overarching logic or articulation. The above Code of ethics often

repeats the content of the Statute for judges and prosecutors, but its added value is not obvious. Many of the principles it conveys are drafted in excessively broad terms, sometimes with significant redundancies. For instance the concept of impartiality appears three times but it is not explained or illustrated. The Code, at the same time, refers to certain specific issues: for instance, it contains a prohibition to participate in pyramid schemes whereas at the same time it is silent as to whether magistrates are expected – more broadly – to adopt also in private life a conduct which would not tarnish the image of the judicial institution (see also the issue of fora and blogs on the judiciary in paragraph 108). It also refers to the need to comply with incompatibilities, which is often confused with conflicts of interest in Romania – which can lead to immediate sanctions. However, the status of the Code is not entirely clear and it would appear that to date it has not led to any disciplinary measure, even a warning or reprimand although it sometimes contains precise obligations and prohibitions, including some which are already sanctionable under the law. The GET further noted that there is also a perception in Romania that everything which is unethical is also illegal (and vice versa); such an approach underestimates the importance of learning what is right or wrong. As pointed out earlier in respect of parliamentarians, professionals and practitioners in Romania often do not see the usefulness of rules of conduct. One of the reasons could be the inadequate approach with such documents and the above Code of ethics is such an example: it combines references to general principles – but without providing further guidance – with certain specific prohibitions as seen above. In their subsequent comments, the Romanian authorities stressed that the Code of ethics, contrary to the rules of the Statute, may not lead to sanctions. Therefore, since the purpose of the Code is to provide guidance, the GET considers that it would need to clarify existing standards – including on withdrawal (see below), and not to add new ones. In this context, it would be advisable to make greater use of disciplinary case-law and other concrete examples to complement the Code. This would also offer an opportunity to draw attention to the content of such decisions, which are not gathered and easily accessible through the on-line databases of the SCM's decisions. In their latest comments, the authorities refer to a Dutch-Romanian project aimed at introducing a network of integrity counsellors and a platform on ethics to make disciplinary case-law available to practitioners and the public. The GET welcomes these initiatives, which could support improvements also as regards the Code. Also, as pointed out hereinafter (see paragraph 114) the Superior Council of Magistracy (SCM) needs to be more responsive to certain risks and to increase i.a. its analytical work; the outcome of such work could, as well, feed usefully into the review of the Code. **GRECO recommends that the Code of ethics for judges and prosecutors be complemented in such a way so as to offer proper guidance specifically with regard to conflicts of interest (e.g. examples and/or types), incompatibilities and accessory activities, impartiality and related areas (including notably the acceptance of gifts and other advantages, the conduct in private life).**

#### Conflicts of interest

98. Magistrates must comply with the general rules and principles on conflicts of interest described in respect of parliamentarians, including the duty to disclose annually their assets, interests and income and the criminal sanctions applicable under article 301 of the New Criminal Code. As it was already pointed out, the system in place does not specify clearly how conflicts of interest are to be managed, especially in case of potential conflicts and/or where these arise punctually. Magistrates are of course subject to rules on withdrawal and recusals (which actually refer to incompatibilities), as pointed out in the following paragraphs. Some of these rules may contain a general ground for withdrawal by the judge or prosecutor, or for recusal by a party, for instance article 64 paragraph 1 lit. f) which refers to any situation where the objectivity of the magistrate could be impaired. The concept of conflicts of interest is still a new subject in Romania and the GET considers that it deserves to be promoted through the Code of ethics and increased training and awareness-raising efforts, as recommended in this report for magistrates altogether.

## Prohibition or restriction of certain activities

### *Incompatibilities and accessory activities*

99. Incompatibilities and accessory activities are regulated under Law 161/2003 *on certain measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, and for preventing and sanctioning corruption (articles 101 et seq.)*. This law states that the position of a judge or prosecutor is incompatible with any other public or private position with the exception of academic professional activities. Judges and prosecutors are also prohibited to perform any arbitration activities in civil, commercial or any other kind of litigations. Nor can they be an associate, a member of the management, administrative or control boards of any civil association or trading company, including banks or other loan institutions, insurance or financial companies, national companies, national associations or autonomous administration. The provisions go on by prohibiting the performance of commercial activities, directly or through intermediaries or to become a member of a group of economic interest. Furthermore, magistrates may not be members of any political party nor perform any political activities. In accordance with article 110, these provisions also apply to members of the Constitutional Court, although strangely enough most of them are usually political appointees and sometimes notorious politicians. The Law 47/1992 on the organisation and functioning of the Constitutional Court is silent on this matter and it only refers to incompatibilities with any position in the public or private sector.

100. Similar incompatibilities and professional / occupational exclusions are also included in Law 303/2004 on the Statute of judges and prosecutors (articles 5 et seq.). There are some divergences, though: for instance, magistrates are authorised to be involved in a business activity as shareholders or even associates in the context of the law on mass privatisation, and they may also be members of scientific or academic societies as well as any private legal person with no patrimonial gain. At the same time, the prohibition to exert any commercial activity, directly or through a third person, contained in Law 161/2003, does not appear in Law 303/2004. As shown above, there are redundancies and inconsistencies in the regime of incompatibilities and other occupational exclusions applicable to judges and prosecutors. Although the main principle stating the incompatibility with any public or private occupation seems to be a common denominator, the fact that this general rule is translated in different ways makes the legal framework unnecessarily complex. Romania may wish to ensure a greater consistency of the present legal framework on incompatibilities and accessory activities for judges and prosecutors.

### *Recusal and routine withdrawal*

101. Magistrates must comply with the requirements of Law 161/2003 *on certain measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, and for preventing and sanctioning corruption (article 105)*. It establishes objective requirements obliging in principle a judge or prosecutor to withdraw from any proceedings involving their spouse or relatives up to the 4<sup>th</sup> degree. The law also recalls the applicability of the various provisions on incompatibilities, abstention and recusal contained in the Criminal Procedure Code (article 64-67) and in the Civil Procedure Code (articles 41-43). For instance, under the Criminal Procedure Code, a judge is considered in a situation of incompatibility in a variety of situations, including if s/he a) was a representative or a counsel of one of the parties to the trial or of a main trial subject, even in another case; b) if s/he is a relative up to the 4<sup>th</sup> degree with one of the parties; c) was an expert or witness in the same case; d) is a guardian or trustee of one of the parties or of a main trial subject; e) conducted criminal investigation acts in the case or participated, as a prosecutor, in any proceedings conducted before a judge or of a court of law; f) there is a reasonable suspicion that the judge's impartiality is impaired. Moreover, Judges who are spouses, blood or in-law

relatives, up to the 4th degree included, or are in one of the situations listed under Art. 177 of the Criminal Code may not be part of the same judicial panel. Moreover, a judge who participated in the trial of a case may no longer participate in the trial of the same case in appeal or when the case is re-examined after the court decision was annulled or reviewed. The grounds for exclusion mentioned above under a) to d), and f), apply also to prosecutors and to criminal investigation bodies.

102. A judge or prosecutor who is in one of the above situations is required to inform the president of the court, or as the case may be, the prosecutor supervising the criminal investigation or the hierarchically superior prosecutor, that s/he withdraws from the criminal proceedings in question. A recusal can be filed on the same grounds against the judge or prosecutor by any of the parties, the main subject of the proceedings, as well as by the prosecutor against a judge.

### *Gifts*

103. The Romanian authorities referred to the different sets of provisions already discussed in the previous chapter on parliamentarians (see paragraphs 30 et seq.). These provide for a duty to declare annually all gifts where the individual value exceeds 500 euros (under the regime for the declaration of assets and interests). Reference was also made to Law 251/2004 regarding the declaration of protocol gifts received during the exercise of official functions. None of these legal frameworks impose a ban on gifts and the Code of ethics discussed earlier does not deal with gifts. Representatives of the judges and prosecutors met by the GET considered that any gift (for instance a painting given by a lawyer on the occasion of an official reception) would not be acceptable, mainly because of the duty of impartiality. One practitioner referred to a prohibition in principle, with the exception of protocol gifts. Although the GET appreciated this high standard of integrity, the discussions suggested that awareness of the existing rules and their precise implications needs to be improved and that further guidance is needed through the Code of ethics, awareness raising initiatives etc., as recommended in this report.

### *Post-employment restrictions*

104. The Romanian authorities pointed out that there are no laws or rules providing for strict and general prohibitions for magistrates leaving their function to engage in other paid or non-paid activities. The only restriction in place, under article 106 of Law 161/2003, concerns a temporary limitation for judges and prosecutors who have become lawyers. Thus, a former judge practicing as a lawyer cannot submit conclusions in a case handled by the court in which s/he previously exerted his/her functions for a period of two years. Likewise, a public prosecutor becoming a lawyer may not provide for the same period of time legal assistance to the criminal investigation authorities from the place where he/she worked. The discussions held on-site by the GET suggested that the vast majority of magistrates perform their activities until they retire since the material conditions are considered as attractive enough, to prevent temptations connected to the promise of a job in the private sector in exchange for a favourable decision. Romania also seems to be preserved from certain phenomena observed in other countries (judges or prosecutors becoming barristers or legal councils and making and abusive usage of contacts to former colleagues).

### *Third party contacts, confidential information*

105. As regards communication outside the official procedures, the Superior Council of Magistracy (SCM) has adopted by a decision of 2012, revised in 2014, a) Guidelines on the relation between the judicial system in Romania and the media b) a Handbook for spokespersons. These documents were amended last in 2014. According to the Guidelines, "as a rule, the spokesperson or his replacement is the one who provides

*public interest information to the media*". The judges, auxiliary personnel and the connected personnel of the law courts and prosecution offices are not allowed to provide information about cases that are brought to the courts or prosecution offices. They must guide the applicants towards the communication structures. As a result of the current policy and rules in place, a magistrate must refrain from any communication referring to a case even if the case is not under his/her jurisdiction, when the proceedings in that particular case are ongoing. Moreover there are specific departments dealing with requests of the parties and other citizens using the justice system.

106. As for rules preventing the misuse of confidential information, the Romanian authorities refer to art. 99 letter j) contained in Law 303/2004 on the Statute of judges and prosecutors (see paragraph 95 above), according to which breaching the confidentiality of deliberations or of the works, as well as of other information of a similar nature constitutes a disciplinary offence. Moreover, article 15 of the Code of ethics for judges and prosecutors (see paragraph 96 above) requires to not reveal or use for other purposes than those strictly related to the exercise of the profession, the information obtained. When documents are confidential, magistrates are bound to keep those documents within the court or public prosecutor's office and to allow the study of the materials only within the framework of law and regulation. The general legal regime of the protection of classified information also applies (Law no. 182/2002 and Government Decision no. 585/2002). The specific provisions of articles 303-305 of the Criminal Code and article 12 of Law 78/2000, already mentioned under the chapter on parliamentarians, also apply to the members of the judiciary; they criminalise the disclosure and misuse of state secrets and other non-public information, and the negligent conduct with regard to informational files (see paragraph 43).

107. The GET also noted that under article 107 of Law 161/2003 on certain measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, and for preventing and sanctioning corruption, "*magistrates have the duty to immediately inform the president of the court or, as the case may be, the general prosecutor to whom they are subordinated, on any political or economic immixture, coming from any natural or legal entity or any group of persons.*"

108. The on-site discussions showed that this has been quite a problematic area in Romania. Cases studies carried out by the anti-corruption prosecution service (DNA) in respect of serious crime cases involving the complicity of magistrates revealed that magistrates too easily tend to answer to "in-house" requests for information coming from their colleagues. Interlocutors met by the GET also referred to the phenomenon of frequent leaks of information to the media. The Romanian authorities may also need to bear in mind allegations that judges and prosecutors tend too easily to comment on the functioning of the justice system on certain websites and blogs in a way which can be problematic and may contribute to diminish the positive image of judicial institutions in Romania. The GET appreciates that steps are being taken to address some of the above matters, especially contacts with the media and there is certainly a number of rules in place to ensure an adequate level of protection of the information handled by judges and prosecutors. It considers that the effective enforcement in daily practice of such measures is, in the first hand, the responsibility of the judges and prosecutors with managerial responsibilities. A recommendation was issued in this respect (see paragraph 114).

#### Declaration of assets, income, liabilities and interests

109. The Romanian magistrates are subjected to the system for the disclosure of assets, interests and income already presented under the chapter on parliamentarians (see paragraphs 45 et seq.). More specifically, the following categories of persons are concerned, in accordance with article 1 paragraph 1 of Law 176/2010: judges, prosecutors, assistant-magistrates, positions similar to those, judicial assistants, judges

of the Constitutional Court. As the GET has already pointed out, Romania has put in place an ambitious system which has been improved over the years and can be seen as exemplary in many respects. The amount of information disclosed, both on the declarant, the spouse and dependent children, has the potential to contribute significantly to the deterrence of corrupt practices or dubious dealings involving judges and prosecutors.

### Supervision

110. As mentioned earlier under the chapter on parliamentarians, the National Integrity Agency (NIA) is responsible for the centralisation of declarations of assets and interests, the overall management of the system, and checks in respect of the content of declarations including abnormal variations. As mentioned in the statistical information below, since 2009 there have been a few cases of incompatible activities / conflicting interests handled by the NIA in respect of magistrates (five judges and three prosecutors), most of which are still pending. One final conviction was pronounced so far. Unjustified wealth was ascertained in respect of two judges (for a total amount of more than 200 000 euros). As also pointed out in the chapter on parliamentarians, the NIA needs to play a more proactive role in its work and its data-processing capabilities need to be improved given the high number of officials subjected to the declaration system and the volume of information generated, which is handled mostly in paper format (see the recommendation in paragraph 53).

111. Romania has opted for a model of management and supervision of the judiciary which is that of self-management, under the lead responsibility of the Superior Council of Magistracy (SCM). The SCM deals with the overall management (finances, staffing) of the courts and prosecution services, it is also the main body responsible for the career and disciplinary supervision of magistrates, including their training through the National Institute of Magistracy. The SCM is composed of 19 members: a) 14 are elected by their peers for a term of 6 years (non-renewable) and they are permanently assigned to the CSM, b) 3 are automatic members: the Minister of Justice, the Chair of the Court of Cassation and Justice, the Prosecutor General, c) two members are civil society representatives, usually barristers in practice. They have the support of more than 200 staff members. The SCM elects its president and vice-president for a non-renewable term of one year. Normally, meetings are held separately for matters concerning judges and those concerning prosecutors (there is one section dealing with each group) but the CSM examines in plenary such matters as the appointment of judges and prosecutors, the organisation of competitions for vacant management positions and the general functioning of the justice system. The CSM is assisted by a Judicial Inspectorate (94 staff).

112. A disciplinary case can be referred to the CSM by a magistrate with managerial responsibility, by the Ministry of justice (which may receive complaints from citizens) as well as by any person who has a particular reason to complain about the conduct of a judge or a prosecutor (for instance a party to a court case). Where needed, the judicial inspectorate can conduct an enquiry or investigation. The disciplinary measures which can be applied are the following, in accordance with article 100 of Law 303/2004: a) warning; b) decrease of the salary by 20% for a period of up to 6 months; c) disciplinary removal for a period of up to one year to another court or another prosecutorial office, located in the jurisdiction of another district court of appeal; d) suspension for a period up to 6 months; e) revocation.

113. The proceedings of the plenum or sections of the SCM are public, unless otherwise decided and the professional associations of judges and prosecutors can participate in the debates by expressing their views. Disciplinary sanctions can be appealed before the High Court of Cassation and Justice (article 29 of Law 317/2004 on the Superior Council of Magistracy).

114. The GET has in mind the recent findings from the case studies on criminal activity involving the Romanian judiciary conducted both by the Ministry of Justice<sup>20</sup> and by the specialised prosecutor's office for corruption (DNA). These positive initiatives demonstrate the ability of Romania to compile and analyse information which can be used for the design of preventive policies. These observations do not imply, of course, that corruption is necessarily widespread, but they highlight areas where risks are present and where internal controls are insufficient. The Romanian authorities point out that the Judicial Inspectorate regularly carries out thematic controls and it may act *ex officio* or upon notification on specific cases concerning the integrity of a magistrate. The CSM also takes public positions on corruption-related matters within the judiciary. But as the GET understood, no particular measures were taken by these bodies in response to the uncovering of criminal rings and the related dubious practices with links to the judiciary, be it through further assessments of risks or just to remind certain obligations to all judges and prosecutors (or those in certain geographic areas). At the same time, the GET noted that the role of those with managerial responsibilities in the courts and prosecution service, is excessively limited. They may not even issue a warning at an early stage of certain situations or problems and in case they have a suspicion, they appear reluctant to discuss the matter directly with those concerned and they need to refer the case for a formal criminal or disciplinary procedure. At the same time, reporting a possible case of infringements to the rules of conduct apparently implies also an excessively formal approach which requires more than just a (grounded) suspicion. Interlocutors of the GET referred to the need to present evidence to avoid excessive reactions from the colleagues. The GET considers that improvements are desirable in this area. **GRECO recommends that the justice system be made more responsive to risks for the integrity of judges and prosecutors, in particular by i) having the Supreme Council of Magistracy and the Judicial Inspectorate play a more active role in terms of analyses, information and advice and ii) by reinforcing the role and effectiveness of those performing managerial functions at the head of courts and public prosecution services, without impinging on the independence of judges and prosecutors.**

#### Enforcement measures and immunity

115. As already mentioned in the previous chapter on parliamentarians, the sanction for incomplete or inaccurate information submitted in the declarations of assets and interests is a fine in the range of 50 lei to 2 000 lei (12 to 480 euros). In case a criminal offence is suspected, the case shall be forwarded to the prosecutorial authorities or to the financial intelligence unit of Romania (for a possible money laundering case). Since 2009, the NIA has ascertained that only one judge breached the legal provisions regarding the conflicts of interest. The file has led to a final conviction. Regarding the legal regime of incompatibilities, since 2009, ANI ascertained that eight magistrates had breached the law. An in two further cases, unjustified wealth amounting to a total of 205.717 euros was identified in respect of two judges. These cases are not final.

116. As for criminal investigations in relation to judges for corruption-related acts (which fall within the competence of the DNA), the following data is available for the period 2012-2014: a) criminal investigations were launched against 37 judges; b) 28 approvals were requested from the Superior Council of Magistracy (for the pre-trial detention for 24 hours or 29 days or for the search). 26 of these were approved; c) 41 judges were indicted for having committed offences such as: taking bribes; trading in influence; abuse of office if the public official obtained an undue benefit for himself/herself or for someone else; favouring the perpetrator; conducting financial operations incompatible with their position; using information not meant for publicity;) as

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<sup>20</sup> "Offenders on causes and consequences of corruption. A study of corruption in Romania", January 2015, study carried out by the Romanian Ministry of Justice and the Dutch Ministry of Foreign Affairs, in partnership with the universities of Amsterdam and Bucharest and with the support from the Prosecutors' Office.

a result, 15 judges were convicted to imprisonment between one year and five and a half years, mostly without suspension.

117. There are no special immunities for magistrates in terms of criminal proceedings. The rules of criminal procedure are the same as for any other individual. However, certain provisions in terms of approval of search, temporary detention, pre-trial custody and domiciliary arrest of judges and prosecutors are applicable, in accordance with article 42 of Law no. 317/2004, Article 42: "*(1) The section for judges of the Superior Council of Magistracy shall approve the search, the temporary detention or the pre-trial custody of judges and assistant-magistrates; (2) The section for prosecutors of the Superior Council of Magistracy shall approve the search, the temporary detention or the pre-trial custody of prosecutors; (3) The provisions of paragraphs (1) and (2) on searches and pre-trial custody shall not apply in case of flagrant offence.*" The decision on the preventive measures is taken by the court, after the approval of the Superior Council of Magistracy and the general provisions are applicable. The competence for judges and prosecutors in first instance is at the level of the courts of appeal or the High Court of Cassation and Justice, depending on the professional degree of the magistrate concerned.

#### Training and awareness

118. Trainees who attend the National Institute of Magistracy (NIM) are provided with courses on deontological and ethical matters. The module is mandatory in the first and second year of the initial training (they represent 20 and 16 hours, respectively). The GET was informed during the discussions that disciplinary cases are presented on these occasions. Attending in-service training every three years is mandatory for all judges and prosecutors. They can freely choose the training modules depending on their interest in a specific subject matter, their own daily work etc. In practice, most magistrates attend training events every year.

119. The GET considers that more could be done in terms of training on integrity-related matters. The need for a more preventive and educational work, which would complement the repressive efforts were also highlighted by practitioners met on-site. This is all the more important if one considers the complexity of the regulations addressing the rights and obligations of magistrates. At the same time, the Code of ethics contains no practical information whatsoever which would illustrate how the concepts of impartiality, conflicts of interest, reactions to gifts, professional discretion and reserve etc. translate into daily practice depending on the actual circumstances and situations. The decisions in disciplinary matters rendered to date could more systematically feed into this process. The information made available to the GET on the on-going training provided to date also reflects only to a limited extent the prevention of corruption. The focus was clearly on the investigation, prosecution and adjudication of offences. At the moment, Romania clearly pays mostly attention to repression, as a result of which there is a tendency to consider that any inappropriate behaviour is a criminal conduct. The GET recalls that prevention and repression are two complementary components and that training (including on an on-going basis) is an important component of prevention through education. **GRECO recommends increasing the training and awareness-raising efforts with regard to integrity and the preventive components of anti-corruption policies, including for judges and prosecutors in exercise.**



## **V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS**

### Overview of the prosecution service

120. The prosecution service in Romania is part of the Judiciary. There is a prosecutors' office functioning at the level of each court, countrywide. The basic role and organisation of the prosecution service is regulated under Law 304/2004 on the judicial organisation, as republished. In the judicial activity, the Public Ministry represents the general interests of society and defends the legal order and the citizens' rights and freedoms. On an operational level, the prosecutor's offices also conduct and supervise the criminal investigation activity of the judiciary police, according to the law.

121. The prosecutors' offices attached to the courts of appeal and tribunals are organised in sections, services and offices. The management of the prosecutors' offices by the courts of appeal is coordinated by general prosecutors and deputy general prosecutor, while the leading duties of the prosecutors' offices by the tribunals and first instance courts are carried out by head prosecutors and deputy head prosecutors. The sections, services and offices of prosecutors' offices attached to courts are coordinated by chief prosecutors. Within every prosecutors' offices there is a leading college functioning, which deals with the general functioning of the prosecutors' offices. The activity of all the prosecutors' offices is coordinated by the Prosecutors' office attached to the High Court of Cassation and Justice, which has judicial personality and manages the budget of the Public Ministry. The Prosecutors' office attached to the High Court of Cassation and Justice is coordinated by the general prosecutor of the Prosecutors' office attached to the High Court of Cassation and Justice, a first-deputy, a deputy and three advisors. Within the Prosecutors' office attached to the High Court of Cassation and Justice there is a leading college which decides over the general problems of the Public Ministry. The Prosecutors' office attached to the High Court of Cassation and Justice is structured in sections, services, offices, conducted by chief prosecutors, including for crimes committed by military personnel. Within the Prosecutors' office attached to the High Court of Cassation and Justice, the Directorate for Investigation of Organised Crimes and Terrorism Crimes functions in this specialised field and also an independent structure functions. This is the National Anti-corruption Directorate representing the central structure that functions together with the territorial structures, composed of territorial services and territorial offices.

122. The prosecution service is organised hierarchically, under the authority of the Minister of Justice. According to Article 132, paragraph 1 of the Constitution, *"Prosecutors carry out their activity in accordance with the principle of legality, impartiality and hierarchical control, under the authority of the minister of justice."*

123. At the same time, prosecutors enjoy certain guarantees of independence since article 3 of Law 303/2004 on the Statute of judges and prosecutors provides that *"(1) Prosecutors appointed by the President of Romania enjoy stability and are independent, according to the law. (2) The prosecutors who are granted stability may not be transferred, seconded or promoted without their consent. They may be delegated, suspended and removed from office only in accordance with the provisions of the present law."* Article 64 of Law 304/2004 further provides that *"according to the law, the prosecutors are independent when they are adopting a solution"*. Therefore, while being independent in their prosecution activity, prosecutors enjoy autonomy, in a way distinct from judges, in the sense that they are to observe the hierarchical internal organisation.

### Recruitment, career and conditions of service

124. As it was pointed out in the previous chapter on judges, Romania has a unique body of judges and prosecutors called magistrates. The recruitment and training was

described earlier. Prosecutors are recruited following open competitions and they undergo an initial training provided by the National Institute of Magistracy.

125. At the end of the training period in the school and, subsequently at a court, the junior magistrate can opt to work in the prosecution service.

126. During their career, they undergo the same career obligations as a judge, notably with the respect to the appraisal which is done every three years.

127. The scale of salaries for prosecutors is determined by the career system for magistrates and thus largely shared by the judges and prosecutors as regards the basic remuneration and additional benefits. The material situation of judges and prosecutors is perceived as quite advantageous in Romania. The gross annual salary of the prosecutor at the beginning of his/her career is about the equivalent 13 000 euros. The gross annual salary of the prosecutor general is approximately 34 000 euros.

#### *Appointment procedure and promotion to a higher rank*

128. As pointed out in the previous chapter, the promotion to higher ranks is based for prosecutors on objective criteria involving competitive examinations. Art. 43 of Law 303/2004 on the Statute of judges and prosecutors provides that "(1) Judges and prosecutors shall be promoted only by means of a competitive exam held at a national level, within the limits set by the vacancies existing in tribunals and courts of appeal or, the case being, prosecutor's offices." The results of periodic appraisals are to be taken into account, which for the time being are of lesser importance since 98% of judges and prosecutors have systematically obtained the highest ratings.

129. The replies to the questionnaire provided no information on the current way appointments of senior prosecutors take place. The on-site discussions showed that the career including promotions to the higher positions actually diverge in their logic from the procedure applicable to judges. The GET noted that the matter is regulated as follows under articles 54 and 55 of Law 303/2004:

*Art. 54 - (1) The General Prosecutor attached to the High Court of Cassation and Justice, the Prime Deputy and deputy, the Chief prosecutor of the National Anti-Corruption Directorate and the deputy and deputy chiefs of its sections, as well as the Chief prosecutor of the Directorate for the Investigation of Organised Crime and Terrorist offences and his/her deputy are appointed by the President for a period of 3 years, renewable once, on a proposal by the Minister of justice, with the opinion of the Superior Council of Magistrates, provided these prosecutors have an experience of minimum 10 years as a judge or prosecutor.*

*(2) The provisions of art. 48 para. (10) - (12) shall apply accordingly.*

*(3) The President of Romania may refuse by a reasoned decision appointments in leading positions mentioned in paragraph (1), stating these reasons in public.*

*(4) The revocation of prosecutors in leadership positions in para. (1) is decided by the President, following a proposal by the Minister of Justice who may act ex officio, or at the request of the general meeting or, where appropriate, of the general prosecutor attached to the High Court of Cassation and Justice, or at the request of the prosecutor heading the National Anticorruption Directorate, with an opinion of the Superior Council of Magistracy, for the reasons referred to in Art. 51 para. (2), which shall apply accordingly.*

*Art. 55 - (1) Appointments to other senior positions in the Prosecutor's Office attached to the High Court of Cassation and Justice and the National Anticorruption Directorate are made for a period of 3 years renewable once, by the Superior Council of Magistrates, on a proposal of the Prosecutor General's Office attached to the High Court of Cassation and Justice or the Chief Prosecutor of the National Anti-Corruption Directorate as the case may be.*

*(2) For candidates to managerial positions in para. (1), a recommendation is necessary from the head of department or, where applicable, from the direction of the Prosecutor's Office attached to the High Court of Cassation and Justice or from the National Anti-Corruption Directorate where the prosecutor is to be appointed.*

*(3) The provisions of art. 48 para. (10) - (12) shall apply accordingly.*

(4) The revocation from the leading prosecutors appointed in accordance with par. (1) shall be decided by the Board of Higher Magistrates, acting ex officio or upon a proposal at the proposal of general prosecutor attached to the High Court of Cassation and Justice or, where appropriate, the Chief Prosecutor of the National Anticorruption Directorate for grounds specified in art. 51 para. (2) which shall apply accordingly.

(5) The proposal under par. (4) may be made ex officio or upon notification by the General Assembly or the heads of departments or, where applicable, the direction of the Prosecutor's Office attached to the High Court of Cassation and Justice or the National Anticorruption Directorate.

130. The GET considers that leaving aside the Prosecutor General, whose position is rather specific, the appointment to the functions of Deputy and deputy chief prosecutor to the Prosecutor General, as well as of chief prosecutors, their deputy(ies) and heads of sections in the two special offices responsible for corruption and organised crime gives a significant role to the executive: they are appointed by the President for a period of 3 years, renewable once, on a proposal by the Minister of Justice. The law does not explicitly provide for a competitive examination nor specific requirements based on merit or other objective considerations, other than a condition of seniority of 10 or more years as a judge or a prosecutor. Moreover, the Superior Council of Magistracy only issues a (non-binding) opinion on the proposal of the Minister. The GET was told on-site that the Ministry of Justice had plans to review the position of the prosecution service as a whole, that the European Commission – in the context of its CVM exercise – expected a more transparent selection of senior prosecutors and the GET noted that the matter remains controversial at the moment, notably due to certain fears that a reform could make things worse whereas Romania was achieving progress in recent years with regard to corruption and other forms of serious crime<sup>21</sup>. In The GET's view, although the individual independence of prosecutors is guaranteed in legislation, the subjection to the Ministry of Justice still bears a risk of undue political pressure, for instance through the renewal of the term of office (limited to three years) and through the mechanism of revocation, which mirrors the appointment process. The GET obtained confirmation that in practice, certain mandates of top prosecutors had not been terminated according to the rules. Giving a binding opinion to the SCM would increase the balance of powers for the appointment, but also revocation, of the prosecutorial positions concerned. Increasing the transparency of the process, through additional selection criteria and a clear merit based-approach would also contribute to ensuring a more objective impartiality (perceived by the public) of the prosecution service. **GRECO recommends that the procedure for the appointment and revocation for the most senior prosecutorial functions other than the Prosecutor General, under article 54 of Law 303/2004, include a process that is both transparent and based on objective criteria, and that the Supreme Council of Magistracy is given a stronger role in this procedure.**

#### *Transfer of a prosecutor*

131. According to art. 3 of the Law no. 303/2004 on the Statute of judges and prosecutors, "(1) Prosecutors appointed by the President of Romania enjoy stability and are independent, according to the law. (2) The prosecutors who are granted stability may not be transferred, seconded or promoted without their consent. They may be delegated, suspended and removed from office only in accordance with the provisions of the present law."

#### *Termination of service and dismissal from office*

132. The situation of senior prosecutors was presented above. For the other categories of prosecutors, the situation was discussed in the chapter on judges. The termination of

<sup>21</sup> See for instance <http://www.nineoclock.ro/mep-macovei-any-attempt-to-modify-chief-prosecutors-appointment-procedure-is-acting-against-romanians-interests/>

service is foreseen in the following cases: a) resignation; b) retirement, according to the law; c) transfer to another office, according to the law; d) professional incapacity; e) as a disciplinary sanction; f) final conviction or the postponement of the application of the penalty of the judge or prosecutor for an offence; f1) dropping of the criminal investigation or of the application of the penalty established by a final decision, when it was decided that remaining in office would not be appropriate; g) violation of the provisions of art.7 on the additional explicit exclusions (e.g. acting as an arbitrator, getting involved into a business through an intermediary) and so on.

133. The removal of a prosecutor from his/her office is decided by the SCM, with the formal endorsement by decree of the President of Romania. The removal from office of junior judges and prosecutors is the sole responsibility of the SCM. A special regime is applicable to military judges and prosecutors.

134. The above decisions of the SCM must be motivated and can be appealed with the SCM on points of law, and subsequently with the High Court of Cassation and Justice.

#### Case management and procedure

135. Unlike the system in place for the courts and judges, the distribution of cases among prosecutors is not done randomly. Cases are assigned to prosecutors according to objective criteria provided in the Regulation of internal organisation of the prosecutors' offices: specialisation, skills, experience, number of files in progress and complexity of these cases, possible situations of incompatibility and conflicts of interest, if they are known, and other special situations. The cases are assigned by the general prosecutor or head of prosecutors' office.

136. Due to the hierarchical organisation of the prosecution service, there is interplay between the prosecutor and his supervisors. Article 64 of the Law no. 304/2004 established that orders must be given in writing. These are binding for the subordinated prosecutors.

137. At the same time, the above article establishes that the prosecutors are independent when they are adopting a solution. The prosecutors may complain to the Superior Council of the Magistracy, within the proceedings for checking the conduct of judges and prosecutors, with respect to any interventions of the hierarchically superior prosecutors, occurring either in the criminal investigation or in the adoption of a solution. The choices made by the prosecutor may be invalidated in a reasoned manner by the hierarchically superior prosecutor, only when they are deemed illegal.

138. The work assigned to a prosecutor may be transferred to another prosecutor only in the following situations: a) in case of suspension or cessation of functions as prosecutor; b) in his or her absence if there are objective reasons to justify the emergency and that prevent that s/he be called back to duty; c) in case of neglect of a file for more than 30 days. The prosecutor concerned may file a complaint against any such decision with the Superior Council of Magistracy.

139. Articles 65 and 66 of the above Law further provide that the control carried out by the Prosecutor General, by the chief prosecutor of the National Anti-Corruption Directorate or by the General Prosecutor attached to a court of appeal, in respect of the subordinated prosecutors may be exercised either directly or through expressly designated prosecutors.

#### Ethical principles and rules of conduct

140. The rules are the general ones described earlier in respect of all magistrates. Principles are contained both in the legislation, in particular Law 303/2004 on the Statute

of judges and prosecutors, and in the Code of Deontology for magistrates adopted in 2005 by the SCM.

#### Conflicts of interest

141. The rules on conflicts of interest are the general ones applicable to all public officials, which were described under the chapter on parliamentarians, with some specific considerations with regard to magistrates in the chapter on judges. As it was pointed out, the concept of conflicts of interest is still a new subject in Romania, which deserves to be promoted through the Code of ethics and increased training and awareness-raising efforts, as recommended in this report for magistrates altogether.

#### Prohibition or restriction of certain activities

142. As it was pointed out in the chapter on judges, there are several sets of legal provisions dealing with prohibitions or restrictions on side activities, and as it was pointed out, Romania needs to increase the consistency of those rules concerning the magistrates.

143. As it was also pointed out in that chapter, the existence of two different sets of rules on gifts – one which concerns accrual of assets for the purposes of the system of declaration of assets and interests and one which concerns specifically protocol gifts – may lead to some confusions. For the time being, a prohibition in principle is not clearly established for judges and prosecutors although it would appear that they follow this policy. But given the realities of daily work, additional awareness raising initiatives, through the Code of Deontology and through training, would provide additional guidance.

144. There are no post-employment restrictions for magistrates, except when a prosecutor has left his/her functions and become a judge: s/he may not provide legal services to the prosecution service where he worked in the last two years.

145. As also already mentioned in the chapter on judges, third party contacts and the use of information have been addressed through regulations prohibiting the disclosure of confidential information (i.e. material specific to a case) to unauthorised parties. Prosecutors may provide public interest data and information directly to the media, according to the Order No. 235/2014, which established the office for public information and public relations of the Prosecutor's Office attached to the High Court of Cassation and Justice, similar offices at the specialised prosecution units and provides for the appointment of spokespersons by each office. Prosecutors may also provide information to the press with the approval of the chief prosecutor only when special presentations are required to explain the technicalities of a case. In 2014, the SCM adopted measures requiring the appointment of spokespersons. It would appear that prosecutors are a particular target of criminals seeking to avert the course of justice by obtaining information from inside. The GET has shared the concerns of the anti-corruption specialists who have pointed i.a. through some case-file analysis to a level of tolerance vis a vis undue requests from colleagues. Magistrates with managerial responsibilities need to be more vigilant on these and other similar matters.

#### *Recusal and routine withdrawal*

146. As it was mentioned in the chapter on judges, recusal and withdrawal basically follow the same rules. Where the prosecutor does not withdraw for a one of the reasons contemplated in the Criminal Procedure Code, s/he can then be recused by a party to the proceedings, including if s/he a) was a representative or a counsel of one of the parties to the trial or of a main trial subject, even in another case; b) if s/he is a relative up to the 4th degree with one of the parties; c) was an expert or witness in the same case; d)

is a guardian or trustee of one of the parties or of a main trial subject; f) there is a reasonable suspicion that the prosecutor's impartiality is impaired.

147. A judge or prosecutor who is in one of the above situations is required to inform the president of the court, or as the case may be, the prosecutor supervising the criminal investigation or the hierarchically superior prosecutor, that s/he withdraws from the criminal proceedings in question. A recusal can be filed on the same grounds against the judge or prosecutor by any of the parties, the main subject of the proceedings, as well as by the prosecutor against a judge.

#### Declaration of assets, income, liabilities and interests

148. The system for the declarations of assets, income and other information has been presented under the chapter on parliamentarians and summarised with regard to judges. Magistrates are required to the same disclosure obligations as parliamentarians and many other public officials exercising some degree of responsibilities in Romania. Declarations are public and centralised by the National Integrity Agency. Romania has put in place an ambitious system in this respect which also takes into account information concerning the spouse and children.

#### Supervision

149. Since they are required to file a declaration of assets and interests on a periodic basis, prosecutors fall under the control of the National Integrity Agency as regards the content of declarations and the detection of possible suspicious increases of the prosecutor's wealth (as well as of any incompatible activity). As pointed out in the chapter on parliamentarians and recalled in the chapter on judges, the NIA needs to play a more proactive role in its work and its data-processing capabilities need to be improved given the high number of officials subjected to the declaration system and the volume of information generated, which is handled mostly in paper format (see the recommendation in paragraph 53).

150. Individual prosecutors are monitored by their hierarchical supervisor as regards the overall functioning of the office to which they are attached. The caseload is discussed and assessed every quarter.

151. As magistrates, and in case they commit a disciplinary offence, prosecutors fall under the responsibility of the Supreme Council of Magistracy, which has a formation dealing specifically with prosecutors. Where an inquiry is needed, it can be conducted by the Judicial Inspectorate, including assessing possible cases where a prosecutor has been confronted with undue pressure or political interference, or where his/her reputation has been tarnished. The GET came to the conclusion that a more responsive approach is needed to address certain risks of corruption in the Romanian judiciary, through additional efforts from the SCM and the magistrates who have managerial responsibilities.

#### Enforcement measures and immunity

152. Prosecutors do not enjoy any form of immunity, except what concerns the authorisation required from the SCM (its section responsible for prosecutors) in order for criminal justice bodies to conduct a search or to apply temporary detention or pre-trial custody measures.

153. Regarding criminal investigations of prosecutors for corruption offences or for offences assimilated to those of corruption, offences which are under the jurisdiction of DNA, the following data were registered during 2012-2014: a) criminal investigations were launched against 28 prosecutors; b) 22 approvals were requested from the Superior

Council of Magistracy (for the pre-trial detention for 24 hours or 29 days or for the search). All of them were granted; c) 29 prosecutors were indicted for having committed offences such as: taking bribe; trading in influence; abuse of office if the public official obtained an undue benefit for himself/herself or for someone else; favouring the perpetrator; conducting financial operations incompatible with their position; using information not meant for publicity; d) 20 prosecutors were convicted to punishments between one and six years imprisonment, mostly without suspension.

#### Training and awareness

154. As candidate magistrates, prosecutors receive the same initial training as judges through the courses of the National Institute of Magistracy. In-service training is mandatory for judges and prosecutors in exercise and, in practice, many attend such training every year. The GET found that these training efforts should take into account, to a greater extent, the needs of the prevention of corruption since the control efforts insufficiently take into account education and prevention.

## **VI. RECOMMENDATIONS AND FOLLOW-UP**

155. In view of the findings of the present report, GRECO addresses the following recommendations to Romania:

*Regarding members of parliament*

- i) that the transparency of the legislative process be improved (i) by further developing the rules on public debates, consultations and hearings, including criteria for a limited number of circumstances where in camera meetings can be held, and ensuring their implementation in practice; ii) by assessing the practice followed and accordingly revising the rules to ensure that draft legislation, amendments to such drafts and the agendas and outcome of committee sittings are disclosed in a timely manner, and that adequate timeframes are in place for submitting amendments and iii) by taking appropriate measures so that the urgent procedure is applied as an exception in a limited number of circumstances (paragraph 21);**
- ii) (i) developing a code of conduct for the members of parliament and (ii) ensuring there is a mechanism to enforce these when it is necessary (paragraph 25);**
- iii) that measures be taken i) to clarify the implications for members of parliament of the current provisions on conflicts of interest independently of whether such a conflict might also be revealed by declarations of assets and interests and ii) to extend the definition beyond the personal financial interests and iii) to introduce a requirement of ad hoc disclosure when a conflict between specific private interests of individual MPs may emerge in relation to a matter under consideration in parliamentary proceedings – in the plenary or its committees – or in other work related to their mandate (paragraph 29);**
- iv) establishing a robust set of restrictions concerning gifts, hospitality, favours and other benefits for parliamentarians, and ensuring that the future system is properly understood and enforceable (paragraph 32);**
- v) i) that an adequate assessment of the rules on incompatibilities, especially their consistency and their enforcement in practice be carried out so as to identify the reasons for the perceived lack of effectiveness, and to make the necessary changes; ii) that ways be found to accelerate and enforce the judicial decisions concerning incompatibilities (paragraph 39);**
- vi) the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process (paragraph 42);**
- vii) that consideration be given i) to further increasing the data-processing capabilities of the National Integrity Agency; ii) to strengthening its proactive approach in the monitoring of declarations of assets and interests (paragraph 53);**
- viii) that the system of immunities of serving parliamentarians, including those who are also members or former members of government, be reviewed and improved, including by providing for clear and objective**



**criteria for decisions on the lifting of immunities and by removing the necessity for prosecutorial bodies to submit the whole file beforehand (paragraph 61);**

- ix) that the parliamentary authorities establish for their members i) a system of counselling through which parliamentarians can seek advice on integrity matters and ii) provide dedicated and regular training on the implications of the existing and yet-to-be adopted rules for the preservation of the integrity of parliamentarians, including the future Code of conduct (paragraph 62);**

*Regarding judges and prosecutors*

- x) that the Code of ethics for judges and prosecutors be complemented in such a way so as to offer proper guidance specifically with regard to conflicts of interest (e.g. examples and/or types), incompatibilities and accessory activities, impartiality and related areas (including notably the acceptance of gifts and other advantages, the conduct in private life) (paragraph 97);**
- xi) that the justice system be made more responsive to risks for the integrity of judges and prosecutors, in particular by i) having the Supreme Council of Magistracy and the Judicial Inspectorate play a more active role in terms of analyses, information and advice and ii) by reinforcing the role and effectiveness of those performing managerial functions at the head of courts and public prosecution services, without impinging on the independence of judges and prosecutors (paragraph 114);**
- xii) increasing the training and awareness-raising efforts with regard to integrity and the preventive components of anti-corruption policies, including for judges and prosecutors in exercise (paragraph 119);**

*Regarding prosecutors specifically*

- xiii) that the procedure for the appointment and revocation for the most senior prosecutorial functions other than the Prosecutor General, under article 54 of Law 303/2004, include a process that is both transparent and based on objective criteria, and that the Supreme Council of Magistracy is given a stronger role in this procedure (paragraph 130).**

156. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Romania to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2017. These measures will be assessed by GRECO through its specific compliance procedure.

157. GRECO invites the authorities of Romania to authorise, at their earliest convenience, the publication of this report, to translate the report into the national language and to make the translation publicly available.

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### **About GRECO**

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe’s anti-corruption instruments. GRECO’s monitoring comprises an “evaluation procedure” which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment (“compliance procedure”) which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: [www.coe.int/greco](http://www.coe.int/greco).

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