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Evaluation Report on Romania

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I. INTRODUCTION

1. Romania was the 19th GRECO member to be evaluated in the First Evaluation Round. The GRECO Evaluation Team (hereafter "the GET") was composed of Mr Didier DUVAL, Head of Division at the Sub-Directorate for Economic and Financial Affairs, Central Directorate of the Judicial Police, Interior Ministry (France, police expert); Mr Carlos RAMOS RUBIO, Prosecutor at the Public Prosecutor's Anti-corruption Office, Fiscalía del Tribunal Superior de Justicia de Cataluña (Spain, prosecution and judicial-system expert) and Mr Georgi RUPCHEV, State expert, Directorate of Legislation, Ministry of Justice and European Legal Integration (Bulgaria, policy expert). The GET, accompanied by a member of the Council of Europe Secretariat, visited Bucharest from 2 to 5 October 2001. Prior to the visit, the GET experts were provided with a comprehensive reply to the evaluation questionnaire by the Romanian authorities (document Greco Eval I (2001) 25).

2. The GET met representatives of the following Romanian governmental organisations: the Ministry of Justice, the Prosecutor's Office at the Supreme Court, the Specialised Unit for fighting corruption and organised crime, the President of the Supreme Court of Justice and the criminal judges, the Ministry for Public Administration, the Senate's Committee on Legal and Disciplinary Affairs and Immunities, the Competition Council, the Ministry of Public Finances (General Directorate of Customs and the Financial Guard), the Prime Minister's Monitoring Department, the Interior Ministry, the General Inspectorate for Police, the Audit Office, the National Office for preventing and combating money laundering, the Ministry of the Privatisation Authority and the Administration of State Partnership.

3. In addition, the GET met representatives from the National Committee for Property Values, the Romanian Chamber of Commerce and Industry, the media and "Transparency International" Romania.

4. It is recalled that, at its 2nd Plenary meeting (December 1999), GRECO agreed that the First Evaluation Round would run from 1 January 2000 and 31 December 2001 and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:

   – Guiding Principle 3 (hereafter "GPC 3"): authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
   – Guiding Principle 7 (hereafter "GPC 7"): specialised persons or bodies dealing with corruption, means at their disposal);
   – Guiding Principle 6 (hereafter "GPC 6"): immunities from investigation, prosecution or adjudication of corruption).

5. Following the meetings indicated in paragraphs 2 and 3 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned, and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the authorities in Romania, and wherever possible their effectiveness, in order to fulfil the obligations deriving from GPCs 3,6 and 7. The report will first describe the situation of corruption in Romania, the general anti-corruption policy, the institutions and authorities in charge of combating it - their functioning, structures, expertise, powers, means and specialisation – and the system of immunities preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis

of the situation described previously, assessing, in particular, whether the system in place in Romania is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Romania, in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

a. The phenomenon of corruption and its perception in Romania

6. After Poland, Romania is the second largest country in central and eastern Europe as for number of inhabitants, with an area of 238,390 km² and 22.5m inhabitants. It is bordered by Ukraine, Moldova, Hungary, the Federal Republic of Yugoslavia and Bulgaria. Following three years of recession from 1997-1999, Romania's economy bounced back in 2000: growth (1.6%) was spurred by a dynamic export sector (+23% in USD), and there was a slight increase in investment and public consumption. According to the information available at the time of the visit, growth was due to be even more sustained in 2001. It stood at 4.9% for the first six-month period, and the Government envisages 4.5% growth for the year as a whole; in any event, growth in 2001 will not be lower than 4%, and the events of 11 September can have only a limited impact on the Romanian economy. This growth is now the consequence of increased domestic demand; household consumption has consolidated (up 7.6% in the first semester), thanks to the increase in real wages observed since the beginning of the year (more than 6%, led largely by the public sector). According to World Bank sources, based primarily on 1999 figures, BNP per inhabitant was 1650€.

i) Criminal Legislation

7. The criminal-law definition of corruption is given in Articles 254-257 of the Romanian Criminal Code, which cover "traditional corruption offences": active bribery, passive bribery, acceptance of undue advantages and trading in influence. Under Article 254 of the Criminal Code, passive bribery occurs when an official[1] directly or indirectly claims or receives money or other advantages that are not due to him or does not reject them in order to accomplish, not to accomplish or delay the accomplishment of an act related to his service duties or in order to act against these duties. This offence is punishable by a prison sentence of 3 to 12 years and the withdrawal of certain rights. Under Article 255 of the Criminal Code, the offence of active bribery involves the promise, offering or handing over of money or other advantages, under the conditions and for the purposes set out in Article 254. The sanction imposed is a prison sentence of 6 months to five years. Under Article 255(2), active bribery is not regarded as an offence where the briber has been constrained by any means by the one who took the bribe. Under Article 255(3), the briber is not punished where he/she voluntarily informs the authorities before the investigation body is informed by another source. In both cases, the money, assets or other property offered by the briber must be returned (Article 255(5)). Acceptance of undue advantages is the act whereby an official directly or indirectly accepts money or other advantages, after having accomplished an act dictated by his/her position and which s/he was obliged to accomplish by the nature of his/her position. It is a separate offence from passive bribery (article 256). The sanction provided for this crime is imprisonment for 6 months to 5 years. Article 257 of the Criminal Code criminalizes (passive) trading in influence, defined as receiving, claiming or acceptance of promises, gifts, directly or indirectly, done by a person who

[1] According to articles 114(5) and 147 of the criminal code, which provide for a large definition of public official, the parliamentarians have to be also included in this definition.

has or lets the other think s/he has enough influence over an employee to make him/her accomplish or fail to accomplish an act that is part of the latter's service attributions.

8. These rules have been supplemented by Law n°78 of 2000 on the prevention, detection and punishment of acts of corruption (hereafter Law 78/2000), which includes a definition of various offences treated as traditional corruption offences (Art. 10-16), and for which attempted crimes are also sanctioned (Art. 15), while for other ordinary offences (Art. 17), the law provides for aggravated sanctions (Art. 18) where there is a direct link between the said offences and corruption offences, so that the penalty for presumed aggravated crimes may be 15 years' imprisonment and the withdrawal of certain rights. The Law also provides for confiscation of money, assets and any other property handed over as an inducement to commit the offence or as a reward for committing it, if these have not been returned to the victim or used to compensate him/her (Art. 19, Law 78/2000). According to the existing legislation, the prescription period for corruption offences ranges from 5 to 10 years; this period is interrupted if the prosecutor's office opens an investigation, there being no need to wait for court action. Law 78/2000 covers prevention as much as elimination of corruption. As already mentioned above, it sets out penalties for actions committed in order to obtain advantages and defined as "offences assimilated to corruption offences" (Section 3), as well as for increasing sanctions for several infractions defined as "offences directly connected to corruption offences" (Section 4). Under the law, corruption offences committed for the benefit of a criminal group or organisation should be punished by increased sanction. The law extends the scope of categories of persons responsible for "classic" corruption offences defined by the Criminal Code and above-mentioned offences defined by the law itself. Thus, the law may be applied partially to private sector corruption[2].

9. Romanian legislation does not recognise the principle of criminal liability of legal entities: consequently, they cannot be held responsible for corruption offences and resulting money-laundering offences. As regards potential active perpetrators of corruption, Law 78/2000 extends the already wide definition of "official" set out in the Romanian Criminal Code (Art. 147.2), which included "public employees" as well as any "employee" working for a private legal entity. The law includes not only public authorities, permanent or temporary officials, whatever their category or title, but also anyone involved in decision-making or in a position to influence it, those providing specialised help in autonomous state services, state-owned companies or national companies and persons with managerial tasks within political parties, trade unions, employers, charitable organisations or foundations, but also persons carrying out the same tasks in commercial companies, co-operatives or other private economic entities and particularly in banking, financial, stock market or insurance companies, and persons who fulfil administrative duties within political parties, trade union, employers, non-profit-making association on foundation.

10. Money laundering was made an offence under Law N° 21 of 1999 on preventing and combating money laundering. The penalty imposed for this type of crime is imprisonment for 3 to 12 years. Under Law 78/2000, criminal offences involving corruption are considered predicate offences in terms of the fight against money laundering.

ii) Preventive measures

11. Law N° 115 of 1996, on the declaration and supervision of the assets of senior officials, judges, officials and managers, requires certain categories of senior officials to declare their assets: in addition, such individuals may be checked by commissions of inquiry, composed of 2 judges and

[2] The relevant laws appear in Appendix I to this report.

1 prosecutor and working within the Courts of Appeal, when a clear discrepancy emerges between the level of assets initially declared and the remuneration received during their period in office. If the commission of inquiry considers that the goods are not legally obtained, it sends the case before the court of appeal. As noted above, Law 78/2000 also covers prevention, and sets out certain specific rules of conduct for the categories of officials concerned. Under the terms of Law n°115/1996, it makes it compulsory for certain persons to declare the amount of their assets and to notify any donation or material gift received in the course of their duties, with the exception of those of "symbolic" value. Law N° 87, on combating tax fraud, was adopted in 1994. Officials' obligations and responsibilities, and the provisions governing their behaviour, are set out in various statutes (Law n°92 of 1992 on administration of the courts, Law n° 80 of 1995 on the charter governing military personnel, Law n°188 of 1999 on the charter governing officials). A code of ethics for the judiciary has been adopted by the Supreme Council of the Judiciary. The Union of Romanian Jurists has adopted a professional charter, equivalent to a code of conduct. Order of urgency n°60 of 2001 sets out the conditions and rules governing public sector calls to tender. This law identifies open competition, transparency and equal treatment as the fundamental principles of the procedure for granting public contracts. Law n°27 of 1996 on political parties governs the financing of political parties. It prohibits anonymous donations amounting to more than 20% of state funding for political parties, donations made for the purpose of economic or political gain, and donations from companies, public organisations and foreign organisations or states. The Auditor's Office is responsible for supervising political parties' financing. Among the measures for preventing and monitoring corruption in public administrations, particular mention should be made of the creation on 3 May 2001 of the Prime Minister's Monitoring Department (see para. 61), co-ordinated by a Minister of State and composed of about fifty persons. This structure was set up by Prime Ministerial order.

iii) International co-operation

12. Article 11(2) of the Romanian Constitution stipulates that international treaties ratified by Parliament are incorporated in domestic law. Romania has signed the Council of Europe's Criminal Law Convention and Civil Law Convention on Corruption, as well as the UN Convention on Transnational Organised Crime. The Romanian Government has submitted both Council of Europe Conventions to Parliament for ratification. The European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and the Convention on the Transfer of Sentenced Persons have been ratified and entered into force. Romania has concluded bilateral agreements on judicial co-operation in criminal matters with Algeria, Armenia, Australia, Belarus, Canada, China, Yugoslavia, Morocco, Syria, the United States and Tunisia. There are no specific treaties providing for co-operation in the field of corruption. The Romanian authorities informed the GET that statistics on extradition and judicial assistance in the field of corruption would become available as of 2002. The Romanian Constitution does not currently permit the extradition of Romanian citizens. Romania has concluded numerous bilateral agreements on police co-operation in fighting organised crime, and two trilateral agreements (one with Bulgaria and Turkey, and the other with Moldova and Ukraine). The Romanian Code of Criminal Procedure includes provisions governing mutual assistance in criminal matters and extradition proceedings. The Government has submitted a draft law to Parliament on extradition, judicial assistance and the transfer of sentenced persons.

iv) Statistics

Final judgments for 1997 – first semester of 2001

Offence	1997	1998	1999	2000	First six months of 2001
Passive bribery	314	215	168	117	59
Active bribery	124	107	57	35	56
Extortion	33	22	13	10	5
Trading in influence	165	190	143	136	74

13. According to the information supplied to the GET, links exist between corruption and organised crime in Romania, but "no more than in other countries in the region, bearing in mind the cross-border nature of this crime and its recent proliferation". On the basis of the above figures, and of information gathered by the GET prior to and during its visit, it seems that, in reality, corruption affects the activities of almost all public institutions in Romania and is a worrying phenomenon. The most serious acts of corruption are directly linked to organised crime, with the attendant risk that government bodies and the judicial system have been infiltrated. In particular, several investigations have outlined the existence of corruption within the Romanian courts and police system, and the levels of satisfaction with these services are the lowest for all public services assessed. According to the Corruption Index 2001, published by Transparency International, Romania lies in 69th place (jointly with Venezuela). The World Bank's 2001 Report on corruption in Romania states, *inter alia*, that 38% of officials were offered bribes in 2000, and that 42% of individuals in contact with public administrations claimed to have been asked, directly or indirectly, to pay bribes or to have offered bribes themselves. Specifically, 16% confessed that someone linked to the administration of justice (usually a lawyer) had demanded that they pay a bribe, and 22% said they had paid a bribe spontaneously. Only 28% of respondents expressed satisfaction with the courts, the lowest for all the public services, and 40% of respondents believed there was no point lodging a complaint; 68% of businesses believed that the slowness of the justice system had caused them harm; 46% thought that they were affected by corruption in the private sector and 37% believed that they were affected by organised crime.

b. Bodies and institutions in charge of the fight against corruption

b1. The police

14. The Romanian police force was reorganised substantially following the 1989 revolution; many employees were replaced. Between 1990 and 1995 the Romanian authorities annually recruited and trained 700 officers and 1000-1500 sub-officers with military status. Staff recruitment is based on examinations followed by a training period of 18 months for sub-officers (this is shortly to be extended to two years) and four years for officers, who attend the Police Academy in Bucharest, ensuring a good academic level and professional police techniques. The teaching staff in the Police Academy includes both police officers and academics. The Police Academy also works in partnership with other so-called "monitoring" departments and equivalent foreign establishments, which gives it at least the appearance of openness and a clear wish to seek constant quality education based on many Western police models.

15. The Romanian police force is composed of 52,000 employees dispersed throughout the national territory, with central, regional (eight administrative regions) and local (42 districts) levels. It is headed by a General Inspector, who is appointed by a decision of the Government upon

proposal of the Ministry of Interior. At the time of the visit, the Romanian police still had military status, but it was foreseen to demilitarise it by the end of 2001.

16. The Romanian police is divided into three sections: public safety, the administrative police and the judicial police. The third section represents about 20% of the total staff, or about 10,000 officials, dealing with 800-900,000 criminal dossiers per year. 1400 of these officials have particular responsibility for fighting economic and financial crime. They receive highly specialised initial training, followed by periods of in-service training intended to provide them with sufficient technical skills to combat this type of crime. The training is validated by professional examinations.

17. Law 78/2000 established specialised units, composed of prosecutors, police officers and other experts in the fight against corruption and organised crime. These police officers are responsible to the judiciary (prosecution service). 128 police officers have been specially trained to fight corruption, and offices have been set up at local level to deal specifically with corruption-related problems.

18. A code of professional ethics for police staff is planned, and the GET was informed that it should be adopted in the course of the first months of 2002. Professional ethics classes have been introduced to police training courses.

19. No police officer may hold the same post for more than five years to ensure that a single individual with decision-making powers cannot be tied to the same post. This rule is not fully applicable when it comes to activities requiring particular specialisation.

20. Several police officers have been prosecuted on suspicion of corruption, but numerous other cases are being investigated at disciplinary level.[3]

21. There exists an internal Investigative Squad within the police. The central service is staffed by 40 people and at local level by 2 to 3 specialised police officers. If, during their internal investigations, these services discover any suspicions of criminal offences exceeding the simple framework of disciplinary infringement, they are obliged to transmit the case to the authorities responsible for criminal prosecution.

b2. Customs administration

22. The customs authority was radically re-organised after the 1989 revolution; since 1993, it has worked in very close co-operation with the European Union, in the context of the Phare programme, and has concluded co-operation and mutual administrative assistance agreements with various countries, such as the USA, Turkey, Yugoslavia, Bulgaria, Ukraine, Switzerland and Moldova. Other bilateral agreements are envisaged with countries such as France, Hungary, Israel, Georgia and the Republic of Korea.

23. As part of the EU integration process, the customs authority has begun the process of modernising the investigation methods introduced since 1997, making it possible, *inter alia*, to monitor movements in transit, draw up statistical reports or collect data to enable fraud risks to be analysed and the figures declared to customs authorities to be verified. This modernisation of customs methods should lead to improved performance in fighting fraud and increased co-

[3] During the year 2001, 140 cases have been investigated by judicial authorities and approximately 3000 have been dealt with at disciplinary level.

operation with other organisations responsible for fighting international crime, such as the police, the tax authorities and, in particular, the justice system.

24. Structurally speaking, the customs authority is composed of 4300 officials, based throughout the country. The General Directorate of Customs is at central level; there are ten regional directorates and 104 local offices. A General Inspectorate Unit exists within the General Directorate of Customs, and is responsible for internal investigations and detecting possible cases of extortion by customs officials.

25. Customs staff are divided between three Units, and recruited through entrance examinations. Customs officials receive initial training directly in the Customs Authority's operational departments, since it does not have a training centre for new officials. It would also appear that the Customs Authority has great difficulty in guaranteeing an adequate mobility for officials, which seems unhelpful in terms of preventing corruption.

26. As a means of preventing corruption among customs officials, the Customs Authority introduced verification of their assets in 1995, effective from the date they take up post. In addition, they must declare the purchase of property or immovable assets within forty-five days if the value of such assets is equivalent to or greater than twenty times the average net salary in force for customs officials. Finally, in addition to the declaration of assets, the Romanian government introduced compulsory tax returns on 1 January 2001, another method of monitoring possible discrepancies between lifestyle and declared legal revenue.

b3. The Romanian justice system and the judicial bodies responsible for fighting corruption

i) The Romanian justice system: principles, appointments, dismissal, penalties, prohibitions, privileges, organisation and training of judges and prosecutors

27. Under its 1991 Constitution (hereafter the "RC"), Romania is a democratic and social state governed by the rule of law, in which the form of government is a Republic (RC, Art. 1), based on the division of legislative, executive and judicial powers, the last being composed of judges who are independent, subject only to the law (RC, Art. 123) and irremovable (RC, Art. 124).

28. In Romania, judges and prosecutors are appointed by the President of the Republic (Art. 124 RC), on a proposal from the Superior Council of the Magistracy (Art. 133, RC, and Art. 47 of Law 92/1992 on the administration of the courts – hereafter "Law 92/1992"). Under Law 92/1992, this proposal is made on a recommendation by the Minister of Justice (Art. 88), who chairs the Council when it meets for this purpose, without however having the right to vote (Art. 133, RC). The President, deputy President, Presidents of sections and judges of the Supreme Court of Justice are appointed under the same procedure, for a renewable period of 6 years (Art. 124, RC).

29. Members of the judiciary (judges and prosecutors) may only be dismissed for reasons set out in law (Art. 92 of Law 92/1992) and may be promoted or transferred only with their consent (Art. 94.1 of Law 92/1992). The President of Romania rules on their dismissal, on a proposal from the Superior Council of the Magistracy (Art. 131 of Law 92/1992). Members of the judiciary (judges and prosecutors) may not belong to a political party or carry out any other political activities (Art. 110 of Law 92/1992), or carry out any other public or private activity, with the exception of educational activities and collaboration with non-political publications (Art. 124.2 of the RC and

Art. 111 and 113 of Law 92/1992). However, they are free to set up and join associations to defend their professional interests (Art. 120 of Law 92/1992).

30. Members of the judiciary (judges and prosecutors) may not be investigated, arrested, detained or charged without the approval of the Minister of Justice (Art. 91.2 of Law 92/1992). Should they request it, the Minister of the Interior is obliged to guarantee protection for judges and their families in the event of threats to their lives, integrity or property (Art. 91.2 of Law 92/1992).

31. The Superior Council of the Magistracy is responsible for disciplinary matters and for issues concerning judges' promotion or transfer (Art. 124.1, RC), but it is the Minister of Justice who decides whether or not a disciplinary measure is to be imposed (Art. 124 of Law 92/1992) and who, as the person responsible for smooth functioning of the courts, has supervisory and administrative powers. Equally, it is the Minister of Justice or the General Prosecutor at the Supreme Court of Justice who open proceedings against prosecutors, but the decision whether or not to do so lies with the Discipline Committee at the Public Prosecution Service, made up of five prosecutors from the Prosecution Service at the Supreme Court of Justice, who are elected for a term of four years from among its members (Art. 127 of Law 92/1992).

32. The most senior body of judicial power is the Superior Council of the Magistracy, composed of 15 judges elected for a term of four years by a joint session of the Chamber of Deputies and the Senate (Art. 132, RC); they are selected from forty-five candidates, nominated by the respective general assemblies of judges and prosecutors at the Supreme Court of Justice and Courts of Appeal (Art. 87 of Law 92/1992). The Superior Council of the Magistracy is chaired by the Minister of Justice, who is not entitled to vote, or, when it is acting as the disciplinary council for judges, by the President of the Supreme Court of Justice (Art. 133.2, RC, and Art. 88 of Law 92/1992).

33. The geographical and functional division of Romanian courts is determined by Law 92/1992 as follows: (1) several (two to six, as appropriate) district courts in each of the 41 administrative districts in Romanian (or about 176 district courts in total), and six others in the state capital, Bucharest (2194 judges); (2) a regional court in each district's main town (41 in total), plus one regional court in Bucharest (933 judges); (3) an Court of Appeal for each judicial district (a total of 15 Courts of Appeal) (458 judges), and (4) the Supreme Court of Justice, the composition and operations of which are governed by a special law (Art. 11 of Law 92/1992).

34. The Romanian State Prosecution Service is part of the judiciary; it represents society's general interests and defends legal order, as well as citizens' rights and freedoms (Art. 130, RC). Under Law 92/1992, the Romanian State Prosecution Service carries out its functions in conformity with the principles of legality, impartiality and hierarchical supervision, in complete independence from the courts (judicial authorities) (Art. 32) and other public authorities. The prosecution service exercises its functions in organise services within each jurisdiction under the authority of the Minister of Justice (Art. 26).

35. The Romanian Public Prosecution Service is organised hierarchically, and exercises its functions through prosecutors attached to prosecution services at each court (Art. 26, Law 92/1992). The most senior figure in the Public Prosecution Service is the General Prosecutor of the Prosecution Service at the Supreme Court of Justice, who is appointed and dismissed by the President of the Republic on a proposal from the Minister of Justice (Art. 40.2, Law 92/1992).

36. The Minister of Justice supervises all prosecutors through the Prosecution Inspectors in the Prosecution Service at the Supreme Court of Justice and prosecution services at Courts of Appeal, or through delegated prosecutors (Art. 34, Law 92/1992). His/her written regulations are binding on all prosecutors when they concern observation and application of the law (Art. 33). On the other hand, the Minister may not order prosecutors to close a criminal investigation that has been opened in accordance with the law (Art. 34). The Minister of Justice decides how all the prosecution services are to be structured and organised, the distribution of offices and how crime detection and criminology units are to be assigned to them upon proposal of the Prosecutor General to the Supreme Court of Justice (Art. 30, Law 92/1992); he/she is also the spokesperson for the State Prosecution Service in budgetary matters.

37. The National Institute of the Judiciary is the public institution, subordinate to the Ministry of Justice, responsible for the specific training of future judges and prosecutors, and for in-service training of judges already in post (Art. 70, Law 92/1992). Specific training for judges lasts from one to two years, in line with the decision taken annually by the Minister of Justice (Art. 75, Law 92/1992). Admission to the National Institute of the Judiciary is the main way of recruiting judges and prosecutors. It is based on a public examination, held annually by the Ministry of Justice; individuals who meet the legally-established criteria on nationality, skills and education are entitled to sit this examination (Art. 46 and 47, Law 92/1992).

ii) Judicial organs and institutions responsible for fighting corruption

38. As a general rule, the district courts have first instance jurisdiction for judging all cases not assigned by the law to other bodies (Art. 20, Law 92/1992). Exceptionally, the regional courts and the Courts of Appeal have first instance jurisdiction for judging all cases assigned to them in the legislation on account of their importance or seriousness, and have second instance jurisdiction for deciding appeals against judgments made at first instance by district courts and regional courts respectively (Art. 23 and 24, Law 92/1992). In particular, the Courts of Appeal have first instance jurisdiction for ruling on offences committed by judges and prosecutors at district and regional courts, with the prosecution service at the Court of Appeal having responsibility for investigating such cases (Art. 28, CCP); the same applies to notaries (Art. 31, Law 36/1995). At second instance, the Courts of Appeal are responsible for appeals lodged against first instance decisions issued by regional courts. For its part, the Supreme Court of Justice, and more specifically its criminal section, has first instance jurisdiction for investigating criminal proceedings initiated against parliamentary Deputies and Senators and for ruling in such cases (Art. 69.1, RC, and Art. 29, CCP), and for ruling on crimes involving members of the Government (in such cases, the Prosecution Service is responsible for the investigation) (Art. 16, Law N°115/1999 and Art. 29, CCP) or involving judges, law officers or prosecutors at the Supreme Court, Courts of Appeal or the military Court of Appeal (Art. 28 and 29, CCP). Equally, in criminal cases and at last instance, the Supreme Court rules not only on appeals concerning points of law, but also on exceptional appeals to quash final judicial decisions in the interests of the law, which may be lodged only by the Prosecutor General of the relevant Prosecution Service.

39. In addition, Law 78/2000 (Art. 29) provides for the setting up of specialised courts for judging corruption offences and similar crimes. This legal provision refers to the option, introduced in Law 92/1992 (Art.15), of setting up specialised judgement units in certain types of cases, in district and regional courts and only where necessary. However, there is no full-time specialised court with jurisdiction for more serious corruption offences, apart from the specific jurisdiction given to

the Supreme Court of Justice's criminal section when parliamentarians, Ministers or judges of a certain category are implicated in a crime.

40. In Romania, the Public Prosecution Service is generally responsible for conducting criminal investigations and for supervising the criminal investigation activities of the police and other bodies to which it may give orders; the Public Prosecution Service may also submit criminal cases to the courts (Art. 27, Law 92/1992). Equally, the Public Prosecution Service is the only body authorised to initiate criminal proceedings before the courts for corruption offences. Should plaintiffs wish to challenge a prosecutor's decision to take no further action in a case, they may only contact his/her hierarchical superior, asking to have the decision in question reviewed for presumed procedural fault or illegality. [4]

iii) The prosecution service unit responsible for fighting corruption and organised crime

41. Specifically, the judicial body with exclusive jurisdiction in criminal investigation of traditional corruption offences is the Public Prosecution Service (Art. 22, Law 78/2000). Within this institution, the specialised unit (Art. 28) set up under Law 78/2000 to prosecute corruption also has exclusive jurisdiction, subject to final hierarchical supervision by the General Prosecutor in the Prosecution Service at the Supreme Court of Justice. This unit is composed of the section at the Supreme Court of Justice, as well as 15 departments in the Courts of Appeal and 41 offices in the regional courts. The Prosecution Service's section for fighting corruption and organised crime, attached to the Supreme Court of Justice, is composed of 20 prosecutors and has two sub-units: the anti-corruption unit and the organised crime unit. The first of these sub-units is itself composed of an internal investigation office and an anti-corruption office, and the second has four offices: drugs and organised crime office, financial, economic and banking crime, violent crime and cyber-crime and EU fraud. These departments and 41 offices employ 120 specialised prosecutors. In carrying out their duties, they are subordinate to the General Prosecutor in the Prosecution Service at the Court of Appeal concerned, but are co-ordinated and directly supervised by the unit for corruption and organised crime. Within this specialised unit at the Prosecution Service, work is allotted to prosecutors on the basis of their specialisation and the complexity of cases.

42. About a hundred prosecutors, working in the Prosecution Service's specialised corruption unit, are receiving on-going internal training within the Prosecution Service at the Supreme Court of Justice and the National Institute for the Judiciary. They also follow EU, Council of Europe and UN training programmes (PHARE, OCTOPUS I and II, FALCONE, TEMPUS) on preventing transnational organised crime, and various bilateral training programmes (with Spain and the USA), which guarantee an appropriate level of professionalism and specialisation in carrying out these essential tasks.

43. At the request of the General Prosecutor in the Prosecution Service at the Supreme Court of Justice, the bodies responsible for prosecuting and detecting corruption and similar offences may delegate, for a year, the specialists needed to carry out the procedural formalities authorised by law, under the direction, surveillance and direct supervision of prosecutors from the anti-corruption and organised crime unit (Art. 28.4, Law 78/2000). To the same end, Law 78/2000 (Art. 28.5) also allows for financial, banking, customs and other specialists to participate in the work of this specialised unit in the Prosecution Service at the Supreme Court of Justice. Similar

[4] The Constitutional Court decided that as from 1998, prosecutors' decisions to take no further action in a case may be challenged in court under Art. 21 of the Constitution concerning free access to justice. A draft amendment to the Code of Criminal Procedure is being finalised, which sets out the procedure for challenging such decisions in court.

collaboration, respecting each body's specific features, is planned for the Public Prosecution Service's specialised territorial offices and departments (Art. 28.6, Law 78/2000). The GET was informed that insufficient numbers of specialists have been delegated from other public bodies to the Public Prosecution Service, and that in any case the system lacks sufficient stability to guarantee effectiveness.

44. The judges who compose the specialised courts for judging corruption, the prosecutors in the corruption and organised crime unit, departments and offices, and the specialists attached to the Prosecution Service enjoyed specific economic benefits, notably a bonus of 30% over and above the basic salary (Art. 29.2, Law 78/2000). This provision was abolished at the end of the year 2000.

b4. Procedure and investigation methods in corruption cases

45. As general rule, the Romanian legislation provides that the police begin investigations into criminal acts, and their investigation finishes at the point where the criminal investigation begins; the latter is entirely conducted by the Public Prosecution Service. This body decides whether or not a case should be pursued (whether there are enough convincing elements to bring criminal proceedings). The average duration of criminal proceedings is two years. Within the prosecution service, superiors may give orders only as regards conformity in applying the law. Thus, if a hierarchically lower prosecutor does not agree with his/her superior's decision to halt proceedings – a decision that is always taken in writing – he or she may appeal this decision to a prosecutor at a more senior grade to the person who made the decision to halt proceedings in this particular case.

46. The Romanian criminal justice system is based on the principle of legality and the proceedings are strictly governed by law (Art. 51, RC, and Art. 2, CCP). The system does not contain the option of negotiating, or of obtaining collaboration from a suspect or convicted person in exchange for acquittal, reduction in sentence or protection. However, in conformity with Art. 74 (c) of the Romanian Criminal Code, the fact of facilitating discovery or the arrest of the participating persons in the achievement of the offence, can be retained as being an extenuating circumstance for the author. On the other hand, the Romanian Criminal Code (Art. 255.3) does not punish a briber who admits his/her offence to the authorities before the matter is referred to the Public Prosecution Service by other means; in addition, it accepts the fact that an offender and his/her crime are only minor social dangers as an extenuating circumstance in deciding the sentence, how it is to be executed or the substitution of an alternative to imprisonment. In Romanian criminal law, investigation and proceedings are protected by judicial secrecy.

47. The Romanian Code of Criminal Procedure, which entered into force on 1 January 1969, was amended many times after 1989; the more important changes have been made in 1992, 1993, 1998 and 2001. A committee of experts at the Ministry of Justice is currently drawing up a new draft code.

48. As regards investigation methods into corruption and organised crime, and following various assessments and recommendations to this end, Romania has undertaken to introduce legislative provisions allowing for the use, alongside traditional methods, of other methods that are specially adapted to the fight against corruption (Art. 27, Law 78/2000), such as surveillance of bank accounts and deposits, surveillance and monitoring of telephone lines or access to information systems. At the same time, a draft law to allow appropriate protection for witnesses and experts, and staff infiltration as part of investigations and proceedings into corruption offences has not yet

been adopted. However, the Romanian Criminal Code penalises the use of threats and violence, or any other means of coercion to prevent witnesses, experts, interpreters and lawyers giving evidence, whether in criminal, civil or disciplinary proceedings (Art. 261, CC).

49. Anonymous complaints and evidence may not be accepted as evidence in a criminal trial or used to justify the opening of an investigation (Art. 25.3, Law 78/2000, and Art. 83, CCP). However, the fact that the Public Prosecution Service and the Prime Minister's Monitoring Department may act ex officio means that anonymous complaints may be taken into consideration where they seem plausible.

50. Banking and professional secrecy may not be used to refuse co-operation with the bodies responsible for criminal investigation of corruption (Art. 26, Law 78/2000). However, the professional confidentiality of lawyers and their associates, colleagues or subordinates is guaranteed except for cases expressly provided by the law (Art. 10, Law 51/1995 and Art. 5, 2001 Order).

51. During its evaluation visit to Romania, the GET learnt from various sources that supervisory operations and, in particular, investigations into corruption offences face difficulties on account of shortcomings in the legislation on conserving, filing and archiving official documents. Although the Criminal Code sets out penalties of up to five years' imprisonment for such acts, items of this sort are destroyed relatively frequently in order to conceal acts of corruption that would entail a more serious penalty.

52. In carrying out their work, the judicial authorities and prosecution services have at their disposal a police force made available by the Ministry of the Interior (Art. 129, RC, and Art. 143, Law 92/1992). The GET was informed that 128 police officials with university degrees had received specialised training in various fields (finance, customs, computing), so that they could be delegated to the Prosecution Service, where they investigated acts of corruption under the prosecutors' orders and supervision.

53. There is an Office responsible for centralising, analysing and using data on corruption and organised crime; under the direct authority of the prosecutor in charge of the Specialised Unit in the Public Prosecution Service, it gathers information provided by the Prosecution Service's departments and offices or transmitted by the various organisations involved in fighting corruption and organised crime.

b5. Other organisations and institutions

54. There are other bodies in Romania, which, while not directly involved, play an important role in preventing and detecting instances of corruption. In this respect, it is essential to refer to the Financial Guard, the National Office for Preventing and Combating Money-Laundering, the Prime Minister's Monitoring Department, the Competition Council and the Competition Office.

i) The Financial Guard

55. The Financial Guard, composed of about 1500 staff based throughout the country (eighty in Bucharest and fifteen to twenty people in each of Romania's 42 districts) is a body responsible for fighting tax fraud. The National Director and Deputy Director are appointed by the Finance Minister.

56. The legal framework for this body's investigations is tax proceedings, but under the rules of Romanian criminal procedure, it can and must forward to the State Prosecution Service information about criminal fraud discovered during its administrative supervision. Thus, this body makes a considerable contribution at institutional level to fighting corruption in Romania. On average, three thousand cases are forwarded each year to the Romanian Prosecution Service in its entirety; many concern corruption or related crimes.

57. It should also be emphasised that the Financial Guard frequently works with other services such as the police or the Money-Laundering Office.

ii) National Office for Preventing and Combating Money-Laundering

58. This inter-ministerial and multi-disciplinary structure was set up in 1999. It is composed of seven representatives, one from each of the following bodies:

- the Finance Ministry
- the Ministry of the Interior
- the Ministry of Justice
- the Prosecution Service at the Romanian Supreme Court
- the national bank
- the Audit Office
- the Association of Romanian banks.

59. The Office is responsible for receiving and analysing information forwarded to it by professionals who are legally bound to disclose instances of suspected laundering (Art. 8, Law 21/1999). Two types of information are involved:

- information about suspicious transactions;
- information about cash transactions of more than 10,000€.

60. The GET noted that 80% of the information forwarded to the Office currently comes from banking institutions[5]; notaries ("notarii") are undoubtedly forwarding little data (2 reports of suspicious transactions) as well as casinos (8 reports of suspicious transactions). It should be noted that, as well as receiving information, the Office may request information directly from any administration.

61. The Law setting up the Office in 1999 did not refer to the offence of laundering the proceeds of corruption, but this was added to the Romanian legislation by Law 78/2000. Since this Law's adoption in 2000, the Office has uncovered a number of cases of corruption, particularly as regards adoption, financial administration in Bucharest and the customs administration, and has forwarded these to the justice system.

iii) The Prime Minister's Monitoring Department

62. This department has ex officio authorisation to check any form of legal violation within governmental structures, ministries or other specialised bodies subordinate to the Government or Ministers, in accordance with Law 90/2000 on the structure and operations of the Romanian

[5] During 2000, the Office received 157 reports of suspicious transactions, of which:
a) 130 were submitted by banks;
b) 10 were submitted by financial organisations other than banks;
c) 17 were submitted by checking and supervision bodies.

Government and Ministers. In particular, it is responsible for checking and monitoring activities related to corruption and organised crime, and must inform the Prime Minister directly of the outcome of its work. This department's reports are accepted as evidence under the legislation on proceedings. It is obliged to preserve any evidence or clues found during its work, and to transmit them to the bodies responsible for prosecuting crime. Between April and October 2001, the department carried out about sixty direct checks.

iv) The Competition Council and the Competition Office

63. These two structures were set up in 1997. The Competition Council is an independent administrative body made up of ten members, a chairperson, three vice-chairpersons and six advisers. Members of this Council are appointed by the President of Romania on the basis of a joint proposal from the Senate Economic Committee and the Economic Committee for the Economic Policy, Reform and Privatisation of the Chamber of Deputies. They are appointed for a term of five years, which may be renewed no more that twice.

64. In accordance with the legislation[6], the Competition Council monitors the transparency and legality of competition rules, including and especially the placing of public sector orders, an area which is particularly sensitive in terms of corruption and associated crimes.

65. The Chair of the Competition Council has similar status to a Minister. He/she may order investigations where suspicions exist that the competition regulations have not been observed, and may appoint rapporteurs for such tasks.

66. The Competition Office is a specialised administrative authority working to ensure observance of the competition regulations. Subordinate to the Government, it has legal personality, and is led by a Head of Office. The Office has a central unit, based in Bucharest, and local bodies at district level, composed of Competition Inspectors and specialised employees. The latter carry out investigations to ensure, *inter alia*, that public procurement conforms to the legislation. They prepare reports and studies on public procurement and provide information to the government and the Competition Council.

c. Immunities in the field of investigation, prosecution and punishment of corruption

67. Like most national judicial systems, Romanian legislation provides for two sorts of immunity:

- firstly, "non-liability" for members of parliament ("freedom of speech") (Art. 70, RC) in proceedings concerning votes cast or opinions expressed during their parliamentary term of office, and
- secondly, "inviolability" ("immunity from arrest") for several categories of people who may not be arrested, detained or prosecuted without the agreement of the relevant body.

68. The extent of inviolability is directly linked to application of Guiding Principle 6.

69. Under the Romanian Constitution and Romanian law, several categories of people enjoy immunity from detention, criminal prosecution or appearance before the courts in case of offences committed.

[6] Law n°21 of 1996 on competition.

70. Members of the Romanian parliament (deputies and senators) may not be detained, arrested, searched or prosecuted for crimes and offences without the authorisation of the Chamber to which they belong. The Romanian authorities claim that the term "prosecution" covers only appearance before the courts and that parliamentarians do not enjoy immunity with regard to other activities related to preliminary investigations, such as questioning. Detention and searches are authorised where a parliamentarian is caught *flagrante delicto*. In such cases, the Speaker of the Chamber concerned must be rapidly informed of the facts by the Minster of Justice and the detained parliamentarian must be released immediately where no grounds are found for these measures (Art. 69, RC).

71. The procedure for withdrawing an MP's immunity is governed by the Rules of Procedure for the two Chambers of Parliament. Under the Chamber of Deputies' Rules of Procedure, the Justice Minister's role is limited to sending an application, citing reasons, to the Speaker of the Chamber, requesting that the immunity of the parliamentarian concerned be withdrawn. The Speaker of the Chamber informs the deputies about this application, which is then transmitted for examination to the Committee for Legal Affairs, Discipline and Immunity. The Committee's decision must be reached by a majority of its members, voting secretly, within 30 days of the application's submission. The Committee's report must be transmitted to the relevant parliamentary group, which then gives its opinion in a written report, again within a 30-day period. These two reports are then submitted for approval to the Chamber of Deputies, which will rule on the application within three months; the decision must be reached by a majority of two thirds of its members, voting secretly (Art. 180-184 of the Rules of Procedure of the Chamber of Deputies). The Senate decides by a majority of the number of its members, voting secretly. There have been no applications to date to withdraw immunity from a deputy or senator for corruption.

72. The President of Romania also enjoys immunity. The scope of this immunity is not explicitly defined by the Constitution, which does nonetheless provide for a prosecution procedure in the event of high treason (Art. 84 of the Constitution).

73. Under Art. 108(2) of the Constitution, only the Chamber of Deputies, the Senate or the Romanian President may apply for criminal proceedings against members and former members of the Government pertaining to actions carried out in the exercise of their functions (including corruption offences). Law N° 115 of 1999, on the Liability of Ministers, sets out the procedure for initiating criminal proceedings against members of Government. The Chamber of Deputies or the Senate will debate the possibility of starting criminal proceedings, on the basis of a report drawn up by a standing committee responsible for analysing the government's activities. The Chamber concerned must reach its decision through a vote by the majority of its members. The Romanian President applies for criminal proceedings against a Minister on proposal of a special committee, composed of five members appointed by the Ministry of the Interior and the Ministry of Justice. In both cases, the applications are transmitted to the Minister of Justice. Once criminal proceedings have been commenced against Ministers who are also deputies or senators, the procedure to withdraw immunity set out in the Rules of Procedure must be initiated at the same time.

74. Members of the judiciary (judges and prosecutors) may not be prosecuted or detained, arrested, searched or brought before the courts without the opinion of the Minister of Justice (Art. 91(2), Law N° 92/1992 on the administration of the courts).

75. Notaries ("notarii") enjoy the same immunity as judges. According to Art. 3 of Law no 36/1995 on notaries, notaries perform a service of public interest and have the status of an autonomous function. The acts performed by notaries are acts emanating from the public authority and have

weight of evidence as provided by law (Art. 4) The Minister of Justice is the competent person as regards decisions to withdraw notaries' immunity (Art. 31).[7]

76. The Romanian Constitution and Romanian legislation, including the Code of Criminal Procedure, identify the bodies and investigation structures with responsibility for initiating proceedings as regards actions by these categories of people. Parliamentarians (deputies and senators) and members of the Government may only be investigated on the order of the General Prosecution Service at the Supreme Court of Justice, and this court has exclusive jurisdiction in judging them. Judges, prosecutors and notaries may only be investigated by the Prosecution Service at the Court of Appeal or at the Supreme Court of Justice, and these courts have exclusive jurisdiction in judging them.

III. ANALYSIS

a. General policy on corruption

77. During its visit, the overwhelming majority of those who met the GET spoke out firmly against corruption and based their work on a vast range of legislative and statutory texts, most of them recent, dating from 1995 to 2000, (a demonstration of the Romanian parliament's willingness to move Romania, a country in economic and political transition, towards a democracy based on the rule of law and transparency). In recent years, the Romanian government has taken a particular interest in eliminating corruption, certainly an important problem in terms of Romania's democratic and economic development. In terms of international commitments, this interest has resulted in actual or promised signature or ratification by Romania of various treaties on corruption and organised crime, and participation in various international programmes and evaluation processes, including some organised by the Council of Europe and the European Community. At national level, this interest has led to promulgation in May 2000 of Law N° 78 on the prevention, detection and punishment of acts of corruption, ("Law 78/2000"), a sign of substantial qualitative progress with regard to: (1) the definition of crimes treated as or linked to traditional corruption offences, and more severe penalties for perpetrators; (2) widening the range of potential active perpetrators of such offences; (3) creating a specialised unit for criminal prosecution of those committing such crimes. However, we should also note other legal standards intended to prevent corruption, via: (a) introducing codes of conduct for the authorities and officials, and strengthening the latter's obligation to denounce corruption to the relevant institutions or organisations; (b) up-dating the regulations in corruption-sensitive sectors, and (c) creating specific bodies for investigation and internal supervision within the public administrations.

78. The GET noted that Law 78/2000 created a specialised unit within the Romanian Public Prosecution Service responsible for prosecuting corruption offences, under the final hierarchical supervision of the General Prosecutor in the Prosecution Service at the Supreme Court of Justice. All public and private organisations, including the police, are obliged to forward to this specialised body any information they receive about acts constituting corruption offences. The GET was able to consult the data on (1) final criminal sentences handed down by the Romanian courts for corruption offences, (2) investigations begun into such crimes by the Romanian Public Prosecution Service's unit for combating corruption and organised crime and (3) police measures in this field. Here, it noted that in the first half of 2001, 194 persons in total were sentenced for the four traditional corruption offences. As the Romanian authorities, the GET points out, that

[7] "Notaries cannot be prosecuted, searched, detained, arrested, brought to court without the opinion of the Minister of Justice for all acts directly linked to the performance of his/her professional duties."

compared to previous years, the number of convictions for trading in influence remained the same, while convictions for the other offences fell slightly, with the exception of passive corruption, which has increased (56 convictions in the first six months of 2001, compared to 35 for 2000 as a whole). In addition, in spite of the fact that in new Prosecution Service's specialised unit is working in a reasonably consistent way throughout the country (294 files), the GET noted that these efforts have not yet been reflected in a significant increase in the number of convictions compared to previous years (probably because the unit has been operational for barely a year). In particular, they have not uncovered high-profile cases of corruption insofar as the position of persons involved is concerned, or the value of the networks used. Finally, in the GET's opinion, the figures provided by the police do not allow to make valid conclusions for this report, since the number of corruption offences reported to the prosecution service in the first half of 2001 – about 9000 – was surprisingly high compared to the number of files being dealt with by the prosecution service.[8]

79. Turning to the prevention of corruption, the GET notes that Law 78/2000 imposes an obligation on all public authorities and officials, regardless of category or title, to exercise their functions or tasks in strict accordance with the legislation and codes of professional conduct; these functions or tasks may not be used to acquire money, assets or unlawful benefits. However, the GET observes that the effectiveness of this rule is weakened by the fact that the rules on disqualification from office applicable to staff in certain authorities and civil servants have not been up-dated. In addition, the GET points out the obligation for the highest Romanian authorities to declare their assets as set out in Law N°115 of 1996 (Art. 3, Law 78/2000). Moreover, the Romanian Criminal Code (Art. 263) imposes penalties of up to seven years' imprisonment for failure by civil servants and those persons who carry out supervision activities, to report information on criminal activities to the judicial authorities, and Law 78/2000 makes it compulsory for individuals in supervisory positions to inform the Prosecution Service or the relevant administrative organ, as appropriate, of any information indicating that a corruption offence may have been committed, and to protect, preserve and make available to these authorities evidence of such offences (Art. 23). Law 78/2000 also states that the fact of meeting these obligations in good faith does not amount to violation of professional or banking secrecy and entails no civil, criminal or disciplinary liability. In connection with prevention, the GET refers to other texts mentioned in paragraphs 7 to 10.

80. In view of the above, the GET noted the existence of the Romanian authorities' clear willingness to attack firmly corruption in the country that caused the setting up of a sizeable and fairly comprehensive legislative framework. Nevertheless, corruption's impact on Romanian public institutions is a reality, recognised also by the Romanian authorities; the phenomenon is all the more worrying in that it affects two institutions most needed in combating this criminal phenomenon, namely the justice system and the police. In this respect, the GET recalls that any attempt to evaluate the effectiveness of the punitive and judicial mechanisms' ability to react to the threat of corruption assumes the existence of detailed statistics on detecting offences, their nature, prosecutions and sanctions imposed. Accordingly, the GET recommended to the Romanian authorities to seek to obtain more precise information about the scale of corruption in the country, by conducting the relevant research in order to understand how this phenomenon affects two key state institutions, such as the police and justice systems, and its possible causes,

[8] It should be pointed out that the apparent contradiction between the data provided by the police and those provided by the Prosecution Service could be explained by the different methods of recording offences. In effect, police statistics are based on the number and type of offences, whereas the statistics provided by the Prosecutor's Office are based on the number of people accused (charged).

with the intention of adopting specific solutions to eliminate it or at least restore it to acceptable levels.

81. The GET also emphasised that several of the existing investigations are based on indices of perception of corruption by certain social and economic operators; consequently they are not immune from a certain margin of error. However, even if those in contact with Romanian public institutions have a disproportionate perception of corruption levels, the situation remains discouraging. In any event, the investigations referred to reveal a loss of Romanian public confidence on the part of certain citizens in certain public institutions, and in political figures, authorities and officials. In this respect, the GET was informed by various sources that it is common in Romania to blame assumed corruption by the authorities or officials for an unfavourable decision in administrative or judicial proceedings. This distrust, while not entirely justified, is an obstacle to the success of the measures taken for preventing and fighting corruption. This distrust may be linked with the problem identified in the SPAI Assessment Report of the complexity and lack of transparency of administrative procedures. It makes it even more essential to conduct targeted research to assess the real scale of the problem, and to implement an appropriate preventative policy based on education and information for all officials and for Romanian society as a whole, so that everyone is aware of their rights and obligations. Consequently, the GET recommended that a specific detailed programme be introduced, for the purpose of:

- raising public awareness of the danger that corruption represents for the stability of democratic institutions and economic and social progress;
- informing the public about the measures adopted to combat corruption, the penalties that may be imposed for it and the institutions involved in fighting corruption which may be contacted by the public;
- involving the media and non-governmental organisations in a co-ordinated awareness-raising campaign;
- raise awareness of the Civil Service Law (no 188/1999) among all civil servants in order to make them more aware of its requirements of corruption;
- reduce the scope of administrative powers and enhance the transparency of administrative procedures.

b. Legislation

82. Although co-ordinated criminalisation of national and international corruption (Guiding Principle 2) is not part of this evaluation, the GET nonetheless examined closely the definition of corruption offences under Romanian legislation, insofar as this is directly linked to the scope of the standards set out in guiding principles 3, 6 and 7. As already emphasised, the GET was able to observe that the Romanian government was making considerable attempts to prevent and combat it. In this respect, the GET took note with satisfaction the adoption of Law 78/2000 as an extremely positive move, in that it has helped to improve and up-date the legal definition of corrupt behaviour by widening the circle of potential active perpetrators, a step which will undoubtedly help in avoiding legal vacuums or shortcomings in the area of sanctions against perpetrators of corruption. In the GET's view, the efforts made to up-date the regulations in all sensitive sectors, especially tax evasion, money-laundering, the financing of political parties and public procurement, are equally encouraging. Similarly as for the introduction of the obligation of declaration of assets imposed to senior public figures and other authorities. However, according to the GET, the various legal measures adopted to prevent corruption should contain more specific references, applicable to all cases of conflict of interest between public activities and

profit-making private activities, which, so far as the GET could check during its visit, are not provided for in the relevant texts. The GET observed that it would be appropriate to up-date the legal framework for disqualification from office currently applicable to members of the various authorities and the civil service, radically limiting the opportunities of private activities which, by their nature, are perceived by Romanian public opinion as being incompatible with the dignity and objectivity that should characterise the exercise of public responsibilities.

83. In this context, the GET was particularly concerned about the duality of lawyer and elected representative which prevails in Romania. In the GET's view, in corruption cases in particular, this situation is detrimental notably because of the influence that a lawyer may have in his/her role as elected representative, during the investigation or the hearing, which could jeopardise the fundamental principles of law, particularly that of equality of arms between the parties. This influence (real or assumed) may be remunerated, through the freely-set fees that the lawyer receives for defending the case. Consequently, the GET recommended that Romania consider the possibility of preventing conflicts of interest by placing limitations on the functions of lawyer when a person is elected to representative office (deputy or senator) at national level.

84. The GET noted that Romania has adopted criminal legislation, applying not only to traditional corruption offences, but also to certain acts that could be considered similar or linked to corruption. However, certain shortcomings in Romanian legislation could still compromise implementation of the standards in guiding principles 3, 6 and 7. Firstly, the GET observes that corruption of foreign officials or of members of international organisations, international courts, foreign public assemblies and international parliamentary assemblies is not classified as a criminal offence. In addition, acceptation of undue advantages or trading in influence, are classed as criminal offences (Art. 256 and 257 of the Criminal Code), but their "active" forms are not classed as offences. Further, the exemption of liability of the briber in the case of "effective repentance", in spite of the fact that could be considered as a mean of gathering evidence and initiating criminal proceedings against officials who accept bribes, could lead to abuses or weaknesses in the implementation of Art. 255 of the Romanian criminal code (active corruption) above all when this exemption of liability is accompanied, in certain cases, by returning the illicit assets to the briber. In the GET's view, Romanian legislation is geared towards prevention and punishment of passive rather than active corruption. Even if, the constitutional provision guarantees the implementation of international treaties which have been ratified and have entered into force, the Romanian legislation as regards definition of corruption offences should be an obstacle to extradition and legal assistance in cases where the requirement of dual criminal liability is observed. Finally, as already stated (para. 9), legal entities cannot be held responsible for corruption offences in Romania. In this respect, the GET noted that it would be appropriate to amend the legislation and adopt provisions allowing for liability on the part of legal entities for offences of corruption.

c. Investigations and proceedings in the field of corruption

85. The GET points out that, since it concerns financial activities and challenges the liability of public servants (leading politicians, members of the parliament and the judiciary or individuals responsible for public sector tasks), the fight against high-level corruption is conducted directly by judges from the Prosecution Service. These specialised judges are assisted by a multi-disciplinary team of officials from the police and the finance administration. 128 police officers, specialised in fighting economic and financial crime, have also been seconded from the Ministry of the Interior and made available to the Prosecution Services. The police and judicial authorities met by the GET, announced their positive appreciation of this system that is producing

convincing results in terms of judicial effectiveness, and is enabling the judges responsible for investigations to be constantly associated with the most important procedural acts.

86. Giving the fact that the police is an institution actively involved in fighting corruption, the GET underlines that it is essential to warn and react effectively to the risks of corruption among police staff. The GET recalls in this context that three simultaneous measures should be conducted systematically to prevent corruption. The first, administrative, involves the quality of recruitment, and the policies for transfers and career development. The second, of ethical nature, involves professional ethics, introduced from the initial training stage and pursued via awareness-raising activities throughout a staff member's career matched by irreproachable ethical behaviour on the part of hierarchical superiors. Finally, the third approach is financial, and involves the level of staff remuneration.

87. Insofar as the first item in this preventive trio, namely administrative measures, is concerned, the GET underlines the high level of requirement of the tests of access to police, the transfer policy on every police official at least once every five years, the existence of career development programmes based on professional merits.

88. In terms of the second approach, ethical measures, the GET noted the setting up of flexible working hours classes, starting from the initial training in police schools, in order to educate future police officers of all grades about respect for the rules of the police profession and about the risks run by giving in to corruption. Throughout a police officer's career, he/she receives refresher courses on professional ethics. In this context, the GET noted that, at the time of the visit, a code of ethics for staff at the Ministry of the Interior was under preparation and that a special department at the Ministry of the Interior monitored the risks of deviance by police officials. Since the beginning of 2001, this department had referred nine official to the justice department for corruption.

89. Finally, as regards the economic factor, the GET heard numerous testimonies according to which it is a particularly delicate problem, the statistics showing that in many cases of police corruption, the weakness of salaries is considered as one of the causes of malpractice. The GET is of the opinion that the absence of appropriate remuneration appears as one of the main risk of corruption of police officers in Romania.

90. The GET recalls that manifestly insufficient salaries may risk to contribute to corruption for the purpose of economic survival, and encourages the drain of elite staff into the private sector or abroad. It seems clear that the salary rates for police officers in Romania (3-4 million lei per month, or 130€) are, in the GET's view, generally inadequate compared to those for other categories of officials, including judges, alongside whom many police officers work on a daily basis. While it seems natural that the vast majority of judges should be better paid, the GET considers that a significant difference in salary can be unfair. Accordingly, the GET recommended to consider the possibility that, within budgetary constraints, the salaries of police officers responsible for administrative checks and judicial investigations should be increased. However, this measure would have to be extended to all severely disadvantaged civil servants, insofar as the budget will permit.

91. The GET noted a lack of specialised training in preventing and combating corruption for employees in the customs administration. This institution plays an important role in this field, and is considered as one of the most vulnerable sectors. Therefore, the GET recommended that

training centres be set up to ensure initial and in-service training for customs officials, and to develop a sense of professional ethics.

92. The GET welcomes with interest the creation of a specialised unit at the Prosecution Service, which has been set up in accordance with the spirit and the letter of guiding principle 7. Having said that, the GET considers that the objections outlined below concerning none-compliance by the Romanian Prosecution Service in general with the standards set out in guiding principle 3, notably its dependence vis-à-vis the executive, may be applied in full to this specialised body. Moreover, the GET is unable to express a precise opinion as regards this measure's tangible effectiveness. The data on the number of convictions for corruption offences and the investigations conducted by the Prosecution Service's specialised corruption unit in the first six months of 2001 are undoubtedly insufficient in themselves to evaluate the progress of the Romanian justice system's fight against this blight. It can be deduced from this data that the cases of offences prosecuted are relatively rare. On this point, the GET recalls the experience of other countries to confirm that the establishing of such a specialised investigation and prosecuting body is a suitable reply against a situation of widespread corruption. In addition to that, the GET emphasises that, in Romania, the unit has only been in operation for less than two years, and these results should be assessed in the light of these considerations. The GET notes that the Romanian Prosecution Service's specialised unit took charge of all cases of corruption, not only those of a certain scale. Accordingly, while, in principle, the number of staff seems adequate (about 140 for the country as a whole), some local services would need more than three prosecutor's posts. Moreover, the GET recalls that anticorruption structures to operate effectively, must have an adequate number of specialists, and be supported by other public bodies with jurisdiction in sensitive areas (finance, the stock market, taxation). On this point, the GET learnt from various sources that the level of collaboration from other public bodies is not always adequate. In addition, the fact that specialised prosecution employees are seconded for one year a short period means that there is insufficient stability and commitment to enable them to carry out the tasks with which they are entrusted.

93. Accordingly, at this stage the GET considers it appropriate to recommend that the Romanian authorities maintain and strengthen the prosecution service's specialised unit for fighting organised crime and corruption, by assigning it the necessary extra financial and human resources, especially in terms of specialised staff seconded from other public bodies whose secondment shall be extended in order to ensure more stability. This strengthening of the prosecution service's specialised unit should take place in those parts of the country where, due to the number of cases pending and reasonable predictions, the number of prosecutors is already inadequate.

94. The GET considers that the gulf between the actual rate of corruption in Romania and the public's subjective perception of this rate shows a generalised lack of trust. The GET considers that this is the result of the absence, already criticised, of a clear legislative text in the field of conflicts of interest between the public and private spheres and the lack of transparency in numerous administrative and judicial procedures, particularly as regards public-sector contracts and privatisation. The GET recommended to strengthen the capacity of the Public Procurement Department of the Ministry of Finance or, preferably, to create an independent Public Procurement Office. The evaluation team remained puzzled as to the privatisation process for Romanian enterprises. On the one hand, the department of privatisations underlined that there were no judicial cases that could call into question the smooth functioning of privatisation process. At the same time, the police and financial administration services reported to the GET a number of cases that strongly contradict this information. The GET noticed a "grey area"

surrounding these privatisation operations, and considers that it would certainly be appropriate to improve vigilance in these operations. Consequently, the GET observes that it would be appropriate to re-examine the Romanian administrative and judicial procedures, which, given the considerable economic interests at state, may increase the likelihood of corruption; this should be done by making the procedures, as well as the reasons of the decision taken, public.

95. The GET notes that the Romanian Constitution and legislation provide adequate guarantees, generally speaking, for the independence of the courts and the immovability of judges. The Superior Council of the Magistracy, as a body composed of judges elected by Parliament and invested with disciplinary, transfer and promotion powers, meets the criteria of guiding principle 3.Furthermore, the room for intervention granted to the Minister of Justice by the legislation to chair and direct discussions at the Superior Council of the Magistracy, although he/she does not have the right to vote, and may conduct administrative inspections of the courts and their organisation does not fully correspond to these criteria. He/she has the right to impose disciplinary sanctions on judges and prosecutors, although he/she does not apply them, and may give permission for them to be investigated, judged and placed in detention; finally, he/she is head of the institution responsible for their initial and on-going training. Moreover, the GET noted with concern that judges at the Supreme Court of Justice are appointed for a renewable period of 6 years. This reduced period of time is not justified, if compared to that of judges of other courts: in particular, it is unjustified if we consider that the Supreme Court of Justice is responsible for judging parliamentarians and government ministers. The possibility of extending their terms of office could be used in a self-seeking way and to harm their independence.

96. For all these reasons, the GET considers it appropriate to recommend that, in order to better guarantee the necessary independence for the judicial bodies responsible for judging, corruption offences, the Romanian authorities introduce the legislative reforms to restrict the Minister of Justice's powers to intervene in the supervision of judges, and to provide guarantees regarding the immovability of the judges at the Supreme Court of Justice, without affecting the possibility of placing a time-restriction on the post of president or deputy president of this Court.

97. The GET considers that the supervisory powers enjoyed by the Minister of Justice upon members of the Prosecution Service do not allow for satisfactory application of the criteria in guiding principle 3; this has greater impact in the Romanian procedural system than in other comparable systems. In Romania, prosecutors have a monopoly on criminal investigations and exclusive rights in terms of bringing criminal proceedings before the courts. In the light of these considerations, the simple banning, even expressly imposed to the Minister of Justice, stating that he may not order suspension or dropping of an investigation, seem inadequate, given that it is this Minister who proposes the appointment of the General Prosecutor in the Prosecution Service at the Supreme Court (the hierarchical superior to all other prosecutors who may overturn their decisions). In addition to that, the Minister of Justice has powers to give written instructions directly to prosecutors or through the General Prosecutor to initiate, within the conditions provided by law, criminal proceedings with respect to offences which are brought to his/her knowledge.

98. Accordingly, in order to guarantee the necessary independence of the authorities responsible for investigating and prosecuting corruption cases, the GET believes it important to recommend that the Romanian authorities adopt the necessary legislative reforms so as to reduce the Minister of Justice's possibility of inappropriate intervention vis-à-vis prosecutors.

99. Finally, the GET evaluated generally positive the proceedings and investigation methods related to corruption activities, provided by the Romanian system, in particular the legal instruments aimed at encouraging admissions of guilt and the attempts to up-date the provisions concerning investigation methods, within the respect of Romania's constitutional safeguards. The most serious forms of corruption in Romania are associated with organised crime. This makes it necessary to use all investigation methods and means for gathering evidence of the offence, within the limits imposed by the obligation to safeguard fundamental rights.

100. It is precisely for this reason that the GET recommended strongly that the Romanian authorities speed up the process of adopting the draft law on the protection of witnesses, and including the protection of experts in it, in criminal proceedings, and making possible the use of uncovered agents during investigation of corruption cases. Equally, given that these investigations frequently require up-dating and examination of all official documents related to public acts suspected of corruption, the GET recommended that the Romanian authorities undertake legislative and administrative reforms in order to guarantee and adequate system of conservation and archiving of the administrative documents and files and to prevent their destruction.

d. Immunities

101. The circle of officials or leaders (President of Romania, deputies, senators, judges and notaries) enjoying immunity from prosecution under the Romanian Constitution and legislation is theoretically delimited by the standards in guiding principle 6. Article 20(2) of the Law on Ministers' Liability grants immunity both to ministers in office and to former ministers (only the Chambers of Parliament and the Romanian President are entitled to request criminal proceedings against current or former members of government for crimes committed during their terms of office). The GET considers that immunity for former members of government is incompatible with guiding principle 6. Accordingly, the GET recommended that the national legislation be amended so as to restrict the categories of persons enjoying immunity from criminal proceedings (the genuine immunity guaranteed to former ministers seems incompatible with the standards set out in guiding principle 6).

102. The GET also noted that the problems concerning the scope of inviolability and the rules of procedure for withdrawing immunity, which are outlined below, call into question their compatibility with guiding principle 6: the proposal to withdraw immunity does not come directly from the Public Prosecution Service. The Minister of Justice, a political figure, is the only authority entitled to decide to request that immunity be withdrawn, regardless of the prosecution service's opinion: he/she thus has discretionary powers in this area. Under the procedure set out in the Law on Ministers' Liability, members of government enjoy *de facto* immunity, protecting them from any judicial or criminal investigation. It would also appear that immunity for judges and notaries, provided for in certain laws, is also applied to preliminary investigation proceedings. Consequently, the scope of immunity for (former) ministers, judges, prosecutors and notaries is wider than that available to members of parliament. Under the procedure established by the Law on Ministers' Liability, a proposal to begin criminal proceedings against members of government is not made by the Public Prosecution Service but, when the request has come from the President, by a committee that is itself composed of members of government.

103. The Romanian authorities confirmed that parliamentary candidates do not enjoy immunity. It should be noted that deputies' and senators' mandates are not suspended prior to parliamentary elections. In the event of re-election, the immunity is extended throughout the following term in office without interruption. This situation has an undeniable potential for permanent obstruction of

the judicial system. We note that the introduction of immunity to Romania, in the form of inviolability, has provoked bitter debates within civil society. The need to limit the current extent of immunities appears to be a matter of political consensus.

104. Accordingly, the GET recommended that the national legislation be amended to guarantee that the decision to initiate the procedure to withdraw immunity or to begin criminal proceedings is based on the Prosecution Service's conclusions.

IV. CONCLUSIONS

105. In recent years, the various Romanian governments have generally been greatly concerned by the problem of corruption, and have made considerable efforts to prevent and combat it. In terms of international undertakings, Romania has signed and in some cases already ratified various treaties on the fight against corruption and organised crime, and has played an active role in implementing several evaluation programmes. Domestically, these efforts have resulted in the introduction of a relatively extensive, and exhaustive, legislative framework, providing the authorities responsible for preventing and combating corruption with a number of effective tools to conduct their tasks to greater effect. Reference should also be made to the promulgation of Law N°78/2000 on the prevention, detection and punishment of corruption offences, and the considerable work being carried out to up-date the regulations in all other sensitive areas (tax evasion, money laundering, financing of political parties, public procurement).

106. Nonetheless, despite this clear willingness on the part of the Romanian authorities to eliminate corruption, the phenomenon of corruption in Romanian daily life is undeniable, and confirmed by a series of official sources and fairly detailed data and investigations. In particular, this information reveals a loss of confidence on the part of certain Romanian citizens in their public institutions and political leaders, authorities and officials. This distrust, although not entirely justified, certainly represents an obstacle to the success of the measures adopted to prevent and fight corruption. The undoubted reality of corruption offences in Romania is all the more worrying in that the institutions most implicated in fighting corruption, namely the police and the justice system, are also affected by the phenomenon.

107. In view of the above, the GRECO submits the following recommendations to Romania:

i) to obtain more precise information about the scale of corruption in the country, by conducting the relevant research in order to understand how this phenomenon affects two key state institutions, such as the police and the judiciary, and its possible causes, with the intention of adopting specific solutions to eliminate it or at least restore it to acceptable levels;

ii) that an explicit and detailed programme be introduced to:

- raise public awareness of the danger that corruption poses for the stability of democratic institutions and for economic and social progress;
- inform the public about the measures taken to fight corruption, the sanctions that may be imposed in corruption cases and the institutions involved in fighting corruption, which the public may contact;
- involve the media and non-governmental organisations in a co-ordinated awareness-raising campaign ;

- raise awareness of the Civil Service Law (n° 188/1999) among all civil servants in order to make them more aware of its requirements on corruption;
- reduce the scope of administrative powers and enhance the transparency of administrative procedures.

iii) to consider the possibility of preventing conflicts of interest by placing limitations on the functions of lawyer when a person is elected to representative office (deputy or senator) at national level;

iv) to consider the possibility of increasing, within budgetary restrictions, the salaries of police officers responsible for administrative checks and judicial investigations. However, this measure would have to be extended to all disadvantaged civil servants, insofar as the budget will permit;

v) to set up training centres for customs officials, to ensure initial and in-service training and to develop a sense of professional ethics;

vi) to maintain and strengthen the prosecution service's specialised unit for fighting organised crime and corruption, by assigning it the necessary extra financial and human resources, especially in terms of specialised staff seconded from other public bodies whose secondment shall be extended in order to ensure more stability. This strengthening of the prosecution service's specialised unit should take place in those parts of the country where, due to the number of cases pending and reasonable predictions, the number of prosecutors is already inadequate;

vii) to strengthen the capacity of the Public Procurement Department of the Ministry of Finance or, preferably, to create an independent Public Procurement Office;

viii) in order to better guarantee the necessary independence for the judicial bodies responsible for judging corruption offences, the Romanian authorities introduce the legislative reforms to restrict the Minister of Justice's powers to intervene in the supervision of judges, and to provide guarantees regarding the immovability of the judges at the Supreme Court of Justice, without affecting the possibility of placing a time-restriction on the post of president or deputy president of this Court;

ix) to undertake the necessary legislative reforms so as to reduce appropriately the Minister of Justice's powers of intervention vis-à-vis prosecutors in order to guarantee the necessary independence of the authorities responsible for investigating and prosecuting corruption cases;

x) to speed up the process of adopting the draft law on the protection of witnesses, and including the protection of experts in it, in criminal proceedings, and making possible the use of uncovered agents during investigation of corruption cases;

xi) to undertake legislative and administrative reforms in order to guarantee an adequate system of conservation and archiving of the administrative documents and files and to prevent their destruction;

xii) to amend the national legislation so as restrict the categories of people entitled to immunity from criminal prosecution (genuine inviolability, guaranteed *inter alia* to former ministers, seems incompatible with the standards set out in guiding principle 6);

xiii) to amend the national legislation to guarantee that the decision to initiate the procedure to withdraw parliamentary immunity or to begin criminal proceedings is based on the Prosecution Service's conclusions.

108. Moreover, the GRECO invites the authorities of Romania to take account of the observations made by the experts in the analytical part of this report.

109. Finally in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of Romania to present a report on the implementation of the above-mentioned recommendations before 31 December 2003.

APPENDIX I

Criminal Code of Romania

Art. 254. - The deed of the employee who, directly or indirectly, claims or receives money or other advantages that are not due to him or does not reject them in order to accomplish, not to accomplish or delay the accomplishment of an act related to his service duties or in order to act against these duties, is punished by 3-12 years jail and interdiction of certain rights.

The deed mentioned in paragraph 1, if it was committed by an employee having control attributions, is punished 3-15 years jail and interdiction of certain rights.

The money, values or any other goods that were the object of bribe are confiscated, and if they cannot

be found, the convict is obliged to pay their equivalent in money.

Art. 255. Promising, offering or giving money or other advantages, in the ways and with the purposes shown in art. 254 are punished by 6 months-5 years jail.

The deed mentioned in the previous paragraph is not considered crime when the briber has been constrained by any means by the one who took the bribe.

The briber is not punished if he informs the authorities of his deed before the investigation body is announced of the crime.

The provisions of art. 254 paragraph 3 are enforced accordingly, even if the offer has not been accepted.

The money, values or any other goods are returned to the person who gave them in the cases described in paragraphs 2 and 3.

Art. 256. - Acceptance by an employee, directly or indirectly, of money or other advantages, after having accomplished an act dictated by his position and which he was obliged to accomplish by the nature of his position, is punished by 6 months-5 years jail.

The money, values or any other goods received are confiscated, and if they cannot be found, the convict is obliged to pay for their equivalent in money.

Art. 257. - Receiving or claiming goods or other advantages, or acceptance of promises, gifts, directly or indirectly, for oneself or for another, done by a person who has or lets the other think he has enough influence over an employee to make him accomplish or fail to accomplish an act that is part of the latter's service attributions, is punished by 2-10 years jail.

The provisions of art. 256 paragraph 2 are enforced accordingly.

Art. 258. - The provisions of art. 246-250 regarding the public employees are also enforced on the other employees, in this case the maximum punishment being reduced by one third.

APPENDIX II

Law on prevention, detection and sanction of corruption offences

The Parliament of Romania adopts the following law.

CHAPTER I

General provisions

Art. 1 – (1) This Law stipulates measures on the prevention, detection and sanction of corruption offences and is applied to the following persons:

a) persons in a public position, irrespective of the manner they received that position, within the public authorities or public bodies;
b) persons having - temporarily or permanently, according to the law - a position or a task in the decision-making procedure or may influence the decisions within the public services, independent state companies, business entities, national companies, national enterprises, co-operative entities or other business organisations;
c) persons having supervision competences, according to the law;
d) persons providing specialised assistance to the entities mentioned in par. a) and b), as long as they take part in the decision making procedure or may influence the decisions;
e) persons that, irrespectively of their capacity, carry out, supervise or provide specialised assistance, as long as they take part in the decision making procedure or may influence the decisions regarding: capital circulation operations, banking operations, currency exchange or credit operations, placement operations with stock exchanges, insurance companies, mutual placements or regarding the bank accounts and those assimilated to the said, domestic or foreign business transactions;
f) persons having a leading position in a political party or body, trade union, management body, non-profit association or foundation;
g) other natural persons, besides those specified in par. a) to f), under the legal regulations.

CHAPTER II

Special behavioural provisions on certain classes of persons in order to prevent the corruption offences

Art. 2 – Persons mentioned in Art. 1 are obliged to fulfil the obligations belonging to their status, attributes or tasks, under the strict observance of laws and professional norms, and to ensure the preservation and implementation of the natural rights and interests of the citizens without making use of their positions, attributes or tasks for gaining - for themselves or for third persons - money, goods or other undue benefits.

Art. 3 – (1) Persons specified in Art. 1, par. a), as well those running a leading position – starting from the director (inclusive), upwards - within the independent state companies, national companies, national enterprises, business entities where the state or an authority of the local public administration is a shareholder, public bodies involved in the privatisation process, the National Bank of Romania, the banks where the state is the majority shareholder, have the obligation to declare their personal fortune, according to Law no. 115/1996 on the declaring and control of personal fortune of public officers, magistrates, public employees or leading position persons.

(2) Failure to submit the personal fortune statement by the persons specified in par. (1) shall have as a result the *ex-officio* control procedure over their fortune, according to Law no. 115/1996.

Art. 4 – (1) Persons specified in Art. 1 par. a) and c) have the obligation to declare, within 30 days from the date of reception, any direct or indirect donation or gift received in connection to the running of their positions or attributes, excepting those having a symbolic value.

(2) The stipulations of Law no. 115/1996 referring to the manner of submitting the personal fortune statement will also apply to the case mentioned at paragraph (1).

CHAPTER III

Offences

SECTION I

Categories of offences

Art. 5 – (1) According to this law, the corruption offences are those acts mentioned in Art. 254 – 257 of the Criminal Code, as well as the offences provided for in special laws, as the specific manners of the offences incriminated by Art. 254 – 257 of the Criminal Code, depending on the capacity of the persons who commit the offences or with regard to whom the offence is committed, or according to the areas of activity where they are committed.

(2) According to this law, offences assimilated to corruption offences are the offences stipulated in Art. 10-13 herein.

(3) The provisions of this law shall be also applied to the offences specified in Art. 17, directly connected to the corruption offences or those assimilated to them.

SECTION II

Corruption offences

Art. 6 – Offences such as receiving bribe, incriminated by Art. 254[9] in the Criminal Code, giving bribe, incriminated by Art. 255[10] in the Criminal Code, receiving undue benefits, stipulated at Art. 256[11]

[9] Passive corruption, incriminated by the Romanian Criminal Code, provides as follows: "The act of the public officer who, directly or indirectly, asks for or receives money or other goods, to which he would not otherwise have been entitled or accepts the promises of such goods or does not reject them, for the purpose to accomplish or not to accomplish or to delay the accomplishing of a document regarding his/her job duties or for the purpose to make a document contrary to his/her duties is punished with imprisonment from 3 to 12 year (...).

[10] Active corruption, incriminated by the Romanian Criminal Code, provides as follows: the promises, the offer or giving of money or other goods by the means showed in Art.254 and with these purposes, are punished with imprisonment from 6 months to 5 years.

[11] The receiving of undue goods, as those stipulated in the Romanian Criminal Code, provides the following: The receiving by a public officer, directly or indirectly, of money or other goods after the accomplishing of a document according to his/her position and for which he/she was obliged according to this reason, will be punished with imprisonment from 6 months to 5 years.

in the Criminal Code and trafficking of influence stipulated at Art. 257[12] in the Criminal Code will be punished according to the mentioned legal provisions.

Art. 7 – (1) The criminal offence of receiving bribe, mentioned at Art. 254 in the Criminal Code, if it was committed by a person who, according to the law, has attributes of detection or sanction of the offences or attributes of detection, tracking or judging related to the offences, will be punished with the penalty specified at Art. 254 par. 2 in the Criminal Code on the offences committed by a public officer having supervision attributes.

(2) The criminal offence of giving bribe committed with regard to one of the persons at par. (1) or to a public officer having supervision attributes will be punished by the penalty in Art. 255 in the Criminal Code, whose maximum length will be increased by 2 years.

(3) The offences of receiving undue benefits and trafficking of influence, if committed by one of the persons at par. (1) and (2), will be punished with the penalty specified at Art. 256 and Art. 257 respectively, in the Criminal Code, whose maximum length will increase with 2 years.

Art. 8 – The provisions of Art. 254 – 257 of the Criminal Code shall be also applied to managers, directors, administrators and auditors of the business entities, national companies and enterprises, independent state companies and other business organisations.

Art. 9 – In the case of offences incriminated by this section, if committed to the benefit of a criminal company, association or group or one of their members, or in order to influence the negotiations over the international business transactions or international exchanges and investments, the punishment provided by the law for those offences will be increased with 5 years.

SECTION III

Offences assimilated to corruption offences

Art. 10 – Five to fifteen years detention and deprivation of some rights shall be the punishments applied to the following acts, if committed with a view to obtaining for self or for other person, money, goods or other undue benefits:

a) a lower amount, established with intention, as compared to the real business value, for the goods belonging to companies where the state or an authority of the local public administration is a shareholder, committed within the privatisation process or related to a business transaction, or for goods belonging to the public authorities or public organisations within an action of selling of the said, committed by the persons having leading, administration or management positions.

b) credit or subvention granting despite the law or crediting norms and failure to supervise, according to the law or crediting norms, the destinations contracted for the credits or subventions or failure to track the overdue credits;

c) use of credits or subventions for other purposes than those for which these were granted.

[12] The trafficking of influence, as those stipulated in the Romanian Criminal Code, provides the following: "Receiving or asking money or other goods or accepting promises, gifts, directly or indirectly, for him/her or for the other person, performed by a person who has influence let the other the impression that he/she has it, to a public officer to determine him/her to make or not to make a document which enters in his/her job duties, will be punished with imprisonment from 2 to 10 years.

Art. 11 – (1) The act of the person who, through his/her position, attributes or tasks, has the duty to supervise, control or wind up a private company, to run a certain procedure, mediate or help with certain business or financial operations performed by the private company or to participate with capital in this private company, if such acts results directly or indirectly in undue benefits, will be punished with 2 to 7 years imprisonment.

(2) If the act mentioned at par. (1) was committed within 5 years from the ceasing of the position, attributes or task, the punishment will be of 1 to 5 years imprisonment.

Art. 12 – 1 to 5 years imprisonment shall be applied to the following acts, if they are committed with the scope to obtain, for self or for other person, money, goods or other undue benefits:

a) financial operations performed as business acts, incompatible with the position, attributes or tasks that a person has, or financial transactions concluded by using the information obtained due to that position, attributes or tasks;

b) direct or indirect use of information that was not destined for the public or permission of access of unauthorised persons to that information.

Art. 13 – The act of the person who has a leading position in a political party or organisation, trade union or non-profit association or foundation and uses his/her authority or influence for obtaining money, goods or other undue benefits for self or for third parties, will be punished with 1 to 5 years imprisonment.

Art. 14 – If the acts incriminated by Art. 12 and 13 are committed under the circumstances of Art. 9, the maximum length of punishment will be increased with 3 years.

Art. 15 – The attempt to commit an offence incriminated by this section shall also be punished.

Art. 16 – If the acts stipulated in this section represent, under the Criminal Code or other special laws, more serious offences, these will be punished according to the provisions established therein.

SECTION IV

Offences directly connected to corruption offences

Art. 17 – The following acts are, within the meaning of this law, directly connected to the corruption criminal offences or those assimilated criminal offences, stipulated by Art. 10 – 13:

a) concealing goods resulted from committing one of the offences at sections 2 and 3, as well as aiding the persons who committed such an offence;
b) associating for committing one of the offences incriminated by sections 2 and 3 or par. a) in this article;
c) forgery and use of forgery with a view to hiding one of the offences at sections 2 and 3 or committed for achieving the goal aimed at by such an offence;
d) abuse of authority against the public interest, committed with a view of achieving the purpose aimed by one of the offences incriminated by sections 2 and 3;
e) money laundering offences incriminated by Law no. 21/1999 on prevention and sanction of money laundering, when the money, goods or other values come from an offence stipulated in sections 2 and 3;

f) smuggling of goods coming from one of the offences stipulated in sections 2 and 3 or committed for achieving the purpose aimed at by such an offence;
g) offences incriminated by Law no. 87/1994 for preventing the fiscal evasion, committed in connection with the offences stipulated by sections 2 and 3;
h) fraudulent bankruptcy and other offences incriminated by Law no. 31/1990 on business companies, as amended and completed, committed in relation with the offences stipulated by sections 2 and 3;
i) trafficking of drugs, failure to observe the gun and ammunition regime, trafficking of persons for prostitution purposes, committed in relation with an offence stipulated in sections 2 and 3.

Art. 18 – (1) The offences incriminated by Art. 17 par. a) to d) shall be punished according to the Criminal Code in case of such offences, the maximum length being increased with 2 years.

(2) The offences stipulated by Art. 17 par. e) shall be punished in the same conditions prescribed by Law no. 21/1999 on prevention and sanction of money laundering, the maximum length being increased with 3 years.
(3) The offences stipulated at Art. 17 par. f) shall be punished according to Law no. 141/1997 on Romanian Customs Rules, the maximum length being increased with 3 years in case of simple smuggling, and with 5 years in case of qualified smuggling.

(4) The offences stipulated at Art. 17 par. g) shall be punished according to Law no. 87/1994 on fiscal evasion, the maximum length being increased with 2 years.

(5) The offences stipulated at Art. 17 par. h) shall be punished according to Law no. 31/1990 republished, the maximum length being increased with 2 years.

(6) The offences stipulated at Art. 17 par. i) shall be punished accordingly, in conformity with the penalties stipulated in Art. 312, 279 or 329 of the Criminal Code.

SECTION V

Common provisions

Art. 19 – In the case of the offences referred to in this chapter, the money, values or any other goods given in order to determine the committing of an offence or to pay the perpetrator or the things acquired by committing the offence, if not returned to the damaged person and not used for reimbursing that person, they will be confiscated; if such goods cannot be found, the perpetrator will be sentenced to pay their equivalent in cash.

Art. 20 – In the case of the offences stipulated in this chapter, the insurance measures are compulsory.

CHAPTER IV

Procedural provisions

SECTION I

General provisions

Art. 21 – (1) The offences stipulated by this law as corruption criminal offences or corruption-assimilated criminal offences or offences directly connected to corruption criminal offences, if they are *flagrans crimen*, they shall be pursued and judged according to the provisions of the Art. 465 and 467-479 of the Criminal Procedure Code.
(2) If the offences stipulated at paragraph (1) are not *flagrans crimen*, the inquiry and trial will be carried out according to the common law.

Art. 22 – The inquiry will be compulsorily conduct by the prosecutor, in the case of offences stipulated in section 2 of chapter III.

SECTION II

Special provisions on the detection and investigation of offences

Art. 23 – (1) The persons having attributes of control are obliged to inform the inquiry body or the offence-detection body with legal competences, as the case may be, on any data leading to indices showing that an illicit operation or act was committed under the provisions of this law.
(2) The persons having attributes of control are obliged, during the control procedure, to insure and preserve the offence evidence, bodies of evidence and any other evidence that may help the legal proceeding bodies.

Art. 24 – The persons mentioned in Art. 1 par. e), who are informed of operations related to capital circulation or other activities mentioned in Art. 1 regarding money, goods or values that are supposed to come from corruption criminal offences or assimilated criminal offences or from offences related to corruption criminal offences, have the obligation to inform the legal inquiry bodies or the legal offence-detection bodies or the legally empowered control bodies.

Art. 25 – (1) The *bona fide* accomplishment of the obligations stipulated in Art. 23 and 24 does not represent an infringement of the banking or professional secret and shall not result in criminal, civil or disciplinary liability.

(2) The provisions of paragraph (1) will also apply even if the inquiry or trial lead to ceasing of criminal proceedings , non suit or discharge of liability or to acquittal.

(3) Anonymous information shall not be considered.

(4) The *mala fide* failure to perform the obligations specified in Art. 23 and 24 represent an offence and shall be punished according to Art. 262 of the Criminal Code.

Art. 26 – The banking and professional secret are not opposable to the inquiry legal bodies, courts or Court of Accounts.

Art. 27 – (1) When serious indices exist regarding the committing of one of the offences stipulated by this law, for gathering the evidences or identifying the perpetrator, the prosecutor may order, for maximum 30 days:

a) supervision of bank accounts and assimilated accounts;
b) interception or hearing of phone calls;
c) access to information systems
d) transmission of certified or written documents, such as banking, financial or accounting documents;

(2) For justified reasons, such measures may be extended by the prosecutor, by a motivated ordinance, each extension not exceeding 30 days.
(3) During the trial, the court may order by a motivated decision the extension of these measures.

Art. 28 – (1) The Department for the Prevention of Corruption and Organised Crime is established by this Law, functioning within the Prosecutors' Office attached to the Supreme Court of Justice, as a specialised structure at national level in this field.

(2) Services for the Prevention of Corruption and Organised Crime are set up within the Prosecutor's Offices attached to the Court of Appeal and Offices for the Prevention of Corruption & Organised Crime are established within the Courts, as specialised territorial structures in this field. The activity of such offices and services is co-ordinated and supervised by the Department for the Prevention of Corruption & Organised Crime.

(3) The Department for the Prevention of Corruption and Organised Crime set up within the Supreme Court of Justice, as well the services and offices mentioned in par. (2) shall, according to the Criminal Procedure Code and other special laws, pursue the corruption criminal offences stipulated by this Law, as well the criminal offences committed under the circumstances of organised crime. Also, the Section shall manage and supervise the proceedings run by the Police and other bodies involved in the detection and legal investigation of such offences, while controlling whether the procedures of those bodies comply with the regulations.

(4) In order to ensure an immediate and thorough process of detection and investigation of the corruption offences and assimilated offences provided in this law, at the request of the General Prosecutor of the Prosecutor's Office within the Supreme Court of Justice, the bodies having competencies in finding and pursuing such offences shall delegate for one year, the necessary number of persons trained in this field, for carrying out the procedural documents required by the law, under the direct supervision and control of the prosecutors of the Department for the Prevention of Corruption & Organised Crime, within the Prosecutor's Office attached to the Supreme Court of Justice.

(5) In order to clear up some technical aspects, various specialists in banking, finances, customs and other similar fields may act along with the Department for the Prevention of Corruption & Organised Crime, within the Prosecutor's Office attached to the Supreme Court of Justice, under the provisions of paragraph (4).

(6) The provisions of paragraph (4) and (5) shall be applied accordingly to the structures specialised in corruption and organised crime prevention operating at regional level.

(7) The Department for the Prevention of Corruption and Organised Crime within the Prosecutor's Office attached to the Supreme Court of Justice, together with the corresponding regional structures shall also gather, analyse and operate their own information or information received from other structures involved in the fight against corruption and organised crime; as a result, a data base in the field of corruption offences and organised crime being set up.

(8) The structure and the staff registers of the Department for the Prevention of Corruption and Organised Crime within the Prosecutors' Office attached to the Supreme Court of Justice and of the regional structures shall be established according to Law no. 92/1992 on judicial organisation, republished with the subsequent modifications.

Art. 29 – (1) Specialised panels may be set up under Art. 15 of Law no. 92/1992 for judicial organisations, republished with the subsequent modifications, dealing with the corruption offences and assimilated offences.

(2) The judges of the specialised panels, the prosecutors functioning in The Department for the Prevention of Corruption and Organised Crime within the Prosecutor's Office attached to the Supreme Court of Justice and regional services and offices, and the persons mentioned in Art. 28 par. (4), (5) and (6), shall receive, among other incomes, a 30% bonus on the basic salary.

SECTION III

Common provisions

Art. 30 – The final judgement sentencing or discharging may be published in the central newspapers or in the local newspapers, as mentioned in the court decision.

Art. 31 – The provisions of this Law will be completed, as regards the inquiry and trial, with the provisions of the Criminal Procedures Code.

CHAPTER V

Final provisions

Art. 32 – When judicial acts are concluded despite the provisions of this Law, Art. 14-22 of the Criminal Procedures Code are applicable.

Art. 33 – Any provisions contrary to this Law are abrogated.

This Law was adopted by The Deputy Chamber and by The Senate in the common session on April 12th 2000, with the observance of the stipulations of Art. 74 paragraph (1) and Art. 76 paragraph (2) from the Romanian Constitution.

THE PRESIDENT OF THE DEPUTY CHAMBER
ION DIACONESCU

THE PRESIDENT OF THE SENATE
ULM SPINEANU

Bucharest, May 8th 2000

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