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Evaluation Report on Romania

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I. INTRODUCTION

1. Romania is the 23rd GRECO member to be examined in the Second Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") visited Romania from 21 to 25 February 2005. It was composed of Mr Jean-Marie LEQUESNE, Chief Superintendent, Federal Police Service, Directorate General of Police (Belgium), Mr Inam KARIMOV, Principal Advisor, Department for the Co-ordination of Entities for Law Enforcement, Executive Bureau of the President of the Republic (Azerbaijan), and Mr Pierre-Christian SOCCOJA, Secretary General of the Central Service for the prevention of Corruption (France), and was accompanied by a member of the Council of Europe secretariat. Prior to the visit the GET experts had received a comprehensive reply to the Evaluation questionnaire (Greco Eval II (2004) 16F), excerpts from legislation and other relevant documents.

2. The GET met representatives of the following authorities: the Private Office of the Prime Minister; the Ministry of Justice; the Ministry of Administration and the Interior (the Central Unit for Reform in Public Administration and the Public Policies Unit); the Ministry of Public Finances (the National Customs Authority, the National Tax Administration Agency, the Department for the Preventive Supervision of Finances and the Financial Guard); the Ministry of Transport, Construction and Tourism; the Ministry of Defence; the Ministry of Health; the Central Analysis Group of the National Crime Prevention Board; the Supreme Council of the Judiciary; the High Court of Cassation and Justice; the National Anti-Corruption Prosecution Office; the Prosecutor's Office at the High Court of Cassation and Justice; the Prosecutor's Office at the Bucharest Law Court; the Property Investigation Commission; the Trade Registration Office; the Police Department: the National Office for Preventing and Combating Money-Laundering Operations; the Auditor-General's Department; the People's Advocate; the National Supervisory Authority; the National Committee for Property Values; and the Disciplinary Board of Bucharest Local Council. The GET also met representatives of the National Agency of Civil Servants; the National Union of Romanian Bar Associations; the Federation of Chartered and Approved Accountants of Romania; the Chamber of Commerce and Industry; Transparency International; Freedom House; the Romanian Academic Society; the Public Policies Institute; the Open Society Foundation; and a journalist from the Centre for Investigatory Journalism.

3. It is recalled that GRECO agreed at its 10th Plenary meeting (July 2002), in accordance with Article 10.3 of its Statute, that the evaluation procedure would deal with the following themes:

   - **Theme I - Proceeds of corruption**: Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 para. 3, 13 and 23 of the Convention;
   - **Theme II - Public administration and corruption**: Guiding Principles 9 (public administration) and 10 (public officials);
   - **Theme III - Legal persons and corruption**: Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19.2 of the Convention.

   Romania ratified the Criminal Law Convention on Corruption (ETS 173) on 11 July 2002. The Convention came into force in respect of Romania on 1 November 2002.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of the measures adopted by the Romanian authorities in order to comply with the

requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Romania in order to improve its level of compliance with the provisions under consideration.

II. THEME I - PROCEEDS OF CORRUPTION

Confiscation

5. In Romanian law confiscation is a safety measure. It is therefore not a penalty and does not affect any subsequent criminal sanction. It is mandatory for all offences, including corruption, but solely in respect of the assets provided for in Article 118 of the Penal Code (PC)[1]. It is subject to a court decision, but in some cases the measure can be ordered by the Public Prosecutor's Office[2]. The general regime set out in Article 118 PC is complemented with the special provisions included in Articles 254 to 257 PC[3] in matters of corruption and the provisions of other relevant laws[4], particularly for the confiscation of the cash equivalent of the assets to be confiscated where these are no longer in the possession of the perpetrator of the offence. The Romanian authorities are considering extending this facility to other offences.

6. In criminal cases, the prosecution must always bear the entire burden of proof, including during identification of the criminal proceeds to be confiscated, also in connection with a conviction for corruption or money laundering. Confiscation of moveable property held by third persons is possible only if the latter are aware of the unlawful origin of the assets or proceeds. However, these matters are still being examined by the Romanian authorities, *inter alia* as part of the procedures of the Select Committee of Experts on the Evaluation of Anti-money Laundering Measures (MONEYVAL).

Interim measures

7. During investigations, the items constituting evidence of the offence are seized by order of the Public Prosecutor or by the Police as part of searches or mandatory seizure procedures, to be used as evidence during the criminal proceedings (Articles 94-111 of the Code of Criminal Procedure – CCP). Authorisation by a judge is necessary for house searches. In addition, where the search or mandatory seizure concern a public entity within the meaning of Article 145 PC or another legal entity, the procedure is complemented with the provisions of Article 111 CCP (for instance it is required that a representative of the legal person visited be present).

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[1] Confiscation as provided for in Article 118 PC covers assets proceeding from an act covered by criminal law (118a); assets that have been used or are intended to be used for committing an offence, where such assets belong to the perpetrator of the offence (118b); assets donated to facilitate or remunerate the commission of the offence (118c); assets manifestly acquired by means of an offence, unless they have been returned to the victim or have been used to compensate the latter (118d); and lastly, assets held as a result of violation of legal provisions (118e). During the GET's visit Article 118 PC was replaced by Article 136 of the new Penal Code adopted on 29.6.2004, to enter into force on 29.6.2005. However, under Government Emergency Order (GEO) No. 58/2005 of 28.6.2005, the Code's entry into force was postponed to 1.8.2006. The new draft Code contains an Article 118 (2) on equivalent confiscation for all offences.

[2] Eg for assets held in breach of criminal law under the terms of Article 118e), in cases where the person charged is not responsible or has died, and, in certain cases, where the Public Prosecutor applies the administrative sanctions set out in Article 91 PC because the facts at issue pose no real threat to society within the meaning of Article 18 PC.

[3] Article 254 PC (accepting bribes), 255 PC (offering bribes), 256 PC (accepting undue advantages) and 257 PC (influence peddling) provide for confiscation "of money, securities and any other asset constituting the subject of the offence and, where the latter cannot be recovered, their equivalent value".

[4] Law No. 78/2000 on prevention of corruption (Article 19), GEO No. 43/2002 on the National Anti-Corruption Prosecution Office (Article 22), Law No. 39/2003 on the prevention of and action against organised crime, and Law No. 656/2002 on the prevention and suppression of money-laundering (Article 25).

Article 163 CCP allows the public prosecutor or judge to freeze assets or to seize them during the criminal proceedings in order to prevent their destruction or disappearance, with a view to covering the damage arising out of the offence and to guarantee "the enforcement of fines". Interim measures to provide compensation for the damage may target the assets of the person charged with the offence, the defendant and the person incurring civil responsibility, up to a maximum of the probable value of the damage (Art. 163.2 CCP). Interim measures geared to "enforcing fines" can only concern the assets of the person charged or the defendant (Art. 163.3 CCP).[5] Interim measures cannot be applied to movable assets held in good faith by third persons. The body ordering the seizure is responsible for its execution, and must draw up an official report on the seizure procedure.

8. The National Office for Preventing and Combating Money-Laundering Operations (NOPCMLO), which is the Romanian Financial Intelligence Unit (FIU), can block any suspect financial transaction for three working days, extendable with the prosecutor's authorisation.

9. There is no specialised body in the management of seized assets. Assets seized during proceedings are frozen. Perishable or metal movables, precious stones, foreign currency, domestic securities, works of art and museum items, valuable collections and sums of money are mandatorily seized and entrusted to the public or private bodies mentioned in Article 165 CCP for storage and valorisation. Management of immovable property is governed by Article 166 CCP.

10. As a general rule, corruption investigations exclude any specific systematic financial or assets investigation designed to identify the proceeds of corruption. Investigations into proceeds are an integral part of the investigation of the actual offences.

11. The special investigative means used in corruption cases are the following: monitoring of bank and equivalent accounts, surveillance and recording of communications and access to information systems. Apart from the surveillance and recording of communications, which require the authorisation of a judge, these measures can be authorised by a prosecutor. They are taken for a period of 30 days extendable to 4 months maximum. The prosecutor can also order the communication of banking, financial and accounting documents. Undercover agents may be used in conformity with Article 26[1] of Law No 78/2000). After prosecution has commenced, banking or professional confidentiality is no longer enforceable against the prosecutor's action, with the exception of legal professional confidentiality.

Statistics

12. From 2002, its year of inauguration, until November 2004, the NAPO ordered interim measures in 72 cases of corruption, corresponding to a total of over € 5 million.[6] Confiscation was ordered by the courts in 54 corruption cases.

International co-operation

13. International mutual legal assistance, including in matters of interim measures and confiscation, is governed by Law No. 302/2004 on international co-operation in criminal law matters and is

[5] The new draft amendment to the Code of Criminal Procedure modifies Article 163 CCP to allow assets also to be frozen with an eye to confiscation in situations other than the two described in Article 163 paragraphs 2 and 3.
[6] From 1.1.2005 to 1.9.2005, the NAPO seized property for an equivalent value of 4,8 Millions Euros.

subject to the applicable international treaties[7]. Article 162 of the Law lists the preconditions for seizure of objects and documents and their placement under compulsory administration by means of letters rogatory: a) the offence must be such as to give rise to extradition in Romania, as the requested State; b) the execution of the letters rogatory must comply with Romanian law. These conditions may require reciprocity. Where Romania is the requesting State, the Romanian authorities forward letters rogatory to the Ministry of Justice (if the request concerns proceedings or the enforcement of criminal-law decisions) or the Public Prosecutor's Office at the High Court of Cassation and Justice (if the request concerns acts relating to the criminal investigation and prosecution). In cases of emergency, the Romanian judicial authorities may, on the basis of the applicable treaties, address their requests directly to their counterparts abroad, simultaneously forwarding a copy of the request to the competent authorities. Where Romania is the requested State, the aforementioned competent central authorities receive the request and transmit it to the judicial authority. The NOPCMLO co-operates with its counterparts abroad and is a member of the Egmont Group.

Money laundering

14. The offence of money laundering is subordinate to a predicate offence. Nevertheless, the Romanian authorities point out that commencement of prosecution for money laundering is no longer subject to sentencing in respect of the predicate offence. Under the terms of Article 23 of Law No. 656/2002, the offence of money laundering covers all offences designated as such in Romania and consequently to the offences of corruption and trading in influence. The institutions which are required to declare their suspicions to the NOPCMLO are listed in Article 8 of Law No. 656/2002. Where there is substantial evidence that a money laundering offence has been committed, the facts are reported to the Prosecutor Office at the High Court of Cassation and Justice (POHCCJ). Between 2001 and 2004 the NOPCMLO transmitted 52 reports relating to corruption offences to the POHCCJ. The POHCCJ initiated proceedings against 20 persons in 2002, 7 in 2003 and 23 in 2004. Only one person was convicted of money laundering in each of the years 2003and 2004, as compared with 20 in 2000. As regards corruption offences coming under the jurisdiction of the NAPO, the NOPCMLO transmitted 22 reports to the latter body in 2004. Between 1.9.2002 and 1.9.2004 the NAPO dealt with 14 cases of money laundering connected with principal offences of corruption; five of these cases have been brought before the courts, but no final decisions have yet been reached[8].

b. Analysis

15. Romania has recently made, and is continuing to make, substantial amendments to its criminal legislation and the organisation of the judicial system. These amendments have been geared to increasing the independence of the judicial system, reinforcing judicial codes of ethics and public confidence in the judicial system, and adapting criminal law and procedure to the requirements of effective action against corruption and to the international treaties ratified by Romania. The GET welcomes these advances and agrees with the members of the national legal service interviewed during the visit that law and the relevant procedures require stabilisation so that legal practitioners can be duly informed of legal and procedural matters and devote their whole attention to implementing them. Successive legislative amendments, such as the postponement until after July 2005 of the entry into force of the Penal Code adopted in July

[7] Including the European Convention on Mutual Assistance in Criminal Matters (ETS 30), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141) and Convention ETS 173.

[8] Between 1.1.2005 and 1.8.2005 the NOPCMLO transmitted 315 reports to the POHCCJ and 32 to the NAPO. These reports concern suspected offences of corruption or equivalent in 69 different cases, involving 1177 individuals and 272 legal entities suspected of money laundering totaling an estimated €247 400 000.

2004 and the uncertain status of applicable texts have also had the effect of complicating the Evaluator's task.

16. The GET notes that the relevant provisions in the field of interim measures and confiscation of instruments, proceeds and assets equivalent to the latter differ from one text to the other in terms of scope, and would be more accessible if they could be complemented and harmonised[9]. Article 163 CCP provides for resorting to interim measures in order to cover the damage caused by the offence and guarantee "the enforcement of the fine". The Romanian authorities have pointed out that Article 163 CCP will be amended and expanded in order also to guarantee the enforcement of the measure of confiscation of the instruments and proceeds of corruption, and where appropriate the equivalent value. **The GET recommends to harmonise the relevant provisions relating to interim measures and confiscation, including value seizure and confiscation, by finalising, as soon as possible, the envisaged amendments on the Criminal code and Code of criminal procedure.**

17. Seizure and confiscation of the proceeds of corruption are compulsory, but in the absence of more detailed information the GET was unable to ascertain whether seizure and confiscation, including value confiscation, are systematically ordered and enforced in all cases of corruption, where such action is appropriate. Moreover, the GET learnt that drawing on Article 18 of the PC, for minor offences of corruption that do not constitute a sufficient social danger, public prosecutors apply the administrative sanctions provided for in Article 91 PC (reprimand, reprimand and written warning, and a fine ranging from ROL 100 000 to 10 000 000 or € 2.69 to 269). In such cases, which appear to concern petty corruption, the proceeds of such corruption are reportedly not systematically confiscated[10]. **The GET recommends to introduce the possibility to confiscate the proceeds of corruption every time it is sanctioned by an administrative penalty.**

18. Similarly, in connection with the preparedness for and quality of investigations with an eye to seizing the products to be confiscated, the number of seizures and the financial sums at stake, the GET formed a number of contrasting opinions. While the National Anti-Corruption Prosecution Office (NAPO) would appear to carry out financial inquires and seizures, this would not seem to be the case for the other police departments and prosecutor's offices across the country, particularly the first-instance prosecutor's offices, which lack resources and specialist knowledge. Furthermore, the GET was informed during the visit that prosecution was too frequently abandoned in favour of administrative sanctions.[11] In the GET's view, the resources at the disposal of public prosecutors and judges in the courts of first instance – in which one public prosecutor often deals simultaneously with 50 cases and each judge with at least 80

[9] Article 118 PC (on confiscation), Articles 254 to 257 PC (on confiscation of money, securities and any other asset constituting the subject of the offence and, where the latter cannot be recovered, their equivalent value) and Article 163 CCP (interim measures), as well as the corresponding provisions of the anti-corruption laws (Article 19 of Law No. 78/2000, Article 22 of GEO No. 43/2002 and Article 13 of Law No. 39/2003, which refer to Article 118 PC, although the wording differs), neither explicitly refer to the concepts of "instruments", "proceeds" or "assets of an equivalent value to such proceeds" as defined in the CoE Conventions on money laundering (ETS 141) and corruption (ETS 173) nor cover the same subjects.

[10] The Romanian authorities pointed out that under Article 118 PC confiscation is only possible if the censurable act constitutes a criminal offence, although the Penal Code is to be amended in order also to permit confiscation in cases where the censurable act does not present the social danger element inherent in a criminal offence.

[11] Article 18[1] of the Penal Code provides as follows: "(1) A fact covered by criminal law should not qualify as an offence if, because it only infringes one of the values defended by law to a limited extent and its practical content is manifestly minor in nature, it falls short of the degree of social danger characterising an offence". "(2) In ascertaining the actual degree of social danger account must be taken of the manner and means of the perpetration of the act, whether it was intentional, under what circumstances the act was committed, the actual and potential consequences, and the conduct and profile of the perpetrator of the act".

cases per hearing – are clearly insufficient (shortage of judges and prosecutors, and lack of training and specialisation), which means that the requisite attention cannot be paid to the financial aspects of corruption cases. Consequently, **the GET recommends to strengthen the capacities of prosecution services and courts to deal efficiently with corruption cases within a reasonable time, in particular through specialisation and training.**

19. In the GET's view, the NAPO is a young institution which should be encouraged in its work.[12] Referral of cases to the NAPO, which is based on a legal apportionment of powers, causes problems of co-operation with the Prosecutor's Office at the High Court of Cassation and Justice (POHCCJ). During the GET's visit the POHCCJ department responsible for economic and financial crime and action against organised crime noted that for certain cases either it had evidence concerning a case that was being concurrently examined by the NAPO (having only discovered this fact by chance), or the NAPO had dropped a corruption case for lack of evidence, even though certain facts emerging from the file could have proved useful to the POHCCJ organised crime department. Transferring a case-file from one prosecutor's office to another after full processing by the NAPO is counterproductive in terms of loss of evidence and of opportunities to seize wrongfully obtained assets. The GET considers that the NAPO and POHCCJ should increase their mutual consultation and, if appropriate, set up joint teams of prosecutors from both offices so that specialists can co-operate without holding up the processing of the case-file.[13] Without infringing the latter's independence, police officers seconded from the NAPO should also be allowed to co-operate with specialists from other police departments.[14] **The GET recommends establishing effective co-operation among the National Anti-Corruption Prosecution Office, the Prosecutor's Office at the High Court of Cassation and Justice and the competent police departments in cases combining corruption, money laundering and/or organised crime.**

20. According to the NAPO, international co-operation in matters of seizure and confiscation is on the statute books and is operational, but is seldom used in corruption cases, as corrupt Romanian citizens tend to invest illegally acquired assets in their own country. The GET is unable to ascertain whether mutual legal assistance in criminal matters for the purposes of seizing and confiscating the proceeds of corruption is actually operational, particularly in cases lying outside the NAPO's jurisdiction, and wonders whether it might be advisable to introduce specific training for prosecutors and judges on all the aspects of international co-operation in the field of seizure and confiscation of the instruments and proceeds of corruption and property equivalent to such proceeds.

[12] According to information received since the visit, the NAPO dealt with 721 corruption cases between, 1.1.2005 and 1.5.2005 (including 409 cases registered during this period). 506 cases have been settled, including 45 referred for trial (covering a total of 426 persons charged with estimated total damages of € 44 million. Of these 426 individuals, 85 were in managerial and supervisory posts. Over the same period, 56 sentences were passed against 111 individuals, including 25 final judgments against 43 persons sentenced to prison terms of between 1 and 7 years. In July 2005 the NAPO was looking into 10 cases that had caused total estimated damages of €116 million, and 30 further cases of serious corruption and organised crime. Eleven of these cases concerned parliamentarians, and were transferred to the POHCCJ in accordance with Constitutional Court Decision No. 235 of 5.5.2005, which denied the NAPO jurisdiction to investigate members of parliament.

[13] The Romanian authorities are considering reorganising the NAPO in accordance with a Constitutional Court decision of 5.5.2005.

[14] The Romanian authorities have pointed out that several co-operation agreements have recently been concluded to launch a process of inter-institutional co-operation. The NAPO has been reorganised as an autonomous Department of the POHCCJ by virtue of GEO No 134/2005 published in the Official Gazette on 7 October 2005.

III. THEME II - PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Administrative organisation and oversight

21. The concept of public administration embraces public authorities at the State level and in the territorial communities (42 judets [counties], including the capital Bucharest, 2 688 comune [communes], 179 orase [towns] and 84 municipiu [municipalities]), as well as their subordinate institutions. At the central level, the Government and Ministries can set up specialised bodies, subject to an opinion from the Court of Accounts. At the territorial level, public administration is organised and operates in accordance with the principles of local self-government, decentralisation and devolution of public services, the rule of law and mandatory consultation of the public in cases of particularly important problems (cf. Law No. 215/2001 on local public administration). There are several public institutions and private companies with public input.

22. Under the terms of Article 52 of the Constitution, "all persons injured in their legitimate right or interest by a public authority have the right to obtain the acknowledgement of the legitimate right or interest, annulment of the act in question and remedies for the damage". Legal remedies are available against administrative acts (or failures to act): application to the same administrative authority, or a superior authority, to reconsider its decision, or legal proceedings (before the competent administrative court). There is also specialised administrative oversight, conducted by State inspectorates, of the lawfulness of administrative acts and decisions. Lastly, for the regional level, Law No. 340/2004 grants Prefects (the Government's representatives at the local level) additional supervisory powers: Article 26 provides that in the exercise of their attributions concerning the verification of the lawfulness of local authorities' administrative actions, apart from management decisions, Prefects may appeal against such acts before the courts, whereupon the challenged act is suspended *ex officio.*

23. Law No. 35/1997 set up the institution of the People's Advocate as an autonomous, independent authority responsible for defending the rights and freedoms of individuals in their relations with government administrative departments. The People's Advocate ensures that applications submitted are dealt with in accordance with the law, and instructs the authorities or administrative officers in question to remedy the violation noted. If the People's Advocate establishes that acts of corruption or other offences have been committed, (s)he draws up a report on the facts in question for the attention of both the House of Parliament or, where appropriate, the Prime Minister. If the People's Advocate concludes that the courts have jurisdiction for settling the complaint, (s)he may apply to the Ministry of Justice, the Public Prosecutor's Office or the President of the competent court, who are required to report on their subsequent action. However, the GET was informed that the People's Advocate had never received a written complaint comprising allegations of corruption. The only allegations of corruption received had been formulated orally and had lacked any supporting evidence.

Anti-corruption strategies

24. The first National Anti-Corruption Strategy (NACS I) (2001-2004), as updated in 2001 and 2003, was geared to devising an appropriate legislative and institutional framework. The new National Anti-Corruption Strategy II (NACS II) (2005-2007), which was adopted on 30 March 2005 (after the GET's visit), emphasises expediting the implementation of existing legislation and specifies 10 priority objectives, including increased transparency and integrity on the part of the public

administration. It is accompanied by an Action Plan setting out concrete measures to implement the said 10 objectives. The Action Plan also provides for adopting strategies and action plans in all vulnerable sectors of the administration, such as the customs service. The Ministry of Justice and the National Supervisory Authority had been monitoring the implementation of NACS I since October 2003. Governmental Decision (GD) No. 233 of March 2005 set up the Co-ordinating Council for the implementation of NACS II. Lastly, GD No. 699/2004 updated the 2001 Strategy for expediting the reform of public administration. The revised Strategy is designed to reorganise central and local administration, reinforce transparency in civil service recruitment, assessment and promotion procedures, improve the quality of administrative services and increase information exchange with the general public.

Transparency in public administration

25. The right of every natural person and legal entity to information is provided for by the Constitution (Article 31) and Law No. 544/2001 on freedom of access to information of public interest. The right to information may be implemented *ex officio* (in the cases specified in Article 5 of the Law) or else on request, whereby the administration must verify and process requests within 10 to 30 days maximum (24 hours for the media). Law No. 544/2001 also comprise special provisions on access to information by the media. [15]

26. The need to take account of the fight against corruption and to prevent abuses in administrative decision-making processes led to the adoption of Law No. 52/2003 on decision-making transparency in the public administration. This Law governs citizen information, consultation and participation procedures in the decision-making processes of central and territorial administrative bodies on matters of public interest, prior to the adoption of decisions of statutory acts. Any civil servant refusing to implement the said procedures is liable to disciplinary procedures. Other modes of citizen participation in public affairs are provided for by the Constitution (Article 74 on citizens' initiative), Law No. 3/2000 on the organisation and running of referenda, and Law No. 215/2001 on territorial administration.

27. Lastly, Government Decision (GD) No. 1362/2004 instituted the National Information Centre at the Ministry of Administration and the Interior, with responsibility for developing a computer system for the central and territorial public administration (*e-administration*).

Employment in the public administration

28. The Romanian public administration employs a staff of almost one million, breaking down as follows: (i) approximately 110 000 national or local civil servants governed by Law No. 188/1999 on the civil service, as amended by Law No. 161/2003, complemented by Law No. 171/2004 and republished in March 2004; (ii) a large number of special-status civil servants (eg diplomatic and consular staff, employees working in Parliament, the Presidential Administration, the Legislative Council, the National Customs Agency, the Police, the Financial Guard, etc), who are governed by special laws, emergency orders or specific decisions; (iii) contractual public officials or occasional collaborators governed by the Labour Code (Law No. 55/2003) such as advisers on European integration and the staff of the Prime Minister's Private Office, officers of the courts and public prosecutors' offices, certain members of staff working for Parliament, the various parliamentary groups, deputies and senators, and trustworthy personnel working in the

[15] The GET has been informed since its visit that the No 544/2001 and No 52/2003 laws are considered in the annual reports drawn up by the Governmental Strategy Agency and that the legislation allowing restrictions on access to information of public interest would be revised (Measures 1.7 and 1.8 in the Action Plan for the implementation of SAN II).

private offices of leading dignitaries; and (iv) other special public employees (judiciary, teachers and medical staff), who are governed by special legislation. Some categories of public officials are also subject to the Civil Service Code of Conduct adopted under Law No. 7/2004 and the Code of Conduct for contractual staff of public authorities and institutions as adopted under Law No. 477/2004 (see below).

29. Under the terms of Articles 10 and 50-54 of Law No. 188/1999, recruitment of civil servants must, in principle, be effected on the basis of competitive examinations or tests. Applicants wishing to take administrative examinations must fulfil certain legal conditions, including not having been discharged from the administration in the seven years preceding their application and not having been convicted of corruption or other intentional offences. Applicants for such examinations must produce a copy of their criminal record. The rules governing civil service promotions are set out in Articles 55 to 60 of the aforementioned Law. In some cases, eg applications for senior civil service posts, the civil servants in question must also produce a copy of their administrative records[16].

30. Civil servants are provided with initial and further training. They are required to attend these training courses, which are run by the National Institute of Administration or other bodies. Furthermore, candidates for managerial posts must undergo specific prior training. There is no specific, general or systematic training in matters of personal integrity or risks of corruption.

31. Romanian legislation comprises no general provisions on periodical staff rotation, in particular for staff holding posts liable to be more vulnerable to corruption. Nevertheless, the rotation principle does apply to representatives of the National Agency of Civil Servants on examining boards for the recruitment of civil servants[17].

Conflicts of interest, incompatibilities, ancillary activities and migration to the private sector

32. The question of conflicts of interest and incompatibilities is governed by Article 49 of Law No. 188/1999 as amended and expanded by Laws Nos. 161/2003, 7/2004 and 171/2004.[18] Law No. 161/2003 provides that civil servants must refrain from any activity liable to generate conflicts of interest. Article 79 of this Law lists situations giving rise to conflicts of interest, stipulating that civil servants must refrain from dealing with an application or taking or helping to take a decision liable to give rise to such a conflict, and to refer immediately to their immediate superiors in such cases. In the event of an actual conflict of interest, the senior official of the authority or public institution must appoint another civil servant nominated by the senior official to replace the person concerned.

33. The regulations on incompatibilities are laid down in Article 94 of Law No. 161/2003, which stipulates that civil servant status is incompatible with any other public office than that to which the person in question has been appointed, as well as with the office of "public dignitary". Furthermore, civil servants cannot discharge other duties or conduct ancillary activities, whether

[16] Measure 1.10 of the Anti-Corruption Action Plan provides for revising legislation on public staff with an eye to introducing an appropriate system of professional assessment.

[17] Measure 1.10 of the Anti-Corruption Action Plan provides for revising legislation on public staff with a view to introducing an appropriate system of staff rotation in vulnerable sectors. A system of rotation has been established for certain officials of the Ministry of Finance after the GET's visit.

[18] This Law consists of a single article complementing Article 94 of Law No. 161/2003. It repeals the incompatibility regulations concerning civil servants appointed to represent, or participate as the representative of, the public authority in certain organisations, collective administrative boards or public establishments.

paid or not, in the situations specified by the Law. Spouses or close relatives must not have any direct hierarchical links within the civil service.

34. Where specified categories of persons[19] refuse to submit the declaration of assets which is mandatory under Law No. 115/1996, the investigating committees operating with the Appeal Courts initiate *ex officio* the assets monitoring procedure, which may lead to the confiscation by the trial court of any unlawfully obtained assets. Moreover, Article 111.2 of Section IV of Law No. 161/2003 and GD No. 506/2003 require declarations of interests to be issued in certain cases. At the time of the GET's visit, Parliament was debating proposed legislation amending Law No. 161/2003. The draft amendment clarified and expanded the concept of conflicts of interest and incompatibilities. The submission of false declarations regarding conflicts of interest and incompatibility was treated as equivalent to corruption. The Government was also considering a draft Law on the creation of a National Integrity Agency responsible for investigating and supervising declarations of assets and interests, as well as the regulations governing incompatibilities.[20]

35. The Romanian authorities have pointed out that Article 256 PC on acceptance of undue advantages covers the concept of illegal acquisition of interests by civil servants in the exercise of their duties. Three persons were convicted of this offence in 2004, and one in the first half of 2005.

36. Where improper migration to the private sector is concerned, Article 94.3 of Law No. 161/2003 provides that civil servants who, in the course of their duties, have conducted supervisory or other activities connected with commercial companies or other similar profit-making bodies are prohibited from working in or advising the latter for a period of three years after their departure from the civil service.

Codes of conduct/ethics

37. Since 2001 many standard-setting instruments, including over 20 codes of ethics, have been adopted, including the codes of conduct for civil servants (Law No. 7/2004) and contractual staff (Law No. 477/2004) as mentioned above, and also the Codes for the State privatisation and asset management authority, the Police, tax inspectors, internal auditors, customs officers, members of the judiciary and public notaries. These different codes deal with ethical conduct in general. The National Agency of Civil Servants and various government departments are responsible for supervising the application of the codes. The control of the implementation of the provisions of the Code of Conduct by the contractual staff is performed by the Ministry of Administration and Interior and the Ministry of Foreign Affairs. Civil servants infringing the Code of Conduct are subject to disciplinary, civil or criminal proceedings. The Disciplinary Boards set up under the Law are empowered to deal with cases of violation of the Code and to impose one or more of the disciplinary measures set out in Article 65 of Law No. 188/1999, namely a written warning, reduced pay entitlement, temporary suspension of promotion rights, temporary transfer to a lower-grade post with a consequent reduction of salary, and finally dismissal. The staff member may appeal to the administrative courts against the decision or sanction imposed.

[19] Eg elected representatives or persons standing for election, members of the judiciary, civil servants, directors of public or semi-public enterprises, etc.

[20] Since the GET's visit the Government has adopted GEO No. 14 of 3.3.2005 amending the forms for declarations of assets and interest by extending their scope. Furthermore, Measures 8.1, 8.2 and 8.4 of the Anti-Corruption Action Plan provide for introducing appropriate procedures for the examination of declarations of assets and interests, setting up a body responsible for supervising them, ensuring the latter's proper functioning, and mandating an independent auditor to assess its operations.

Gifts

38. Article 46.1 of Law No. 188/1999 prohibits civil servants from requesting or accepting gifts or other advantages during the exercise of their duties, directly or indirectly, whether on their own behalf or for others, offered by virtue of their civil servant status. By the same token, Article 14 of Law No. 7/2004 provides that civil servants must not accept gifts, services, favours, invitations or any other type of advantage for themselves, their families, relatives, friends or persons with whom they have business or political relations, that are liable to influence their impartiality in conducting their public obligations or intended to reward them vis-à-vis their civil service duties (Article 14 of law No. 477/2004 on contractual staff). Moreover, Law No. 161/2003 stipulates that assets, services or other advantages received as gifts for specific formalities connected with a public mandate or post, the value of which exceeds € 300 each, must be included in the declaration of assets.[21] Infringement of the aforementioned provisions is liable to disciplinary or indeed criminal sanctions.

Reporting corruption

39. According to Article 263 PC, any civil servant omitting to report to the prosecution services the commission of an offence linked to the department in which he or she works and of which (s)he has cognizance is liable to a prison sentence ranging from 3 months to 5 years (from 6 months to 7 years if (s)he holds a managerial or supervisory post). Law No. 78/2000 also provides that persons with supervisory responsibilities are required to inform the prosecuting authorities of any offence of which they have cognizance (Article 23). In connection with misconduct or dishonest conduct which cannot be designated a criminal offence, Article 21.3 of Law No. 7/2004 lays down that staff members who report in good faith to the National Agency of Civil Servants or the competent disciplinary boards cases of violation of the legal provisions of the Code of Conduct or threats or pressure exerted on them to break the law should not be subject to any disciplinary measure. Lastly, Article 25 of Law No. 78/2000 stipulates that such reports do not entail any violation of professional or banking secrecy. Law No. 571/2004 comprises additional provisions to protect whistle-blowers in the public sector.[22]

40. The Disciplinary Boards that operate within all public authorities and institutions are responsible for disciplinary investigations. The membership of these Boards, and the stipulation that members must have no hierarchical links with parties to the disciplinary procedure, are geared to ensuring their independence. Disciplinary procedures can lead to criminal proceedings. Officials involved in criminal investigations are suspended from office. They are dismissed ex officio if convicted of offences of corruption (Article 84 of Law No. 188/1999). Under the terms of Article 58.1 of GD No. 1210/2003, the Chairs of the various Boards must draw up quarterly activity reports on the number of cases of misconduct reported, the categories of civil servants having infringed disciplinary rules, the causes and consequences of the cases of misconduct, the disciplinary measure proposed and the number of reported cases settled. These reports are collated by the National Agency, which prepares an annual report and transmits it to the Government. The Ministry of Administration and the Interior analyses the summaries based on

[21] The Romanian authorities declared, after the visit, that when civil servants receive gifts in the course of protocol relations, they have to declare them to a Commission which will subsequently evaluate these gifts. There is a detailed procedure concerning the obligation to notify the Commission, the evaluation of the gift and the possibility for civil servants to acquire the gift by paying the price fixed by the Commission.

[22] Measure 8.3 of the Anti-Corruption Action Plan provides for reinforcing supervision of the implementation of Law No. 571/2004.

these reports and, where appropriate, lays down strategies for consolidating discipline.[23] Furthermore, the National Agency of Civil Servants manages civil servants' administrative files.[24]

b. Analysis

41. Romania has made great progress over the past fifteen years in reforming State institutions, and has adopted extensive new legislation in all fields. Romanian society has managed to adapt quickly to the new political, economic and legal environment, but will no doubt need some time to assimilate all these changes. At the same time, Romania is endeavouring to obtain tangible and immediate results in transforming its administration so that it can combat corruption. Legal professionals such as the judges and lawyers interviewed during the visit have acknowledged that the rapid adoption of many new laws and amendments has injected a great deal of complexity, uncertainty and sometimes contradictions into legislation. *The GET observes that the Romanian authorities should take particular care about the clarity and coherency of legislation.*

42. At the time of the GET's visit the implementation of the first National Anti-Corruption Strategy (NACS I) had not yet been properly assessed, and no satisfactory analyses had been conducted of vulnerable sectors and corruption risks within the administration.[25] Assessments and analyses have been conducted since the GET's visit, including the comprehensive audit carried out by Freedom House Washington and such sectoral analyses as the one conducted by the Ministry of Defence following the interview with the GET. Furthermore, the Romanian authorities point out that the Council for co-ordinating the implementation of NACS II now has the requisite authority and resources for ensuring inter-institutional co-ordination and supervision of the implementation of NACS II. The GET welcomes this development. The Romanian authorities have identified shortcomings and omissions in numerous areas regarding the fight against corruption, and have undertaken to adopt the necessary measures to remedy these problems. Accordingly, the GET cannot but encourage the ministries and other public or semi-public bodies which have not yet done so to conduct analyses of vulnerable sectors and specific risks in matters of corruption, to publish them and, in accordance with measures 1.15 and 1.16 of the Anti-Corruption Action Plan, to devise anti-corruption strategies and sectoral action plans, accompanied by practical measures and training courses, embracing the customs services, police, the tax authorities, the health sector, transport, and for subsidies, privatisation and public contracts[26].

43. The GET noted that the Strategy for Administrative Reform as revised in 2004 pinpoints action against corruption as one of the aims of a more efficient administration, but fails to mention any actual instruments geared to combating corruption. This revised Strategy does, however,

[23] 252 cases of disciplinary offences were reported between August 2004 and June 2005. In 149 of these cases, the Disciplinary Boards in question: issued a written warning in 70 cases; ordered a 5% to 20% reduction in pay for a period of less than three months in 41 cases; ordered a demotion for a period of less than one year with corresponding pay cuts in 18 cases; and ordered dismissal from the civil service in 7 cases. 13 cases had not yet been settled at the time of the visit.

[24] Measure 1.10 of the Anti-Corruption Action Plan provides for revising legislation on civil servants with a view to intensifying the role played by the National Agency of Civil Servants in supervision, analysis and notification. The revised Strategy for Administrative Reform also stresses the need to provide more appropriate information on the various categories of public staff and their career situations.

[25] However, the GET has now been informed that the Romanian Inspectorate General of Police conducted an analysis of this kind in the police service on 16.2.2005.

[26] The customs service adopted their own anti-corruption strategy and action plan on 29.4.2005. The Financial Guard has now also devised its strategy and action plan. Disciplinary offences in the police are being scrutinised, and training is being intensified for the staff of the Ministry of Administration and the Interior.

comprises provisions designed to improve information on the numbers and categories of public officials, as well as to reinforce the integrity of the system for managing civil servants, vis-à-vis their recruitment, appraisal and promotion. The revised Strategy is supervised by the Higher Council for Administrative Reform operating within the Government. At the time of the visit, the GET noted that there was insufficient co-ordination between the anti-corruption strategies and action plans and the revised Strategy for Administrative Reform, and also inadequate co-operation among the different bodies responsible for formulating and implementing these instruments.[27] *The GET observes that the Romanian authorities should ensure improved co-ordination between the different anti-corruption strategies and action plans and the Strategy for Administrative Reform, and improve co-operation in monitoring these instruments.*

44. The GET considers that although there have been some criminal convictions, particularly in cases of corruption dealt with by the NAPO, there has been insufficient recourse to administrative means of preventing, detecting and suppressing corruption and breaches of professional ethics, particularly in the field of public contracts, subsidies,[28] refunding of excise and acquisitions[29], and the existing administrative means do not facilitate the effective and proactive detection and suppression of offences of corruption.[30] The GET noted that there was no system of effective co-operation between the internal and external supervisory bodies and the judicial authorities. Also, at the time of the visit, the GET was unable to establish whether there is a general obligation to provide the reasons for administrative decisions.[31]

45. The representatives of the People's Advocate interviewed by the GET in February 2005 pointed out that the Advocate played a subsidiary role in detecting and combating corruption. According to the representatives of this institution, the People's Advocate had never received any written allegations of corruption. On the other hand, some parties had complained orally of cases of corruption, although none of them had provided supporting evidence. No information was available on the number of such oral complaints received or of cases in which they were reported to the competent authorities. According to the information gleaned by the GET, Romanian citizens were ill-informed about the institution and its role in combating corruption. In the GET's view, the People's Advocate's contribution to combating corruption should be reinforced, although the Romanian authorities have pointed out that such reinforcement was not on the agenda.

46. Laws Nos. 544/2001 and 52/2003 on administrative transparency reinforce citizens' control over the administration and the authorities' accountability to the general public. The assessment reports drawn up by the Governmental Strategy Agency point to a major increase in requests for information and citizen participation in decision-making processes. Differences of opinion nevertheless remain as regards the implementation of these Laws, on whether or not specific categories of sensitive information can be communicated, by virtue, for instance, of legislation

[27] According to the Romanian authorities, the Strategy for Administrative Reform is subordinate to NACS II. Co-ordination is formally provided for by the NACS II Co-ordinating Council, which is apparently sufficiently representative for the task.

[28] Since the GET's visit, Law No. 244/2005 has been adopted repealing the practice of granting facilities for the payment of outstanding budgetary commitments and ensuring equal treatment of all tax-payers.

[29] Since the GET's visit several new standards have been adopted, including GEO No. 74/2004 setting up the National Authority for the Regulation and Supervision of Public Purchases, the Strategy for reforming the system of purchases by the Ministry of Finance, and GEO No. 40/2005 on reinforcement of transparency in public purchases. Furthermore, the Government has ordered supervision of all high-value purchase contracts.

[30] For instance, even though the Ministry of Finance supervisors have reported many cases of corruption in the field of purchases, none of them have yet been referred to the courts. Nevertheless, since its visit the GET has learnt that the Romanian authorities are considering the most appropriate means of reinforcing administrative supervision and introducing incentives for supervisors (cf. Action Plan).

[31] Although the Romanian authorities contend that these "judicial administrative decisions" are always reasoned.

on the protection of State secrets, archives and personal data, as well as at local authority level, as regards information on the restoration of property rights, issuing of certificates, etc. Individuals have access to ordinary remedies against unfettered discretion on the part of the authorities. In 2003 the People's Advocate received 476 applications for access to information, and 403 further applications were submitted in 2004. Many other complaints have been lodged with the courts. The GET nevertheless considers that most cases of lack of transparency are due to the absence of sufficiently detailed and effective legislation, appropriate training for public officials on the existing rules on administrative transparency, and an appropriate mechanism for supervising and guaranteeing access to information and for giving independent opinions on whether or not a document can be communicated at the request of a citizen who has been denied access thereto. However, according to the Romanian authorities, the combination of the monitoring performed by courts, the People's Advocate, the Governmental Strategy Agency and the Citizens' Information offices constitutes an appropriate mechanism for guaranteeing the right of individuals to have access to documents held by public organisations. In view of the foregoing, **the GET recommends to review, as necessary, the legislation unduly restricting the right of individuals to have access to official documents and to provide appropriate training to public officials on the implementation of the rules on freedom of information.**

47. Article 45 of the Civil Service Regulations obliges civil servants to maintain the confidentiality of any actions, information or documents obtained in the performance of their duties, except information deemed of public interest. According to Article 13 of the codes for civil servants and contractual staff public officials must promote a positive image of Romania and the institutions which they represent in international relations, under threat of disciplinary sanctions. According to the GET, the wording of these obligations and the remnants of the culture of secrecy within public administration are likely not to favour transparency within public administration. In the light of the foregoing, *the GET observes that the Romanian authorities should review the provisions on civil servants' duty to be discreet.*

48. In connection with public sector employment, the Status of Civil Servants is set out in Law No. 188/1999, as amended by Law No. 161/2003. They represented some 10% of all public officials. The regulations governing such special officials as customs or police officers, as described in the descriptive section of the report, had not all been adopted and/or brought into line with Law No. 161/2003 by the date of the GET's visit. Moreover, many public officials, such as advisers, dignitaries' employees, physicians and teachers, are not subject to any comparable rules. Representatives of the Ministry of Administration and the Interior and the National Agency of Civil Servants (NACS) acknowledge that the diversity and complexity of the existing professional rules and regulations precluded verifying whether all staff are subject to clear ethical rules stressing the risks of corruption and comply with the provisions on recruitment, promotion, transparency, conflicts of interest and incompatibilities, etc. While modes of recruitment of public officials vary, the procedure for civil servants in principle involves competitive examinations. [32] The low salaries, and to a certain extend, a *de facto* process of politicisation of the civil service can at times make employment in the Public Sector less attractive, and this, despite all guarantees, including in terms of job stability. . However, the Government has established programmes for the promotion of employment within the Public Sector targeting young people. The GET was told that unfair favouritism sometimes shown towards certain officials or advisers might also have brushed other civil servants aside and

[32] Prefects and secretaries general are senior officials (under the terms of Laws Nos. 188/1999 and 340/2004) and continued to be appointed on the basis of political considerations. Both laws establish a particular selection procedure. The selection procedure for Prefects will only enter into force in January 2006.

demotivated them. Public officials' performance appraisal and promotion mechanisms are not implemented systematically, and neither is the system for verifying candidates' police records, administrative files or ethical profiles on recruitment or promotion. In all these fields, the NACS, which has authority only over civil servants whose status is governed by Law No. 188/1999, and the Ministry of Administration and the Interior, are struggling to impose uniform rules and assess and manage the overall situation of the civil service. In view of the foregoing comments, **the GET recommends to ensure that all public officials within the wider public sector are subject to appropriate rules, particularly in the field of recruitment and promotion.**

49. In 2004 Romania adopted a general code of conduct for civil servants and a separate code for contractual staff. However, neither of these texts applies to such categories of public officials as trustworthy personnel working in the private offices of leading dignitaries, members of the judiciary, physicians and advisers (some of whom have their own codes). The codes do not always cover such important aspects as situations conducive to corruption, conflicts of interest, detection of corruption, the obligation to report criminal offences and violations of professional ethics, the attitude to adopt to gifts and risks of corruption, etc. The Romanian authorities have pointed out that the provisions that are not included in the codes are already set out in other pieces of legislation. The GET would stress here that such codes are intended not to lay down legal regulations on a given matter but to guide conduct, and are therefore generally drafted in less specifically legal language. As many codes have been adopted recently, the GET has noted that there is little or no information or training on these documents, as the authorities themselves admit. The NACS has not been attributed any role in promoting the code or training civil servants, even though it is the body responsible for supervising the Code of Conduct. The National Institute of Administration (NIA) is responsible for running training and professional development courses, which consist mainly of annual further training courses lasting a minimum of seven days. Most of the Institute's programmes consist in studying the administration and its mode of operation, without any specific modules on ethics and risks of corruption.[33] Consequently, **the GET recommends complementing the existing codes of conduct, where necessary (eg. regarding reactions to gifts and reporting of corruption) and ensuring that all public officials receive appropriate training.**

50. The Civil Service Regulations set out the main principles to be applied in the field of conflicts of interest; it is complemented by Law No. 161/2003, which contains a separate chapter on "Conflicts of interest and incompatibilities in the exercise of senior public and official duties". However, the definition set out in Article 70 of the Law restricts the concept of conflict of interest to financial interest, which is in fact only one component of personal interest.[34] Many of the provisions on conflicts of interest, incompatibilities and ancillary activities in the civil service have not yet been harmonised. And many categories of public officials, such as advisers, dignitaries' private staff, physicians, teachers and the employees of public enterprises and private companies holding franchises and/or empowered to issue licences on behalf of the State, are not subject to satisfactory rules in the field of conflicts of interest, incompatibilities and ancillary activities. Nor is there any authority responsible for supervising legislation on conflicts of interest, despite the fact that a draft Government Decision still provides for the setting up of a National Integrity Agency with powers of supervision in the field of conflicts of interest and declarations of assets and interests. The GET finds the rules on conflicts of interest and

[33] However, the Romanian authorities have pointed out that the NIA has introduced such modules for the 2nd half of 2005.
[34] Since the visit, however, the Romanian authorities have pointed out that the text drafted by the Ministry of Justice on the National Integrity Agency was designed to broaden the definition of conflicts of interest.

incompatibilities and the supervision of such rules insufficient.[35] At the same time, there are legislative provisions prohibiting improper moves by civil servants (but not all other public employees[36]) to the private sector (*pantouflage*), although these provisions do not lay down any mechanisms or systems for effectively supervising such moves. Consequently, **the GET recommends to extend the scope of the existing rules on conflicts of interest and incompatibilities and make them applicable to all public officials exercising an activity involving prerogatives of public authority, and to introduce an appropriate system for supervising the application of these rules, including in the field of abusive migration by public officials to the private sector.**

51. The GET has been informed that Article 256 PC on "acceptance of undue advantages" is also geared to applying criminal sanctions to the illegal acquisition of interests. This provision has, however, been largely ignored and is not applied in practice. Furthermore, as part of the revision of the Penal Code, the Romanian authorities are considering making conflicts of interest subject to criminal sanctions, defining such conflicts as follows: "the fact of a public employee, in the exercise of his duties, accomplishing an act or participating in a decision designed to obtain, directly or indirectly, a material or other advantage for himself (or his friends or relatives)". The GET would encourage the Romanian authorities to adopt a coherent, harmonised approach.

52. Romania has established a system of declaration of assets and interests. Law No. 115 on *declaration of assets* specifies the categories of public officials required to submit such declarations and also, in principle, the authorities to which they must submit them (in principle the Human Resources Department). These declarations are public and accessible on the Internet. The GET noted during the visit that the system for supervising declarations of assets is not effective, in particular, because the investigatory commission is only seldom applied to,[37] the level of evidence required to initiate that process is very high and because of the absence of a preliminary and independent administrative review of these declarations in order to identify actual or apparent violations of the law, unjustified fluctuations in the public officials' financial situation, conflicts of interests, incompatibilities and prohibited gifts.. Lastly, there is also no appropriate system for verifying *declarations of interest*. Consequently, **the GET recommends introducing an effective system for supervising declarations of assets and interests.**

53. The GET has noted a wide variety of regulations on gifts. The three different sets of rules on gifts seem to impose three different types of obligations. Moreover, it is unclear why civil servants should report gifts of a value superior of or equal to € 300 if such gifts are not authorised or belong in fact to the institution the civil servant represents.. There are no training courses or guidelines for public employees on the requisite attitude to be adopted in cases of requests for or offers of gifts, even though this is still a common practice. Consequently, **the GET recommends the consolidation and harmonisation of rules on gifts and the provision of appropriate training for public officials, drawing on practical examples.**

[35] While senior officials cannot join the Governing Boards of political parties, Prefects, as "appointed dignitaries", continue as party leaders at the local level, which is authorised under Article 85 of Law No. 161/2003; they are also responsible for verifying the situation of local elected representatives where incompatibilities are concerned.

[36] There are also incompatibilities for magistrates, who - for instance – cannot work thereafter as private attorneys at law.

[37] In fact, over the past eight years, 15 different commissions have been set up and two cases have been finalised, with the courts rejecting them at last instance.

IV. THEME III – LEGAL PERSONS AND CORRUPTION

Definition of legal persons

54. There are several types of legal persons (legal entities) under Romanian private law: associations, foundations and trade unions (defined by Law No. 54/2003), and commercial companies (regulated by Law No. 31/1990). Commercial companies include commercial partnerships, limited partnerships, partnerships with shares, limited partnerships with shares and limited liability companies. Public commercial companies, co-operative societies, agricultural co-operatives, economic interest groups and autonomous public corporations also have legal personality. They are required to be entered on the commercial register.

Establishment and registration

55. The conditions for the establishment of legal entities vary according to their form, and are specified in the rules governing each category. Before commencing their activities (within a period of 15 days from the date of adoption of the instrument setting up the company and, in some cases, the date of authentication of this instrument), all companies must apply for registration on the Commercial Register (Law No. 26/1990, Article 17). Acquisition of legal personality is conditional upon the issue of a registration certificate by the competent judge with the Commercial Register Office. When the company is registered, the judge's decision is transmitted *ex officio* to the Official Gazette (*Monitorul Oficial*) for publication, at the parties' expense, and to the tax department within whose jurisdiction the company has its registered office for tax purposes, stating the registration number with the commercial register. Similarly, the Commercial Register must record any amendments to the recorded acts, facts and other entries (Law No. 26/1990, Article 21). Registration in the Commercial Register validates the companies' documents and acts vis-à-vis third parties. In the case of trade unions, associations and foundations, mandatory authorisation must be granted by the court with jurisdiction for the area where the legal entity is based, with a view to registering them in the Associations Register or the Special Trade Unions Register. Law No. 359/2004 simplifies formalities for registering natural persons, family associations and legal persons in the Commercial Register. It sets out models on which declarations can be based, and also lays down the deadline for presenting the registration certificate, namely three days from the date of registration of the application. By the same token, the Commercial Register must record any amendments to the recorded acts, facts and other entries (Law No. 26/1990, Article 21). The Commercial Register's offices e-mail data on the application for registration to the Ministry of Finance with a view to allocating a single registration code. The Ministry of Finance draws on the aforementioned data to attribute the single registration code, within a period of eight hours. The Commercial Register is open to the public.

Professional disqualifications

56. Article 6 (2) of Law No. 31/1990 prohibits from founding a company persons who lack legal capacity or who have been convicted of fraudulent management, misappropriation, forgery and use of false documents, misrepresentation, squandering, perjury, embezzlement, corruption and other offences laid down in this Law. Furthermore, under the terms of Article 8 of Governmental Order No. 75/2001 on the organisation and functioning of the tax records, a natural person cannot discharge managerial duties in a company if his tax records comprise entries relating to criminal offences. Lastly, Romanian law provides for specific disqualifications concerning posts of experts and auditors in commercial companies likely to generate situations

of conflicts of interest (eg disqualifications linked to family relations with the founders or incompatibilities vis-à-vis the discharging of duties other than those of expert or auditor).

Liability of legal persons

57. At the time of the GET's visit only civil liability could be incurred on the part of legal persons or entities in specific circumstances. Article 1000 of the Civil Code stipulates that a legal entity incurs civil liability for any action committed by a natural person on behalf of the legal person.. Legal persons can be civilly liable even if no natural person has been convicted.

58. The GET was told after the visit that there is also an administrative liability of legal persons for offences committed on their behalf and subject to administrative fines. The principle of criminal responsibility of legal persons for criminal offences was not set out in Romanian law at the time of the visit.[38]

Accounting obligations

59. Article 25 of Law No. 82/1991 on accountancy requires all legal persons to keep accounting documents for a period of ten years, except for documents on wage payments, which must be stored for 50 years. Article 28 of the Law stipulates that financial records must be kept for 50 years. Accounts must be accurate and reliably reflect the actual operations. No specific sanctions are laid down for manipulating the accounts to cover up offences of corruption as mentioned in Article 14 of Convention ETS 173, but persons infringing the provisions of accounting law, including manipulating the accounts in general, are subject to criminal sanctions (Article 43 of Law No 82/1991 and Articles 11 and 12 of Law No. 87/1994[39]). Natural persons found guilty of forgery and use of false documents or destruction and concealment of accounting records are liable to a primary prison sentence or a fine and disqualification from certain rights.[40]

Tax deductibility

60. Article 21.4 of Law No. 571/2003 on the Tax Code prohibits offsetting certain payments against taxes, but does not explicitly mention facilitation payments, illegal advantages or other expenditure with possible links to bribery or corruption offences. Payments for management, consultation, assistance and other services for which the taxpayer cannot produce evidence that such expenditure was actually necessary and for which there are no signed contracts, are not tax-deductible.[41]

Tax authorities

61. Article 105 of the Code of Tax Procedure requires the tax authorities to inform the prosecuting services of any offence, including corruption, of which they have cognizance as a result of tax inspections. Where money laundering is concerned, Article 3 of Law No. 656/2002 requires the tax authorities to declare any suspicions they may have of illegal activities to the National Office

[38] However, the Romanian authorities are drafting legislation to introduce such corporate criminal liability by amending the Criminal code and the Code of criminal procedure.
[39] Amended by Law No 241/2005 published in the Official Gazette on 27.7.2005.
[40] Since its visit the GET has been informed that Article 9 of the new Law No. 241/2005 on prevention of and action against tax avoidance lays down a prison sentence of between 2 and 8 years and debarment from certain rights for any accounting offences committed for the purposes of avoiding tax obligations.
[41] The methodological regulations of the Tax Code (GD No. 44/2004) specify the conditions for deducting expenses.

for Preventing and Combating Money-Laundering Operations (NOPCMLO). At the time of the GET's visit Article 3.8 of this Law did, however, exempt the public authorities (including the Treasury) and their transactions from this declaration requirement.[42]

62. Taxpayers are required, under threat of criminal sanctions, to facilitate verification of accounting documents and to place them at the disposal of the tax authorities (in the Ministry of Finance and the territorial bodies, the Financial Guard and other persons/bodies authorised by law).

Role of accountants and auditors

63. Article 262 of the Penal Code requires all persons to report specified offences to the law enforcement agencies immediately, but this excludes corruption and equivalent offences. Nevertheless, Article 14 of GEO No. 43/2000 does provide that persons responsible for verification must report any suspicions they may have of corrupt practices to the National Anti-Corruption Prosecution Office (NAPO). It is unclear whether this provision also applies to auditors and chartered accountants. Article 16 (4) of the GEO empowers the NAPO to request any accounting or financial document it may wish to examine. Lastly, Article 20 of the GEO provides that professional secrecy cannot be raised against the prosecution services or the judicial authorities after the prosecution has begun. Auditors and chartered accountants are required to notify the NOPCMLO of any suspect transactions or unlawful activities, as well as any cash operations exceeding a total or € 10 000, whether this involves one single or several joint transactions (Law No. 656/2002, Article 3 [6] and [7]). The Romanian authorities have pointed out that non-governmental organisations have held conferences for auditors and accountants (and other professionals working in an advisory capacity in this field) with a view to increasing their involvement in detecting and report acts of corruption.

b. Analysis

64. The concept of "legal entity" is clearly defined in legislation, with a clear classification of all profit-making legal persons or entities. The latter are required to register with the Commercial Register, which was transferred from the Chamber of Commerce and industry to the Ministry of Justice in 2002, thus reinforcing the public nature of the Register. Law No. 359/2004, which came into force on 11.11.2004, is designed to simplify registration formalities, including tax registration, with one single office operating in the local courts. The persons interviewed confirmed that the Register had been functioning more effectively since being transferred to the Ministry of Justice. According to Article 6 of Law No. 31/1990, persons who have been convicted for specified criminal offences are disqualified from founding a company and/or being included on the Commercial Register, although the list of offences does not include money-laundering. **The GET recommends adding the offence of money laundering to the list of criminal offences justifying the professional disqualification for convicted persons.**

65. At the time of registration, Registry staff did not verify the factual information supplied by company founders or other persons so entitled, apart from the criminal records data. According to the Romanian authorities, supervision of the information required by law and of the purpose of the companies' actual activities after registration is primarily a matter for the competent supervisory bodies (including the Tax Administration, the Financial Guard and the authorities

[42] Since the GET's visit the Romanian authorities have pointed out that a GEO is to be issued amending the current anti-money-laundering legislation and deleting Article 3.8 of Law No. 656/2002.

supervising the regulated sectors.[43] The officials responsible for registration interviewed by the GET were well aware that many shell companies did register and were operating in Romania, and emphasised that they did not have the resources for taking effective action in such cases. **The GET recommends reinforcing checks on the information required by law and the companies' real purposes, during and after registration.**

66. At the time of the GET's visit the principle of criminal responsibility on the part of legal persons was not yet established. However, amendments to the Criminal code and Criminal procedure code were under preparation. The introduction of this principle in Romanian law requires that all the authorities responsible for its implementation receive appropriate training and guidelines. **The GET recommends to actively pursue the current legislative developments aimed at introducing an adequate regime of liability of legal persons for criminal offences committed on their behalf and to establish adequate sanctions or measures for such offences in conformity with the Criminal Law Convention on Corruption**.

67. In connection with the suppression of corruption offences committed on behalf of legal persons, the GET concluded that one problem was the lack of co-operation among the different authorities. This applied to the time of registration, when the company's actual situation should be properly ascertained, and also when suspicions were being reported and subsequent investigations conducted. **The GET recommends that the institutions involved in preventing and detecting corruption offences committed on behalf of legal persons (eg. Commercial Register, Tax Administration, police, customs, auditing bodies) should step up their co-operation in order to ensure permanent exchange of relevant information on legal persons and also reinforce their co-ordination with the judicial authorities.**

68. All legal persons must comply with current accounting regulations. These regulations are set out in Law No. 82/1991. At the time of the GET's visit, sanctions for non-compliance with these regulations were set out in Law No. 87/1994 and incorporated into the provisions of Article 75 ff of the new Penal Code. They followed the IFAC (International Federation of Accountants) accountancy standards.[44]

69. The information gleaned by the GET would seem to indicate that the legal measures on tax deductibility are liable to be interpreted in such a way as to make certain payments possibly linked to bribery tax-deductible. However, the Romanian authorities reported that tax legislation contains exhaustive lists of authorised deductions, according to which the deduction of "facilitation-payments"or bribes is excluded.

70. The tax authorities are required to report any irregularities and suspected criminal offences to the prosecution services. The existing training programmes for tax inspectors do not specifically deal with detecting cases of corruption. Consequently, **the GET recommends introducing training courses for tax inspectors in the field of detecting corruption offences.**

71. Chartered accountants are required to declare to the Principal Public Prosecutor's Office and the NOPCMLO any financial transaction giving rise to suspicions of money-laundering. It is unclear to what extent private auditors and accountants are required to report suspicions of

[43] Since its visit the GET has been informed that under the terms of Order No. 375/2005 the Chairman of the National Agency for the Tax Administration (NATA) has ordered the publication of the list of inactive/shell companies. Inactive companies do not have to issue invoices or any other standardised forms linked to delivery of goods or services.

[44] Since the GET's visit Law No. 87/2004 has been repealed and replaced by Law No. 241/2005, and the draft new Penal Code is currently under consideration.

corruption to the NAPO, apart fro Article 14 of GEO No. 43/2003, which requires persons responsible for verification to report any suspicions of corruption to the NAPO. At the time of the visit there had never been any such reports of cases of corruption. Furthermore, the Romanian Association of Chartered Accountants has drawn up a code of ethics and organised compulsory 40-hour training modules for chartered experts on the prevention of corruption, laying down guidelines on detection of corruption. However, the GET has been unable to ascertain the situation of private auditors, their contribution to combating corruption and their rules on ethical matters and conflicts of interest. *The GET observes that the authorities should explore, in dialogue with the private auditors' and accountants' representative bodies, potential measures that could be taken to improve the situation in relation to reports of suspicious acts to the competent authorities.*

V. CONCLUSIONS

72. Romania has made considerable progress in the field of legislative and institutional reform. Romanian society has managed to adapt quickly to the new political, economic and legal environment, but will no doubt need some time to assimilate all these changes. At the same time, Romania must obtain immediate tangible results in transforming its administration and ensuring its efficient and transparent functioning if it is to combat corruption effectively. A series of corresponding measures have already emerged, such as the adoption of a new anti-corruption strategy and an action plan to implement it, and the scheduled setting up of a National Integrity Agency and a body responsible for verifying declarations of assets and interests and incompatibilities. Further progress is possible in terms of preventing and suppressing corruption in legal persons and in recovering the proceeds of corruption. In all these fields, finalisation of the Penal Code and the Code of Criminal Procedure and a number of adjustments to legislation, accompanied by effective implementing measures and appropriate training, should help achieve the desired results.

73. In view of the above, GRECO addresses the following recommendations to Romania:

i) **to harmonise the relevant provisions relating to interim measures and confiscation, including value seizure and confiscation, by finalising, as soon as possible, the envisaged amendments on the Criminal code and Code of criminal procedure** (paragraph 16);

ii) **to introduce the possibility to confiscate the proceeds of corruption every time it is sanctioned by an administrative penalty** (paragraph 17)**;**

iii) **to strengthen the capacities of prosecution services and courts to deal efficiently with corruption cases within a reasonable time, in particular through specialisation and training** (paragraph 18)**;**

iv) **to establish effective co-operation among the National Anti-Corruption Prosecution Office, the Prosecutor's Office at the High Court of Cassation and Justice and the competent police departments in cases combining corruption, money laundering and/or organised crime** (paragraph 19);

v) **to review, as necessary, the legislation unduly restricting the right of individuals to have access to official documents and to provide appropriate training to public officials on the implementation of the rules on freedom of information** (paragraph 46)**;**

vi) **to ensure that all public officials within the wider public sector are subject to appropriate rules, particularly in the field of recruitment and promotion** (paragraph 48)**;**

vii) **to complement the existing codes of conduct, where necessary (eg regarding reactions to gifts and reporting of corruption) and to ensure that all public officials receive appropriate training** (paragraph 49)**;**

viii) **to extend the scope of the existing rules on conflicts of interest and incompatibilities, and make them applicable to all public officials exercising an activity involving prerogatives of public authority, and to introduce an appropriate system for supervising the application of these rules, including in the field of abusive migration by public officials to the private sector** (paragraph 50)**;**

ix) **to introduce an effective system for supervising declarations of assets and interests** (paragraph 52)**;**

x) **to consolidate and harmonise the rules on gifts and to provide appropriate training for public officials, drawing on practical examples** (paragraph 53)**;**

xi) **to add the offence of money laundering to the list of criminal offences justifying the professional disqualification for convicted persons** (paragraph 64)**;**

xii) **to reinforce checks on the information required by law and the companies' real purposes, during and after registration** (paragraph 65)**;**

xiii) **to actively pursue the current legislative developments aimed at introducing an adequate regime of liability of legal persons for criminal offences committed on their behalf and to establish adequate sanctions or measures for such offences in conformity with the Criminal Law Convention on Corruption** (paragraph 66);

xiv) **that the institutions involved in preventing and detecting corruption offences committed on behalf of legal persons (eg Commercial Register, Tax Administration, police, customs, auditing bodies) should step up their co-operation in order to ensure permanent exchange of relevant information on legal persons and also reinforce their co-ordination with the judicial authorities** (paragraph 67)**;**

xv) **to introduce training courses for tax inspectors in the field of detecting corruption offences** (paragraph 70)**.**

74. GRECO also invites the Romanian authorities to take account of the *observations* (paragraphs 41, 43, 47 and 71) of the analytical section of this report.

75. Lastly, in accordance with Rule 30.2 of its Rules of Procedures, GRECO invites the Romanian authorities to submit a report on the implementation of the above-mentioned recommendations by 30 April 2007.