



Strasbourg, 4 December 2009

**Public**  
**Greco RC-II (2007) 9E**  
**Addendum**

## **Second Evaluation Round**

### **Addendum to the Compliance Report on Romania**

Adopted by GRECO  
at its 45<sup>th</sup> Plenary Meeting  
(Strasbourg, 30 November – 4 December 2009)

## I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Romania at its 25<sup>th</sup> Plenary Meeting (14 October 2005). This report (Greco Eval II (2005) 1E) addressed 15 recommendations to Romania and was made public 19 October 2005.
2. Romania submitted the Situation Report required under the GRECO compliance procedure on 3 June 2007. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on Romania at its 35<sup>th</sup> Plenary Meeting (7 December 2007). This last report was made public on 30 May 2008. The Compliance Report (Greco RC-II (2007) 9E) concluded that recommendations i, ii, xiii and xiv had been implemented satisfactorily. Recommendations iv and v had been dealt with in a satisfactory manner. Recommendations iii, vii, viii, ix, xi and xii had been partly implemented and recommendations vi, x, and xv had not been implemented; GRECO requested additional information on their implementation. This information was provided on 7 July 2009, complemented with additional elements and explanations on 23 November 2009.
3. The purpose of this Addendum to the Second Round Compliance Report is, in accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, to appraise the implementation of recommendations iii, vi to xii and xv in the light of the additional information referred to in paragraph 2.

## II. ANALYSIS

### **Recommendation iii.**

4. *GRECO recommended 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.*
5. GRECO recalls that in the Second Round Compliance Report on Romania it welcomed the efforts made to offer at least some training opportunities on anti-corruption matters and in a number of disciplines which are crucial from the perspective of dealing adequately with corruption cases (money laundering in particular). However, it noted that more could be done in this area. GRECO also took note with interest of the efforts to distribute more equitably the workload among prosecutors, to fill the vacant positions of prosecutors and to provide also for training opportunities in the field of management of courts and prosecutorial services. GRECO encouraged further initiatives to increase the resources and specialisation (which is - besides training - a specific element of the recommendation) of prosecutors and judges and concluded that recommendation iii had only been partly implemented.
6. The Romanian authorities now report that the Prosecutor's Office has implemented a new set of measures: a) a national network of specially designated prosecutors was established to deal with corruption cases; b) a manual of best practices (describing *inter alia*, the instruments used in the course of corruption investigations, specific elements of the corruption offence and other offences connected with them) was drafted and distributed to all prosecutors; c) a professional training programme for prosecutors, including the methods of investigation of corruption offences was developed by the Prosecutor's Office attached to the High Court of Cassation and Justice (POHCCJ) and the National Institute of Magistracy (NIM)<sup>1</sup>. The authorities also indicate that, on

---

<sup>1</sup> Several seminars for prosecutors are planned for 2010; each prosecutor should attend at least two seminars.

24 September 2008, the General Prosecutor issued order no. 331/2008, providing that: a) each prosecutor's office should adopt local strategies to combat corruption offences; b) all decisions issued by the prosecutors' offices in corruption cases must be reported to the POHCCJ; c) an in-depth analysis shall be drawn up twice a year in order to assess the efficiency of the strategies and to identify the areas of public administration where most corruption offences are committed; d) the POHCCJ monitors the implementation of the local strategies for the fight against corruption on a permanent basis.

7. The authorities also indicate that according to the provisions of article 29, paragraph 1 of Law no. 78/2000 on preventing, discovering and combating corruption, as subsequently amended, corruption cases are tried in first instance by panels of specialist judges. Further amendments to Law no. 304/2004 on the Judiciary, allow the creation of similar specialised panels at the level of appeal courts (article 41). Besides, a number of vacant positions of prosecutors and judges have been filled: 224 prosecutor and 178 judge positions in 2008; 60 prosecutor and 70 judge positions at the level of first instance courts in 2009. Further competitions are scheduled for the second half of 2009.
8. Finally, the authorities stress that during 2008, the NIM organised in cooperation with other bodies several training activities on corruption-related issues for police officers, prosecutors and judges: a) under the Phare projects<sup>2</sup>, 10 seminars on combating corruption were organised and attended by 144 magistrates (45 judges and 98 prosecutors), 27 specialists and 24 police officers from the National Anticorruption Directorate (NAD); b) 57 seminars were organised at decentralised level<sup>3</sup>. Specialised training activities were also provided to the members of the NAD on corruption-related issues<sup>4</sup>. Moreover, according to the continuous training programme for 2009, the following anti-corruption training activities have been scheduled: a) 7 seminars on "Methods for investigation of corruption crimes" for prosecutors investigating corruption offences and judges dealing with corruption-related cases; b) under the Phare project "Continuing the assistance provided to the NIM", 1 workshop on the fight against corruption and individualisation of sanctions; and c) 2 seminars offering specialised training for judges dealing with corruption crimes. In addition, according to the continuous decentralised training programme for 2009, the courts of appeal will organise at least one seminar on combating corruption and at least one seminar on economic and financial crimes.
9. GRECO takes note of the information provided and welcomes the steps which have been taken to increase the resources of prosecutors and judges and to develop new working and management methods at these levels. It also notes that several training activities for police officers, prosecutors and judges have been reported in order to make them more familiar with the handling of corruption cases, including those involving important financial aspects. GRECO encourages the authorities to fully implement the measures introduced or planned and to ensure that the matter of proceeds of corruption is duly taken into account.
10. GRECO concludes that recommendation iii has been implemented satisfactorily.

---

<sup>2</sup> "Continuing the assistance provided to NIM" and "Strengthening the fight against corruption in Romania".

<sup>3</sup> 16 within the courts of appeal and 41 within the prosecutor's offices attached to the courts of appeals.

<sup>4</sup> Training sessions under the Phare programmes and bilateral programmes developed with the German Foundation for International Legal Cooperation (9 sessions attended by 87 prosecutors, 22 police officers, 27 specialists and 28 judges) ; seminars organised with the support of the National Administration Institute (NAI), the National Agency for Civil Servants (NACS) and the Ministry of Administration and Interior (MAI), attended by 45 specialists and police officers; 29 seminars, courses and training activities abroad, attended by 36 prosecutors; quarterly meetings and training activities organised at the level of each section within the central structure and of each territorial service of NAD. The topics included: investigative techniques; specificities of economic crime investigations; fraud in public procurement, privatisations and capital market.

**Recommendation vi.**

11. GRECO recommended to ensure that all public officials within the wider public sector are subject to appropriate rules, particularly in the field of recruitment and promotion.
12. GRECO recalls that in the Compliance Report it welcomed the changes that were introduced to subordinate the category of high-ranking civil servants to the general civil servants statute, and thereby to make their recruitment and career system more transparent and based on objective criteria. However, GRECO considered that the number of posts concerned by the reform was very limited and did not fundamentally change the current proportion of officials regulated by the general civil service recruitment and career system (as indicated in the Second Round Evaluation Report, some 10% of all public officials only were subject to law no.188/1999 on the civil service, as subsequently amended). GRECO encouraged the adoption of further measures to ensure that all employees of the public sector are subject to rules similar to those of law no.188/1999 and it concluded that recommendation vi had not been implemented.
13. The Romanian authorities now state that according to article 6 of Law no. 188/1999 on the civil servants, republished, with the subsequent amendments and completions, the provisions of the law do not apply to various categories of persons such as contractual personnel and any staff who do not exercise prerogatives of public power, personnel employed on the basis of personal trust in the office of dignitary post holders, the body of magistrates, didactic personnel and persons nominated or elected to positions of public dignity. Besides, article 5 of the above law provides that the civil servants employed by the following state structures can be subject to special statutes: a) the Parliament; b) the Presidential Administration, c) the Legislative Council; d) diplomatic and consular services; e) customs authorities; f) police and other structures of the Ministry of Interior and Administrative Reform; g) other public services settled by the law.
14. The authorities further refer to several specific laws governing the rules on recruitment and promotion of different categories of public officials who are not civil servants and thus not subject to law no. 188/1999, besides other officials governed by special statutes:

	<b>Conditions for Recruitment</b>	<b>Conditions for Promotion</b>	<b>Other aspects</b>
Law no. 53/2003 on the labour code (applies to all contractual staff of the general administration, state bodies and local authorities)	Examination in case of persons recruited to work in public institutions.	No information	No information
Law no. 303/2004 on the statute of judges and prosecutors	1. General recruitment: competitive examination based on professional competence, good reputation and no criminal or fiscal record, law degree required, vacancies announced annually in the official journal and 3 or more newspapers; attendance of the school of magistracy during 2 years plus 1 year traineeship; process overseen by professional body. 2. Special recruitment by way of contest organised annually or ad hoc for certain categories of persons with at least 5 years' professional experience: former judges and prosecutors, lawyers, notaries, judicial assistants, legal advisors, judicial police	Based on results of professional appraisal carried out every 3 years and after competitive examination held at national level.	- professional evaluation system is used

	officers, legal experts of the parliament /presidential or government administration etc.; process overseen by professional body.		
Law no. 128/1997 on the statute of teaching staff	Contest (except in case of transfer) both for teachers and school/university managers; written examination for teachers, written or oral examinations for substitute teachers and interviews for associated teaching staff; vacant positions in the pre-university institutions are announced publicly in the national and local media and advertising at the teaching unit and school inspectorate; calendar of contests communicated every year before 15 November.	Based on evaluation through the competent body or specific means depending on the level .	- professional evaluation system is used - disciplinary sanctions are similar to those of the Law on civil servants; - in-service training is mandatory every five years and coordinated at national level
Law no. 7/2006 on the statute of parliamentary civil servants	Contest or examination to fill vacant positions announced publicly (at the chambers' premises, their website and in one national newspaper); conditions include absence of a final conviction (for an offence that would disqualify the person from holding a public position);	Based on contest or examination.	Specific rules (provided in decisions of the Permanent Bureau of the chamber of Deputies and of the Senate) on professional training, selection and evaluation
Law no. 269/2003 on diplomatic and consular personnel	Contest, except for graduates of the Diplomatic Academy of Romania; other conditions include absence of conviction for an offence.	According to the requirements on probation, professional evaluation and qualifications from the Diplomatic Academy.	Professional evaluation system is used
Law no.360/2002 on statute of the police	Recruitment "mainly" based on selection from the graduates of the training institutions of the Ministry of Administration and Interior (MAI); admission to the training institutions is based on contest or examination and absence of criminal record (or ongoing criminal investigation or proceedings); experts can be directly employed following a contest or examination.	According to conditions related to the probationary period and appraisal results ("outstanding" or "very good").	- professional evaluation system is used
Ordinance no. 91/2003 on the financial guards	Financial Guard are civil servants with special status; recruitment and promotion are to be made according to Law no. 188/1999.		
Law no. 293/2004 on the civil servants with special statute within the National Administration of Penitentiaries	Contest but priority to graduates from educational institutions for trainers, officers and penitentiary personnel; recruitments are also possible by transfer from the military civil service or civil servants from other public order and security agencies; new recruits undergo probation period and training sessions.	Based on contest (and within the limits of existing vacancies).	Professional evaluation system is used

15. The Romanian authorities take the view that with the exception of persons appointed or elected in public dignity positions (for instance the ministers) and of personnel employed on the basis of personal trust in the office of dignitaries, objective and transparent criteria are applied for all categories of personnel of the public authorities and institutions which are not subject to Law no. 188/1999 during the recruitment process.
16. GRECO takes note of the information provided, which complements the measures already reported in the Compliance Report as regards the category of high-ranking civil servants. GRECO observes that with the Law no. 7/2006 on the statute of parliamentary civil servants (and perhaps also the legislation applicable to teachers), there has been some further slight progress. But all

other laws and sector specific provisions currently in place are the same as at the time of the on-site visit in 2005. GRECO regrets that no further measures have been adopted to bring contractual staff<sup>5</sup> closer to civil servants in terms of statutory rules.

17. GRECO concludes that recommendation vi has been partly implemented.

**Recommendation vii.**

18. *GRECO recommended to complement the existing codes of conduct, where necessary (e.g. regarding reactions to gifts and reporting of corruption) and to ensure that all public officials receive appropriate training.*
19. GRECO recalls that in the Compliance Report it concluded that this recommendation had been partly implemented. It acknowledged that some developments had taken place since the on-site visit in February 2005 and in particular, that new codes of conduct for police officers and customs officers had been adopted. However, it noted that there were still various codes of ethics (20 or so according to the Evaluation Report) that would not adequately cover conflicts of interest, the detection and reporting of corruption, reactions to gifts etc. Further measures would therefore be needed to streamline and harmonise the ethical standards and to clearly regulate the aforementioned matters. GRECO also welcomed training of a broader range of officials in this field.
20. The Romanian authorities now state that several codes of conducts for different categories of civil servants, already in force at the time of the on-site visit in 2005, contain rules related to gifts and reporting of corruption and conflicts of interest. Moreover, three new codes of conduct were adopted: a) the code of ethics for experts of the Agency for Pre-university Education<sup>6</sup>, approved by order no. 5337 of the Minister of Education of 11 October 2006; b) the Code of ethics and deontology for the personnel of the Inspectorate for Emergency Situations and subordinated structures<sup>7</sup>, approved by order no.1589 of 3 November 2006 (Chapter IV of the Code contains principles on the issues of gifts and reporting of corruption<sup>8</sup>); c) the Code of conduct for clerks within courts and prosecutors' offices attached to the courts of 26 April 2005<sup>9</sup>. The Romanian authorities also indicate that the National Authority for Regulating and Monitoring Public Procurement has drafted the "Procurement Code of ethics" which prohibits the acceptance of gifts, money, loans or advantages of any other nature, both during the public procurement process and while carrying out the contract<sup>10</sup>. In addition, on 1 July 2009, the Government

---

<sup>5</sup> According to article 6 a) of the Law no 188/1999 on the civil servants, the contractual personnel of public authorities and bodies are those who perform administrative activities (e.g. secretariat, housekeeping and security services), as well as those who do not exercise prerogatives of public powers.

<sup>6</sup> Published in the Official Journal No. 872 from 25 October 2006.

<sup>7</sup> Published in the Official Journal No. 918 from 13 November 2006.

<sup>8</sup> It is forbidden for a personnel of Emergency Situations: 1) to request and/or accept, directly or indirectly, money, gifts, favours, services or other advantages for themselves, their family, parents, friends or persons they have work relations and to firmly reject any promise that might influence their impartiality and fairness in decision making or that might determine them carrying out an undue operation in the offeror's favour; 2) to use information or data they have access to, in order to carry out activities that might generate incomes or undue benefits or that might generate material or moral prejudices to other persons; 3) to carry out activities that generate or might generate a conflict of interests or that is contradictory to their official duties. The personnel is obliged : 1) to communicate in due time to their superiors and competent authorities any breach of the law during or related to their duties; 2) to firmly reject the attempts to corrupt or influence them, made by third parties, with a view to not performing their professional duties; 3) to inform immediately their superior on such attempts.

<sup>9</sup> Published in the Official Journal No. 382 from 6 May 2005.

<sup>10</sup> According to the principle of impartiality and independence set out in the code, the persons involved in the public procurement process must avoid any arbitrary action that might negatively affect other persons.

approved the draft law on the code of conduct for police officers, which will also apply to the gendarmerie<sup>11</sup> and will replace the existing Code of 2005. This draft is currently in Parliament.

21. The Romanian authorities further refer to a series of professional training organised in 2008 by the National Institute of Administration (NIA), as well as training programmes for civil servants and other categories of personnel on matters such as ethics, integrity, professional conduct and prevention of corruption<sup>12</sup>. Moreover, the Government approved Decision no. 608 on the National Anticorruption Strategy for Vulnerable Sectors and Local Public Administration and on its general and sectorial action plans, in such fields as: public order, local public administration, fiscal and financial administration, health and education. In connection with this, training activities (e.g. on prevention and combating corruption, professional conduct and ethics) are to be organised for the personnel of institutions involved in the field of preventing and fighting against corruption; some have already taken place<sup>13</sup>.
22. Finally, the authorities indicate that between 16 October 2007 and 27 February 2008, the Ministry of Justice carried out an extensive public awareness campaign in 17 cities in Romania aimed at stimulating the debate on vulnerabilities to corruption in the public administration and the judiciary and identifying best practices and promoting the means to combat corruption<sup>14</sup>. In addition, the General Anticorruption Directorate (DGA) has drafted and disseminated to all structures of the Ministry of Administration and Interior an Information Bulletin - a half-yearly publication - on preventing and combating corruption<sup>15</sup>. They also report on the finalisation of the Anti-corruption Guidelines containing principles on the issues of reporting corruption and professional conduct (how to react when corruption occurs)<sup>16</sup>.
23. GRECO takes note of the information provided and welcomes the adoption of three new codes of conduct which cover conflicts of interest, the detection and reporting of corruption, reactions to gifts etc, the provision of training and awareness raising activities for about 3000 civil servants and other employees between October 2007 and February 2008 and the dissemination of a similar amount of information material. Finally, other training and awareness raising initiatives are reported for a broader audience in the public sector are mentioned under recommendation x (see paragraph 40). All these measures go in the direction suggested by recommendation vii.
24. GRECO therefore concludes that recommendation vii has been dealt with in a satisfactory manner.

---

<sup>11</sup> According to the draft law, the police officer should observe the principles of legality, non-discrimination, availability, priority of the public interest, proximity, professionalism, confidentiality, respect, moral integrity, loyalty and transparency. It is forbidden for a police officer: 1) to tolerate corrupt acts and to abuse public authority; 2) to request or accept money, goods or values with a view to performing (or not) professional tasks; 3) to receive, when performing professional duties, money, goods, services or other benefits from natural or legal persons; 4) to use his/her position to solve private matters. The police officer is also obliged to inform his/her superiors and other competent bodies on corruption cases she/he comes across persons.

<sup>12</sup> 29 programmes were organised (each several times a year). Thus, 121 seminars were organised and attended by 2641 civil servants and other categories of personnel.

<sup>13</sup> 10 training sessions on prevention and combating corruption attended by 250 civil servants National Agency for Fiscal Administration; 6 training sessions on "Ethics and deontology in the customs field" attended by 150 civil servants.

<sup>14</sup> 50.000 informative guides containing information on corruption and means to combat it in five sectors (justice, police, education, healthcare and public administration) and 35.000 posters were disseminated to public institutions, NGO's and citizens; 17 conferences, 3 public debates, 5 seminars for public officials, 2 roundtables and 5 meetings were organised.

<sup>15</sup> 1.500 copies in January 2008 and 500 copies in July and December 2008.

<sup>16</sup> 2000 copies were disseminated; the guide is also available for consultation on the internet.

### **Recommendation viii.**

25. *GRECO recommended 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.*
26. GRECO recalls that in the Compliance Report it concluded that the recommendation had been partly implemented. It considered that the scope and concept of conflicts of interest had not been affected by the legislative reform and remained limited to financial interests. Moreover, the Romanian authorities had not reported on any new measures concerning abusive migration by public officials to the private sector. GRECO acknowledged that the scope *ratione personae* of the rules had been extended to some degree to include a larger number of senior officials or officials who are exposed to corruption risks. However, it considered that some of the categories mentioned in the Evaluation Report remained uncovered (advisers, dignitaries' private staff, physicians, teachers) and no information at all was provided on possible improvements concerning the matter of incompatibilities as such.
27. The Romanian authorities now indicate that Law no. 144/2007 setting up the National Integrity Agency (NIA) broadens the categories of persons who have the obligation to submit asset and interest declarations<sup>17</sup> and that the NIA, as an autonomous administrative authority, has the main responsibility for verification in this area, including incompatibilities. Moreover, the law provides for sanctions in the event of a breach of its provisions, including confiscation of assets, disciplinary sanctions, deprivation of the right to hold a public function, fines and criminal sanctions. The authorities also report that the NIA monitors constantly the assets and economic interests of public officials, as well as conflicts of interest and incompatibilities of functions. The Government submitted a legislative proposal to broaden the regulations applicable to conflicts of interest in order to cover non-patrimonial interests as well. Unfortunately, on 13 June 2007, the Senate rejected the Government's legislative proposal.
28. GRECO takes note of the information provided with regard to the effective operation of the National Integrity Agency which is examined under recommendation ix below. It is also clear now that Law no. 144/2007 has extended significantly the categories of officials required to disclose assets and interests. However, the policy on the prevention of conflicts of interest is still limited to financial interests and does not address conflicts of interest more broadly. No initiatives are reported either concerning a system for supervising the abusive migration by public officials to the private sector.
29. GRECO concludes that recommendation viii remains partly implemented.

---

<sup>17</sup> The list of 34 categories of officials concerned includes at present all the members of the main state functions bodies, local elected officials, designated categories of officials working for specific state agencies and independent authorities, local elected representatives and more generally persons with leading and control functions as well as public servants – including those with a special status – who carry out their activity within all the central or local authorities, or as the case may be, within all public institutions”; staff of dignitaries' cabinets, persons with leading functions in public education, several categories of advisors are explicitly mentioned.



### **Recommendation ix.**

30. *GRECO recommended to introduce an effective system for supervising declarations of assets and interests.*
31. GRECO recalls that the National Integrity Agency (NIA) was established in 2007; at the time of adoption of the Compliance Report, this institution was too young to allow a fair assessment of its effectiveness in practice and GRECO preferred to re-examine this matter in the light of the Agency's first concrete results.
32. The Romanian authorities indicate that under Law no.144/2007, the maximum number of positions for the Agency is 200. At present, the Agency's staff comprises 126 employees (one senior civil servant, six detached employees, 25 contractual employees, 30 civil servants transferred or appointed after a promotion or a contest, and 64 integrity inspectors appointed as civil servants with a special status). A training plan for the employees has been established and protocols have been signed with other agencies. The budget for 2009 is 18.2 million RON (approximately 4 million EUR); it was 11 million in 2008 (2.5 million EUR).
33. Up to mid-2009, the NIA has received a total of 485.166 declarations of assets and interests; 185.114 of these concern regular declarations for the fiscal year 2007 and 21.365 concern regular declarations for the fiscal year 2008; besides, 295.543 specific declarations have been submitted in the context of the 2008 elections (290.186 for the local elections and 5357 for the parliamentary elections). At present, controls are being performed in relation to 2279 persons. In 47 cases, it was decided to initiate further measures: 5 files were sent to court (for the imposition of confiscation orders), 27 to the prosecutors' offices (because of false statements) and 15 to administrative disciplinary committees (for situations of incompatibility of functions or conflicts of interest).
34. According to article 52 of Law no. 144/2007, failing to submit a declaration of assets and interests within the terms stipulated by the law constitutes a misdemeanour punishable with a fine between 100 RON (23 EUR) and 500 RON (115 EUR); it also triggers automatically the initiation of a control. Up to mid-2009, 2080 such penalties were imposed, all in the amount of 500 RON (115 EUR).
35. GRECO takes note of the information provided. It would appear that the mechanism for the control of declarations of interests and assets introduced in 2007 is now fully operational and produces results, although one third of the positions of the competent National Integrity Agency have not been filled yet. The creation of the National Integrity Agency is an ambitious initiative and GRECO very much hopes that Romania will provide it with the necessary support in the forthcoming years.
36. GRECO concludes that recommendation ix has been implemented satisfactorily.

### **Recommendation x.**

37. *GRECO recommended to consolidate and harmonise the rules on gifts and to provide appropriate training for public officials, drawing on practical examples.*
38. GRECO recalls that at the time of the Compliance Report, the Romanian authorities reported on the regulations that were in fact already in place at the time of the on-site visit in 2005 (the

reasoning behind recommendation x, as it appears in the Second Round Evaluation Report - para. 53 – was the wide variety of inconsistent regulations on gifts as well as the lack of training and guidance on how to react to (the common practice of) gifts. No information was available about appropriate training being provided to fill those gaps and GRECO concluded that this recommendation had not been implemented.

39. The Romanian authorities indicate that Law no. 7/2004 on the Code of Conduct for Civil Servants was amended in 2007: the authorities and public institutions all have at present the obligation to designate ethical counsellors responsible for providing advice and assistance to civil servants concerning compliance with the ethical rules, including the legal prohibition of accepting gifts or other benefits<sup>18</sup>. They further explain (for the first time) in their additional comments that the provisions of Law no. 188/1999, Law no. 7/2004 and of Government Emergency Ordinance no. 14/2005 do not represent different sets of rules on gifts. While the provisions of Law no. 188/1999, according to which civil servants are prohibited from requesting or accepting, directly or indirectly, for them or for others, gifts or other advantages, offered by the virtue of their statute, represent a legal framework under the statute of the civil servants, the provisions of Law no. 7/2004 are meant to complement the first ones and set guidelines for conduct. Finally, the authorities indicate that under the third set of rules (see below: Government Emergency Ordinance no. 14/2005, setting up a system for the declaration of assets, as amended by Law no. 144/2007) the concept of “gifts”<sup>19</sup> is not meant to address those received in the exercise of the civil servants’ duties, as gifts connected with the duties are addressed and prohibited under the first set of rules, i.e. Law no. 188/1999 on the Statute of Civil Servants. Instead, the provisions of 2005/2007 are only related to gifts received outside the context of the exercise of the civil service duties (from a person who is not a first or second degree relative). They also stress that the obligation to disclose gifts is meant to ensure full transparency of the public official’s possessions<sup>20</sup> and should not be seen as contradictory to the first and second sets of rules.
40. Concerning training events for public officials, the Romanian authorities report on the workshop “Enhancing the integrity, transparency and accountability in the civil service” which took place during the International Conference on “Innovation and Quality in Public Sector” in September 2008 and on a series of seminars on “Ethics in public sector/public services” in Bucharest and 3 other cities, in October 2008. They also indicate that in 2008, a total number of 3.850 training seminars and workshops on the topic of prevention of corruption were organised and attended by 56.799 employees of the Ministry of Administration and Interior<sup>21</sup>. Finally, they refer to the recent adoption of the Anti-corruption Guidelines (see above, paragraph 22) which offers a clear picture of the reaction expected from a civil servant when offered a gift, i.e. he/she should refuse it. A copy of Chapter 2 was provided to GRECO.

---

<sup>18</sup> According to statistical data, in 2008, 541 civil servants requested assistance from the ethical counsellors.

<sup>19</sup> The template for the declaration of assets, containing the obligation to disclose gifts exceeding 300 euro (as amended in 2005 by Government Emergency Ordinance no. 14/2005) concerns “Gifts, services or advantages received for free or below market value from persons, organisations, commercial companies, (...), national companies or public institutions from Romania or abroad, including scholarships, loans, mortgages, bearing of costs or others, the individual value of which exceeds euro 300”(gifts received from 1<sup>st</sup> and 2<sup>nd</sup> degree relatives are exempted from disclosure).

<sup>20</sup> The templates also contains chapters on: real estate, movable goods, financial assets, debts, incomes from prizes, gambling, as well as from other sources.

<sup>21</sup> 1.105 training seminars (e.g. on ethics, deontology and professional integrity) attended by 24.023 employees; 1.493 workshops on prevention of corruption, attended by 13.122 persons including managers (topics debated : conflicts of interest in public procurement, vulnerabilities specific to human resources, vulnerabilities specific to the structures providing services for citizens, protection of the employee notifying a corruption deed, the obligations related to reactions to gifts and reporting corruption).

41. GRECO takes note of the information provided and welcomes that some positive steps have been taken towards compliance with this recommendation. Examples of this can be seen in the appointment of ethical counsellors and the finalisation of Anti-corruption guidelines providing advice to civil servants on ethical rules. Romania is also to be praised for the awareness raising and training efforts which reportedly also address the matter of gifts. However, GRECO recalls that according to paragraph 38 and 53 of the Evaluation Report, various laws provided for three different sets of rules at the time of the evaluation: one set prohibiting any gift or advantage to civil servants, another set prohibiting gifts which would constitute a reward or could influence the impartiality of the civil servants (with similar rules applicable to contractual staff), and a last set of rules requiring that gifts accepted by holders of a public mandate or post must be included in the declaration of assets, should they exceed the value of 300 EUR. GRECO is not entirely convinced that the issue of consistency of regulations has been addressed in a sufficiently clear-cut manner. GRECO still believes that it would be preferable to ensure that the various rules are as clear and consistent as possible.
42. GRECO concludes that recommendation x has been partly implemented.

**Recommendation xi.**

43. *GRECO recommended to add the offence of money laundering to the list of criminal offences justifying the professional disqualification for convicted persons.*
44. GRECO recalls that in the Compliance Report note was taken of the important amendment to the Trade Companies Law. However, as persons with a criminal background were still not excluded in all cases from holding a managerial position, GRECO concluded that recommendation xi had only been partly implemented and it invited the Romanian authorities to fine-tune the work already accomplished.
45. The Romanian authorities now indicate that following the government emergency ordinance no. 82/2007 as subsequently amended and approved by Law no. 88/8 of April 2009 (published in the Official Journal no. 246/2009)<sup>22</sup>, article 6, paragraph 2 and article 73 of the Trade Companies Law were amended to the effect that persons convicted for fraudulent management, breach of trust, forgery, use of forged items, fraud, embezzlement, perjury, bribery and money laundering cannot be founders (which was the innovation reported in the Compliance Report) but are also excluded at present from exercising responsibilities as administrators, directors and directorate members, members of the supervisory board, auditors and financial auditors of trade companies<sup>23</sup>. The Romanian authorities also recall that the legislation in force until now already included similar disqualifications in respect of economic interest groupings (Law no. 161/2003, as subsequently amended and supplemented), economic activities of natural persons, and individual and family companies (emergency ordinance no. 44/2008<sup>24</sup>), and cooperatives (Law no. 1/2005 on the organisation and operation of cooperatives).
46. GRECO takes note of the recent legislative steps thanks to which professional disqualifications following a money laundering conviction are at present in place also in respect of trade companies and economic activities of natural persons, and individual and family companies. GRECO welcomes the fact that disqualifications which have been introduced in 2007, as a result

---

<sup>22</sup> Government emergency ordinances must be approved by a law to become enforceable.

<sup>23</sup> The latter include credit cooperative institutions since these are to be established as joint stock companies and they fall under the Trade Companies Law.

<sup>24</sup> Published in the Official Journal no.328/2008.

of this recommendation, are not limited to founders anymore but apply to a broader range of persons exercising responsibilities within the above categories of legal persons. Besides, the Romanian authorities provide reassurances that similar rules are also in place as regards economic interest groupings and cooperative structures. It would thus appear that the economic sector is now broadly subject to professional disqualification measures meeting the concerns of the present recommendation.

47. GRECO concludes that recommendation xi has been implemented satisfactorily.

**Recommendation xii.**

48. *GRECO recommended to reinforce checks on the information required by law and the companies' real purposes, during and after registration.*
49. GRECO recalls that in the Compliance Report note was taken of the statistical figures which were indicative of a certain level of control activity by the authorities and especially the Financial Guard. Although the controls were basically meant to ensure that entities operate with the proper authorisations and comply with the regulations, GRECO noted that a significant number of cases lead to criminal proceedings and it would appear that, ultimately, the companies' real purposes were controlled by the judicial authorities. However, it was unclear whether these measures had an impact on the number of fictitious companies and lead to corrective action at the level of the registry of companies (reinforcement of checks on the information required by law and the companies' real purposes). GRECO concluded that recommendation xii had only been partly implemented and encouraged the Romanian authorities to pursue their control, updating and other efforts also at the level of the trade Register.
50. The Romanian authorities provide a long description of the system and mechanisms in place as regards the registration and centralisation of information by the Trade Register Offices attached to courts (under the overall coordination of the National Trade Register Office - ONRC), from which it emerges that: a) the delegated judge responsible for the registration of entities is required to verify that the documents communicated meet the legal requirements as to their form and content (article 6, paragraph 1 of the Law No 26/1990 on the trade register; b) the authorisation of traders is carried out, according to the provisions of Law no. 359/2004, on the basis of the declaration submitted under his/her own responsibility by the applicant; but the information provided is sent to the competent public authorities for control purposes and applicants registering a business may be subject to sanctions in case of false statements (article 292 of the Criminal Code); c) according to the provisions of article 22, paragraph 1 of Law no. 26/1990 on the trade register, the trader has the obligation to notify (for registration) any conviction imposed on him/her, an administrator or an auditor that would disqualify him/her from exercising the registered activity; in case the final decision of conviction is communicated by the court, it shall be registered within 15 days following the receipt of an authenticated copy of the final decision; convictions of the trader for illegal commercial activities are, specifically, to be communicated by the courts and registered (article 5, paragraph 2 of Law no. 12/1990 on protecting the population against certain illegal commercial activities, as republished and subsequently amended and supplemented<sup>25</sup>; d) since 2006, article 479 of the Criminal Procedure Code obliges judicial bodies

---

<sup>25</sup> Other judgments subject to registration are :a) declaration of nullity of the legal person registered in the trade register and appointment of a liquidator; b) dissolution of the legal person; c) changes regarding the insolvency proceedings; d) conviction of the trader, administrator, members of the supervision board, etc. for inaccurate, bad-will declarations, on the basis of which an incorporation was operated or a change was made in the trade register or for criminal acts laid down by special laws, in case, based on those laws, registration of the decisions in the trade register was disposed.

to communicate to the Trade Register any criminal proceedings, indictment and sentence against a legal person, with a view to performing the appropriate changes in the trade register, especially if one of the following sanctions was applied: i) complementary penalty of dissolution of the legal person; ii) suspension of activity or one of the activities of the legal person; iii) exclusion from participation in public tenders; iv) closure of certain working units; v) prohibition to perform certain patrimonial operations (susceptible of entailing a significant decrease in the patrimony asset or insolvency of the legal person); vi) prohibition to conclude certain legal documents, established by the judicial body, e) ordinance no. 75/2001 on the fiscal record was amended by government emergency ordinance no. 46/2009 on improving fiscal procedures and diminishing tax evasion; at present, the following data shall be registered in the fiscal record of the natural and legal persons (which is also kept by the trade register<sup>26</sup>): i) data from the fiscal bodies' final decisions; ii) court decisions information on the co-liability with the insolvent debtor; iii) data on the fiscal inactivity. In addition, the amendments provide explicitly that the delegated judge shall not order the registration in the trade registry if, for instance, the fiscal record contains criminal deeds and/or data showing a fiscal inactivity; f) protocols have been drafted between the ONRC and public authorities<sup>21</sup> controlling the activity of trading companies to the effect that the latter have on-line access to the information registered in the computerised trade register databases.

51. In addition, the authorities indicate that in 2008, out of 101.466 applications for registration, one was rejected (for not meeting certain conditions concerning premises). Between January and 15 June 2009, 27.935 applications were registered and none of them was rejected. In nearly the same period of time, between January 2008 and May 2009, the Financial Guard performed 254.926 controls of economic legal entities, and as a result, 6.577 notifications were sent to criminal investigation bodies (1091 of these were related to fictitious companies).
52. GRECO takes note of the information provided, in particular the fact that several mechanisms are in place to exert various forms of control during and after the registration of commercial legal entities. However, limited information is available about the functioning in practice of these mechanisms. As the control work of the Financial Guard suggests, the phenomenon of fictitious companies is still quite significant in Romania but to date, no cases are reported which would indicate that in practice corrective actions have been taken or that increased diligence is applied by the judicial authorities and the staff of the Register (out of the 130.000 applications for business registration processed over a period of 18 months in 2008/2009, only one was rejected for a minor issue and not a single company was dissolved or subject to penalties for not complying with legal requirements). Since controls over legal persons potentially involve at present the various state authorities, the current situation cannot be explained solely by the lack of means of the Register (which was underlined in paragraph 65 of the Evaluation Report). Romania should therefore pursue its efforts in this field and strengthen the checks in practice.
53. GRECO concludes that recommendation xii remains partly implemented.

---

<sup>26</sup> The Trade Register Offices attached to courts ensure the availability of information from the fiscal record in case of registration of a trading company, assignment of shares, appointment of new legal representatives and joining of new associates. According to the legal provisions regulating the organisation and operation of the fiscal record, the fiscal records contain i.a. information on the persons who have committed acts sanctioned by the financial and customs laws, as well as those related to the financial discipline.

<sup>27</sup> Such as DGA, the General Inspectorate of the Romanian Police, the Fraud Investigation Services within the territorial Police Inspectorates, the National Customs Authority, the General Commissariat of the Financial Guard, the National Office for the Prevention and Combat of Money Laundering, DNA, ANAF etc.

### **Recommendation xv.**

54. *GRECO recommended to introduce training courses for tax inspectors in the field of detecting corruption offences.*
55. GRECO recalls that this recommendation had not been implemented since most initiatives mentioned in the Compliance Report were of little relevance (and/or were already in place at the time of the on-site visit) from the point of view of recommendation xv. It was also unclear to what extent the only initiative which could have been considered as a direct result of the recommendation – a one-week seminar organised in July 2007 – answered the concerns of the report (it involved staff of the Financial Guard but not the tax inspectors of the National Fiscal Administration Agency and the focus was on issues which were quite different from the detection of possible corruption offences during tax inspections).
56. The Romanian authorities now report on a series of further initiatives<sup>27</sup>. They also indicate that the President of the National Agency for Fiscal Administration (ANAF) issued an order on 1 July 2009 (Order no. 1307/2009), establishing an obligation for control and inspection personnel to attend professional training courses which deal with anti-corruption measures. In their additional information, the authorities indicate that as a result of this decision, 2491 persons of the fiscal administration at central and local level (this represents more than 50% of the total number of persons with control and verification attributions) have already received training, including on the various forms of corruption, their possible appearance in concrete tax payers' situation (tax deductions, fictitious employment for instance). Concrete examples are discussed and the training material includes the OECD Bribery Awareness Handbook for Tax Examiners. Emphasis was also put on reminding the inspectors that even though they may not be able to identify as such the possible corruption-related facts they come across in the course of verification and controls, they are entitled to notify the criminal investigation bodies when they have indications that an offence was committed.
57. GRECO welcomes the swift steps taken since July 2009 at the level of the fiscal administration, which meet the expectations of this recommendation.
58. GRECO concludes that recommendation xv has been dealt with in a satisfactory manner.

### **III. CONCLUSION**

59. In addition to the conclusions contained in the Second Round Compliance Report on Romania and in view of the above, GRECO concludes that recommendations iii, ix and xi have been implemented satisfactorily and that recommendations vii and xv have been dealt with in a satisfactory manner. Recommendations vi, viii, x and xii remain only partly implemented.
60. With the adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that out of the 15 recommendations issued to Romania, in total 11 recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner. Most of the remaining recommendations concern public administration and the statutory rules applicable to public officials. Therefore, GRECO urges the Romanian authorities to pursue their efforts in this area in particular so that further positive developments can be signalled in the near future.

---

<sup>28</sup> Training on deontology and anti-corruption measures organised by the Customs and Public Finances School, periodic meetings between prosecutors of the National Anticorruption Directorate (DNA) and the Financial Guard to improve the quality of notifications sent to the DNA and of the accompanying files.

Romania should pursue its efforts to address in particular the phenomenon of companies without real economic activity, since these can be misused for various criminal purposes, including dissimulating payments and proceeds of corruption.

61. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of Romania. The Romanian authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations vi, viii, x and xii.
62. Finally, GRECO invites the Romanian authorities to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.