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FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies

EVALUATION REPORT

ROMANIA

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GRECO
Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE
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I. EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the framework in place in Romania to prevent and combat corruption among persons exercising top executive functions (the President, the Prime Minister, Deputy Prime Ministers, Ministers, Secretaries and Undersecretaries of State, Presidential Advisers, State Advisers, State Councillors and Ministerial Advisers, hereafter "PTEFs") and members of two law enforcement agencies (LEAs), presently the Police and the Gendarmerie. It aims at supporting the ongoing efforts of the country in building a solid foundation to prevent corruption through strengthening transparency, integrity and accountability in public life.

2. Romania has a National Anti-corruption Strategy (SNA) for the period 2021-2025 in place. It has developed an integrity institutional framework, applicable to both PTEFs and LEAs, consisting of the National Integrity Agency (ANI), responsible for the review of declarations of assets and interests and carrying out administrative investigations regarding conflicts of interest, incompatibilities and unjustified wealth; the National Anti-corruption Directorate (DNA), leading the prosecution of medium and high-level corruption; and the General Anti-corruption Directorate (DGA) within the Ministry of Internal Affairs (MAI), which is specialised in preventing and combatting corruption of MAI's personnel, including its specialised structures such as the Police and the Gendarmerie. Also, the integrity legal framework consists of several laws which contain provisions regulating conflicts of interests, incompatibilities, filing of declarations of assets and interests, acceptance and disclosure of gifts, etc. A new Law on the protection of whistle-blowers came into effect in December 2022.

3. Regarding PTEFs, there are a number of issues that would need to be improved. In order to prevent risks of conflicts of interest, integrity checks of Government officials should be carried out as part of the appointment process. The applicable codes of conduct need to be reviewed to cover all relevant integrity matters, accompanied by practical guidance and proper monitoring and enforcement. Dedicated and regular briefings and training ought to be conducted and confidential counselling made available to all PTEFs. Public interest information is not regularly published online, in spite of the domestic statutory requirement. An independent oversight mechanism against the authorities' refusal to disclose information is absent. The frequent recourse to emergency ordinances for the Government to legislate is an issue of serious concern that hampers effective transparency and meaningful public consultations and must be addressed as a matter of priority. Lobbying of PTEFs is not regulated *per se*. The existing legal integrity framework needs greater clarity, coherence and predictability. There is no regulation of the phenomenon of revolving doors for PTEFs.

4. Turning to law enforcement agencies, the MAI's recent integrity plan, which was adopted in December 2022, extends its scope of application to the Police, and its measures have also been implemented by the Gendarmerie. There is also a need to update the Code of Ethics applicable to the Police and the Gendarmerie to include relevant integrity rules and supplement it by practical guidance and examples reflecting day-to-day realities. Integrity checks do not take place before all recruitment and at regular intervals during the career of law enforcement officers. Representation of women at all levels, particularly in higher echelons of the Police and Gendarmerie, is an issue that requires further measures. Appointment to managerial positions, notably by virtue of 'empowerment', is predominantly left to the discretion of the direct superior. The system of permitting secondary activities lacks effective oversight arrangements. Rules and procedure regulating the disclosure and

management of conflicts of interest in the Gendarmerie are absent. Lastly, the new Law on whistle-blower protection is to be welcomed, and will require dedicated measures for its implementation, notably through regular training of law enforcement officers.

II. INTRODUCTION AND METHODOLOGY

5. Romania joined GRECO in 1999 and has been evaluated in the framework of GRECO's First (in October 2001), Second (in February 2005), Third (in November 2010) and Fourth (in May 2014) Evaluation Rounds. The resulting Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's website (www.coe.int/greco). This Fifth Evaluation Round was launched on 1 January 2017 [1].

6. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of Romania to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of Romania, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, Romania shall report back on the action taken in response to GRECO's recommendations.

7. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Romania from 30 October to 4 November 2022, and reference was made to the responses by Romania to the Evaluation Questionnaire (GRECO(2016)19), as well as other information received, including from civil society. The GET was composed of Ms Silvia THALLER, Senior Public Prosecutor, Central Prosecution Service for Economic Crime and Corruption (Austria), Mr Elnur MUSAYEV, Head of the Non-Criminal Proceedings Department, Prosecutor's Office of the (Azerbaijan), Mr Dimosthenis STIGAS, Judge by the Court of Appeal in Thessaloniki, (Greece), and Ms Stela BRANIŞTE, Head of International Relations Department, Ministry of Justice (Republic of Moldova). The GET was supported by Ms Tanja GERWIEN and Mr Ylli PECO from GRECO's Secretariat.

8. The GET had meetings with representatives of the Romanian Presidential Administration, the Secretariat General of the Government, the Ministry of Justice, the Prime Minister's Control Body, the General Anti-corruption Directorate within the Ministry of Internal Affairs (MAI), the Minister of Internal Affairs' Control Body, the General Inspector of the Romanian Police, the General Inspector of the Romanian Gendarmerie, the National Integrity Agency, the National Anti-corruption Directorate, the Ombudsperson and the Court of Accounts. It also met representatives of academia, journalists, civil society and police trade unions.

[1] More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's website.

III. CONTEXT

9. Romania has been a member of GRECO since 1999 and has undergone four evaluation rounds focusing on different topics related to the prevention of and fight against corruption. In summary, 100% of recommendations were implemented in the First Evaluation Round, 73% in the Second Evaluation Round, and 75% in the Third Evaluation Round. In the Fourth Evaluation Round, dealing with corruption prevention in respect of parliamentarians, judges and prosecutors, 56% of all recommendations, including those made in the Follow-up to the Ad Hoc (Rule 34) Report have been fully implemented, 22% partly implemented and 22% not implemented so far. The compliance procedure under that round is, however, still on-going.

10. Throughout the years, Romania has been plagued by high-level corruption scandals[2]. According to Transparency International's Global Corruption Barometer – European Union 2021[3], 80% of respondents in Romania believe that corruption in government is a big problem, 66% of respondents believe their Government is doing badly in tackling corruption and 45% think corruption increased in Romania in the previous 12 months. According to the European Commission's Special Barometer on Corruption 2022[4], 72% of respondents believe corruption is widespread in Romania. 39% responded that the level of corruption in the country remained the same, and 36% thought that it increased in the last three years. Institutions that scored high on the presence of widespread corruption included, amongst others, politicians at national, regional or local level (44%). According to Transparency International's Corruption Perception Index[5], Romania has maintained a steady score of the perceived level of public sector corruption in the last three years (between 44 and 46 out of 100, where 0 means highly corrupt and 100 means very clean).

11. In response, the National Anti-corruption Strategy for 2021-2025 has been adopted, the implementation of which is ongoing. An online Single Register of Transparency of Interests (RUTI) has been operating since 2016 with a view to disclosing the agenda of persons with top executive functions. The National Integrity Agency (ANI) has pursued its work for reviewing declarations of assets and interests, which are now submitted online, through an electronic platform, and for determining situations of unjustified wealth, conflicts of interest and incompatibilities. The National Anti-corruption Directorate (DNA) has prosecuted medium and high-level corruption, in spite of operational challenges relating to its staffing/personnel resources.

12. As regards law enforcement authorities, according to the Special Barometer on Corruption 2022, 40% of respondents thought that widespread corruption was present in the police and customs. Transparency International's Global Corruption Barometer[6] revealed that

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[2] In January 2012, a former Romanian Prime Minister was found guilty of illegally raising over a million and a half euros during the 2004 election campaign and sentenced to prison for corruption (https://edition.cnn.com/2012/01/30/world/europe/romania-politician-convicted/index.html). In September 2015, the then Romanian Prime Minister was formally indicted on several counts of corruption, and was acquitted in 2018 (https://www.bbc.com/news/world-europe-34279002 and https://balkaninsight.com/2018/05/10/romanian-ex-pm-acquitted-of-corruption-charges-05-10-2018/). In 2021, another former Romanian Prime Minister was charged with receiving bribes while in office (https://balkaninsight.com/2021/01/26/romanian-charges-ex-prime-minister-over-alleged-800000-bribes/)

[3] https://images.transparencycdn.org/images/TI_GCB_EU_2021_web.pdf

[4] https://europa.eu/eurobarometer/surveys/detail/2658

[5] https://www.transparency.org/en/cpi/2022/index/rou

[6] https://www.transparency.org/en/gcb/eu/european-union-2021/results/rou

24% of respondents considered the Police to be involved in corruption. That notwithstanding, the General Anti-corruption Directorate (DGA) within the Ministry of Internal Affairs (MAI) has played a significant role in preventing and investigating corruption within MAI's structures, including the Police and the Gendarmerie, as well as in raising awareness of law enforcement officers.

13. A new Law on the protection of whistle-blowers has recently entered into force and the National Integrity Agency has been designated as an external reporting channel.

14. Access to public interest information is enshrined in the Constitution, and domestic legislation requires public authorities to publish information of public interest.

IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)

System of government and top executive functions

System of government

15. Article 1 of the Constitution of Romania (the Constitution)[7] provides that the form of government of Romania is a republic. Under Article 61 of the Constitution, Parliament is the supreme representative body of the Romanian people and the sole legislative authority in the country. It is composed of the Chamber of Deputies and the Senate. According to the authorities, the doctrine considers Romania to be a semi-presidential parliamentary republic, in which the constitutional prerogatives of the President appear to be limited when compared to those in other semi-presidential republics.

The President

16. Article 80 (1) of the Constitution provides that the President of Romania (the President) represents the Romanian State and is the safeguard of the national independence, unity and territorial integrity of the country. Article 80 (2) mandates the President to guard the observance of the Constitution and the proper functioning of the public authorities. To this effect, s/he is to act as a mediator between the Powers in the State, as well as between the State and society.

17. The President is elected by direct popular vote for a five-year term (see also paragraph 38 below). The President designates the Prime Minister, and on the latter's proposal, the President appoints or dismisses Members of the Government. Under Article 86 of the Constitution, the President may consult with the Government about urgent, extremely important matters. According to Article 87, the President may participate in the meetings of the Government debating upon matters of national interest with regard to foreign policy, the defence of the country, preservation of public order, and, at the Prime Minister's request, in other matters. In such instances, the President presides over the Government's meetings.

18. The President addresses messages on the main political issues of the nation to Parliament. According to Article 89 (1) of the Constitution, the President, after consultation with the presidents of both Chambers of Parliament and leaders of parliamentary groups, may dissolve Parliament provided that no vote of confidence has been obtained to form a government within 60 days after the first request was made, and only after rejection of at least two requests for investiture. Article 90 provides that the President may, after consultation with Parliament, ask the people of Romania to express its will on matters of national interest by referendum.

19. In addition to the powers described above vis-à-vis the Government and Parliament, the President has certain powers in matters of foreign policy. Article 91 of the Constitution provides that, in the name of Romania, s/he concludes international treaties negotiated by the Government and submits them to Parliament for ratification. Upon the Government's

[7] https://www.presidency.ro/en/the-constitution-of-romania

proposal, the President will accredit and recall diplomatic envoys of Romania and approve the setting up, closing down or change in rank of diplomatic missions.

20. Article 92 of the Constitution provides that the President is the Commander-in-Chief of the Armed Forces and presides over the Supreme Council of National Defence. S/he may declare, with prior approval of Parliament, partial or general mobilisation of the Armed Forces. Only in exceptional cases will the decision of the President be subsequently submitted for approval to Parliament.

21. Also, the President may adopt emergency measures, such as declaring a state of emergency in the country with Parliament's approval. Under Article 94 of the Constitution, the President exercises other powers, such as the power to confer decorations and titles of honour, grant individual pardon and make appointments to public offices as provided for by law. According to Article 100 of the Constitution, the President issues decrees, which are to be published in the Official Gazette and countersigned by the Prime Minister in respect of the President's key powers.

22. As agreed by GRECO, a Head of State would be covered in the 5th evaluation round under "central governments (top executive functions)" when s/he actively participates on a regular basis in the development and/or the execution of governmental functions or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure, taking decisions on the appointment of individuals to top executive functions.

23. The GET notes that the President of Romania is the Head of State with powers which go beyond ceremonial functions. The GET learned that the President may refuse the appointment of ministers only once. When attending Government meetings relating to matters of foreign policy, national defence or public order, s/he can articulate his/her views and endeavour to influence the Government's policy or decision-making, even without having the right to vote. During the nine-year term of office, the current President has attended five Government meetings. The Constitutional Court has recognised that the role of the President is to promote his/her agenda. Also, the President acts as a mediator between the Powers in the State. In this vein, on 26 May 2019[8] the President of Romania called a consultative referendum over the Government's controversial justice reforms. The President's official website[9] states that "the referendum … was an unequivocal signal that the path of a European and democratic Romania is inextricably linked to maintaining the independence of the judiciary. … the result of the referendum was translated into the National Political Agreement[10] to strengthen Romania's European path."

24. The President's position of power is also demonstrated by the active exercise of powers in the field of foreign policy, as representative of the Romanian State. Pursuant to the Constitutional Court's decision no. 683/2012, Article 80 (1) of the Constitution allows the President to outline the future direction to be followed by the State in the foreign policy and, practically, to establish its orientation in the area of foreign relations in consideration of the

[8] https://www.euractiv.com/section/eu-elections-2019/news/romanias-anti-corruption-referendum-explained/
[9] https://www.presidency.ro/en/president/klaus-iohannis
[10] https://www.presidency.ro/ro/presedinte/documente-programatice/acord-politic-national-pentru-consolidarea-parcursului-european-al-romaniei-13-iunie-2019

national interest. The President, in his/her capacity as Head of the State, exclusively represents the Republic of Romania in meetings of the European Council, which is the institution defining the general political direction and priorities of the European Union. In doing so, the President is empowered to express his/her (dis)agreement with the items on the agenda in the name of the Republic of Romania, without any obligation to have any formal prior consultation with or consent by the Government which will merely implement the commitments undertaken by the President. The President recently represented Romania at the Fourth Council of Europe's Summit of Heads of State and Governments in Reykjavik[11].

25. Furthermore, the President is regularly active in the field of defence. Thus, as the Commander-in-Chief of the Armed Forces, which derives from his/her position as the representative of the Romanian State and is a safeguard of the national independence, unity and territorial integrity of the country, the President's role influences the Government's defence policies, including cooperation with Members of the Government. The Presidential Administration's Department of National Security is involved in the elaboration, implementation and evaluation of the National Defence Strategy, which is subsequently adopted by Parliament. Also, the GET learned that, as a result of the President's role and influence in brokering a National Political Agreement on the increase of defence funding on 13 January 2015[12], the annual share of gross domestic product (GDP) allocated to defence expenditure had been increased to 2%.

26. The GET also took note of the remarks made on-site by representatives of civil society, media and academics, all of whom regarded the President as a main political actor in Romania.

27. In view of the above, the GET considers that there are solid grounds to regard the President of Romania as a person with top executive functions for the purpose of this report.

28. According to Law no. 47/1994[13] on the services subordinated to the President, s/he is assisted by the Presidential Administration, which is a public institution with its own legal personality and is made up of various departments employing civil servants, contract and technical personnel. The Presidential Administration has a Chief Authorising Officer, appointed and dismissed by the President, with the rank of a Presidential Adviser. In addition, Presidential Advisers having the rank of Minister, and State Advisers with the rank of Secretary of State assist the President. According to the Regulation on the Organisation and Functioning of the Presidential Administration[14], the Presidential Advisers and State Advisers are experts in their areas of responsibility and have a technical role, thus providing advice and support to the President for the proper discharge of his/her duties and functions. As a result of their direct involvement in giving advice to and assisting the President in respect of political matters, policies and in the decision-making process, the GET regards the Chief Authorising Officer, Presidential Advisers and State Advisers (jointly referred to as Presidential Councillors) as involved in the exercise of executive functions so as to be covered by this report.

The Government

[11] https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680ab40c4
[12] https://www.presidency.ro/en/president/core-documents/national-political-agreement-on-increasing-defence-funding-13-january-2015
[13] https://legislatie.just.ro/Public/DetaliiDocument/28133
[14] https://www.presidency.ro/files/documente/ROF_AP_2021.pdf

29. Under Article 102 of the Constitution, the Government ensures the implementation of the domestic and foreign policy of the country and exercises the general management of public administration. The Government consists of the Prime Minister, Ministers and other members, as established by an organic law, who are politically appointed by Parliament. The Prime Minister, two Deputy Prime Ministers and 19 Ministers[15] constitute, for the purpose of this report, the Cabinet which is the ultimate decision-making body of the Government. There are only two female members of the Cabinet. There appears to be no standards or rules to promote gender equality in the composition of the Cabinet. Therefore, the GET draws the attention of the Romanian authorities to the Council of Europe's Recommendation Rec (2003)3 of the Committee of Ministers on balanced participation of women and men in political and public decision-making according to which the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

30. Article 107 of the Constitution provides that the Prime Minister leads the Government, presides over its meetings, and co-ordinates the activities of its members, with the observance of the powers and duties incumbent on them. Article 56 of the Government Emergency Ordinance no. 57/2019[16] of 3 July 2019 on the Administrative Code (the Administrative Code) states that Deputy Prime Ministers coordinate, under the direct leadership of the Prime Minister, the implementation of the Government programme accepted by Parliament in a specific field of activity, for which purpose they work with the ministers responsible for the implementation of this programme. Ministers exercise the leadership of ministries which are legal entities, and represent them before other public authorities, legal and natural persons and courts.

31. According to Article 31 of the Administrative Code, the Prime Minister appoints the Secretary General of the Government, who has the rank of Minister, Deputy Secretaries-General of the Government, who have the rank of Secretary of State, Secretaries and Undersecretaries of State, and State Councillors. They are not part of the Cabinet, but will be considered Members of the Government, together with the members of the Cabinet, for the purpose of this report. They assist the Government in the daily conduct of business and represent the Government on instructions received by the Prime Minister, Deputy Prime Ministers or Ministers. The GET takes the view that the Members of the Government are to be regarded as persons with top executive functions (PTEFs) in the sense of this report. However, according to Article 61 of the Administrative Code, Secretaries-General and Deputy Secretaries-General of Ministries are senior civil servants, appointed by competition and examination, on the basis of professionalism, and fall outside the scope of this report.

32. The working structure of the Government is composed of the Secretariat General of the Government, the Prime Minister's Chancellery, Deputy Prime Ministers' Offices, and ministries, according to Article 19 of the Administrative Code. Article 20 of the Administrative Code provides that the Secretariat General of the Government (SGG) is headed by the Secretary General of the Government. S/he is assisted by one or more Deputy Secretaries-General, and, where appropriate, by one or more Secretaries of State, appointed or removed from office by decision of the Prime Minister. According to the Government's decision no.

[15] https://gov.ro/ro/guvernul/cabinetul-de-ministri

[16] https://legislatie.just.ro/Public/DetaliiDocument/215925. The Administrative Code regulates, amongst other things, the general framework for the organisation and functioning of the central public administration, including the Government and Ministries, the status of civil servants and contract staff, and administrative responsibility.

137/2020[17] of 13 February 2020 on the organisation, functioning and duties of SGG, it is organised and functions as a public institution with legal personality, and ensures the development and continuity of technical operations related to the acts of the Government.

33. The Chancellery of the Prime Minister (CPM) is a structure without legal personality, subordinated to the Prime Minister, funded through the SGG's budget. It is led by the Head of the CPM, who has the rank of Minister. The CPM comprises one or more Secretaries of State, State Councillors, the Director of the Prime Minister's cabinet who is appointed or dismissed from office by decision of the Prime Minister as well as the Prime Minister's advisers. The CPM's Head coordinates the activity of the structures, public institutions and specialised bodies of the public administration. According to the Prime Minister's decision no. 76/2021[18] of 27 January 2021, the CPM has tasks in the field of communication and media relations, in the implementation of policies and the establishment of objectives in the field of international relations, in developing good relations with Parliament, and in analysing, verifying the information in the field of national security.

34. According to Article 21 of the Administrative Code, the Deputy Prime Minister's Office is a structure without legal personality, financed by the budget of the SGG, headed by the Deputy Prime Minister, which comprises several Secretaries of State and State Councillors.

35. Article 544 of the Administrative Code provides that the Prime Minister and Members of the Government are entitled to a private cabinet, the staff members of which (including honorary advisers working for the Prime Minister and heads of cabinets) are employed under an individual employment contract and dismissed from office on the basis of the proposal of the person who contracted them (jointly referred to as Ministerial Advisers). Under Article 541 (2) of the Administrative Code, their role is to support the decision-maker in carrying out the activities directly resulting from the exercise of the duties established by the Constitution or by other normative acts. As a result of the direct role and work in providing advice on, and directly contributing to political matters, policies and decision-making, Ministerial Advisers are also to be considered PTEFs.

36. Under Article 108 of the Constitution, the Government adopts decisions and ordinances. Decisions are adopted to organise the execution of laws. Ordinances are issued under a special enabling law, within the limits and in conformity with the provisions thereof. Decisions and ordinances adopted by the Government are signed by the Prime Minister, countersigned by the Ministers who are bound to execute them, and are published in the Official Gazette. Failure to publish them entails their nullity. Article 57 of the Administrative Code provides that Ministers issue orders and instructions of a regulatory or individual nature. Regulatory orders and instructions are published in the Official Gazette.

37. According to Article 36 of the Administrative Code, the Government meets weekly or whenever needed. The Government's meetings, the briefings at the end of meetings, the information regarding drafts of normative acts included on the agenda of each Government meeting and the information regarding normative acts adopted during the Government's meetings are published weekly on the website of the institution (www.gov.ro), section Govern/Legislative Process/Government meeting (https://gov.ro/ro/guvernul/sedinte-guvern). The debates during the Government's meetings and the manner of adopting acts, as

[17] https://legislatie.just.ro/Public/DetaliiDocument/223115
[18] https://legislatie.just.ro/Public/DetaliiDocument/236753

well as any other measures established, are recorded and written in the transcript of the meeting, certified by the General Secretary of the Government and preserved by the General Secretariat of the Government.

Status and remuneration of persons with top executive functions

38. Under Article 81 of the Constitution, the President is elected by universal, equal, direct, secret and free suffrage. According to Article 83, s/he serves a term of five years, for a maximum of two terms, which may be consecutive.

39. Article 103 of the Constitution provides that the President designates a candidate to the office of Prime Minister, as a result of his/her consultation with the party which has obtained absolute majority in Parliament, or - unless such majority exists - with the parties represented in Parliament. The candidate to the office of Prime Minister will, within ten days of his/her designation, seek the vote of confidence of Parliament upon the programme and complete list of the Government.

40. All Members of the Government individually take an oath before the President. According to Article 105 of the Constitution, membership of the Government is incompatible with the exercise of any other public office, except with the office of a member of the Chamber of Deputies or the Senate. Likewise, it is incompatible with the exercise of any office of professional representation paid by a business organisation. Membership of the Government ceases upon resignation, dismissal, the loss of the electoral rights, incompatibility, death or in any other cases provided for by law.

41. Upon the proposal of the Prime Minister, the President dismisses or appoints Members of the Government. According to Article 107 (2) of the Constitution, the President cannot revoke the Prime Minister. Article 110 of the Constitution states that the Government exercises its term of office until the validation of the general parliamentary elections. The Government is dismissed on the date Parliament withdraws the confidence granted, or if the Prime Minister finds himself/herself in a situation of incompatibility or in case of his/her impossibility to exercise his/her powers for more than 45 days.

42. Under Article 109 of the Constitution, the Government is politically responsible for its entire activity before Parliament.

43. As regards the appointment of Members of the Government, Presidential Councillors and Ministerial Advisers, the GET learned that there are no regulations for their appointment other than the general eligibility requirements of being Romanian nationals, commanding good knowledge of the Romanian language, having full legal capacity, etc. With the exception of checks in the national security register in order to allow them access to classified information, there is no procedure in place to carry out integrity vetting prior to their appointment by either the President, the Prime Minister or another body, as appropriate. The GET recognises that the appointment of certain PTEFs is based on personal trust. However, the conduct of integrity checks prior to appointment would serve the purpose of managing possible conflicts of interest beforehand or organising for certain areas under the responsibility of a PTEF to be dealt with by another PTEF in case of potential conflicts of interest. Therefore, **GRECO recommends that rules be introduced requiring that integrity checks take place prior to or right upon the appointment of Members of the Government,**

Presidential Councillors and Ministerial Advisers in order to identify and manage any possible conflicts of interest.

44. The GET welcomes that the names, resumes/CVs and areas of responsibility of the Presidential Councillors are disclosed on the President's website[19]. The same disclosure takes place in respect of the Prime Minister's advisers[20]. However, such a practice (which is not to be confounded with the publication of declarations of assets and interests) is not fully consistent. Ministries have not published on their websites the names and areas of responsibilities of the respective Ministerial Advisers. For this reason, **GRECO recommends that, for the sake of transparency, the Ministerial Advisers' names, areas of responsibility and information on ancillary activities (when those are carried out) be made public and easily accessible.**

45. The gross monthly salary of certain PTEFs is shown in the table below.

PTEFs	Gross monthly salary
President of Romania[21]	24,960 Romanian New Leu (RON), approx. 5,052 euros (EUR)
Prime Minister	RON 23,920, approx. EUR 4,841
Deputy Prime Minister	RON 22,256, approx. EUR 4,505
Minister Secretary General of the Government (rank of minister) Chief of Chancellery (rank of minister)	RON 21,840, approx. EUR 4,420
State Councillors Secretary of State Director of Cabinet (rank of Secretary of State) Deputy Secretary General	RON 16,640, approx. EUR 3,368
Under-Secretary of State	RON 14,560, approx. EUR 2,947

46. The President, the Prime Minister, Ministers and Secretaries of State are entitled to an official residence, in accordance with the law, during their term of office.

Anti-corruption and integrity policy, regulatory and institutional framework

Anti-corruption and integrity policy

47. In December 2021, the Government adopted a National Anti-corruption Strategy 2021-2025[22] (SNA). Its implementation is monitored by the Minister of Justice, who reports to the Government and submits a summary of its implementation to Parliament. SNA's monitoring is shared amongst five stakeholders' platforms which are involved in reviewing the annual monitoring report drawn up by the technical secretariat of the Ministry of Justice: the platform of independent authorities and of the anti-corruption institution, the platform of the central public administration, the platform of the local administration, the platform of the business environment and the platform of civil society. Prior monitoring reports are publicly available

[19] https://www.presidency.ro/en/presidential-administration/advisers-of-the-president
[20] https://gov.ro/ro/prim-ministru/echipele-premierului-i-vicepremierilor
[21] https://www.presidency.ro/files/documente/Lista_cu_Functii_AP_+_Grila_salarii_AP_-_31.03.2023.pdf
[22] https://sna.just.ro/docs/pagini/79/NAS%202021-2025.pdf

online[23], no report having been produced in respect of the current SNA. An ex-post evaluation of the impact of SNA is also envisaged. SNA is accompanied by a logical framework, setting out the objectives, measures to be taken for their fulfilment, performance indicators and corresponding risks.

48. SNA's first general objective relates to increasing the level of implementation of integrity measures at the organisational level. This is carried out by, amongst other things, adopting, implementing, monitoring, evaluating and disseminating integrity plans for central institutions, following consultations carried out with employees in order to identify, analyse and assess the risks of corruption as well as establish preventive and mitigating measures. A Standard Methodology for the Assessment of Corruption Risks[24] (MSERC) for central public authorities and institutions, which was formulated during the implementation of the previous SNA 2016-2020, already exists. According to MSERC, the head of each central public authority will set up a working group, which will identify and evaluate corruption risks, determine the intervention measure as well as monitor, review and update the integrity plan.

49. The GET learned that the Presidential Administration has an integrity plan in place, which is published online[25]. Out of 20 ministries, 19 have sent their integrity plans to the Ministry of Justice. The GET had a closer look at the integrity plan and the corruption risk register of the Prime Minister's Control Body which had been made available to it and it accessed certain integrity plans published online (not all of them being published online). While acknowledging that integrity plans are in place, the GET notes that they have a focus on the public administration and do not cover PTEFs as such. They include general measures but do not contain specific corruption risks including mitigating or intervening measures targeting PTEFs. This lacuna needs to be filled. Therefore, **GRECO recommends that (i) a systemic analysis of corruption and integrity-related risks covering all persons with top executive functions, including the identification of corresponding remedial measures, be carried out and integrated in the integrity plans which would subsequently be revised or adopted afresh, and (ii) the integrity plans be published online and subject to review, as appropriate.**

Institutional framework

50. The National Integrity Agency (ANI) deals with the collection, monitoring and verification of declarations of assets and interests, in order to identify possible incompatibilities, conflicts of interest and unjustified assets. ANI is an autonomous institution, which is not subordinated to any other public authority or institution. ANI monitors whether public institutions have collected and published the declarations of assets and interests of their officials and verifies their correctness. ANI applies sanctions in case of failure to file declarations. If ANI finds irregularities in the declarations, it refers the matter to the competent authorities.

51. The National Anti-corruption Directorate (DNA) is an independent prosecutor's office specialising in combating medium and high-level corruption and forms part of the Prosecutor's Office attached to the High Court of Cassation and Justice. It was created as a necessary tool in discovering, investigating and bringing to court medium and high-level corruption cases.

[23] https://sna.just.ro/Rapoarte+de+monitorizare
[24] https://legislatie.just.ro/Public/DetaliiDocument/204398
[25] https://www.presidency.ro/files/documente/23-02-01-03-40-32Planul_de_Integritate_al_AP_-_2022.pdf

52. The General Anti-corruption Directorate (DGA) is a structure of the Ministry of Internal Affairs (MAI), with its own legal personality, specialised in preventing and combating corruption of MAI's personnel.

Regulatory framework

53. The integrity legal framework in Romania consists of several laws. Thus, Law no. 161/2003[26] on certain measures for ensuring transparency in the exercise of political officeholders, public functions and in the business environment, and for preventing and sanctioning corruption contains provisions relating to conflicts of interest and incompatibilities, which vary depending on the category of political or public office. It applies to all PTEFs.

54. Law no. 176/2010[27] on integrity in the exercise of public functions and dignities lays down the obligation for political officeholders, such as PTEFs, to disclose assets and interests on appointment, annually and on leaving public office. As stated above, the verification of declarations of assets and interests as well as the investigation of situations of conflicts of interest, incompatibilities and unjustified wealth is carried out by ANI, which was established by Law no. 144/2007[28].

55. Law no. 251/2004[29]on certain measures relating to goods received free of charge on the occasion of protocol events in the exercise of a public office or function governs the receipt of protocol gifts and items.

56. Lastly, the Administrative Code lays down ethical and integrity rules applicable to civil servants and contract staff, the latter of which includes Ministerial Advisers.

57. The GET acknowledges that the legal framework on integrity is spread out in various voluminous laws, which has rendered its task of grasping the breadth and depth of the integrity framework rather difficult. Moreover, it dates back to the early 2000s and interlocutors met on-site stressed the need to have a consolidation of the laws on integrity and to improve the stability, clarity and predictability of statutory provisions, also having regard to national case-law and corruption prevention policies. The European Commission's 2022 Rule of Law Report[30] on Romania states that the legal landscape on integrity remains fragmented and needs modernising. The GET takes the view that a comprehensive and consolidated approach is needed in the form of new legislation. Obviously, such legislation would require solid research and analysis, which would provide a stable and sustainable basis for its review or modernisation. Consequently, **GRECO recommends that a comprehensive analytical study of the existing legal integrity framework be carried out and, in the light of its findings, the current integrity framework be reviewed in order to enhance its clarity, coherence and comprehensiveness.**

[26] https://legislatie.just.ro/Public/DetaliiDocument/43323
[27] https://legislatie.just.ro/Public/DetaliiDocument/121924
[28] https://legislatie.just.ro/Public/DetaliiDocument/82317
[29] https://legislatie.just.ro/Public/DetaliiDocument/52934
[30]https://commission.europa.eu/document/download/bf52b443-7a64-4a54-8584-533c866bf902_en?filename=52_1_194026_coun_chap_romania_en.pdf

Ethical principles and rules of conduct

58. The Internal Regulation of the Presidential Administration[31] lays down rules regarding the ethical and professional conduct of its employees, including the Presidential Councillors. Article 3 lists the principles governing the ethical and professional conduct (priority of public interest, professionalism, impartiality and non-discrimination, moral integrity, freedom of thought and expression, honesty and fairness, openness and transparency and equal treatment of citizens). Articles 8 and 10 set out the obligation to comply with the rules contained in the Code of Ethics and Professional Conduct of the staff of the Presidential Administration. It applies to, amongst others, Presidential Councillors. It comprises general principles governing the ethical and professional conduct, and contains provisions relating to prohibition on the acceptance of gifts, services and benefits, participation in decision-making, use of public resources, whistleblowing, etc.

59. A Code of Conduct for Members of the Government was adopted in 2017 and is available online[32] (the Ministerial Code of Conduct). Also, there is a code of ethical conduct and integrity which applies to civil servants and contract staff of the Secretariat General of the Government[33] (SGG) as well as the structures without legal personality within the Government working apparatus for which the Secretariat General of the Government is the employer (SGG Code of Conduct). By virtue of its Article 3(m), it appears to cover the advisers to the Prime Minister's and Deputy Prime Ministers' office. The general principles laid down in the Ministerial Code of Conduct and the SGG Code of Conduct are broadly the same (and similar to those set out in the Internal Regulation of the Presidential Administration in the preceding paragraph), namely the supremacy of the Constitution and of the law, priority of public interest, professionalism, moral integrity and transparency in the exercise of public office.

60. Article 7 of the Ministerial Code of Conduct contains provisions regarding the refusal to accept any gifts or other advantages and the obligation to declare situations of conflicts of interest or incompatibility. Under Article 10, complaints about breaches of the Ministerial Code of Conduct are brought to the attention of the Prime Minister through the Secretariat General of the Government. The Prime Minister puts the matter to the members of the Cabinet for discussion, which decides by consensus on the best solution. Serious ethical breaches are the subject of analysis within the Government.

61. The SGG Code of Conduct contains, amongst other things, provisions which have almost identically mirrored provisions of the Administrative Code applicable to civil servants (see paragraph 62 below), regulating the preservation of state secrecy, professional secrecy and confidentiality (Article 11), the prohibition on accepting gifts or other advantages save for protocol gifts (Article 12), the responsible use of public resources (Article 15), limitation of participation in acquisitions, concessions or rents (Article 18), conduct in relation to citizens (Article 20), conduct in international relations (Article 21), objectivity and responsibility in decision-making (Article 22), respect for the regime of conflicts of interest and incompatibilities and the obligation to file declaration of assets and interests (Articles 24-27). Breaches of its provisions engage administrative-disciplinary liability, which will attract one of the sanctions provided for in Article 35 for civil servants and Article 39 for contract staff,

[31] https://www.presidency.ro/files/documente/Regulamentul_Intern_Administratia_Prezidentiala.pdf
[32] https://gov.ro/fisiere/programe_fisiere/20-02-10-12-02-17Codul_de_conduita_al_membrilor_Guvernului_Romaniei.pdf
[33] https://sgg.gov.ro/1/wp-content/uploads/2016/04/Codul_etic.pdf

namely written reprimand, decrease of salary, demotion and dismissal from office/termination of the individual employment contract.

62. According to Article 597 (2) (k) and (l) of the Administrative Code, its entry into force repealed the Code of Conduct for civil servants, enacted by Law no. 7/2004, and the Code of Conduct for contract staff, introduced by Law no. 477/2004. However, Articles 430-450 regulate the duties of civil servants, such as the duty to preserve state secrecy, professional secrecy and confidentiality (Article 439), the prohibition on accepting gifts or other advantages save for protocol gifts (Article 440), the responsible use of public resources (Article 441), limitation of participation in acquisitions, concessions or rents (Article 444), respect for the legal regime of conflicts of interest and incompatibilities and the obligation to file a declaration of assets and interests (Article 445), conduct in relation to citizens (Article 447), conduct in international relations (Article 448), objectivity and responsibility in decision-making (Article 449). Article 558 of the Administrative Code provides that the rules of conduct of civil servants are binding on contract staff, such as the Ministerial Advisers who are employed on the basis of individual employment contracts.

63. The GET notes that the rules of ethics or conduct for PTEFs are governed by different legal documents (e.g. the Code of Ethics and Professional Conduct applies to Presidential Councillors, the Ministerial Code of Conduct covers all Members of the Government, the SGG Code of Conduct captures the Prime Minister's and Deputy Prime Minister's advisers and the rules of conduct applicable to civil servants extend to Ministerial Advisers who are considered contract staff for the purpose of the Administrative Code). However, there is no code of conduct for the President, other than the constitutional provisions regulating the President's incompatibilities and immunities during the term of office[34]. Turning to the content of the existing rules of ethics or conduct, the GET notes that the Code of Ethics and Professional Conduct of the Presidential Administration upholds rights and obligations contained in other legislative documents, such as the Code of Conduct for Contract Staff Of Public Authorities and Institutions, the Code of Conduct for Civil Servants, and the Whistle-blowers' Protection Law no. 571/2004, all of which have been repealed (see paragraphs 62, above, and 208, below). That Code, together with the Ministerial Code of Conduct, are formulated in general terms and do not address all pertinent issues (such as, contacts with lobbyists and third parties, post-employment restrictions, confidential information, etc.). The rules applicable to Ministerial Advisers also lack precision about situations relating to contacts with lobbyists and third parties, secondary activity, post-employment restrictions to mention but a few. While some areas may be addressed by other pieces of existing legislation, the GET sees merit in consolidating all integrity related matters and standards into one single document. As regards the implementation of the existing rules of conduct, they are yet to be complemented by guidance containing explanations of the ethical principles, including illustrations and/or examples, in order to facilitate their understanding and application in practice. In addition, sanctions incurred in case of breach should be specified in the Ministerial Code of Conduct as should those in respect of Ministerial Advisers. The Code of Ethics and Professional Conduct applicable to Presidential Councillors recognises their liability for breaches of the Code. It does not provide for any sanctions as it makes reference to the applicable domestic law. Consequently, **GRECO recommends that (i) codes of conduct for persons with top executive functions, or another appropriate document for the President, be adopted or revised and published online, covering all relevant integrity matters (e.g. conflicts of interest, gifts,**

[34] See Article 84 of the Constitution of Romania (paragraph 98 and 120 below).

contacts with third parties, ancillary activities, confidential information, post-employment restrictions), accompanied by the provision of clear guidance; and (ii) proper monitoring and enforcement of the codes of conduct be ensured.

Awareness

64. ANI has teamed up with civil society organisations to carry out training activities targeting the public administration and, at times, PTEFs, in order to: identify and prevent situations of conflicts of interest, incompatibilities and unjustified wealth, raise awareness and knowledge about filing electronic declarations of assets and interests, it being noted that attendance of trainings is not mandatory by law. However, the GET was informed that, in practice, save for the provision of an induction package to PTEFs taking up office in the Ministry of Justice, PTEFs receive no induction package or awareness raising activities on integrity-related matters. The GET learned that it is envisaged that ANI develop such a package addressed to all PTEFs as well as a digital awareness and prevention platform through which the relevant stakeholders will be able to clarify certain obligations regarding the integrity framework. Also, the GET heard from the authorities that the appointment of ethics advisers in the Presidential Administration, under the SGG Code of Conduct and the Administrative Code, mostly concerns the provision of guidance regarding the obligation to file declarations of assets and interests and does not cover the provision of confidential counselling to PTEFs in respect of all integrity-related matters. The GET stresses that awareness raising activities, as well as confidential counselling to PTEFs, are important tools to strengthen their integrity in decision making and inform PTEFs on how to deal with ethical dilemmas in their daily activities and functions. Therefore, **GRECO recommends that (i) dedicated and robust briefings and/or practical training on integrity standards systematically take place for persons with top executive functions upon taking office and on a regular basis thereafter; and (ii) effective and consistent confidential counselling on all relevant integrity standards be provided to and documented for persons with top executive functions.**

Transparency and oversight of executive activities of central government

Access to information

65. Article 31 of the Constitution enshrines a person's right of access to public interest information, which can be achieved upon request for information by an individual or legal entity and the *ex officio* disclosure of information by central government institutions. According to Law no. 544 of 12 October 2001 on free access to information of public interest[35] (Law no. 544/2001), everyone has the right to request and obtain from public authorities and institutions information of public interest in writing or through electronic means, if available. Oral requests are to be dealt with as soon as possible. Information of public interest requested verbally by the media will be communicated, as a rule, immediately or within 24 hours. If the requested information is not available on the spot, the person is directed to request the information of public interest in writing. Public authorities and institutions are obliged to respond in writing to the request for information of public interest within 10 days or, as the case may be, within 30 days from the registration of the request, depending on the difficulty, complexity, volume of documentary work and the urgency of the request. The refusal to communicate the requested information is to be produced and communicated within five

[35] https://legislatie.just.ro/Public/DetaliiDocument/31413

days from the receipt of requests for information. A complaint against the refusal may be lodged with the head of the public authority or institution concerned within 30 days from the receipt of the refusal. The aggrieved party may also lodge an appeal with the administrative court within 30 days from the receipt of the refusal to disclose the information. The court may order the public authority or institution to provide the information of public interest requested and/or pay damages.

66. Article 12 of Law no. 544/2001 provides that the following information is exempted from the free access to public interest information: information concerning national defence, security and public order, if it belongs to the categories of classified information as defined by law; information on the deliberations of the authorities, as well as on the economic and political interests of Romania, if they belong to the category of classified information as defined by law; information on commercial or financial activities, if their publicity affects the right to intellectual or industrial property, as well as the principle of fair competition as defined by law; information on personal data as defined by law; information on the procedure during the criminal or disciplinary investigation, if the outcome of the investigation is jeopardised, confidential sources are disclosed or the life, bodily integrity, health of a person are endangered as a result of the investigation carried out or in progress; information on judicial proceedings, if their publicity is prejudicial to the ensuring of a fair trial or the legitimate interest of any of the parties involved in the proceedings; information the publication of which is prejudicial to measures to protect young people.

67. Under Article 5 of Law no. 544/2001, each public authority or institution is required to communicate *ex officio* the following information: the normative acts regulating the organisation and functioning of the public authority or institution, the organisational structure, the tasks of departments, the operating schedule, the audience programme of the public authority or institution, the full names of persons in the management of the public authority or institution and of the official responsible for disseminating public interest information, the financial resources, the budget and balance sheet, programmes and strategies, the list of documents of public interest. They have the obligation to (i) publish and update annually a newsletter that will include the information referred to above, (ii) publish a periodic activity report, at least annually, in the Official Gazette. In addition, Annex 4 of the SNA provides the general standard for publication of information of public interest, which should include four sections: (i) a section containing information about the institution (ii) a section dedicated to information of public interest (iii) a section about contacting the institution, and (iv) a section dedicated to the institutional integrity.

68. The GET notes that Law no. 544/2001 does not envisage a dedicated body to supervise its implementation and receive complaints. A decision regarding access to public interest information is subject to an administrative complaint with the institution to which the request was originally addressed and, subsequently, to an appeal with the competent administrative court. Dissatisfaction was expressed on-site about inconsistent and insufficient responsiveness of the authorities, delays or refusals to provide information and the absence of a specific independent complaint mechanism, since administrative court proceedings concerning the authorities' refusal to disclose information of public interest are considered to be onerous and take a long time. Interlocutors stated that by the time the court proceedings terminate, the disclosure of information has lost its relevance and importance. Moreover, it emerged from the on-site visit that the Presidential Administration and certain other central institutions did not have a spokesperson for a certain time to whom journalists could turn for

requests for information. Journalists also asserted that the protection of personal data was heavily used as a ground against the disclosure of information of public interest, which was not made available online as required by law and envisaged in Annex 4 to the National Anti-corruption Strategy (SNA). For example, the Code of Ethics and Professional Conduct for the Presidential Administration has not been published online. According to the authorities, in the last three years persons have been designated in each of the central and local authorities to ensure the implementation of Law no. 544/2001[36].

69. In view of the foregoing, the GET considers that the establishment of a specialised body or dedicated mechanism, which would handle complaints against the authorities' refusal to disclose public interest information authoritatively and free from external influence and pressure, provided with adequate means and guarantees of independence, would ensure the effective oversight of implementation of the legislation on access to public interest information. As also advanced by the authorities, the standard publication of information of public interest (set out in Annex 4 of the SNA) represents an improvement in the disclosure of information to the public and would respond to appeals by journalists and civil society for greater transparency. As its compliance will be subject to monitoring by the authorities, the GET recalls that the transparency of the central government is an important element of any preventive anti-corruption policy. **GRECO recommends that (i) an independent oversight mechanism be established to examine complaints against the authorities' refusal to disclose public interest information and to guarantee the effective implementation of the freedom of information legislation, and (ii) as required by the domestic legal framework, the information of public interest be regularly disclosed and updated by the central government authorities on the relevant websites in order to facilitate the public's access to information and its role to scrutinise their activities**.

70. Romania has neither signed nor ratified the Council of Europe Convention on Access to Official Documents[37] (CETS 205). The GET encourages the authorities to do so in due time, as this could further pave the way for advancing the implementation of freedom of information.

Transparency of the law-making process

71. Article 74 of the Constitution provides that the legislative initiative lies with, amongst others, the Government, which exercises it by introducing bills before the competent Chamber of Parliament. According to Article 108 of the Constitution, the Government adopts decisions (issued to organise the execution of laws) and (ordinary) ordinances (issued under a special enabling law, within the limits and in conformity with the provisions thereof). Decisions and ordinances are to be signed by the Prime Minister, countersigned by the Ministers who are bound to carry out their execution and are to be published in the Official Gazette. Non-publication entails the non-existence thereof.

[36] The authorities provided figures compiled as a result of the Secretariat General of Government's monitoring of the implementation of the Access to Information Act (https://sgg.gov.ro/1/transparenta-decizionala-monitorizare/). Thus, in 2019, 98.21% of 396,190 total requests for information received by central and local authorities were resolved favourably, of which 74.32% received a response within 10 days and 17.34% within 30 days; in 2020, 99.52% of 1,111,592 total requests for information received a positive response, of which 87% were dealt with in 10 days; in 2021, 98% of 372,573 total requests received a positive response, the vast majority having been addressed in 10 days.

[37] https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=205

72. A particular feature of the law-making process in Romania is that, under Article 115 (4) of the Constitution, the Government can adopt emergency ordinances (GEOs) in exceptional cases, the regulation of which cannot be postponed, and it has the obligation to give the reasons for the emergency status within their contents. For example, the Administrative Code was adopted through a GEO. GEOs cannot be adopted in the field of constitutional law or cannot affect the status of fundamental institutions of the State, the rights, freedoms and duties stipulated in the Constitution, the electoral rights, and cannot establish steps for the forcible transfer of assets to public property. A GEO will come into force only after it has been submitted for debate in an emergency procedure to the Chamber having the competence to be notified, and after it has been published in the Official Gazette of Romania. After their submission for endorsement by Parliament, the Chamber of Deputy should pass it within 30 days, while there is no deadline for the Senate to express its endorsement. In practice, Parliament has taken a long time (sometimes years) to express endorsement of GEOs. If the notified Chamber does not take a position on the ordinance, the latter will be deemed adopted and will be sent to the other Chamber, which will also make a decision in an emergency procedure. According to Article 146 of the Constitution, GEOs may be challenged before the Constitutional Court only *post-factum* by the Ombudsperson. A constitutional challenge against a GEO can also be raised by common courts, through a preliminary request for constitutionality, in the course of ongoing court proceedings. In spite of any pending constitutional challenge, GEOs continue to remain in force until the Constitutional Court has declared them unconstitutional. On 22 September 2022 the Government adopted decision no. 1173[38] establishing a methodology on good practices for the elaboration and substantiation of Government emergency ordinance as a regulatory instrument.

73. The statistics provided from the authorities demonstrate that the Government has legislated by means of emergency ordinances (GEOs) in almost 10% of all the approved normative acts in the last five years[39]. The GET considers this figure to be very high and is seriously concerned about the Government's constant resorts to the adoption of GEOs, which are considered a source of primary law but escape effective and meaningful consultation and public scrutiny. It recalls that, in a consultative referendum called in May 2019 by the President of Romania (see also paragraph 23 above), an overwhelming majority of citizens voted in support of banning the use of GEOs in the area of justice[40]. The GET recognises that this form of law-making is rooted in the Constitution and has been repeatedly used by the Government of the day for the past 25 years, because of its efficiency and expediency. The GET is concerned that legislating by GEOs weakens the necessary checks and balances of the democratic process and erodes the stability and predictability of legislation as a result of frequent successive changes brought about by GEOs. By reference to the Constitutional Court's vast jurisprudence[41] on the conditions justifying the adoption of GEOs, the GET stresses that GEOs should not be used more than what is absolutely necessary as they bypass

[38] https://legislatie.just.ro/Public/DetaliiDocument/259551

[39] The authorities have provided that 114 GEOs (9.79% of all normative acts) were adopted by the Government in 2018; 89 GEOs (8% of all normative acts adopted by the Government) in 2019; 227 GEOs (16.78% of all normative acts adopted by the Government) in 2020; 145 GEOs (9.88% of all normative acts adopted by the Government) in 2021, and 175 GEOs (10.76% of all normative acts) were adopted by the Government in 2022 (source: www.clr.ro).

[40] https://balkaninsight.com/2019/05/27/romania-justice-referendum-deals-blow-to-ruling-party/

[41] See, for example, Constitutional Court's decisions nos. 15 of 25 January 2000; 255 of 11 May 2005; 544 of 28 June 2006; 421 of 9 May 2007; 802 of 19 May 2009; 1008 of 7 July 2009; 919 of 6 July 2011; 447 of 29 October 2013; 761 of 17 December 2014, 859 of 10 December 2015; 361 of 26 May 2016; 68 of 27 February 2017; 214 of 9 April 2019; 60 of 12 February 2020; 83 of 18 February 2020; 188 of 26 May 2020 (as provided by the authorities).

the role of Parliament and the regular transparency and consultation processes. The GET also refers to similar serious concerns expressed in paragraph 20 of the Fourth Round Evaluation Report on Romania. In view of the foregoing, **GRECO recommends that, as a matter of priority, (i) a study be conducted to assess the practice of legislating through emergency ordinances, the existence of adequate and effective safeguards and controls, and that, in the light of its content and findings which should be made public, the regulatory framework and practice be revised accordingly; and (ii) an adequate level of public consultations on draft emergency ordinances be effectively ensured and that only specific and limited exceptions to this rule be made possible and be clearly regulated.**

74. Besides emergency ordinances, which are not subject to effective and meaningful public consultations, other draft normative acts emanating from the Government benefit from public consultation in accordance with Law no. 52/2003[42] on the transparency of decision-making of public administration. The initiating public authority has the obligation to publish an announcement regarding the intention to adopt a draft normative, either on its own website, at its own premises, or in the media, as the case may be. The announcement will be displayed to the public for at least 30 working days prior to submission to the public authority for endorsement (the transparency period). The initiating public authority also submits the draft normative acts to the SGG which uploads them in the e-consultation platform[43]. Within the transparency period, the initiating public authority's administration will set a period of at least 10 calendar days to receive proposals, suggestions or opinions in writing on the draft normative act. All proposals are to be recorded in a register, mentioning the date they were received, the person and the contact details from which the proposal, opinion or recommendation was received. The proposals, suggestions or opinions should also specify the article or articles of the draft normative act to which they refer. A person responsible for receiving the proposals, suggestions and opinions on the proposed draft normative act will be designated.

75. In addition, the public authority may hold a public hearing if this has been requested in writing by a legally established association or by another public authority. The announcement of the public hearing will be made at least three days before it takes place on the public authority's own website and premises. The initiating public authority, after considering the proposals, suggestions or opinions obtained in writing, and upon the conclusion of the public debate and interinstitutional consultations, submits the final version of the draft normative act to the SGG for inclusion on the agenda of Government's meeting and subsequent adoption. Public authorities are obliged to draw up and make public an annual report on the transparency of decision-making.

76. Law no. 52/2003 does not apply to: (i) the process of drafting and adopting normative acts on national defence, national security and public order, the strategic economic and political interests of the country, as well as the deliberations of the authorities, if they belong to the category of classified information, according to the law; (ii) the figures, deadlines for implementation and technical and economic data of commercial or financial activities, if their publication affects the principle of fair competition, according to the law; and (iii) personal data, according to the law.

[42] https://legislatie.just.ro/Public/DetaliiDocument/41571
[43] http://e-consultare.gov.ro/w/

77. In June 2022 the Government adopted decision no. 831/2022[44] on the approval of the methodological norms for the application of the Transparency of decision-making Act, which aims at standardising the procedure for ensuring the transparency of decision-making.

78. The authorities have provided the following figures as regards the draft normative acts initiated by ministries between 2019 and 2021.

Year	Draft normative acts		Written comments & recs.		Public meetings		
	Drafts adopted	Drafts published for consultations	Recs. received	Recs. reflected in drafts	Total held	Recs. made	Recs. reflected in drafts
2019	2,878	1,326	4,233	1,225	84	328	184
2020	3,577	1,337	2,996	1,267	62	204	168
2021	4,043	985	3,141	56	37	291	140

79. The GET received information from various interlocutors that the consultation procedure at the Government level was carried out as a formality, since contributions made by interested parties were not published, nor were reasons for their rejection disclosed by the initiating public authority. The period of at least 10 days for making comments and recommendations, as part of the minimum of a 30-day transparency period informing the public of the intention to adopt a draft normative act, was considered inadequate to provide in-depth contributions. Supporting documents justifying the adoption of a draft normative act were not made available at all times. Some consultation processes were not all-inclusive and transparent as they were only open to a certain category of stakeholders. There are no sanctions in case the public authorities fail to observe the statutory requirements. The authorities confirmed that the period for holding public consultations is of at least 10 days and public meetings/hearings are organised on demand. In addition, the authorities stated that there was no requirement to publish the legislative footprint for any piece of legislation emanating from the Government.

80. The GET wishes to stress that transparency of the law-making process is an important component of anti-corruption policy. It welcomes the adoption of the Government decision on the methodological norms for the application of the Transparency of decision-making Act and encourages the authorities to follow up its implementation. In order to increase the transparency of the legislative process, the GET considers that effective and broad public consultations should take place as a rule for all draft normative acts initiated by the Government. Moreover, the current period of at least 10 days for making comments and recommendations should be increased in order to have meaningful public consultations. In addition, it would be preferable that the authorities publish the legislative footprint of drafts emanating by the Government, including the documentation of the contributions received and parties involved. Consequently, **GRECO recommends that the transparency of draft legislation originating from the Government be further enhanced by (i) taking measures to ensure an effective and broad level of public consultations in respect of the Government's draft normative acts; (ii) increasing the minimum statutory timeline for public consultations to an adequate level in order to allow for effective and meaningful consultations; and (iii) publicly providing the legislative footprint documenting and disclosing substantive**

[44] https://legislatie.just.ro/Public/DetaliiDocument/256871

external inputs (containing contributions received, parties involved and justification for their acceptance or rejection) from the beginning of the legislative drafting process.

Third parties and lobbyists

81. There is no law on lobbying. It is only regulated in a memorandum approved by the Government[45] in 2016 on the establishment of the Single Register of Transparency of Interests (RUTI[46]). This register is currently managed by SGG. According to the memorandum, RUTI is an online platform the main purpose of which is to register information about specialised groups seeking to promote a public policy proposal, for example a funding programme, a strategy, a regulatory act, public events, or to contribute to the revision of an existing one, so that meetings between such groups and decision-makers can be organised through mutual knowledge of the interests of both parties. It is thus based on the genuine desire of the specialised groups to contribute to increasing transparency and confidence in the decision-making process.

82. RUTI concerns decision-makers in the central government (save for the President), who are expected to publish the daily agenda of meetings with legal entities highlighting those that are members of RUTI. The agendas, which will also be automatically exported to the authorities'/institutions' website, will be linked to the database of the entities in the specialised groups registered in RUTI. Their management, represented by decision-makers, will fill in the following information on a weekly basis concerning meetings with RUTI registered entities: the name of the specialised group met, the name of the person/s representing the specialised group, the date of the meeting, the meeting venue, the names of decision-makers participating in the discussions, other persons attending the meeting and the subject of the discussion

83. Specialised groups comprise companies with legal personality, associations, foundations, federations, religious organisation, trade unions, employers' associations, chambers of commerce and other types of legally constituted organisations, which agree to register, on a voluntary basis, with RUTI by completing a registration form. The following categories are also assimilated to specialised groups: authorised natural persons, sole proprietorships, family businesses, and company professionals. Responsibility for the veracity, accuracy and completeness of information provided by specialised groups lies with them. The SGG ensures that the information is completed in full, provides advice to decision makers and specialised groups regarding the scope of RUTI, and has the responsibility for promoting transparency at the Government level. SGG organises training sessions for users whenever changes to the Government composition occur. Adherence to a code of conduct, which sets out the parameters for cooperation and conduct between specialised groups and decision-makers and is appended to the memorandum, is mandatory for the completion of the registration process.

84. The GET welcomes the setting up of RUTI, which is expected to increase the transparency of meetings that PTEFs have with third parties and lobbyists. However, it was explained during the on-site visit that RUTI is completed on a voluntary basis, it is not subject to a monitoring mechanism and there are no sanctions on PTEFs for failure to disclose information of meetings with third parties and lobbyists. Moreover, the GET notes with

[45] http://ruti.gov.ro/wp-content/uploads/2016/10/Memorandum-privind-instituirea-RUTI.pdf
[46] http://ruti.gov.ro

concern that there are no binding rules on how PTEFs are to interact with lobbyists and third parties. As regards the Presidential Administration, its agenda is disclosed online without there being an obligation to report publicly its meetings with third parties and lobbyists on a regular basis and the topics discussed in sufficient details. Consequently, **GRECO recommends that (i) detailed rules and guidance be introduced on how persons with top executive functions engage in contacts with lobbyists and other third parties seeking to influence their decision-making process and work; and (ii) sufficient information about the purpose of these contacts must be disclosed on a regular basis, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion.**

Control mechanisms

85. According to Article 111 of the Constitution, the Government is obliged, within the parliamentary control over their activity, to present the information and documents requested by the Chamber of Deputies, the Senate, or parliamentary committees, through their respective presidents. The Prime Minister represents the Government in its relations with Parliament. In case a legislative initiative involves the amendment of the provisions of the State budget, or of the State social security budget, the request for information is compulsory. If they are requested to be present, members of the Cabinet are entitled to attend the sessions of Parliament. Article 112 states that the Cabinet and each of its members are bound to answer the questions or interpellations raised by the deputies or senators, under the terms stipulated by the regulations of the two Chambers of Parliament. Under Article 113, the Chamber of Deputies and the Senate may, in joint sitting, withdraw the confidence granted to the Government, by carrying a motion of censure by a majority vote of the Deputies and Senators.

86. Section 9 of Law no. 672/2002[47] on public internal audit provides, amongst other things, that central public institutions that carry out expenses of more than RON 2 billion (EUR 404,738,000) must set up internal audit committees in order to increase the efficiency of the public internal audit activity. In addition, internal audit departments are constituted within each ministry under the direct subordination of the competent minister. They carry out, amongst others, public internal audit activities to assess whether the financial management and control systems of the public authority are transparent and comply with the rules of legality, regularity, economy, efficiency and effectiveness, report regularly on the findings, conclusions and recommendations resulting from the audit work, and prepare the annual report of the public internal audit activity. It was confirmed that each central government authority has an internal audit structure in place. Also, the Secretary General of the Government has issued Order no. 600/2018 on the Code of Internal Management Control of Public Entities[48]. According to this Order, the head of each public entity has the obligation to set up an internal audit committee which will monitor, coordinate and guide the implementation and development of the internal control management system. The latter consists of processes, means, actions, provisions that concern all aspects of the public entity's activities, which are established and implemented by its management.

87. The types of public internal audits carried out are as follows: (i) the system audit, which is an in-depth assessment of the management and internal control systems, with the aim of

[47] https://legislatie.just.ro/Public/DetaliiDocument/40929
[48] https://legislatie.just.ro/Public/DetaliiDocument/200317

determining whether they are functioning economically, effectively and efficiently, in order to identify shortcomings and to make recommendations for their correction; (ii) performance audit, which examines whether the criteria set for the implementation of the public entity's objectives and tasks are correct for evaluating the results and assesses whether the results are in line with the objectives; (iii) compliance audit, which is the examination of actions on the financial effects on behalf of public funds or public assets, in terms of compliance with all the principles, procedural and methodological rules applicable to them; and (iv) information technologies audit, which examines and evaluates the risks, policies, procedures, operations, applications, data management and infrastructure of the public entity in the field of information technology.

88. The internal audit of the SGG has carried out audit activities of the system on the prevention of corruption, none of which targeted PTEFs specifically. Its reports are confidential; they are forwarded to the Ministry of Justice, which should ensure their implementation, as well as to the Court of Accounts.

89. The Prime Minister's Control Body checks the activities of ministries and other executive agencies subordinate to the Government. They issue recommendations and their reports are, as a rule, published on its website.

90. In addition to parliamentary control and the internal audit departments functioning in each of the Government's Ministries, Article 140 of the Constitution has mandated the Court of Accounts (Court of Audit) to exercise control over the formation, administration, and use of the financial resources of the State and public sector. It provides Parliament with an annual report on the management accounts of the consolidated general budget of the preceding years, including any irregularities found. Its controls are initiated *ex officio* and at the request of one of the Chambers of Parliament. The audit reports are made public on the Court of Accounts' website. According to Law no. 94/1992 on the Court of Accounts[49], it decides autonomously on its work programme. It checks the quality of internal audit mechanism and verifies that reports issued by the internal audit are accurate and truthful. It issues recommendations as necessary and checks on their implementation through a follow-up report. It may refer a case to the prosecutor's office if it decides that the elements of an alleged criminal offence have been made out.

91. Lastly, the Constitution provides the Advocate of the People (Ombudsperson) with a general mandate to defend the rights and freedoms of individuals in their relations with public authorities. S/he exercises his/her powers *ex officio* or at the request of an aggrieved party. The public authorities are bound to provide the Ombudsperson with the necessary support in the exercise of his/her powers. S/he issues recommendations informing the public administration about the unlawfulness of an administrative act. Also, s/he may be involved in the constitutional review of laws and ordinances carried out by the Constitutional Court, including the emergency ordinances (also see paragraph 73 above).

Conflicts of interest

92. An "administrative conflict of interest" is defined in Article 70 of Law no. 161/2003 (on certain measures for ensuring transparency in the exercise of political officeholders, public

[49] https://legislatie.just.ro/Public/DetaliiDocument/2364

functions, etc.), as a situation in which the person exercising a public office or holding a position of public dignity has a personal interest of a pecuniary nature, which might influence the objective performance of his/her duties under the Constitution and other normative acts. The SGG Code of Conduct, which applies to advisers to the Prime Minister and Deputy Prime Ministers (see paragraph 59 above), defines conflict of interest as a situation or circumstance in which the personal interest, directly or indirectly, of the public official or contract staff is contrary to the public interest, so as to affect (or it could affect) his/her independence and impartiality in making decisions or in carrying out his/her duties in the exercise of his/her public office in a timely and objective manner.

93. The SGG Code of Conduct states that staff members are required to observe the legal regime of conflict of interest and incompatibilities, established by specific legislation, that is Law no. 161/2003.

94. Article 445 of the Administrative Code, which applies to Ministerial Advisers (see paragraph 62 above), lays down the obligation for civil servants to respect the legal regime of conflicts of interests and incompatibilities as provided in the specific legislation. In this connection, Article 79 of Law no. 161/2003 sets out the situations of a conflict of interest for civil servants and the obligation to report conflicts of interest to the hierarchical manager.

95. Under Article 72 (1) of Law no. 161/2003, the Prime Minister, Deputy Prime Ministers, Ministers, Secretaries and Undersecretaries of State are obliged to not issue an administrative act, conclude a legal act, take - or participate in making - a decision in the exercise of the public office of authority, which produces a material use for him/herself, his/her spouse or his/her relatives of the first degree. This same obligation applies to Presidential Councillors, as stated in Article 100 of Law no. 161/2003. A breach of this obligation constitutes administrative misconduct, unless it is characterised as a more serious act according to the law. Acts issued or concluded in breach of this obligation are null and void.

96. The GET notes that the legislation does not provide the specific obligation to declare *ad hoc* conflicts of interest. Under Article 72 (2) of Law no. 161/2003, the obligation not to participate in the decision-making process in a situation of a conflict of interest does not apply to the issuance, approval or adoption of normative acts. Article 7 (2) of the Ministerial Code of Conduct states that members of the Cabinet (the Prime Minister, Deputy Prime Ministers and Ministers) are obliged to declare, by any means, any situation that gives rise to a conflict of interest or incompatibility without expressly providing for the obligation to withdraw in the event of a situation of *ad hoc* conflict of interest. The GET underlines the importance of PTEFs to withdraw from the decision-making process whenever there is a perceived conflict of interest in respect of a draft normative act and that such withdrawal decisions be made accessible to the public. Consequently, **GRECO recommends that, in the case of ad hoc conflict of interest between private interests and official functions, a requirement to disclose, abstain or withdraw be introduced in respect of persons with top executive functions, including with regards to the issuance, approval or adoption of normative acts.**

97. The GET notes with interest that, as far as public procurement is concerned, the National Integrity Agency (ANI) has set up an integrated information system – PREVENT, which carries out an ex-ante verification mechanism to automatically identify situations that may generate conflicts of interest (detecting family ties and close links between bidders or public procurement procedures and the management of contracting authorities) within the

procedures initiated through the Electronic Public Procurement System. When detecting a potential conflict of interest, the system issues an 'integrity warning', which is transmitted to the management of the contracting authority to undertake all the necessary measures to remove the elements that generated the conflict of interest (e.g. replacing evaluation committee members or, in extreme cases, excluding the bidder). Failure to act following an integrity warning or to fill an integrity form gives rise *ex officio* to a conflict-of-interest evaluation procedure by ANI. The GET considers this a good practice, which could be replicated in other countries.

Prohibition or restriction of certain activities

Incompatibilities, outside activities and financial interests

98. Article 84 of the Constitution provides that the President of Romania may not be a member of any political party, nor may s/he perform any other public or private office.

99. Article 105 of the Constitution provides that membership of the Government is incompatible with the exercise of any other public office of authority, except the office of a deputy or senator. Likewise, it is incompatible with the exercise of any office of professional representation paid by a business organisation. In addition, Article 84 of Law no. 161/2003 states that the position of members of the Cabinet is incompatible with the (i) position of chairman, vice-president, general manager, director, administrator, member of the board of directors or censor of commercial companies, including banks or other credit institutions, insurance and financial companies, as well as public institutions; (ii) the office of chairman or secretary of the general meetings of shareholders or members of the companies referred to in (i); (iii) the function of state representative in the general meetings of the companies referred to in (ii); (iv) the position of manager or member of the boards of directors of autonomous companies, companies and national companies; (v) the status of trader who is a natural person; (vi) membership of an economic interest grouping; and (vii) a public office entrusted by a foreign state, except for those functions provided for in the agreements and conventions to which Romania is a party. Under Article 41 of the Administrative Code, members of the Cabinet are required to put an end to a situation of incompatibility within 15 days from taking their oath, on pain of ceasing their functions.

100. Also, the positions of Secretary and Undersecretary of State and the functions assimilated to them are incompatible with the exercise of another public office of authority, as well as with the exercise of the functions provided for in the preceding paragraph. Exceptionally, the Government may approve the participation of its members, Secretaries and Undersecretaries of State as representatives of the State in the general meeting of shareholders or as members of the board of directors of autonomous companies, national companies or companies, public institutions or commercial companies, including banks or other credit institutions, insurance and financial companies, of strategic interest or where a public interest so requires, in accordance with Article 84 (3) of Law no. 161/2003. Members of the Cabinet, State and Undersecretaries of State and persons performing functions assimilated to them may exercise functions or activities in the field of teaching, scientific research and literary and artistic creation.

101. According to Article 100 of Law no. 161/2003 (on certain measures for ensuring transparency in the exercise of political officeholders, public functions, etc.), Presidential

Councillors are subject to the same regime of incompatibilities as Ministers and Secretaries of State. They may, however, exercise functions or activities in the field of teaching, scientific research and literary and artistic creation. Procedures for findings incompatibilities are established in the Regulation on the Organisation and Functioning the Presidential Administration (see paragraph 28 above).

102. As regards Ministerial Advisers, who are to be covered by the regime of incompatibilities applicable to civil servants (see paragraph 64 above), Articles 94-97 of Law no. 161/2003 set out the regime of incompatibilities.

Contracts with state authorities

103. It would appear that national law does not prohibit PTEFs from entering into contracts with state authorities, but they have the obligation to declare them and to respect the legal provisions regarding conflicts of interests. The declaration of interest forms contains a section to disclose contracts financed from the State budget, local and foreign funds or concluded with companies with state capital or where the state is the majority/minority shareholder. The obligation to disclose such contracts is on the declarant (including the spouse and first-degree relatives, namely parents in the ascending line and children in the descending line). The contracts of joint stock companies, in which the declarant together with the spouse and the first-degree relatives hold less than 5% of the share capital of a company, regardless of how they acquired the shares, are not subject to disclosure requirements.

Gifts

104. The existing legal framework prohibits soliciting or accepting gifts, advantages or other benefits. Thus, one of the principles governing the ethical and professional conduct of the Presidential Administration is moral integrity, which is defined in Article 3 (d) of the Internal Regulation of the Presidential Administration as the prohibition to solicit or accept, directly or indirectly, for himself/herself or another person, any moral or material advantage or benefit (see also paragraph 58 above). At the same time, all the rules on the integrity of civil servants and contract staff in the central administration (rules on the prevention of conflicts of interest, incompatibilities, declaration of gifts) are equally applicable to the staff of the Presidential Administration. In this connection, Article 440 of the Administrative Code, which also applies to Ministerial Advisers (see paragraph 62 above), prohibits civil servants from soliciting, accepting, directly or indirectly, for themselves or others, on account of their civil service, gifts or other advantages.

105. Article 7 (1) of the Ministerial Code of Conduct provides that Members of the Government will not accept, directly or indirectly, any pecuniary or non-pecuniary gifts or other advantages, which could influence or be perceived to influence the exercise of their duties or the performance of specific duties.

106. According to Article 12 of the SGG Code of Conduct, members of the Prime Minister's and Deputy Prime Ministers' private offices are prohibited from requesting or accepting, directly or indirectly, for themselves or for others, in view of their public office, gifts or other advantages.

107. Irrespective of the preceding legal framework, Law no. 251/2004[50] on certain measures relating to goods received free of charge on the occasion of protocol events in the exercise of a public office or function regulates the acceptance or receipt of protocol gifts. Thus, persons who are public dignitaries and those who hold positions of public dignity as well as other persons who have an obligation to disclose their assets and interest, such as PTEFs, have the obligation to declare to their employer all gifts they have received in the framework of protocol activities in the exercise of their functions, within 30 days of receipt. Each public institution has to designate a three-member commission for recording, valuating and keeping an inventory of gifts. If the value determined by the commission is below EUR 200, the recipient may keep the gift. If the recipient does not wish to keep the gift, it will remain with the institution or be handed over, free of charge, to another institution or be auctioned off. The proceeds obtained will be allocated to the State budget. If the value of the received gift has been determined to be greater than or the equivalent of EUR 200, the person who received it may keep it and pay for the excess over EUR 200. Medals, decorations, badges, orders, sashes, collars and the like, irrespective of their value, as well as office supplies with a value of up to EUR 50, which have been rewarded or received during the exercise of a PTEF's functions and term of office, are exempted from the obligation to declare. Lastly, PTEFs have an obligation to disclose gifts, services or benefits received for free or at a preferential market value from third parties, where their individual value exceeds EUR 500, in the declaration of assets form.

108. Law no. 251/2004 obliges central government institutions to publish information about the list of received gifts and their destination on their websites or in the Official Gazette at the end of the year. In this connection, in March 2019 the SGG issued a procedure for declaring gifts, including a template model for disclosing gifts at the end of a calendar year.

109. The GET notes that the existing regulatory framework introduces a prohibition on PTEFs to receive gifts. They may however accept protocol gifts received during their term of office, which must be declared to their employer. The requirement to disclose protocol gifts does not apply to medals, decorations, badges, orders, sashes, collars and the like (irrespective of their value), or to office supplies the value of which has been determined to be lower than EUR 50. In addition, PTEFs are allowed to keep gifts received during their term of office which have been estimated to have a value of up to EUR 200 (or more than EUR 200 provided that they pay for the excess over EUR 200). The GET considers that, in the interest of transparency, any honours, such as medals, decorations, badges, orders, sashes, collars and the like, which may be accompanied by the award of a monetary award, should be reported, as a rule, to the competent authority. In addition, the value of a single gift, which PTEFs may be allowed to retain should be substantially lowered. Moreover, having regard to comparable practice, the law may specify a maximum threshold on the annual value of gifts that the same person may be allowed to keep, in particular if gifts are received from multiple donors. Accompanying guidance, to be illustrated by practical examples, should be made available in sufficient details. As regards the publication of the register of gifts, the GET welcomes that the Presidential Administration has published the list of gifts for 2022[51], while the SGG's list of gifts for 2022 is blank[52]. Also, it transpired from the on-site visit with the authorities that not all Ministries publish a list of gifts annually. The GET considers the publication of the list of

[50] https://legislatie.just.ro/Public/DetaliiDocument/52934
[51] https://www.presidency.ro/files/documente/23-01-31-05-24-45Lista_bunurilor_primite_cu_titlu_gratuit,_cu_prilejul_unor_actiuni_de_protocol,_in_anul_2022.pdf
[52] https://sgg.gov.ro/1/lista-cuprinzand-cadourile-primite-potrivit-legii-nr-251-2004-si-destinatia-acestora/

gifts would contribute to an increase of transparency and allow the public to be informed about the gifts, their donor, value and the final beneficiary. Consequently, **GRECO recommends that (i) the rules on gifts and all forms of benefits/advantages applicable to persons with top executive functions be more specific and be accompanied by appropriate guidance, and (ii) central government institutions disclose the list of all protocol gifts received, in a regular and timely manner, in accordance with the statutory requirements.** This recommendation is equally applicable to law enforcement agencies (see paragraph 192 below).

110. The GET further understood that no training or other awareness raising activities has been provided to PTEFs. In this connection, the GET would refer to the recommendation made in paragraph 64 above about the need to provide PTEFs with briefings and/or practical training on integrity standards upon taking office and on a regular basis.

Misuse of public resources

111. The SGG Code of Conduct, applicable to the members of the Prime Minister's and Deputy Prime Ministers' private cabinets, and the Administrative Code, also targeting Ministerial Advisers, contain provisions regarding the responsible use of public resources (see paragraphs 61 and 62 above). The Code of Ethics and Professional Conduct for the Presidential Administration contains a similar provision. In addition, Articles 295, 297, 298, 306 and 307 of the Criminal Code sanction the criminal offences of embezzlement, abuse of power by a civil servant, professional negligence, illegal monetary gain and changing the destination of money, respectively, which are punishable by a prison sentence of between two and seven years, a fine or a ban from exercising the right to hold public office.

Misuse of confidential information

112. The SGG Code of Conduct, applicable to the members of the Prime Minister's and Deputy Prime Ministers' private cabinets, and the Administrative Code, also targeting Ministerial Advisers, contain provisions regulating the preservation of state secrecy, professional secrecy and confidentiality (see paragraphs 61 and 62 above). Under Law no. 182/2002 on the protection of classified information, a breach of its provisions by PTEFs may entails disciplinary, civil or criminal liability, as the case may be. In addition, Articles 303, 304 and 305 of the Criminal Code criminalise the unlawful disclosure of State secret, the disclosure of information classified as State secret or not public, and negligence in storing information, respectively, which, depending on the circumstances of the commission of the offence, are punishable by a fine, imprisonment of up to 12 years and a ban from exercising certain rights.

Post-employment restrictions

113. During the on-site visit, the GET was informed that the phenomenon of PTEFs leaving office to work in the private sector (i.e. "revolving doors") constitutes a serious problem and the GET was not made aware of any post-employment restrictions applicable to PTEFs, apart from certain statutory provisions concerning cooling-off periods for civil servants[53] and

[53] Article 94 (3) of Law no. 161/2003 provides that a civil servant who, in the exercise of his/her duties, has carried out monitoring of and control activities over companies or other profit-making businesses, may not carry out

internal auditors[54], as well as the management of conflicts of interests for public procurement suppliers[55]. It is the GET's view that this issue needs to be addressed, in particular with the aim of preventing conflicts of interest and potential misuse of information. Possible measures could include prohibitions to seek new employment while in office, a cooling-off period before a new position may be taken up, restrictions on certain types of activities or a mechanism from which PTEFs must obtain approval or advice in respect of new activities following public service. **GRECO recommends that (i) rules on post-employment restrictions be developed and applied to persons with top executive functions, and (ii) an effective monitoring mechanism regarding these rules be established.**

Declaration of assets, income, liabilities and interests

Declaration requirements

114. Romania has a solid system for the declaration of assets and interests in place. Law no. 176/2010 (on integrity in the exercise of public functions and dignities, see paragraph 54 above) lays down the obligation on all PTEFs, including the President, (except honorary advisers) to disclose assets and interests on appointment, each year and on leaving office. According to Article 4, PTEFs have the obligation to declare assets and interests as follows: (i) within 30 days from the date of appointment or election to public office; (ii) annually, not later than 15 June; (iii) in the case of suspension from public office, within 30 days from the date of termination of suspension; and (iv) not later than 30 days from leaving office.

115. Declarants have to fill out two separate forms, namely a declaration of assets and a declaration of interests. As of 1 January 2022, they do so electronically through an online platform (e-DAI). The duty to disclose assets and interests applies to the declarant, also in respect of his/her spouse and dependent children. The disclosure of assets comprises (i) immovable property, such as real estate, land and buildings, (ii) movable property such as vehicles and other means of transportation, (iii) movable property such as precious metals, jewellery, art works, religious artefacts, cultural relics the total value of which exceeds EUR 5,000, (iv) movable property the individual value of which exceeds EUR 3,000 and real estate that was disposed of the previous year, (v) financial assets, such as bank accounts and deposits, investment funds or other forms of savings and invested, including credit cards if the total value of all of them exceeds EUR 5,000, (vi) other net income which exceed EUR 5,000, (vii) liabilities such as debts, mortgages, guarantees issued for the benefit of a third party, assets acquired under leasing and other such goods, if the aggregate value exceeds EUR 5,000, (viii) gifts, free of charge or subsidised in relation to the market value services or advantages, received from persons, organisations, companies, autonomous regions, national companies

activities within and may not provide consultancy services to those companies/businesses for three years after leaving the public office.

[54] According to Article 22 (5) of Law no. 672/2002 on the internal public audit, as amended, internal auditors cannot be entrusted with internal public audit missions in the areas of activity where they have held positions or have been involved, and this prohibition can be lifted after a period of three years.

[55] Under Article 61 of Law no. 98/2016 regarding public procurement, as amended, the successful bidder with whom the contracting authority has concluded a public procurement contract is required not to engage or conclude any other arrangements on providing services, directly or indirectly, with the purpose of fulfilling the public procurement contract, with the persons involved in the verification/evaluation process of the requests/bids submitted within an award procedure or with employees/former employees of the contracting authority or of the procurement service provider involved in the award procedure, during a period of at least 12 months after the conclusion the contract.

or foreign public institutions, including scholarships, loans, guarantees, expense settlements, other than those of the employer, the individual value of which exceeds EUR 500, and (ix) income of the declaring person and family members (i.e. spouse and dependent children) in the last fiscal year.

116. Section 111 of Law no. 161/2003 lists the functions and activities to be disclosed in the declaration of interests, which is appended as Annex 2 to Law no. 176/2010. They are: (i) the status of associate or shareholder in companies, national companies/corporations, credit institutions, economic interest groups, as well as member of associations, foundations or other non-governmental organisations; (ii) the position of member in the management, administration and control bodies of companies, autonomous companies, national companies/corporations, credit institutions, economic interest groups, associations or foundations or other non-governmental organisations; (iii) membership in professional and/or trade union associations; (iv) membership in the management, administration and control bodies, remunerated or not, of political parties, the position held and the name of the political party, (v) contracts, including legal assistance, legal advice, consultancy and civil contracts, obtained or in progress during the exercise of public functions, mandates or dignities financed from the State budget, local and foreign funds or concluded with companies with state capital or where the state is a majority/minority shareholder.

Review mechanisms

117. Within 10 days of receipt of the declarations, focal points of each institution, who are designated by the head of the relevant institution to ensure the implementation of the statutory provisions on the disclosure of assets and interests and provide relevant advice on completing the declarations, act as a first layer of verification of declarations by making a preliminary check, before they reach ANI. For example, focal points may request the declarant to rectify the declaration within 30 days if they notice deficiencies in filling out the forms. Failure to file declarations within the statutory deadline may lead to an administrative fine and trigger the initiation of an evaluation by ANI's inspectors. Declarations are disclosed on the respective public entity's website, and ANI publishes them on its portal, namely the Public Portal of Assets and Interest Disclosures. Personal data, such as personal identification number, addresses, bank account numbers, signature, etc., will be anonymised. Under Article 6 of Law no. 176/2010 (see paragraph 54 above), declarations of assets and interests are kept on the websites of both institutions throughout the exercise of public office or mandate and for three years after leaving office.

118. ANI's integrity inspectors are civil servants who enjoy special status and carry out the evaluation of conflicts of interests, incompatibilities and unjustified wealth. They enjoy autonomy and operational independence. In this regard, integrity inspectors do not request or follow the request of any public authority, institution or person to carry out evaluations. Evaluations may start *ex officio* or upon notification by any individual or legal entity. During verifications, integrity inspectors can obtain information from several databases, such as fiscal registries, the population registry, land registry, car registry, real estate registry as well as other property registers. They may also request non-public information from other private or public entities which are obliged to provide data within 30 days of receipt of the request. In the context of an evaluation of unjustified wealth, expert opinions may only be requested and used with the prior approval of the person who is subject to verification. If approval is withheld, an application is made with the competent court, which decides on the need for an

expert opinion. Verifications are carried out on the basis of an operational procedure. At the conclusion of the evaluation, they produce an evaluation report.

119. During the on-site visit, the GET learned that ANI's budgetary resources appear to be sufficient for its day-to-day operations[56], namely the monitoring of asset and interest declarations, incompatibilities, conflicts of interest and unjustified assets. However, in view of the large number of declarations filed each year (approx. 800,000), and because the verification is carried out manually, ANI does not have the necessary means to scrutinise all declarations or even a significant proportion thereof. Thus, between 2017 and 2021 over 6,000 declarations were reviewed by inspectors for possible violations of the deadline for their submission, the manner of completing the declaration, and fines were imposed in over 4,600 cases. Between 2019 and 2022, ANI investigated only 27 cases related to PTEFs and 431 cases regarding law enforcement officers, and findings were made in respect of certain cases while other cases are still pending. The GET took note of ANI's good cooperation with various bodies, except that the cooperation with the National Agency for the Management of Seized Assets (ANABI) needs further strengthening. It was further made aware that entrusting new and additional tasks and responsibilities to ANI, such as: the provision of training and awareness activities to PTEFs (see paragraph 64 above); the management of the PREVENT system (see paragraph 97 above); the transition from paper-based disclosures to electronic filing of declarations and the management of e-DAI platform; ANI's new intended role as an external reporting channel for the protection of whistle-blowers (see paragraph 209 below), the need for continuous training and enhancement of skills and know-how of ANI's staff members; the future implementation of a risk analysis module and development of IT applications in order to enable the interconnection with relevant external registers and databases and digitalise its work processes on analysing all disclosures of assets and interests, call for the allocation of additional financial, human, administrative and material resources. Therefore, **GRECO recommends that (i) declarations of assets and interests of persons with top executive functions be effectively and substantively checked on a regular basis by the National Integrity Agency, and (ii) the National Integrity Agency be provided with increased resources and means, as well as robust and effective cooperation/interaction with other relevant control bodies/databases, that are proportionate to the proper and effective performance of its duties.**

Accountability and enforcement mechanisms

Criminal proceedings and immunities

120. Under Article 84 of the Constitution, the President of Romania enjoys immunity. The scope of this immunity is not explicitly defined by the Constitution, which nonetheless provides for an impeachment procedure by Parliament in the event of high treason (Article 96 of the Constitution).

121. Also, members of the Cabinet (the Prime Minister, Deputy Prime Ministers and Ministers) enjoy immunity. Criminal liability is personal and concerns each of the Prime Minister and Ministers for the acts committed during their respective mandates. According to Article 109 (2) of the Constitution, the Chamber of Deputies, the Senate and the President of Romania have the right to demand that criminal proceedings be taken against members of

[56] ANI's annual budget for 2022 was of approx. 7.03 million euros. ANI presently employs 101 staff members, 39 of whom are integrity inspectors;

the Cabinet for criminal offences committed during the exercise of their office. Law no. 115 of 28 June 1999 on ministerial liability[57]sets out the procedure for initiating criminal proceedings. According to Article 24 (2) of Law no. 115/1999, the criminal prosecution of former Members of the Government for offences committed in the exercise of their office will be made in accordance with the procedure provided for in that Law. Thus, the Chamber of Deputies or the Senate will debate the possibility of starting criminal proceedings, on the basis of a report drawn up by a standing committee responsible for analysing the Government's activities. The Chamber concerned must reach its decision through a vote by the majority of its members. The applications are transmitted to the Minister of Justice.

122. Once criminal proceedings have commenced, if (former) members of the Cabinet are not parliamentarians, immunity may be waived by the President of Romania, who may decree that they be suspended from office. If (former) members of the Cabinet are parliamentarians (i.e. Deputies or Senators), Article 72 (2) of the Constitution provides that they may be subject to criminal investigation, or criminally prosecuted, but may not be searched, detained or arrested without the consent of the competent Chamber of Parliament. Under Article 72 (3) of the Constitution, if caught in the act, Deputies or Senators may be detained and searched. The Minister of Justice will inform without delay the president of the Chamber in question on the detention and search. If, after being notified, the Chamber in question finds there are no grounds for detention, it will order the annulment of such a measure at once. Law no. 115 of 28 June 1999 on ministerial liability[58]provides that criminal prosecution is carried out by the prosecutor's office attached to the High Court of Cassation and Justice which has jurisdiction to examine the case against members of the Cabinet.

123. From 2017 to 2022, the President of Romania has authorised all 11 requests for the pursuit of criminal proceedings against members of the Cabinet. The Chamber of Deputies has authorised one request and rejected another request, while the Senate has authorised one request and rejected three others. As described in the Fourth Round Evaluation Report, "the immunity of parliamentarians – including when they are Members of Government – remains a problematic area in Romania". It is recalled that GRECO recommended that "the system of immunities of serving parliamentarians, including those who are also Members or former Members of Government, be reviewed and improved, including by providing for clear and objective criteria for decisions on the lifting of immunities and by removing the necessity for prosecutorial bodies to submit the whole file beforehand". This recommendation was dealt with in a satisfactory manner on the date of the adoption of the latest public compliance report under this round, since both Chambers of Parliament had amended their respective regulations on lifting parliamentary immunity for Members of Parliament, including those who are or have been members of Cabinet. Both Chambers of Parliament apply similar rules for the lifting of immunity of their members. Consequently, GRECO encourages the authorities to no hamper criminal proceedings in respect of Members of the Government, who are also parliamentarians suspected of having committed corruption related offences.

124. Secretaries and Undersecretaries of State, State Councillors, Presidential Councillors and Ministerial Advisers are subject to common criminal procedure law and do not enjoy immunity.

[57] https://legislatie.just.ro/Public/DetaliiDocument/18561
[58] https://legislatie.just.ro/Public/DetaliiDocument/18561

125. The National Anti-corruption Directorate (DNA), which is a prosecutor's office specialised in combatting medium and high-level corruption[59] and attached to the High Court of Cassation and Justice, is responsible for prosecuting corruption offences committed by PTEFs and law enforcement officers (LEOs). DNA opens an investigation into allegations of corruption offences on the basis of: complaints received from citizens, including whistle-blowers, complaints made by public authorities or specialised institutions (e.g. ANI, Court of Auditors, other prosecutor' offices, etc.) and *ex officio* notifications as a result of data or information obtained by prosecutors in the performance of their duties or of news items or media reporting. Drawing from its annual activity report for 2022[60], it transpires that: 404 cases were referred to court in 2022 (compared to 338 in 2021 and 306 in 2020); 252 high-ranking persons were put to trial in 2022, including two Ministers, one Secretary of State and 40 police officers (compared to 223 in 2021, which included two Ministers and one former Ministers, three Secretaries of State and one Undersecretary of State, 54 police officers, and 160 in 2020, which included one Secretary of State and 18 police officers); 287 persons received convictions out of 439 defendants, 18 of whom were staff members of the Ministry of Internal Affairs-MAI (compared to 255 convicted persons out of 427 defendants, of whom 13 were MAI employees, in 2021[61]; and 258 convicted persons out of 450 defendants, of whom one was a Secretary of State and 17 were police officers, in 2020[62]); the total number of outstanding cases in 2022 rose to 3,295 (compared to 3,177 in 2021 and 3,232 in 2020); and the average workload per prosecutor increased to 66 cases in 2022 (compared to 59 in 2021 and 61 in 2020).

126. The GET takes note of the positive results recorded by DNA, in particular as regards the number of cases sent to court and the number of accused, including 11 PTEFs and 112 law enforcement officers, put to trial in the last three years. However, it transpires that only one Secretary of State and 48 police officers received a conviction in the last three years. The GET is concerned about the low number of convictions received by PTEFs and law enforcement officers and the overall rising number of cases pending before DNA. Also, it has not escaped the GET's attention that DNA is understaffed, with only 74.9% of positions filled (146 out of 195 positions) at the end of 2022. The shortfall in human resources was the same in 2020. As a result, the individual workload per prosecutor has experienced an increase, as has the total number of outstanding cases pending with DNA. The authorities have recently confirmed that the occupancy rate for prosecutors' positions has reached 85% (i.e. 165 out of 195 positions assigned for prosecutors), though 10 prosecutors have already been appointed to work for the European Public Prosecutor's Office, leaving the DNA with an effective workforce of 155 prosecutors. The GET understood from the on-site visit that challenges remain in recruiting DNA prosecutors owing to a ten-year seniority requirement for appointment[63] and the attractiveness of the workplace. The GET considers that the proper and full functioning of DNA, including a sufficiently stable workforce, is crucial in carrying out solid investigations and substantiated prosecution of medium and high-level corruption and in securing a successful track record of convictions for such offences. **GRECO recommends that necessary ongoing**

[59] According to domestic law, medium and high-level corruption takes place if: the value of the bribe or undue benefits is higher than EUR 10,000, the damage caused is over EUR 200,000 or the offence has been committed (regardless of the amount of bribery or damage) by persons occupying important positions, as determined by law. Offences against EU financial interests are also to be investigated by DNA.
[60] https://www.pna.ro/obiect2.jsp?id=590
[61] https://www.pna.ro/obiect2.jsp?id=536
[62] https://www.pna.ro/obiect2.jsp?id=489
[63] See the European Commission's 2022 Rule of Law Report on Romania, referred to in paragraph 57 above.

measures be taken to maintain a sufficient and stable workforce in order to address the current challenges faced by the National Anti-corruption Directorate

Non-criminal enforcement mechanisms

127. As stated in paragraphs 117-119 above, Law no. 176/2010 (on integrity in the exercise of public functions and dignities) empowers ANI's inspectors to carry out investigations and evaluations of alleged unjustified wealth, alleged situations of incompatibilities and conflicts of interest. Thus, Article 17 of Law no. 176/2010 states that if, at the end of an evaluation procedure on the wealth (i.e. assets), and upon obtaining explanations in writing or orally from the person being evaluated, the integrity inspector finds that there have been significant discrepancies in the wealth exceeding EUR 10,000, s/he will draw up an evaluation report about the existence of unjustified wealth. The evaluation report will be communicated to the person subject to evaluation and, where appropriate, to the fiscal authorities, to the criminal investigation authorities and the disciplinary and wealth investigation committee for further action. It is sent to the Wealth Investigation Committee, a three-member panel, which operates at the court of appeal. The Wealth Investigation Committee's proceedings are not public. It may hear the parties concerned and summon other persons to give testimony as well as representatives of ANI. It may decide, by a majority of votes, to (i) refer the case to the court of appeal if it finds that, based on the evidence, the acquisition of a share of property or certain assets are not legally justified (in such case, the proceedings take place before the court of appeal, with a possibility to appeal to the High Court of Cassation and Justice) (ii) dismiss the case if it finds that the origin of the goods is justified or (iii) suspend the control and refer the case to the prosecutor's office to determine whether the origin of the assets constitutes a criminal offence.

128. Article 21 of Law no. 176/2010 states that if, at the end of the evaluation procedure, and upon obtaining explanations in writing or orally from the person evaluated, the integrity inspector considers that there are elements that confirm a conflict of interest or incompatibility, s/he will draw up an evaluation report. The person under evaluation may challenge the evaluation report finding the existence of a conflict of interest or incompatibility, within 15 days of its receipt, before the administrative court. If the evaluation report finding the existence of a conflict of interest has not been challenged before the administrative court, ANI notifies, within six months, the competent bodies to trigger disciplinary proceedings against the person concerned. If the evaluation report finding the existence of incompatibility has not been challenged before the administrative court, ANI notifies, within 15 days, the competent bodies to trigger disciplinary proceedings against the person concerned.

129. According to Article 26 of Law no. 176/2010, ANI will communicate the evaluation report as follows: for the President and the Prime Minister to Parliament; for other Members of the Government to the Prime Minister, who proposes to the President their removal from office; for secretaries and undersecretaries of state to the Prime Minister who may order their dismissal from office; for Presidential Councillors and Ministerial Advisers to the disciplinary committee, disciplinary board, authority of the competent institution which will impose a disciplinary sanction under the law. The disciplinary sanction is valid even if the evaluation report was transmitted to the prosecutor's office.

130. Under Article 25 of Law no. 176/2010, the finding of a state of incompatibility or conflict of interest is considered a ground for dismissal or, where appropriate, punishable under applicable disciplinary rules. However, the disciplinary sanctions of reprimand and warning cannot be used. In addition, the person removed from office or who was found to be in a situation of conflict of interest or incompatibility losses his/her right to exercise public office or occupy a position of public dignity, except for election for a period of three years after removal from office or from the date of termination of his/her mandate/contract. If the person occupies an eligible position, s/he cannot occupy the same position for a period of three years from the end of his/her term of office. If the person no longer has a public office when s/he is found to be in a situation of incompatibility or conflict of interest, the three-year ban starts from the date of the final evaluation report, or the date of the final court decision confirming the existence of a conflict of interest or incompatibility. At the same time, the person, in respect of whom significant differences between the assets and income gained have been ascertained by a final domestic court decision, is considered to be in a situation of incompatibility with the exercise of public office and is banned from holding public position or office for a period of three years.

131. Turning to sanctions, Article 55 of the Internal Regulation of the Presidential Administration provides for the following sanctions: written warning, demotion with a corresponding salary decrease for a period not exceeding 60 days; reduction in salary of 5-10% for one to three months and termination of employment. Article 39 of the SGG Code of Conduct Article 39 provides for the following sanctions for contract staff (Prime Minister's and Deputy Prime Ministers' advisers), namely written reprimand, decrease of salary, demotion and dismissal from office/termination of the individual employment contract (see paragraph 61 above). Article 493 of the Administrative Code provides for the following sanctions applicable to civil servants and, by extension, to Ministerial Advisers: a written reprimand; a reduction in salary rights by 5-20% for a period of up to three months, by 10-15% for a period of up to one year; suspension of the right to promotion for a period ranging from one to three years; demotion with a corresponding salary decrease and dismissal from office.

132. Between 2017 and 2022, ANI imposed administrative fines to a minister, two state councillors and 24 staff members of private offices and issued warnings to one secretary of state and 11 staff members of private offices for failure to comply with the provision of Law no. 176/2010.

V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

Organisation and accountability of law enforcement/police authorities

Overview of various law enforcement authorities

133. There are four main law enforcement agencies operating in Romania, which are subordinated and accountable to the Ministry of Internal Affairs (MAI). These are as follows: the Romanian Police, a specialised institution, which performs tasks regarding the protection of the fundamental rights and freedoms of the person, the prevention and discovery of crimes, the observance of public order and peace; the Romanian Gendarmerie, responsible for, amongst others, maintaining and restoring public order in general and during official visits or other activities attended by high-ranking Romanian and foreign dignitaries, managing crowd and riot control, policing the mountainous and coastal areas, and pursuing and apprehending fugitives and deserters; the Romanian Border Police responsible for, amongst other things, the surveillance and control of the crossing of the State border and the prevention and fight against illegal migration and acts specific to cross border criminality carried out in its area of competence; and the General Anti-corruption Directorate (DGA), a specialised structure for preventing and combating corruption amongst MAI's personnel.

134. The Romanian Police[64] (Police) and the Romanian Gendarmerie[65] (Gendarmerie) will be the subject of this report in view of their mandate, tasks, workforce and the distinct legal framework regulating each of them. For the purposes of this report, (i) the common features of the Police and the Gendarmerie are grouped together, but a detailed assessment is provided whenever necessary, to highlight differences or respective arrangements within each law enforcement agency – whether those differences are achievements or challenges ahead, and (ii) the term "law enforcement agencies - LEAs" will be used to refer to both the Police and the Gendarmerie without any distinction, and the term "law enforcement officers - LEOs" will be used to denote both police officers and military officers without any distinction.

Organisation and accountability of selected law enforcement authorities

135. Law no. 218/2002[66] governs the organisation and functioning of the Police. It is supplemented by Law no. 360/2002[67] on the Status of Police Officer and other implementing by-laws. The Police is a civilian organisation and, according to Article 5 of Law no. 218/2002, has the following organisational structure: the General Inspectorate of the Romanian Police (IGPR), territorial police units (e.g. inspectorates and police stations) subordinated to the IGPR, the General Police Directorate of the Municipality of Bucharest, county police inspectorates, educational institutions for the initial and continuous training of staff members and other units necessary for the performance of specific police duties.

136. IGPR is the central unit of the police, and is made up of 37 central administrative units, i.e. directorates, services, offices and institutes. It has legal personality and general territorial competence. It directs, guides and controls the activity of subordinated police inspectorates, carries out the investigation of crimes, as well as any other powers conferred on it by law. It

[64] www.politiaromana.ro
[65] www.jandarmeriaromana.ro
[66] https://legislatie.just.ro/Public/DetaliiDocument/35841
[67] https://legislatie.just.ro/Public/DetaliiDocument/36819

is headed by an Inspector General and is assisted by deputies. A Superior Council operates within IGPR, which analyses and decides on the activities of the Police according to the strategy of the MAI, and its decisions are taken by qualified majority.

137. Territorial units comprise 40 county police inspectorates as well as the General Police Directorate of Bucharest Municipality, which operate in accordance with the administrative-territorial division of the country. County police inspectorates are organised and function as units with legal personality. They are headed by a chief inspector, who is assisted by deputies. The General Police Directorate of Bucharest Municipality is organised and functions as a unit with legal personality, headed by a General Director, who is assisted by deputies. There are four educational establishments. In municipalities and cities there are municipal and city police stations, and in communes there are police stations.

138. The Police's workforce comprises 58,000 employees and is composed of police officers (71.35% men and 28.65% women), police agents (77.47% men and 22.53% women), contracted staff (24.07% men and 75.93% women) and one female civil servant. Women occupying management positions in the Police account for 9.74% of the total number of management positions.

139. Law no. 550/2004[68] regulates the functioning and organisation of the Gendarmerie. It is supplemented by Law no. 80/1995[69] on the status of military personnel and other implementing by-laws. The Gendarmerie is a military force, and it has the following organisational structure: the General Inspectorate of the Romanian Gendarmerie (IGJR), the General Directorate of Gendarmerie of the Municipality of Bucharest, the Special Intervention Brigade, county gendarmerie inspectorates, mobile gendarme groups, military educational institutions, training centres and a special unit.

140. IGJR is the central unit of the Gendarmerie, with legal personality and general territorial competence, which plans, organises, manages, coordinates and supervises the activity of the subordinated structures and ensures cooperation and collaboration with other state institutions. IGJR is headed by a General Inspector, who is assisted by three deputies: the First Deputy and Chief of Staff and two other deputies. The General Directorate of Gendarmerie of the Municipality of Bucharest is directly subordinated to IGJR and is responsible for the planning, organisation, management and execution of specific missions and the fulfilment of the duties of the Gendarmerie in the municipality of Bucharest. The Special Intervention Brigade is directly subordinated to IGJR and is responsible for carrying out missions to ensure and restore public order, ensure the protection of the fundamental institutions of the state and neutralise serious threats to them. County gendarmerie inspectorates are subordinated to IGJR and have an area of responsibility corresponding to the territory of a country. Mobile Gendarme groups operate under the authority of IGJR, as a structure designed to organise and execute missions to restore public order and combat crime in an area of territorial responsibility. Military educational institutions are structures intended for the continuous training and specialisation of the Gendarmerie.

141. The Gendarmerie comprises 22,500 staff members, of whom 20,500 (91.11%) are men and 2,000 (8.88%) are women.

[68] https://legislatie.just.ro/Public/DetaliiDocument/57610
[69] https://legislatie.just.ro/Public/DetaliiDocument/6151

142. The GET notes that women occupy 9.74% of the total management positions in the Police, they make up 28.65% of police officers and 22.53% of police agents, and they represent 8.88% of the Gendarmerie's total workforce. It heard during the on-site visit that participation of women in law enforcement agencies is hindered by adverse cultural perceptions. The GET understood that the authorities do not differentiate between men and women in terms of recruitment policies and procedures. Women may apply for management positions under the same conditions as men, and there is no difference in relation to salaries between men and women of the same grade. That said, the GET is of the view that the authorities need a clear strategy to strengthen the representation of women in the Police and the Gendarmerie, not only at the recruitment stage, but, in particular, at the medium and high management level. An increased representation of women is likely to have a positive impact on the law enforcement agencies and the workforce, for example in contacts with the public, in bringing about diversity, in countering a possible code of silence, in developing internal control measures, etc. Consequently, **GRECO recommends that measures be taken to increase the representation of women at all levels of the Police and the Gendarmerie as part of initial recruitment and promotion policies.**

143. Both law enforcement agencies are independent in terms of general policing duties. The GET heard from various interlocutors that law enforcement officers enjoy autonomy, without any intervention from the executive power in carrying out activities pertaining to criminal investigations, which are directed or managed by prosecutors. While instances of instructions given or influence exerted by LEOs' superiors cannot be ruled out, the GET would encourage the authorities to continue inspiring a culture of operational independence of law enforcement agencies in carrying out their tasks in individual cases, without any interference from the political level.

144. The Police and the Gendarmerie are funded, as a main rule, from the State budget. However, both forces may directly receive donations, monetary values up to RON 25,000 (approx. EUR 5,067), goods or sponsorship by a third party, in accordance with the Minister's Order no. 53 of 16 May 2017[70], on the following conditions: the donations may not affect the independence and impartiality of staff in making decisions or the timely and objective performance of their duties; the donations may not lead to the creation of personal advantages or to the use of the offered funds or goods for the personal benefit of staff; the donations may not support the activities of the personnel, indicated by name as beneficiary of the money or goods offered; the donations may not result in the obvious purpose of obtaining an economic advantage for the donor/sponsor, so as to favour him/her in relation to other natural persons or legal entities; the donations may not relate to goods which clearly do not comply with the quality and safety standards laid down by legislation in force at the time.

145. The receipt of donations, goods or sponsorship will be subject to a positive opinion given by the Directorate General for Internal Protection[71] (a specialised structure within MAI with powers in the field of national security and responsible for identifying, counteracting and removing risk factors, threats, vulnerabilities to information, heritage, personnel, missions, decision-making process and operational capacity of MAI structures) and internal opinions provided by various departments such as logistics, IT, public relations, etc. Upon receipt of positive opinions or authorisations: the authorising officer responsible for financing accepts

[70] https://legislatie.just.ro/Public/DetaliiDocument/189485
[71] https://dgpi.ro/

the donation, goods or sponsorship; an offer report is drawn up in accordance with a template report appended to Order no. 53/2017; a legal contract/document is concluded between the Police/Gendarmerie and the donor/sponsor, which is entered into the records of the beneficiary law enforcement agency. LEAs are obliged to publish the contracts of donations or sponsorship on their respective websites.

146. While the rules in place appear to provide for safeguards against improper or unethical donations and sponsorships, the GET is of the view that private donations to law enforcement agencies must be surrounded by very strict rules and transparency, if such financing should be allowed at all, as they may taint the reputation of law enforcement agencies or compromise the perception of their neutrality. The GET notes that donations to the Police are published on its website[72]. The last report regarding donations to the Police dates back from April 2022, no donations having been received since. Also, information on donations and sponsorships may be located on the Gendarmerie's website[73], the last donation report having been drawn up in 2011. Subsequent to the on-site visit, the authorities indicated that each unit of the Gendarmerie publishes donation and sponsorship reports on its own website. In this connection, the GET considers that, for the sake of transparency and easy accessibility and scrutiny of information by the public, the publication of donation and sponsorship reports by each of the Gendarmerie units should be centralised and appear on a single dedicated webpage. **GRECO recommends that all donations and sponsorships received by the Gendarmerie be systematically published on a centralised, dedicated, accessible webpage, clearly indicating the nature and value of each donation, the donor's identity and how the assets donated were spent or used.**

Access to information

147. LEAs fall under the access-to-information-of-public-interest rules that apply to any other public authority and have been described in paragraphs 65-67 above. The GET refers to its observations, in this respect, in paragraph 69 of this report.

148. All persons, including media representatives, may access public interest information on the respective websites of each institution on the basis of information provided through daily press releases, through online social platforms (Facebook, Instagram and YouTube) accessing the accounts of the Police and the Gendarmerie at the central and local structures. Representatives of the general public and media may address specific requests via e-mail or through an on-line request.

Public trust in law enforcement authorities

149. According to the European Commission's 2022 Special Barometer on Corruption[74], 40% of respondents consider that corruption is widespread in police and customs (see paragraph 10 above). The majority of respondents (38%) would turn to the police to complain about corruption. The most recent study on the perception of corruption at MAI was carried out by DGA in 2016[75].

[72] https://www.politiaromana.ro/ro/informatii-publice/transparenta-institutionala/bunuri-provenite-din-contracte-de-comodat-si-donatie
[73] www.jandarmeriaromana.ro/oferte-donatii-daruri-manuale-comodate-si-sponsorizari
[74] https://europa.eu/eurobarometer/surveys/detail/2658
[75] https://www.mai-dga.ro/prevenire-2/sondaje-si-studii

Trade unions

150. Article 59 (3) of the Law no. 218/2002 (on the Police) recognises the right of police officers to form associations, as does Article 48 (1) of Law no. 360/2002 (on the Status of Police Officer). During the on-site visit, the GET learned that there are several Police trade unions. Their representatives expressed their concern about an increasing lack of their employer attractiveness for new recruits. Also, Article 49 of Law no. 360/2002 has established the National Police Corps[76], which is a legal, apolitical and non-profit entity under public law, representing and promoting the interests of police officers and defending their rights. It is responsible for, amongst other things, taking measures to ensure the moral and professional integrity of police officers as well as their effective activity, providing advice on the elaboration of proposals for normative acts that refer to the activity of the Police, participating in the elaboration of the Code of Ethics and Deontology, and representing – upon request – the interests of police officers against whom disciplinary sanctions have been imposed.

151. There are no organised trade unions or professional associations in the Gendarmerie. Article 29 (e) of Law no. 80/1995 (on the Status of Military Personnel) prohibits the formation of trade unions.

Anti-corruption and integrity policy, regulatory and institutional framework

Anti-corruption and integrity policy

152. Pursuant to the National Anti-corruption Strategy (see paragraph 47 above – SNA), the Minister of Internal Affairs adopted an integrity plan by Order no. 191/2022 in December 2022[77], which covers all its structural directorates and entities subordinated to it, including the Police and the Gendarmerie. The integrity plan contains five general objectives, each of which has specific objectives, measures for their implementation, indicators of achievement, sources for their verification, risks to the accomplishment of activities, the responsible structure within MAI, the timeline and links to SNA's objectives and measures. The General Anti-corruption Directorate (DGA) is responsible for its overall implementation, annual evaluation and review, whereas the heads of the structures within MAI and those subordinated to it are responsible for implementing the measures under their area of responsibility and for reporting on the status of implementation to DGA.

153. The GET notes that that the Ministry of Internal Affairs' integrity plan, which contains over 60 measures (activities to be executed), extends to its subordinated structures. Only seven measures have been expressly addressed to the Police, none having been identified for the Gendarmerie. Nevertheless, according to the annual progress report on the implementation of the Ministry's integrity plan[78], the Gendarmerie reported that, in 2022, it identified 81 corruption risks in respect of which 94 control measures were adopted, in accordance with the Corruption Risk Register (see in paragraph 156 below). The areas under review concerned declarations of assets, conflicts of interest, incompatibilities, compliance with the code of ethics and professional conduct, transparency in decision-making, access to

[76] https://www.cnpromania.ro/
[77] https://legislatie.just.ro/Public/DetaliiDocument/263723
[78] https://www.mai-dga.ro/wp-content/uploads/2023/04/Raport-narativ-implementare-Plan-de-integritate-MAI.pdf

information, management of public funds, public procurement and selection and promotion of staff. The main measures taken related to the strengthening of the role of the ethics adviser, strengthening the disciplinary regime and practice, raising awareness of heads of departments about their responsibility to monitor the integrity of their staff members, informing staff members of reported cases of corruption, and carrying out activities of getting to know the military personnel. Integrity incidents were reported to the competent service of DGA. In addition, training activities were organised for Gendarmes involved in criminal investigation activities. Concerning the Police, the annual progress report states that, in 2022, a priority objective for the Police was to fill vacant management positions through competitive procedures. Out of 1,281 vacant management positions, 700 (56.64%) were filled through 'empowerment' (see paragraph 177 below for more information). Other measures taken by the Police included: the digitalisation of the process of issuing criminal record certificates; the acquisition of, and fitting with, body cameras for police officers; the conduct of professional trainings for police officers on topics related to corruption prevention activities; the designation of specific staff members dealing with the processing of personal data; the conduct of periodic controls/verifications of the handling of confidential and classified information, etc. The GET takes note of the measures taken by the Police and the Gendarmerie in implementing the Ministry of Internal Affairs' integrity plan. It stresses that, in the absence of a dedicated integrity plan for each of the Police and the Gendarmerie, implementing the Ministry of Internal Affairs' integrity plan at the level of the Police and the Gendarmerie will be instrumental in strengthening their integrity management system as well as preventing and fighting corruption, and encourages the authorities to keep up the momentum.

Institutional framework

154. DGA was established by Law no. 161/2005[79] and is the specialised structure of MAI for preventing and combating corruption, subordinated directly to the Minister. It is responsible for carrying out the investigation into corruption offences committed by MAI personnel, including the Police and the Gendarmerie staff members. In addition, DGA performs professional integrity tests of MAI staff members, carries out technical-operative support activities in order to execute the technical surveillance measures, receives and resolves complaints/petitions by citizens regarding the corruption offences in which MAI staff members are involved, manages the anti-corruption call-centre system set up for the purpose of citizens' notification of corruption acts, organises and carries out awareness-raising campaigns, conducts studies and ensures the coordination, monitoring and evaluation of the corruption risk management activities within MAI. It is made up of four directorates (the intelligence directorate, the criminal investigation directorate, the prevention directorate and the support directorate), it has 41 anti-corruption units throughout the country and comprises a workforce of 700 police officers (31.6% women and 68.04% men).

Risk management measures for corruption prone areas

155. The Minister of Internal Affairs has issued Order No. 62/2018[80] on the organisation and conduct of corruption prevention and education activities to promote integrity within MAI's personnel. One of the measures to prevent the occurrence of corrupt practices is the establishment of corruption risk management, which aims at identifying, describing, evaluating and prioritising institutional and individual factors that favour or determine the

[79] https://legislatie.just.ro/Public/DetaliiDocument/62152
[80] https://legislatie.just.ro/Public/DetaliiDocument/201827

commission of corruption, the development and application of measures necessary to prevent their occurrence and limit their effects.

156. Pursuant to the MSERC (see paragraph 48 above), each of the Police and the Gendarmerie has set up a working group for the prevention of corruption, which comprises heads of directorates, services, offices and independent units and is headed by a representative from the senior management. The working group annually analyses vulnerabilities in each department with a view to identifying corruption risks and entering them in the Corruption Risk Register. For each identified corruption risk, prevention and control measures are implemented, assessment indicators and risk managers are established. At the same time, monitoring and review activities of corruption risks are carried out annually by the working group, with the support of the risk officers, in order to monitor the status of implementation of the measures established in the Corruption Risks Register. The Corruption Risk Monitoring Report (which includes information about each directorate of the Police and the Gendarmerie, identified risks, proposed measures and resulting assessment) and the Revised Corruption Risk Register are approved by the management of each of the Police and the Gendarmerie and sent, at the beginning of each year, to DGA. The secretariat of the working group is ensured by an integrity adviser who is also responsible for ensuring the dissemination of materials transmitted by DGA regarding the activity of preventing and combatting corruption, keeping records of staff members participating in information and training activities, supporting DGA in carrying out monitoring activities, the risk assessment and the institutional response to integrity incidents.

157. The GET learned that the annual reports on the assessment of integrity incidents at the level of MAI for previous years are made available online[81]. However, no such reports could be found in respect of the Police and the Gendarmerie on their websites. During the on-site visit, the GET understood that Corruption Risk Registers are not published, but may be made available upon filing a request for access to information, whereas data about annual integrity incidents are to be disclosed. In this connection, the GET would refer to the recommendation made in paragraph 69 of this report, which would also apply to the Police and the Gendarmerie with a view to disclosing information of public interest, as required by the domestic regulatory framework.

158. By virtue of Article 17^1 of Law no. 38/2011[82], as further supplemented by the Minister's Order no. 256/2011[83] on the procedure for testing the professional integrity of MAI staff members, DGA has applied, since 2011, another administrative preventive measure (similar to undercover operations) which, includes integrity testing of MAI staff members. On recruitment, MAI staff members give their implied consent to have their professional integrity tested. The professional integrity testing is carried out by DGA, at its initiative or by request of MAI structures. It represents a method of identifying, assessing, and removing the vulnerabilities and risks which lead MAI staff members to commit corruption offences. It consists of creating a possible situation, like the ones encountered by staff members in the exercise of their duties, materialised under the guise of simulated operations, in accordance with the tested staff members' behaviours, in order to establish their reaction and conduct. No incitement or instigation of staff members to perpetrate a crime or commit an

[81] https://www.mai.gov.ro/wp-content/uploads/2023/04/raport-MAI-incidente-MJ-2022-final.pdf and https://www.mai-dga.ro/prevenire-2/sondaje-si-studii
[82] https://legislatie.just.ro/Public/DetaliiDocument/127156
[83] https://legislatie.just.ro/Public/DetaliiDocument/133179

administrative offence is allowed (i.e. no entrapment). If, while conducting an integrity test, the ascertainment is made that criminal offences have been committed, DGA informs the prosecutor's office. If it is ascertained that the tested staff members breached legal provisions other than those giving rise to criminal liability, then administrative and/or disciplinary measures would be applied, in accordance with domestic legislation. Staff members are informed if they successfully pass the integrity test. The GET takes note of this practice, which, if applied in accordance with the rules and free of any coercion or incitement in order to protect fundamental human rights and freedoms, is a practical way of identifying areas where risks are prevalent and informing preventive strategies.

159. Lastly, the authorities provide that, based on case studies and the operational situation in relevant fields, specific vulnerable areas are identified where corruption prevention activities are prioritised.

Handling undercover operations and contacts with informants and witnesses

160. The Police carries out undercover operations in accordance with Articles 148-149 of the Code of Criminal Procedure (CCP). Authorisation for the use of undercover operations or informants may be ordered by the prosecutor supervising or conducting the criminal investigation *ex officio* or upon request by criminal investigation bodies, for a period of up to 60 days. The authorisation will include the activities to be performed, the time duration for which the activities were authorised, and the identity given to the undercover agent. The duration of the initial authorisation may be extended for well-grounded reasons, provided that each extension may not exceed 60 days. The total duration of such measure, in the same case and in respect of the same person, may not exceed one year, except for certain cases[84]. The use of technical devices in order to obtain pictures or audio and video recording is subject to a court order issued by the judge for rights and liberties.

161. Undercover agents may be heard as witnesses in criminal proceedings and trial under the same terms and conditions as threatened witnesses, in accordance with Articles 125-130 of CCP. Under Article 149 of CCP, the real identity of undercover agents and of informants having an identity other than their real one, may not be disclosed.

162. The Gendarmerie does not perform any undercover activities.

Ethical principles and rules of conduct

163. The Code of Ethics and Professional Conduct for Police Officers[85] (Code of Ethics) was adopted on 25 August 2005. According to Article 25, it applies to staff members working for the Police and the Gendarmerie. The Code of Ethics contains provisions relating to general principles, main functions of the Police, cooperation with other state institutions and relationship with different categories of people, the protection of police officers in the performance of their duties, the use of force, protection of data and information[86] and

[84] Offenses against life, national security, drug trafficking, weapons trafficking, and trafficking in person, acts of terrorism, money laundering, as well as for offenses against the European Union's financial interests (Article 148 (9) of CCP).

[85] https://legislatie.just.ro/Public/DetaliiDocumentAfis/64812

[86] Article 17 (Protection of data and information) reads as follows: "1. The police officer shall be obliged to preserve, in accordance with the law, while ensuring respect for the rights of individuals, state secrecy and work

attitude towards corruption[87]. Compliance with the principles and rules of the Code is an officer's duty of honour. Breaches of the principles and rules laid down in the Code of Ethics may lead to disciplinary, civil or criminal liability.

164. Article 45 of Law no. 360/2002 on the Status of Police Officer and Articles 28-30 of the Law no. 80/1995 on the Status of Military Personnel impose prohibitions/restrictions on law enforcement officers (see also paragraph 186 - 187 below). Also, Law no. 161/2003 (on certain measures for ensuring transparency in the exercise of political officeholders, public functions, etc., see paragraph 53 above) contains provisions relating to conflicts of interest and incompatibilities applicable to civil servants (see paragraphs 94 and 102 above), which apply to the Police (but not the Gendarmes owing to their military status).

165. The GET notes that the Code of Ethics, which was drafted in cooperation with trade unions and the National Police Corps, has not been revised since 2005. While it appears as a framework text on institutional settings, etc., it only contains limited provisions dealing with integrity issues. There is no reference to incompatibilities, contacts with third parties, outside activities and post-employment restrictions. Even though some of these issues are covered by other statutory provisions, the GET sees merit in addressing rules of ethics and integrity in one single text, for the sake of clarity and accessibility. While some of the features of both law enforcement agencies are common, there are also specificities of the service of each of the Police and Gendarmerie which should be reflected therein and supplemented by practical guidance. Consequently, **GRECO recommends that (i) the Code of Ethics applicable to the Police and the Gendarmerie be revised, with the active participation of relevant stakeholders in the Police and the Gendarmerie, to cover in detail relevant integrity issues (such as conflicts of interest, incompatibilities, gifts, contacts with third parties, outside activities, etc.), and (ii) the Code of Ethics be complemented with practical guidance and examples for the staff of the Police and the Gendarmerie.**

Advice, training and awareness

166. Students of the Police Academy attend a course on ethics and integrity. DGA may be asked to intervene as necessary. Also, according to the Minister of Internal Affairs' Order No. 62/2018[88], DGA carries out anti-corruption information and training activities to develop the capacity of MAI staff members (initial and in-service training). Newly recruited staff members are required to participate in the anti-corruption training activities in the first six months following their appointment. The training course lasts at least 120 minutes, and its curriculum covers topics such as corruption offences, professional integrity testing, presentation of the Code of Ethics and presentation of the whistle-blowers' protection system, etc. In addition, all MAI staff members are obliged to participate in anti-corruption training activities at least once every three years. The training course lasts at least 120 minutes and

secrecy, as well as complete confidentiality of the data and information in his possession and not to use them improperly or for personal gain."

[87] Article 19 (Attitude towards corruption) reads as follows: "(1) A police officer shall not tolerate acts of corruption and misuse the public authority conferred by his or her status. (2) A police officer shall not demand or accept money, goods or valuables in order to perform or not to perform his or her professional duties and shall not receive tasks, assignments or work that exceed the competences set out in the job description file. (3) A police officer shall take a stance against acts of corruption within the institution and shall inform superiors and other competent bodies about cases of corruption of which he/she has become aware. (4) A police officer shall not use his/her position or office to pursue personal interests."

[88] https://legislatie.just.ro/Public/DetaliiDocument/201827

principally focuses on the discussion of hypothetical or real-life situations, without overlooking issues, such as the institutional risks specific to MAI structures, integrity warning, reporting obligations, etc. Furthermore, managers attend a training course for at least 120 minutes, dealing with topics such as their role in maintaining a climate of integrity, their responsibility in preventing corruption practices, risks and vulnerabilities specific to management, professional integrity testing, presentation of dilemmas, etc. The content of the training course may be adapted to better address the target group. Every two years, DGA conducts a poll of MAI staff members about the training curriculum in order to adapt it to everyday realities. Moreover, each of the Police and the Gendarmerie has its own training centre, which organises courses on prevention of corruption and promotion of integrity. The total number of trainings organised by DGA in the last four years is as follows:

Year	Activities		Participants	
	Police	Gendarmerie	Police	Gendarmerie
2019	1,408	431	18,835	8,238
2020	294	146	3,211	2,225
2021	917	360	9,545	4,346
2022	1,097	386	13,246	5,470
Total	3,716	1,323	44,837	20,279

167. The GET takes note of the existing training framework on corruption prevention, which appears to be adequate in its format, both for initial and in-service training. However, the GET was told on-site that induction and in-service trainings were not conducted on a regular basis for all law enforcement officers, not least because of the large number of staff members in each of the Police (58,000 employees) and the Gendarmerie (22,500 employees). This means that the conduct of initial and in-service training should be further strengthened to target all serving law enforcement officers. The GET considers it important that future trainings should take fully on board the revised Code of Ethics as well as the practical guidance, which will be produced in the implementation of the preceding recommendation. To this comes the need to ensure that law enforcement officers have the possibility to obtain confidential counselling on an individual level in respect of ethical conduct in situations where they have doubts. Such counselling goes beyond the mere possibility of asking guidance from line managers. In view of the above, **GRECO recommends that (i) in view of the to-be revised Code of Ethics, initial and in-service training on relevant integrity matters be updated and provided to all law enforcement officers; and (ii) a mechanism of confidential counselling on ethics and integrity matters be established in the Police and the Gendarmerie.**

Recruitment, career and conditions of service

Recruitment

168. According to Article 1 of Law no. 360/2002 on the Status of Police Officer, police staff members are civil servants with special status, armed, who usually wear a uniform and exercise responsibilities established by law. Police staff members consist of two categories: the corps of police officers having obtained a higher education diploma (Category A) and the corps of police agents having finished high school or attended a post-secondary education (Category B). This report is concerned with the corps of police officers (Category A).

169. Recruitment of members of the corps of police officers (Category A) may take place in one of the following ways: appointment of graduates from a bachelor's or master's programme organised by the *Alexandru Ioan Cuza* Police Academy; re-employment of former police officers to fill in non-managerial positions, in accordance with the law; direct employment or transfer from institutions pertaining to the defence, public order or national security systems; competition or examination.

170. Article 23 of Law no. 550/2004 (on the Romanian Gendarmerie) provides that the personnel of the Gendarmerie consist of military personnel and contract staff members. Military personnel comprise military officers, warrant officers and non-commissioned officers. This report is concerned with military officers. The status of military personnel is principally governed by Law no. 80/1995 (on the Status of Military Personnel) and implementing regulations. Recruitment of military officers broadly follows the same pattern as that of police officers, described in paragraph 169 above.

171. Annex no. 2 (on Police recruitment) to the Minister of Internal Affairs' Order no. 140/2016[89] (on the activity of human resources management in Police units) and Annex no. 2 (on military personnel recruitment) to the Minister's Order no. 177/2016[90] (on the activity of human resources management in military units) principally address the admission of students to MAI's educational institutions. According to their functions, law enforcement officers may work in non-managerial (execution) and managerial positions.

172. As regards vetting of new recruits, and subsequent to the on-site visit, the authorities referred to Annex no. 2 to Orders nos. 140/2016 and 177/2016. The GET notes that Annex 2 lays down the procedure for the admission of candidates to MAI's educational institutions and does not appear to cover the remaining categories of recruits spelled out in paragraph 169 above. Whereas a provision entrusts human resources units to "ask the Directorate General for Internal Protection (GDIP) to carry out specialised checks on the candidate", the GET is left with the impression that, owing to the special mandate of the DGIP which is akin to an intelligence service (see paragraph 144 above), the checks refer to security clearance. Indeed, as maintained by the authorities, such a security clearance is required in order to have access to classified information, in accordance with the Government decision no. 585/2002 on the national standards on the protection of classified information. The GET underlines that integrity vetting, as construed by GRECO, is not about having access to classified information under domestic law. It is about carrying out pre-employment background checks, checks in relation to family members, close relatives or associates, checks of previous, present or intervening criminal convictions, screening financial interests, handling persons and resources, checking possible conflicts of interest linked to a person's individual circumstances that may affect the discharge of his/her duties in general, not least because of receipt of any internal of external notifications. The GET emphasises that personal circumstances are likely to change over time and, in some cases, make a person more vulnerable to possible corruption risks. Therefore, regular integrity vetting during the service as well as following a change of service or as requested by the line manager, should become the rule as a tool for prevention and be properly regulated. Consequently, **GRECO recommends that integrity checks take place before recruitment and at regular intervals during the career of law enforcement officers, depending on their exposure to corruption risks and the required security levels and upon resuming their functions in the structures of the Police or the Gendarmerie.** The

[89] https://legislatie.just.ro/Public/DetaliiDocument/181616
[90] https://legislatie.just.ro/Public/DetaliiDocument/183746

GET does not lose sight of professional integrity testing, which, as described in paragraph 158 above, is carried out by DGA as a simulation activity to establish a staff member's behaviour and reaction and does not address the concerns expressed in this paragraph.

Appointment and promotion to a higher rank

173. Article 8 of Law no. 218/2002 provides that the Police Inspector General, with the rank of Secretary of State, is appointed by decision of the Prime Minister, on the proposal of the Minister of Internal Affairs, who consults the National Police Corps. No competition is conducted, as it is considered a position of public dignity. Police Deputy Inspectors General are appointed by the Minister of Internal Affairs, on proposal of the Inspector General, in consultation with the National Police Corps, after conducting an open competition. Under Article 12 of Law no. 218/2002, the General Director of the Police General Directorate of Bucharest Municipality and the chief inspectors of the county police inspectorates are appointed and dismissed from office by order of the Minister of Internal Affairs, on the proposal of the Inspector General, in consultation with the National Police Corps, after conducting an open competition.

174. Article 6 of Law no. 550/2004 states that the Gendarmerie Inspector General is appointed by the Minister of Internal Affairs. The Inspector General of the Gendarmerie is assisted in the performance of his/her duties by a First Deputy and chief of staff and by deputies appointed, at his/her proposal, by the Minister of Internal Affairs, after conducting an open competition. The General Director of the Gendarmerie General Directorate of the Municipality of Bucharest and the Chief of Special Intervention Brigade are appointed by the Gendarmerie Inspector General, after conducting an open competition.

175. The appointment and promotion of other law enforcement officers is made by the appointing authority, as set out in Annex 11 to Orders nos. 140/2016 and 177/2016.

176. Article 27^35 of Law no. 360/2002 (on the Status of Police Officers) states that vacant managerial positions are filled by competition or direct appointment. In addition, Article 27^15 of the same Law has introduced the institution of "empowerment", which is the direct appointment of an individual in a temporarily vacant managerial position, for an initial period of up to six months, renewable once. The Law requires the conduct of a competition to fill in the vacant position at the expiry of that period. The same provisions are made in Article 77^1 of Law no. 80/1995 (on the Status of Military Personnel) and Annex 3 to Order No. 177/2016 in respect of the Gendarmerie. A law enforcement officer which meets the conditions in the job description, is not under disciplinary investigation or is not under the effect of a disciplinary sanction may be 'empowered'.

177. It transpired from the on-site visit that the phenomena of direct appointment and empowerment were widespread in the Police and the Gendarmerie. More than 9% of all positions in MAI were filled by virtue of "empowerment". While, according to the authorities, empowerment is applied in specific situations in order to ensure efficiency and continuity of management and capitalise on the professional potential of law enforcement officers, the GET is concerned about the prevalence of such methods of appointment to managerial positions, which is left entirely at the discretion of superiors and appears to be devoid of an objective, transparent, public and merit-based process. This should be remedied, as a matter of priority, by ensuring that all appointments to managerial positions are characterised by a fair and

public process. **GRECO recommends that, as a matter of priority, measures be taken to ensure that appointments to managerial positions, including through empowerment, are strictly based on merit and guided by open, standardised and transparent competitions.**

Rotation and mobility

178. The authorities stated on-site that there is no formal and structured job rotation system in the Police and the Gendarmerie, whereas legislation guarantees the stability of the law enforcement officer in the workplace. Upon completion of their educational institutions, law enforcement officers are assigned to positions based on needs, in a balanced manner, at the national level, which, according to the authorities, ensures, to some extent, a natural job rotation. Managers may introduce a system of rotation of law enforcement officers within their own teams. The GET notes that the aim of rotation is to avoid law enforcement officers spending a significant part of their career, and sometimes their whole career, in specific work of geographic areas, notably where corruption risks may be higher, etc. There are various ways to achieve that, such as incentives and professional development schemes. Therefore, **GRECO recommends that an institutional system of rotation be put in place in the Police and the Gendarmerie, which could be applied, as appropriate, in areas considered particularly exposed to corruption risks.**

Performance evaluation and termination of service

179. Performance evaluation is important for awarding the next professional rank, identifying continuous professional training needs and promoting a law enforcement officer. As a rule, performance evaluation is carried out once a year in respect of all law enforcement officers. A performance evaluation report is drawn up by the hierarchical manager and approved by his/her superior, according to a set of evaluation criteria. Marks are awarded to each evaluation criteria on the basis of which an overall score is calculated. Depending on the overall score, a police officer may receive the following ratings: very good, good, satisfactory and unsatisfactory, and a military officer as follows: exceptional, very good, good, appropriate, mediocre or unsuitable. An administrative appeal may be lodged, and court proceedings instituted, by an aggrieved law enforcement officer against the performance evaluation.

180. According to Article 69 of Law no. 360/2002, the termination of employment of police officers is ordered by one of the persons empowered to bestow professional ranks. The termination of employment may be ordered if a police officer, amongst other things, reaches the retirement age, has lost the capacity to work, resigns, has been appointed to another public office, has been dismissed from office, has received unsatisfactory ratings during his/her last two performance evaluations, has been convicted by a final court decision, or has committed misconduct. The decision of termination may be challenged before the competent administrative court**.**

181. The termination of employment of military officers may be ordered by persons who are competent to grant military ranks, in accordance with Articles 85 and 87 of Law no. 80/1995. The termination of employment may be ordered, amongst others, when military officers: have reached the standard retirement age; have reached the age limit for appointment to a public, civilian post, provided that they may be placed in reserve forces; request it for well-founded reasons; tender their resignation; fail to pass the physical fitness test; commit serious breaches of military regulations or other legal provisions; have been

deemed 'unfit for military service' or 'partially fit' by the medical and military expert committees or have been convicted by a final court decision. Administrative acts terminating employment may be challenged before the competent administrative court.

Salaries and benefits

182. The average gross monthly salaries are presented in the table below.

	Police officer	Military officer
Starting gross monthly salary (approx. in euros)	884	1,273
Average gross monthly salary (approx. in euros)	1,336	1,586
Maximum gross monthly salary (approx. in euros)	4,872	1,972

183. Police officers may benefit from a rent/housing allowance ranging from approximately EUR 107 to EUR 609 per month, reimbursement of transportation expenses, a relocation allowance, an installation allowance in the case of secondment, delegation or detachment allowance, reimbursement of accommodation expenses in accordance with the conditions laid down by law, and an annual meals allowance of approximately EUR 2,615. In addition, they have the right to a uniform and specific equipment and service, social or protocol housing, as applicable. Military officer may be entitled to a rent allowance, an installation allowance and a transportation allowance. The allowances discontinue in the event of termination of employment. Verification and monitoring of allowances is carried out by the MAI's internal audit office and the Court of Auditors.

Conflicts of interest

184. Because of their status as civil servants (see paragraph 168 above), all police officers are bound by the rules on conflicts of interest applicable to civil servants, as laid down in Law no. 161/2003 (see paragraph 94 above). The authorities further refer to Article 301 of the Criminal Code, which criminalises conflicts of interest committed by public servants[91].

185. Other than Article 301 of the Criminal Code providing for the offence of conflict of interest, such conflicts of interest are not regulated *per se* in respect of the Gendarmerie. Only persons with management and control positions in the Gendarmerie are bound by the requirement to file declarations of assets and interests, in accordance with Law no. 176/2010 (on integrity in the exercise of public functions and dignities). Given the central role that the prevention of conflicts of interest plays in any anti-corruption regulatory framework, the GET considers it important that, in spite of the military status of the Gendarmerie, rules on disclosing and addressing conflicts of interest be introduced. **GRECO recommends laying down rules and procedure regulating the disclosure and management of conflicts of interest in the Gendarmerie.** This area could further benefit from more developed guidance, including practical examples on situations that may occur in daily routines and possible ways to address them (see also paragraph 165 above).

[91] Article 301 of the Criminal Code reads as follows: "The conduct of public servants who, while carrying out their professional duties, performed an act or participated in making a decision that resulted, directly or indirectly, in a material gain for themselves, their spouses, for a relative or an in-law up to the second degree, or for another person with whom they were in business or work relationships for the past five years or from whom they have received or receive benefits of any kind, shall be punishable by imprisonment from one to five years and a ban from exercising the right to hold a public office."

Prohibition or restriction of certain activities

Incompatibilities and outside activities

186. In addition to the regime of incompatibilities applicable to civil servants (see paragraph 102 above), which also extends to police officers , Article 45 of the Law no. 360/2002 (on the Status of Police Officer) lays down a number of prohibitions, such as to be a member of political parties; to express political opinions or preferences at work or in public; to run for office for local authorities, Parliament or the President of Romania; to express in public opinions contrary to the interests of the country; to declare or participate in strikes as well as in rallies, demonstrations or any other gatherings of a political nature; to carry out, directly or through intermediaries, commercial activities or to participate in the administration or management of some commercial companies, with the exception of being a shareholder; to carry out profit-making activities which would harm the honour or dignity of the police officer or of the institution to which s/he belongs or would violate the legal regime of conflict of interest and incompatibilities.

187. Articles 28-30 of Law no. 80/1995 (on the Status of Military Officers) state that it is forbidden for a military officer, amongst other things, to: belong to political parties, formations or organisations or to carry out propaganda by any means or other activities in favour of them or of an independent candidate for public office; stand for election to the local public administration, the Romanian Parliament, the European Parliament and the office of the President of Romania; declare or participate in strikes, express political opinions in public, express public opinions contrary to the interests of the country and the armed forces; participate in rallies, demonstrations, processions, gatherings or meetings of a political or trade union nature, and be the sole member of, or participate directly in the management or direction of, organisations or companies, with the exception of those appointed to the boards of directors of autonomous companies and companies subordinated to, coordinated by or under the authority of the Ministry of Internal Affairs and their subsidiaries, within or related to the defence industry.

188. Annex no. 10 to Orders nos. 140/2016 (regarding the Police) and 177/2016 (regarding the Gendarmerie) regulate the exercise of any kind of outside remunerated activities. Law enforcement officers may carry out other paid activities outside working hours if (i) the performance of the new duties does not affect the efficiency of the performance of the duties of the basic function held in the respective force; (ii) in the activity carried out, they do not use equipment, materials, data and information in the use of the unit to which they belong; (iii) the military medical personnel will continue to perform on-call duties that do not affect the medical assistance programme of the unit in which they are employed; (iv) they carry out gainful activities in organisations or companies other than those supplying goods, performing works or providing services to MIA units.

189. Law enforcement officers who intend to carry out outside remunerated activities are obliged to request the approval of the head/commanding officer of the unit by means of a written report, which must include the name and the object of activity of the entity, details of the activities to be carried out, the work programme, their rights and obligations within the employing entity, any other information which they consider would be useful. After registration, the report, endorsed by the immediate superior, is submitted to the human

resources office. The head/commanding officer of the unit will review the report. If, following checks, the head/commanding officer finds that the activities to be carried out contravene the provisions of the regulations, s/he will not approve the report. The reasons for non-approval will be notified to law enforcement officers. In the event of any changes in the exercise of outside paid activities, law enforcement officers are obliged to inform the head/commanding officer of the unit within five days.

190. The GET wishes to stress that the rules on outside activities are key for good management of conflicts of interest. While there appears to be an adequate system to authorise outside activities, the GET understood that there is no centralised record-keeping of authorisations given in order to ensure their consistency. Moreover, while the law places an obligation on the law enforcement officer to keep information updated, there is no institutionalised follow-up system. In the GET's view, further development of the current authorisation system for outside activities would undoubtedly bring valuable inputs for risk assessment purposes. **GRECO recommends (i) establishing a register of outside/secondary activities in the Police and the Gendarmerie, and (ii) developing effective oversight arrangements in this respect.**

Gifts

191. Article 19 (2) of the Code of Ethics and Professional Conduct for Police Officers, which applies to both the Police and Gendarmerie, provides that a law enforcement officer will not demand or accept money, goods or valuables in order to perform or not to perform his/her professional duties. Also, Article 43 of Law no. 360/2002 (on the Status of Police Officer) lays down a prohibition to receive, solicit, accept, directly or indirectly, for him/herself or others, because of his official status, gifts or other advantages.

192. According to Article 1 of Law no. 251/2004 (on Protocol Gifts, see paragraphs 107 above), its provisions apply to all police officers, given their status as civil servants with special status, and to persons with management and control positions in the Gendarmerie who are obliged to file a declaration of assets and interests. In this connection, the GET would maintain the same observations it has made in respect of PTEFs, and refer to the recommendation in paragraph 109 above.

Misuse of public resources

193. The liability of miliary officer is regulated by the Minister's Instruction no. 114 of 22 July 2013 regarding the material liability of personnel for damages caused to MAI, which was issued in application of Government Ordinance no. 121/1998 regarding the material liability of military personnel. The Minister's instruction and the Government's ordinance also used to apply to police officers. However, on 27 April 2023 the Constitutional Court of Romania declared that their application could not extend to police officers, who are considered to be civil servants with special status. As from the date of the publication of the Constitutional Court's decision in the Official Gazette, and pending the adoption of a normative act regulating the material liability of police officers, such liability will be governed by Articles 499-500 of the Administrative Code and Articles 254-259 of the Labour Code.

Third party contacts, confidential information

194. Article 17 (1) of the Code of Ethics and Professional Conduct for Police Officers provides that the law enforcement officer is obliged to preserve, in accordance with the law, while ensuring respect for the rights of individuals, state secrecy and work secrecy, as well as complete confidentiality of the data and information in his/her possession and not to use them improperly or for personal gain. Articles 42 (a) and 45 (3) of Law no. 360/2002 (on the Status of Police Officer) provides for the preservation of professional secrecy and confidentiality of classified data obtained by the police officer during the exercise of his/her duties, which cannot be made public for a period of five years from the termination of his/her employment, unless the law provides otherwise. In addition, Article 8 of Law no. 80/1995 (on the Status of Military Officer) states, amongst others, that the military officer has a duty to strictly preserve military, state and service secrecy, as well as the confidential nature of certain activities and documents. In addition, Articles 227, 304 and 305 of the Criminal Code provide for offences for disclosure of professional secrecy, disclosure of classified or non-public information and negligence in storing information, respectively, which are punishable by a fine or a prison sentence.

Post-employment restrictions

195. There are no post-employment restrictions for law enforcement officers (LEOs) on leaving employment. The GET was made aware that LEOs could retire after 21 years of service, the average retirement age being in their mid-forties. However, the authorities did not provide any figures in respect of post-employment rates. As the possibility of outside employment may entail risks (e.g. job offers as a token of reward, keeping channels of communications with former colleagues and relying on the experience and knowledge on police procedures to the advantage of the new employer), **GRECO recommends that a study be conducted concerning activities by law enforcement officers after they leave the Police and the Gendarmerie and that, if necessary, in the light of the findings, rules be adopted to ensure transparency and limit the risks of conflicts of interest.**

Declaration of assets, income, liabilities and interests

Declaration requirements

196. Article 1 of Law no. 176/2010 (on integrity in the exercise of public functions and dignities, see paragraph 54 above) provides that all police officers, given their status as civil servants with special status, and persons with management and control positions in the Gendarmerie, are obliged to file a declaration of assets and interests (see paragraph 114-116 above). Other military officers do not have an obligation to disclose their assets and interests, unless their position is part of a project financed from external or budgetary funds (see Article 1 (1)(36 of Law no. 176/2010).

197. The GET is aware that it is not uncommon that financial disclosure obligations for law enforcement officers, who have a military status and are not considered civil servants, are restricted to senior posts, which are more exposed to corruption than their subordinates. Even so, there may well be other corruption prone positions where the use of financial disclosure may be of use for preventive purposes, for example, for officials dealing with public procurement decisions. Moreover, if ever developed in the future for all staff members of the Gendarmerie, financial disclosure should not be seen merely as an obligation, but also as an opportunity for the system to help prevent situations that could ultimately lead to corruption.

The GET encourages the authorities to examine this issue in connection with the improvements to the vetting system recommended in paragraph 172 above.

Review mechanisms

198. Once collected by the human resources department of MAI, integrity inspectors of the National Integrity Agency are responsible for reviewing the declarations of assets and interests, as has been explained in paragraphs 117 and 118 above.

Oversight and enforcement

Internal oversight and control

199. Internal control is exercised by hierarchical management within the Police and the Gendarmerie. In addition, Internal Control Directorates have been set up within the Police and Gendarmerie, with a general competence for carrying out investigations of alleged breaches of deontological or criminal provisions committed by police officers and military officer, respectively (except for corruption offences, which are the competence of DGA) on receipt of complaints or notification. At the level of the territorial/county Police inspectorates, control offices are set up, which have the competence to investigate criminal and disciplinary offences committed by the local staff. Any findings made by the control offices are reported to the head of the entity and findings of other criminal investigations are reported directly to the public prosecutor. At the level of the Romanian Gendarmerie, specialised control structures have been set up in only two territorial units: the General Directorate of Gendarmes of Bucharest and the Special Intervention Brigade of the Gendarmerie. At the level of the other territorial units, the General Prosecutor of the Prosecutor's Office of the High Court of Cassation and Justice has appointed officers to special criminal investigation offices. They have the power to carry out investigative actions into offences committed by gendarmes following delegation by the prosecutor, who has the exclusive responsibility to carry out the criminal prosecution. The commander of the unit may designate any subordinate gendarmes to carry out investigations into disciplinary offences, without there being any requirement that s/he has any special status.

200. Citizens, who are dissatisfied with the results of the Internal Control Directorates of the Police and the Gendarmerie, may complain to the Minister's Control Body[92]. It is a central operative structure, set up at the level of general directorate, without legal personality, under the direct subordination of the Minister of Internal Affairs, which has a general material and territorial competence in carrying out controls over MAI's entities, including the Police and the Gendarmerie. The specific control activity consists in analysing, verifying and measuring the quantitative and qualitative achievement of objectives, activities or tasks, comparing them with the planned objectives and indicating the measures that are required during or at the end of this activity, in order to maintain the state of normality of the organisation's activity

201. Within MAI, the Internal Public Audit Directorate[93] is the specialised structure that carries out internal public audit missions on all the activities of the entities included in MAI's organisational structure, including the Police and the Gendarmerie, regarding the formation and use of public funds and public property as well as the good administration of revenues

[92] https://www.mai.gov.ro/despre-noi/organizare/aparat-central/corpul-de-control-al-ministrului/
[93] https://www.mai.gov.ro/despre-noi/organizare/aparat-central/directia-audit-public-intern/

and expenditures. Every two years, the Internal Public Audit Directorate assesses all the preventive activities that have been carried out by DGA and the other law enforcement institutions in order to support the implementation of the anti-corruption policies at the level of MAI, including the activities related to the implementation of the corruption risk methodology. DGA issues a report regarding the vulnerabilities and corruption risks, which have been analysed at the level of MAI structures.

202. Lastly, DGA is responsible for investigating corruption offences within the Police and the Gendarmerie as well as within all MAI's structures. From the operational point of view, they are dependent on the prosecutors in charge of the investigation and do not take order from their hierarchical administrative management.

External oversight and control

203. External oversight bodies over the Police and the Gendarmerie include the Court of Accounts (see paragraph 90 above), the Ombudsperson (see paragraph 91 above), the Prime Minister's Control Body (see paragraph 89 above) and the National Supervisory Authority for Personal Data Protection, which may conduct investigations *ex officio* or upon complaint on the observance of the rules concerning the processing of personal data. On special occasions, the Police and the Gendarmerie may be requested to produce reports or answer to questions in inquiries carried out by Parliament.

204. In criminal proceedings, the bodies exercising external oversight are the prosecutor's offices attached to tribunal for petty corruption offences provided for by the Criminal Code and DNA for medium and high-level corruption (see paragraph 125 above). The prosecutor's offices and DNA have the overall control and coordination of criminal investigations carried out by the Police and the Gendarmerie. Criminal investigation activities are reported directly to the prosecutor.

Complaints system

205. Members of the public may make petitions in accordance with the Government's Ordinance no. 27/2002[94] on the regulation of the activity of resolving petitions, as elaborated by the Minister of Internal Affairs Ordinance no. 33/2020[95]. Petitions may be made in person, by email or online, and are handled by the public relations departments. The Police and the Gendarmerie are expected to respond within a maximum of 30 days or, if the time-limit has been extended, not later than 45 days from the date of registration of the petition. Members of the public have the right to complain against the response received to a higher level within the Police and Gendarmerie, for example to the Internal Control Directorate or the prosecutor's office, depending on the content of the complaint.

206. DGA is responsible for receiving complaints on corruption and related misconduct committed by law enforcement officers. It has also set up an anti-corruption call centre, which members of the public may call to file a complaint. DGA organises campaigns/activities for preventing corruption within law enforcement officers and for raising awareness of the public officials and citizens on the causes and consequences of involvement in corruption. It also participates in similar activities initiated by other public institutions.

[94] https://legislatie.just.ro/Public/DetaliiDocument/33817
[95] https://legislatie.just.ro/Public/DetaliiDocument/223340

Reporting obligations and whistle-blower protection

207. All LEOs are obliged to report suspected corruption offences, in accordance with the domestic statutory obligations. Failure to report constitutes a criminal offence under Article 267 of the Criminal Code.

208. Law no. 571/2004[96] regulated the protection of whistle-blowers reporting violations of the law in public authorities, public institutions and other entities. Its Article 6 provided that a complaint could be made alternatively or cumulatively to a number of reporting channels (internal or external). That Law was repealed with the entry into force of Law no. 361/2022[97] on 16 December 2022, which transposed the Directive (EU) 2019/1937[98] of the European Parliament and of the Council of 23 October 2019. Reporting of, amongst other things, disciplinary misconduct, misdemeanours and criminal offences and breaches of the law is allowed. Reporting may be made in writing, on paper or in electronic form, by telephone or other voicemail systems, or by a face-to-face meeting. Under Article 6, anonymous reporting may be accepted to the extent that it contains indications of violations of the law. Confidentiality of the whistle-blower is to be protected. The rights and measures provided by this Law may not be subject to a waiver or limitation by any agreement, form or condition, in accordance with Article 27.

209. Article 5 of Law no. 361/2022 provides for internal and external reporting. Articles 8 and 9 provide for the obligation on public authorities to establish internal reporting channels and procedures, to maintain confidentiality, to keep records of every report received and preserve the processing of personal data in accordance with the law. Public authorities are required to review their existing procedures and bring them in line with the Law, within 45 days from the date of its entry into force, in accordance with Article 33. The Law encourages the priority use of the internal reporting channel. The whistle-blower may, however, choose between the internal reporting channel and the external reporting channel. When choosing the reporting channel, the whistle-blower may consider aspects such as: (i) the existence of the risk of retaliation when reporting through internal channels; and (ii) the impossibility of effectively remedying the breach through internal reporting channels. The National Integrity Agency (ANI) has been designated as an external reporting channel, in accordance with Article 12, competent to receive reports on violations of the law. Under Article 24, ANI will provide counselling and information on the applicable protection measures to whistle-blowers as well as assistance before relevant authorities.

210. Besides the internal and external reporting channels, a whistle-blower may publicly disclose information on the breach of the law, to the press, trade unions, employers' associations, civil society organisation, parliamentary committees, etc. if one of the following conditions is met: (i) s/he considers that no appropriate measures have been taken within the time-limit further to the internal and external reporting or (ii) has reasonable grounds that the infringement may constitute an imminent or obvious danger to the public interest or the risk of damage which can no longer be remedied or, in the case of external reporting, there is a risk of retaliation or a low probability that the breach will be effectively remedied in the light of the specific circumstances of the report.

[96] https://legislatie.just.ro/Public/DetaliiDocument/57866
[97] https://legislatie.just.ro/Public/DetaliiDocument/262872
[98] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L1937

211. Article 22 lays down forms of retaliation which are prohibited. Article 23 provides for the whistle-blower's possibility to challenge retaliatory measures taken against him/her. In doing so, the Law empowers the competent court to order interim relief prior to the conclusion of proceedings, as well as protective measures in its decision on the merits. The reversal of the burden of proof has been recognised in such court proceedings. Article 21 states that the whistle-blower will not incur liability for any reporting made in accordance with the Law.

212. The GET welcomes the adoption of the new Law on the Protection of Whistle-blowers in December 2022 (Law no. 361/2022), which appears to have enhanced the regulatory framework in the area and has increased the level of protection afforded to whistle-blowers through, for example, the provision of a range of retaliatory prohibitions, the reversal of the burden of proof in disputes challenging retaliatory measures, the adoption of interim measures against retaliatory measures, the adoption of protective measures by a tribunal at the conclusion of the proceedings, the provision of counselling, information and free legal aid to whistleblowers, etc. However, it has not escaped the GET's attention that the new Law has established a hierarchy of reporting channels (internal, external and public disclosure), when compared to the repealed act (Law no. 571/2004), under which it was open to the whistle-blower to choose whichever reporting channel/s s/he wished to use. With this in mind, the GET considers that the new Law on the Protection of Whistle-blowers' should be promoted at all levels of the Police and the Gendarmerie in order to incentivise the reporting of corruption and misconduct by personnel of both agencies. Furthermore, public authorities, such as the Police and Gendarmerie as well as the Ministry of Internal Affairs, ought to bring their internal rules and procedures in line with the statutory requirements, as directed in Article 45 of the new Law. **GRECO recommends that (i) the Police and the Gendarmerie as well as the Ministry of Internal Affairs undertake a review of the current whistleblower rules and procedures in order to make them compliant with the new Law on the Protection of Whistle-blowers, and (ii) law enforcement officers be trained and informed on a regular basis about the reporting channels and the whistle-blowers' protection measures provided for in the new Law on the Protection of Whistle-blowers**. This should go hand in hand with increased resources and means allocated to ANI (see recommendation in paragraph 119 above), which, in addition to acting as the review mechanism for declarations of assets and interests, has been entrusted with the new role as an external reporting channel.

Disciplinary and other administrative proceedings

213. According to Article 57 of Law no. 360/2002 (on the Status of Police Officer), the following acts, provided that they are not considered to be criminal offences, will constitute disciplinary offences: misconduct in service, family or society which is detrimental to the honour, professional probity of the police officer or the reputation of the institution; breaches of the rules on the confidentiality of the activities carried out; failure to comply with the provisions of the oath of allegiance; breaches of provisions relating to incompatibilities, conflicts of interest and prohibition established by law. In accordance with Article 58, the following disciplinary sanctions may be imposed: written reprimand, reduction in salary by 5-20% for a period of one to three months, deferment of promotion for a higher professional rank or higher position for a period of one to three years, downgrading and dismissal from office.

214. Disciplinary sanctions are imposed following the conduct of a preliminary investigation, which aims to establish the existence of disciplinary misconduct and guilt. The preliminary investigation is ordered by one of the persons listed in Article 59 (2), including the line manager. It is carried out by a judicial police officer. Article 59^3 states that the preliminary investigation file, including the report, is submitted to the person who ordered the investigation and may decide on the application of the disciplinary sanctions of reprimand and reduction in salary. The imposition of other disciplinary measures requires consultation with the Disciplinary Board, set up at the level of IGPR, in accordance with Article 62. The Disciplinary Board's conclusions regarding the existence or non-existence of disciplinary misconduct and the guilt or innocence of the investigated police officer are binding on the person who ordered the investigation, and the proposal regarding the disciplinary sanction is of an advisory nature. The right to impose a disciplinary sanction lies with the person who ordered the investigation.

215. Disciplinary proceedings are not public. They are carried out on the basis of these principles: respect for the presumption of innocence, adversarial procedure, proportionality, observance of the right of defence, legality and uniqueness of the sanction. Article 61 provides that the aggrieved police officer may challenge a disciplinary sanction to the higher administrative body and, subsequently, to the administrative court.

216. According to Article 34^1 of Law no. 80/1995 (on the Status of Military Officer), breaches of legal rules, military regulations, orders and instructions by military commanders/superiors may constitute disciplinary misconduct, if they are not classified as a criminal offence. This would also cover breaches of the Code of Ethics, rules on incompatibilities, etc. Depending on the gravity of the offence, Article 35 provides for the following disciplinary sanctions: warning, written reprimand, reduction in salary by up to 10% for a maximum period of three months, reduction in command pay by 5-10% for a maximum period of three months, deferment of advancement to the next professional rank, downgrading, and transfer to the reserve forces (i.e. retirement or discharge from service). Article 35^1 provides that the first four disciplinary sanctions are imposed by the commander/chief of the military unit; the imposition of sanctions regarding deferment of advancement and downgrading is reserved for commanders/chiefs who have the authority of appointment; and the sanction to the transfer to reserve is applied by the head of the military institution.

217. The commander of the military unit orders that a preliminary disciplinary investigation into an alleged misconduct be carried out, in accordance with Article 35^5. A report is drawn up which is transmitted to the person who ordered the preliminary investigation. In accordance with Article 35^7, s/he may impose one of the penalties provided for by law or refer the investigation report and the proposal made to the Disciplinary Board, set up at the level of IGJR. The decision of the Disciplinary Board is communicated to the military serviceman by the commander/hierarchical head. The concerned military serviceman has the right to lodge an administrative appeal and, subsequently, an action with the administrative court.

Criminal proceedings and immunities

218. Police officers or gendarmes do not enjoy any immunity or other procedural privilege. They are subject to ordinary criminal procedure.

Statistics

219. Information about disciplinary sanctions imposed on LEOs is not public. Statistics on disciplinary proceedings against LEOs are made public in the annual reports of each of the Police and the Gendarmerie, and are given below**.**

Romanian Police

Disciplinary sanctions / Year	2020	2021	2022	Total
Written reprimand	335	818	1,266	2,419
Reduction in salary by 5-20% for a period of one to three months	82	107	183	372
Deferment of promotion for a higher professional rank or higher position for a period of one to three years	23	8	26	57
Downgrading	9	6	9	24
Dismissal from office	13	5	12	30
Total	462	944	1,496	2,902

Romanian Gendarmerie

2020

Disciplinary sanctions	Officers	Warrant Officers	Non-commissioned officers	Total
Warning	32	2	200	234
Written reprimand	5	0	84	89
Reduction in salary by up to 10% for a maximum period of three months	1	0	5	6
reduction in command pay by 5-10% for a maximum period of three months	0	0	0	0
deferment of advancement to the next professional rank one of two years	1	0	7	8
Downgrading	0	0	0	0
Transfer to reserve forces	0	0	0	0
Total	39	2	296	337

2021

Disciplinary sanctions	Officers	Warrant Officers	Non-commissioned officers	Total
Warning	36	0	240	276
Written reprimand	6	0	69	75
Reduction in salary by up to 10% for a maximum period of three months	1	0	23	24

reduction in command pay by 5-10% for a maximum period of three months	1	0	0	1
deferment of advancement to the next professional rank one of two years	0	0	5	5
Downgrading	0	0	0	0
Transfer to reserve forces	1	0	1	2
Total	45	0	338	383

2022

Disciplinary sanctions	Officers	Warrant Officers	Non-commissioned officers	Total
Warning	26	0	125	151
Written reprimand	3	0	34	37
Reduction in salary by up to 10% for a maximum period of three months	0	0	6	6
reduction in command pay by 5-10% for a maximum period of three months	1	0	0	1
deferment of advancement to the next professional rank one of two years	1	0	4	5
Downgrading	0	0	0	0
Transfer to reserve forces	0	0	0	0
Total	31	0	169	200

2023(01.01.2023 – 15.05.2023)

Disciplinary sanctions	Officers	Warrant Officers	Non-commissioned officers	Total
Warning	8	0	43	51
Written reprimand	0	0	15	15
Reduction of up to 10% of the official's salary for a maximum period of 3 months	1	0	2	3
Reduction of command pay by 5-10% for up to 3 months	0	0	0	0
Postponement of promotion to the next rank for 1 or 2 years	0	0	1	1
Demotion in position up to the level of the rank held	0	0	0	0
Transfer to reserve	0	0	0	0
Total	9	0	61	70

220. Information about corruption cases investigated by DGA is made public on its website, and information about court proceedings on the prosecutor's office website. In 2020[99], following notifications received from DGA and from the prosecutor's office, DGA's judicial police carried out investigations in respect of 1,753 criminal cases affecting MAI staff members and other external suspects, in accordance with the prosecutors' delegation orders. The case prosecutors filed indictments for 243 criminal cases. At the same time, there were 94 plea bargains submitted to courts. As a result, 176 MAI staff members were placed under investigation, 102 were charged with corruption offenses and 41 charged with other criminal offences. In 2021[100], DGA's judicial police carried out criminal investigation in respect of 2,221 criminal cases. The case prosecutors filed indictments for 227 criminal cases, while 97 plea bargains were submitted to courts. As a result, 255 MIA staff members were investigated, 178 were charged with corruption offenses and 79 charged with other criminal offences. In 2022[101], DGA's judicial police was involved in investigating 2,653 criminal cases, as a result of which 2,623 persons were placed under investigation.

[99] https://www.mai-dga.ro/eng/wp-content/uploads/2022/02/Bilant-DGA-2020-EN.pdf
[100] https://www.mai-dga.ro/eng/wp-content/uploads/2022/02/Bilant-DGA-2021-eng.pdf
[101] https://www.mai-dga.ro/eng/wp-content/uploads/2023/02/Bilant-DGA-2022_ENG.pdf

VI. RECOMMENDATIONS AND FOLLOW-UP

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

Regarding central governments (top executive functions)

i. **that rules be introduced requiring that integrity checks take place prior to or right upon the appointment of Members of the Government, Presidential Councillors and Ministerial Advisers in order to identify and manage any possible conflicts of interest** (paragraph 43);

ii. **that, for the sake of transparency, the Ministerial Advisers' names, areas of responsibility and information on ancillary activities (when those are carried out) be made public and easily accessible** (paragraph 44);

iii. **that (i) a systemic analysis of corruption and integrity-related risks covering all persons with top executive functions, including the identification of corresponding remedial measures, be carried out and integrated in the integrity plans which would subsequently be revised or adopted afresh, and (ii) the integrity plans be published online and subject to review, as appropriate** (paragraph 49);

iv. **that a comprehensive analytical study of the existing legal integrity framework be carried out and, in the light of its findings, the current integrity framework be reviewed in order to enhance its clarity, coherence and comprehensiveness** (paragraph 57);

v. **that (i) codes of conduct for persons with top executive functions, or another appropriate document for the President, be adopted or revised and published online, covering all relevant integrity matters (e.g. conflicts of interest, gifts, contacts with third parties, ancillary activities, confidential information, post-employment restrictions, etc.), accompanied by the provision of clear guidance; and (ii) proper monitoring and enforcement of the codes of conduct be ensured;** (paragraph 63);

vi. **that (i) dedicated and robust briefings and/or practical training on integrity standards systematically take place for persons with top executive functions upon taking office and on a regular basis thereafter; and (ii) effective and consistent confidential counselling on all relevant integrity standards be provided to and documented for persons with top executive functions** (paragraph 64);

vii. **that (i) an independent oversight mechanism be established to examine complaints against the authorities' refusal to disclose public interest information and to guarantee the effective implementation of the freedom of information legislation, and (ii) as required by the domestic legal framework, the information of public interest be regularly disclosed and updated by the central government authorities on the relevant websites in order to facilitate the public's access to information and its role to scrutinise their activities** (paragraph 69);

viii. **that, as a matter of priority, (i) a study be conducted to assess the practice of legislating through emergency ordinances, the existence of adequate and effective safeguards and controls, and that, in the light of its content and findings which should be made public, the regulatory framework and practice be revised accordingly; and (ii) an adequate level of public consultations on draft emergency ordinances be effectively ensured and that only specific and limited exceptions to this rule be made possible and be clearly regulated** (paragraph 73);

ix. **that the transparency of draft legislation originating from the Government be further enhanced by (i) taking measures to ensure an effective and broad level of public consultations in respect of the Government's draft normative acts; (ii) increasing the minimum statutory timeline for public consultations to an adequate level in order to allow for effective and meaningful consultations; and (iii) publicly providing the legislative footprint documenting and disclosing substantive external inputs (containing contributions received, parties involved and justification for their acceptance or rejection) from the beginning of the legislative drafting process** (paragraph 80);

x. **that (i) detailed rules and guidance be introduced on how persons with top executive functions engage in contacts with lobbyists and other third parties seeking to influence their decision-making process and work; and (ii) sufficient information about the purpose of these contacts must be disclosed on a regular basis, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion** (paragraph 84);

xi. **that, in the case of ad hoc conflict of interest between private interests and official functions, a requirement to disclose, abstain or withdraw be introduced in respect of persons with top executive functions, including with regards to the issuance, approval or adoption of normative acts** (paragraph 96);

xii. **that (i) the rules on gifts and all forms of benefits/advantages applicable to persons with top executive functions be more specific and be accompanied by appropriate guidance, and (ii) central government institutions disclose the list of all protocol gifts received, in a regular and timely manner, in accordance with the statutory requirements** (paragraph 109);

xiii. **that (i) rules on post-employment restrictions be developed and applied to persons with top executive functions, and (ii) an effective monitoring mechanism regarding these rules be established** (paragraph 113);

xiv. **that (i) declarations of assets and interests of persons with top executive functions be effectively and substantively checked on a regular basis by the National Integrity Agency, and (ii) the National Integrity Agency be provided with increased resources and means, as well as robust and effective cooperation/interaction with other relevant control bodies/databases, that are proportionate to the proper and effective performance of its duties** (paragraph 119);

xv. **that necessary ongoing measures be taken in order to reach a sufficient and stable workforce to address the current challenges faced by the National Anti-corruption Directorate** (paragraph 126);

Regarding law enforcement agencies (Police and Gendarmerie)

xvi. **that measures be taken to increase the representation of women at all levels of the Police and the Gendarmerie as part of initial recruitment and promotion policies** (paragraph 142);

xvii. **that all donations and sponsorships received by the Gendarmerie be systematically published on a centralised, dedicated, accessible webpage, clearly indicating the nature and value of each donation, the donor's identity and how the assets donated were spent or used** (paragraph 146);

xviii. **that (i) the Code of Ethics applicable to the Police and the Gendarmerie be revised, with the active participation of relevant stakeholders in the Police and the Gendarmerie, to cover in detail relevant integrity issues (such as conflicts of interest, incompatibilities, gifts, contacts with third parties, outside activities, etc.), and (ii) the Code of Ethics be complemented with practical guidance and examples for the staff of the Police and the Gendarmerie** (paragraph 165);

xix. **that (i) in view of the to-be revised Code of Ethics, initial and in-service training on relevant integrity matters be updated and provided to all law enforcement officers; and (ii) a mechanism of confidential counselling on ethics and integrity matters be established in the Police and the Gendarmerie** (paragraph 167);

xx. **that integrity checks take place before recruitment and at regular intervals during the career of law enforcement officers, depending on their exposure to corruption risks and the required security levels and upon resuming their functions in the structures of the Police or the Gendarmerie** (paragraph 172);

xxi. **that, as a matter of priority, measures be taken to ensure that appointments to managerial positions, including through empowerment, are strictly based on merit and guided by open, standardised and transparent competitions** (paragraph 177);

xxii. **recommends that an institutional system of rotation be put in place in the Police and the Gendarmerie, which could be applied, as appropriate, in areas considered particularly exposed to corruption risks** (paragraph 178);

xxiii. **laying down rules and procedure regulating the disclosure and management of conflicts of interest in the Gendarmerie** (paragraph 185);

xxiv. **(i) establishing a register of outside/secondary activities in the Police and the Gendarmerie, and (ii) developing effective oversight arrangements in this respect** (paragraph 190);

xxv. **that a study be conducted concerning activities by law enforcement officers after they leave the Police and the Gendarmerie and that, if necessary, in the light of the**

findings, rules be adopted to ensure transparency and limit the risks of conflicts of interest (paragraph 195);

xxvi. **that (i) the Police and the Gendarmerie as well as the Ministry of Internal Affairs undertake a review of the current whistle-blower rules and procedures in order to make them compliant with the new Law on the Protection of Whistle-blowers, and (ii) law enforcement officers be trained and informed on a regular basis about the reporting channels and the whistle-blowers' protection measures provided for in the new Law on the Protection of Whistle-blowers** (paragraph 212).

222. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Romania to submit a report on the measures taken to implement the above-mentioned recommendations by 31 December 2024. The measures will be assessed by GRECO through its specific compliance procedure.

223. GRECO invites the authorities of Romania to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.

About GRECO

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

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

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

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