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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**On Progress in Romania under the Co-operation and Verification Mechanism**

{SWD(2017) 701 final}

## 1. INTRODUCTION

The Cooperation and Verification Mechanism (CVM) was set up at the accession of Romania to the European Union in 2007<sup>1</sup> to address shortcomings in judicial reform and the fight against corruption. Since then, CVM reports have sought to help focus the efforts of the Romanian authorities through specific recommendations, and have charted the progress made. As underlined by the Council<sup>2</sup>, the CVM will end when all four benchmarks applying to Romania are satisfactorily met.

In the January 2017 CVM report,<sup>3</sup> the Commission took stock with an overview of the achievements, the challenges outstanding, and set out the key remaining steps needed to achieve the CVM's objectives. To this end, the Commission made twelve key recommendations that if followed up will lead to the conclusion of the CVM process. The report highlighted that the speed of the process would depend on how quickly Romania will be able to fulfil the recommendations in an irreversible way and also on avoiding negative steps which call into question the progress made in past 10 years.

Therefore, at this stage of the CVM process, this report presents the progress made in following up the recommendations set out in the January 2017 report. As in previous years, this report is the result of a careful process of analysis by the Commission, drawing on close cooperation with Romanian institutions, as well as the input of civil society and other stakeholders, including other Member States.

In his September 2017 State of the Union address, President Juncker emphasised the importance of the rule of law and of the independence of the judiciary:<sup>4</sup> an imperative valid for all EU Member States, not just those involved in the CVM. This underlines the importance of avoiding a climate of confrontation between the different branches of the state with damaging consequences for judicial independence, a problem which was noted in the January 2017 report and which has remained during the period of reference of the present report.

Based on its analysis of progress in Romania over the entire CVM process since 2007 and on progress made since January 2017 report, the Commission remains of the opinion that with loyal cooperation between State institutions, a resolute political steer holding firm to progress already achieved and respect for judicial independence, Romania will be able to fulfil the remaining outstanding CVM recommendations in a near future.

The Commission intends to assess progress towards the end of 2018, and stands ready to provide further assistance to help Romania meet the outstanding recommendations with a view to reinforce the irreversibility of progress and therefore bring the mechanism to a conclusion.

## 2. GENERAL SITUATION

In the January 2017 report, the ten years' perspective showed that Romania had made major progress towards CVM benchmarks. A number of key institutions and much important legislation had been put in place. The reform of the criminal and civil codes was close to finalisation. The report confirmed that the Romanian judicial system had profoundly

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<sup>1</sup> Conclusions of the Council of Ministers, 17 October 2006 (13339/06); Commission Decision establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption, 13 December 2006 (C (2006) 6569 final).

<sup>2</sup> Council conclusions on the CVM.

<sup>3</sup> COM (2017) 44.

<sup>4</sup> [http://europa.eu/rapid/press-release\\_SPEECH-17-3165\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm)

reformed itself and that the judiciary had repeatedly demonstrated its professionalism, independence and accountability. A number of internal safeguards against abrupt reversals of progress had also been noted. The twelve key recommendations from the January 2017 report were set out to address the remaining identified shortcomings. Most of them focus on the responsibility and accountability required from the Romanian authorities and the internal safeguards needed to ensure the irreversibility of the results.

The Romanian Government expressed its appreciation of this approach and repeatedly affirmed its commitment to fulfil the CVM recommendations. In Parliament, both the parliamentary majority and the opposition also showed a willingness to have a constructive dialogue, and responded positively to certain recommendations.

However, despite the commitment of the Government to seek to close the CVM as soon as possible, progress in addressing the January 2017 CVM recommendations has been affected by the political situation. Within a nine months period since the January 2017 report, Romania has seen two governments, while growing tensions between State powers (Parliament, Government and Judiciary) made the cooperation between them increasingly difficult.

Furthermore, the positive progress and the continued good results of the judicial institutions in the fight against corruption were largely questioned by events, such as in January 2017 the adoption by the previous Government of a Government Emergency Ordinance to decriminalise certain corruption offences, such as abuse of office and the proposal for a pardon law.<sup>5</sup> Widespread protests throughout Romania contested these measures. Even though the Emergency Ordinance was abrogated by the Government and also repealed by the Parliament, the events left a legacy of public doubts.

A controversy also emerged with the discussion of proposed revisions to the Justice laws since the end of August. When consulted, the Superior Council of the Magistracy has twice rejected drafts, noting issues like judicial independence.<sup>6</sup> Concerns have also been raised by the President of Romania and in civil society. There was also a petition issued demanding that the opinion of the Superior Council be respected, signed by a majority of Romanian magistrates. The three Justice laws, dating back to 2004, regulate the status of judges and prosecutors, and the organisation and functioning of the courts, prosecution offices and the Superior Council itself. They have a direct impact on judicial independence and the justice system more broadly, and the laws as they stand were an important element in the positive evaluation by the Commission last January. Some of the proposed changes covered issues like the role of the Judicial Inspection and the personal responsibility of magistrates, as well as the appointment of senior prosecutors: issues which touch on judicial independence and where changes raised questions about whether the January 2017 report assessment with regard to progress on the independence of the judicial system would have to be reconsidered. The strong negative reaction from the judiciary and parts of civil society focused heavily on the issue of judicial independence.

The capacity of the Government and the Parliament to ensure an open, transparent and constructive legislative process on the justice laws will be crucial. In general, a process in which the judicial independence and the opinion of the judiciary is valued and given due

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<sup>5</sup> Emergency Ordinance 13/2017, amending the Criminal Code and Code of Criminal Procedures.

<sup>6</sup> On 9 November the Superior Council of Magistracy gave a second negative opinion on the drafts on the Justice laws currently in Parliament, though the motivation of this decision has yet to be issued.

account,<sup>7</sup> as well as drawing on the opinion of the Venice Commission, is a prerequisite for sustainability of reform and is an important element in fulfilling the CVM benchmarks.

Criticism against the judiciary and judicial decisions remains a problematic feature in the public debate.<sup>8</sup> This is in contradiction with the positive findings of the Commission about the role of the magistracy in pursuing reform,<sup>9</sup> supported by the Council,<sup>10</sup> and with the need to respect the independence of the judiciary. Accepting and respecting final court judgements and allowing the magistrates to fulfil their duty unhindered is essential, including to meet the condition set in the January report.

### **3. ASSESSMENT OF PROGRESS ON THE FULFILMENT OF THE CVM BENCHMARKS ON THE BASIS OF THE RECOMMENDATIONS SET OUT IN THE JANUARY 2017 CVM REPORT**

#### **3.1. Benchmark one: Judicial independence and Judicial reform**

##### **3.1.1. Judicial independence**

***Recommendation 1:** Put in place a robust and independent system of appointing top prosecutors, based on clear and transparent criteria, drawing on the support of the Venice Commission.*

***Recommendation 2:** Ensure that the Code of Conduct for parliamentarians now being developed in Parliament includes clear provisions on mutual respect between institutions and making clear that parliamentarians and the parliamentary process should respect the independence of the judiciary. A similar Code of Conduct could be adopted for Ministers.*

##### *Appointments*

In January, the Commission reiterated its recommendation to put in place a system of transparent and-merit based appointments of top prosecutors which would provide sufficient safeguards against politicisation. The appointment procedure of top prosecutors has been a key part of the debate around proposed amendments to the laws on Justice since August. It formed part of the first negative opinion of the Superior Council of the Magistracy in September, and has been further changed in the current draft.

The Venice Commission has acknowledged that there are different models with regard to the appointment to the position of Prosecutor General (or similar top prosecution posts). However, it has underlined the need for an adequate balance "*such as to gain the confidence of the public and the respect of the judiciary and the legal profession.*"<sup>11</sup> The role of the President and the degree of discretion for the Minister of Justice to select candidates have been part of the debate here, as has the extent to which the same appointment and dismissal procedure would apply at lower management levels within the prosecution.

<sup>7</sup> The Council of Europe Consultative Council of European Judges (CCJE) recommended in past opinions that "*the judiciary should be consulted and play an active part in the preparation of any legislation concerning their status and the functioning of the judicial system*". "The position of the judiciary and its relation with the other powers of state in a modern democracy", Opinion No 18 (2015).

<sup>8</sup> For example, public statements from the authorities that the whole judicial system is dysfunctional or that the status quo needs to be brought "back to normality".

<sup>9</sup> CVM Report January 2017, COM (2017) 44 final.

<sup>10</sup> Council Conclusions on the CVM, March 2017 [https://ec.europa.eu/info/sites/info/files/st-7048-2017-init\\_en.pdf](https://ec.europa.eu/info/sites/info/files/st-7048-2017-init_en.pdf).

<sup>11</sup> Report on European standards as regards the independence of the judicial system – Part II: The prosecution service, CDL-AD(2010)040.

The January recommendation specified the need to draw on the support of the Venice Commission to help bring this long-standing debate to a close.<sup>12</sup> . It remains the requirement of the recommendation that Romania calls on the advice of the Venice Commission.

The fulfilment of this recommendation will also need to ensure appropriate safeguards in terms of transparency, independence and checks and balances, even if the final decision were to remain with the political level.

### *Codes of conduct*

Since the last CVM report, criticism of the judicial system and magistrates in the media has been particularly strong. This confirms the validity of recommendations to ensure that measures are taken to discourage behaviour which amounts to open challenges to the independence of justice and the authority of court decisions. Attempts to bring redress have been tried through the Superior Council of the Magistracy and through individual magistrates bringing their own cases to court. But the Commission's recommendation sought an institutional recognition of the problem, and a decision to take steps to address it. This underlies the recommendation for a Parliamentary Code of Conduct which would include provisions on respect for the independence of the judiciary.

Parliament adopted a Code of Conduct on 11 October 2017. The inclusion of a broad provision on the respect of the separation of powers is a positive step. Although it did not follow up on the Commission's recommendation to specifically refer to the independence of the judiciary, the implementation of the Code could achieve the same effect in different ways. The next step will therefore be to see how the Code has a practical effect in terms of defining what actions would go beyond the boundaries set by the Code, and what steps are taken when these boundaries are crossed. The Code of Conduct could for instance benefit from being accompanied by guidance, examples and awareness-raising on how to deal with concrete situations,<sup>13</sup> to help it to become an effective tool in reducing public criticism of magistrates and improving respect for the judiciary and judicial decisions. It would for example be to be expected that whenever the Superior Council of Magistracy condemns statements of a Member of Parliament criticising a magistrate or the judicial system, there would be a clear follow-up in Parliament to assess whether the Code had been breached.

The January report also suggested that the Government might usefully adopt a Code of Conduct for Ministers. In July 2017, the newly-appointed Government adopted a ministerial Code of Conduct which includes a similar provision on the respect of separation of powers.

The practical application of the Codes of Conduct, in terms of reacting to Members of Parliament and Government criticising the judiciary, is therefore also important.

### **3.1.2. Judicial reform**

**Recommendation 3:** *The current phase in the reform of Romania's Criminal Codes should be concluded, with Parliament taking forward its plans to adopt the amendments presented by the government in 2016 after consultation with the judicial authorities. The Minister of Justice, the Superior Council of the Magistracy and the High Court of Cassation and Justice should finalise an action plan to ensure that the new deadline for the implementation of the remaining provisions of the Code of Civil Procedures can be respected.*

<sup>12</sup> The Venice Commission has set out a list of European standards:

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)040-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)040-e)

<sup>13</sup> A similar analysis was made in the 4th evaluation of the Group of States Against Corruption (GRECO) [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4%282015%294\\_Romania\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4%282015%294_Romania_EN.pdf)

**Recommendation 4:** *In order to improve further the transparency and predictability of the legislative process, and strengthen internal safeguards in the interest of irreversibility, the Government and Parliament should ensure full transparency and take proper account of consultations with the relevant authorities and stakeholders in decision-making and legislative activity on the Criminal Code and Code for Criminal Procedures, on corruption laws, on integrity laws (incompatibilities, conflicts of interest, unjustified wealth), on the laws of justice (pertaining to the organisation of the justice system) and on the Civil Code and Code for Civil Procedures, taking inspiration from the transparency in decision-making put in place by the Government in 2016.*

### *New Codes*

In 2017 there have been a number of developments with regard to the Criminal Code and the Code of Criminal Procedures. While some of these developments serve the objectives underpinning the Commission recommendations, others have held back the goal of more certainty and stability in the reform of the Codes. It is to be noted that many of the debates around the Criminal Codes focus on provisions relevant to high level corruption crimes.

The recommendation to conclude the current phase of the reform of Romania's Criminal Codes remains outstanding. Parliament has so far adopted none of the draft amendments proposed by the Government in 2016, which had been the result of broad consultations with the judiciary.<sup>14</sup> Parliament has however adopted other amendments to the Criminal Code, notably those with the effect of decriminalising conflict of interests.<sup>15</sup>

The rapid succession of Constitutional Court decisions declaring provisions of the Codes unconstitutional has added to the challenge of stability. The Ministry of Justice has started to address this through consultations with the judiciary, legal professions and civil society and the Government has indicated its intent to adopt relevant amendments. However, none of the proposed changes have yet translated into legislative amendments and such delays can result in divergent interpretations. Responding swiftly and consistently to the need to adapt laws to reflect Constitutional Court rulings should be an important priority, without compromising on the quality of the preparation of the amendments. The Government has expressed its intention to translate the Constitutional Court decisions into a new set of amendments.

The recommendation also covers the finalisation of the reform of the Code of Civil Procedures. In December 2016, a new deadline of January 2019 was set for the entry into application of the remaining provisions of this Code. Discussions between the Minister of Justice, the Superior Council of the Magistracy and the High Court of Cassation and Justice are underway. The first steps to provide for the necessary infrastructure for the new Council Chambers have been taken and the Minister of Justice is finalising a plan for adoption by the Government. Regarding the stability of the Civil Codes, Constitutional Court decisions also create challenges. In particular, a recent ruling of the Constitutional Court concerning the threshold previously in place to limit the possibility for second instance appeal could result in a major extra case load for the High Court of Cassation and Justice.<sup>16</sup> The Minister of Justice is looking at ways to mitigate the impact on the workload of the High Court, with more cases to be handled by lower courts. The High Court already faces a heavy workload and the

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<sup>14</sup> The progress reports from the Government and the Parliament do not mention progress on these pending proposals.

<sup>15</sup> Three deeds out of four have been decriminalised. See also Technical Report SWD(2017) 701. This amendment was not subject to consultation with the judicial authorities.

<sup>16</sup> Decision no 369/2017, published in the Romanian Official Gazette, Part I, no. 582 on 20th July 2017.

January report underlined the importance of its work on cassation and interpretation of the law.<sup>17</sup>

*Transparency and predictability of the legislative process for legislation on judicial reform and anti-corruption*

Since the January report, there have been a series of cases raising concerns about the transparency and predictability of the legislative process, whether initiated by the Government or the Parliament. Several measures and amendments have been adopted by Parliament with little or no opportunity for consultation and public debate.<sup>18</sup> Other problematic and uncoordinated proposals have been introduced and while many never progress in the parliamentary process, the fact that they remain on the parliamentary table introduces an important level of uncertainty: examples include the law on pardons or on the liability of magistrates.

Civil society has also been an important voice to highlight potential consequences for judicial reform and the fight against corruption. The current controversy around the Justice laws will be an important test of the extent to which the legitimate interests of judicial and other stakeholders are given an opportunity to be voiced, and are taken sufficiently into account, in the final decisions.

One initiative to help remedy this situation was made by the President of the Legal Committee of the Senate, who invited the Minister of Justice and the Superior Council of the Magistracy to set up a permanent dialogue between State institutions on amendments to the criminal codes and other important legislation. The objective was to set up a predictable amendment process, ensuring debate and public consultation. The Parliament has taken up the idea and at the start of October, it created a Special Parliamentary Committee on Systematisation, Unification and Ensuring Legislative Stability in the Judiciary.

For the fulfilment of recommendation 4, this Committee will need to demonstrate its capacity to build trust between the Parliament, the Government and the judiciary and to facilitate constructive cooperation on key legislation. This Committee has the opportunity to resolve the uncertainty surrounding the Codes and underlying recommendation 3, through a consensual adoption of amendments preserving the progress brought by the reforms of these four codes. The Committee could also help to ensure a consistent process to provide legal certainty following decisions of the Constitutional Court.

***Recommendation 5:*** *The Government should put in place an appropriate Action Plan to address the issue of implementation of court decisions and application of jurisprudence of the courts by public administration, including a mechanism to provide accurate statistics to enable future monitoring. It should also develop a system of internal monitoring involving the Superior Council of the Magistracy and Court of Auditors in order to ensure proper implementation of the Action Plan.*

***Recommendation 6:*** *The Strategic Judicial Management, i.e. the Minister of Justice, the Superior Council Of the Magistracy, the High Court of Cassation and Justice and the Prosecutor-General should ensure the implementation of the Action Plan as adopted and put*

<sup>17</sup> COM (2016) 41, COM (2017) 16.

<sup>18</sup> For example, the modification of the incompatibility regime for MPs and removing most conflicts of interest from criminalisation. In addition, there are other examples of legislation adopted without consultation which has also impact on the justice system and the fight against corruption such as the on the status of local administrations, the law on financing of political parties and a proposal to allow the review of all judgements of the last 20 years, the latter being eventually squashed by the Constitutional Court.

*in place regular common public reporting on its implementation, including solutions to the issues of shortages of court clerks, excessive workload and delays in motivation of decisions.*

#### *Respect for court decisions*

This recommendation concerns enforcement of decisions against the State, in which a public institution has to pay an amount of money or to fulfil an action following a court decision. The Minister of Justice has acknowledged that the effective implementation of all court decisions against the State is essential.

At the end of August, Romania updated its 2016 action plan, prepared for the Council of Europe in order to address the structural problems of non-enforcement of court decisions against the State identified by European Court of Human Rights.<sup>19</sup>

The implementation of this action plan would largely address recommendation 5. To assess the extent of progress on implementing this recommendation, the Commission looks forward to receiving concrete solutions and a detailed timetable to address the problems identified.

The other action needed to implement this recommendation is to develop procedures within the public administration to ensure that the public administrations consistently apply the solution provided by the courts in similar cases when there has been a final appeal decision or an interpretative decision from the High Court of Cassation and Justice. Such a procedure would reduce the risk of repetitive cases going to court and increase the confidence of citizens and businesses in the decisions of public administrations.

#### *Structural reforms to the judicial system*

After a delay earlier in the year, the Judicial Strategic Management Council met in June and September 2017. In the last meeting, an overall monitoring of the implementation of the action plan on the Strategy for the Development of the Judiciary 2015-2020, with quarterly reports, was set up. Individual judicial institutions report that they are implementing the action plan, and the Ministry of Justice has successfully applied for EU structural funds to finance the action plan. These steps would need to be accompanied by clear monitoring and regular use of the Council as a real coordination body to foster dialogue and cooperation on the common issues that affect the functioning of the judicial system.

***Recommendation 7:*** *The new Superior Council of the Magistracy should prepare a collective programme for its mandate, including measures to promote transparency and accountability. It should include a strategy on outreach, with regular open meetings with assemblies of judges and prosecutors at all levels, as well as with civil society and professional organisations, and set up annual reporting to be discussed in courts' and prosecutors' general assemblies.*

#### *Transparency and accountability of the Superior Council of the Magistracy*

On 6 January 2017, the new Council started its activity.<sup>20</sup> The new Council has had to face challenging circumstances. It has however shown its readiness to take difficult decisions through the negative opinions on the Executive Ordinance in February, and again on the amendments to the laws on Justice in September and November. The Council has also faced the need to defend the independence and reputation of magistrates, in particular prosecutors,

<sup>19</sup> Technical report SWD(2017) 701. Proposal made to the Council of Europe Committee of Ministers.

<sup>20</sup> After several adjournments, the Senate appointed the two members of the Superior Council of Magistracy representing the civil society in early September.



and the complication of receiving repeated disciplinary or managerial complaints against the same magistrates from other State powers. The Council can therefore be seen to have fulfilled its tasks and showed the strength and resilience of the institution.

In line with the recommendation, at the end of February 2017, the Superior Council of the Magistracy set out its priorities for its mandate (2017–2022). They provide a first basis to promote the accountability of the institution. The Council has taken measures to promote transparency and openness, such as a new website, and the direct participation of representatives of courts, magistrates' professional associations or NGOs in Council meetings. The Council has also organised ongoing consultations of courts and prosecutor's offices, which has proved an important channel for communication and consultation. The Council is also working on a collective programme and strategy which will cover areas including outreach, measures to improve the public image of the judiciary, relations with mass-media and the cooperation with the Government and the Parliament.

The Council should continue to consolidate its work to defend the reputation of the magistracy in a consistent and effective way, and to contribute to a constructive and transparent dialogue with the Government and Parliament. The Council should also promote further strengthening of cooperation between judicial institutions on key outstanding issues, including the functioning of the Judicial Inspection.

*On the basis of an analysis of recommendations 1 to 7, the Commission considers that further work is needed to fulfil benchmark one. Several positive developments have taken place, in particular in relation to the codes of conduct, the Civil Codes, as well as steps taken to implement the Strategy for the Developments of the Judiciary and in relation to the activities of the new Superior Council of Magistracy. However, the political situation and legislative proposals that risk having a negative impact on reform have held back progress. The analysis of the recommendations points at several initiatives and processes that, if carried through, offer promising possibilities for Romania to swiftly resume progress under benchmark one.*

### **3.2. Benchmark two: Integrity framework and the National Integrity Agency**

**Recommendation 8:** *Ensure the entry into operation of the PREVENT system. The National Integrity Agency and the National Public Procurement Agency should put in place reporting on the ex-ante checks of public procurement procedures and their follow-up, including ex post checks, as well as on cases of conflicts of interest or corruption discovered, and the organisation of public debates so that the government, local authorities, the judiciary and civil society are invited to respond.*

**Recommendation 9:** *The Parliament should be transparent in its decision-making with regard to the follow-up to final and irrevocable decisions on incompatibilities, conflicts of interests and unjustified wealth against its members.*

The PREVENT system is designed to prevent conflicts of interests in public procurement procedures by setting up an ex-ante verification mechanism and allowing the contracting authorities to remedy these situations prior to the award of the contract. The system entered into operation at the end of June. It is the result of a close collaboration between the National Integrity Agency, the Agency for Public Procurement and the Digital Agenda Agency, as well as with the Government. It has now been operating for four months and is delivering its first results.

Successive CVM reports have highlighted the delay and inconsistency of application of sanctions for Members of Parliament found incompatible or in conflict of interest following a final court decision on a report of the National Integrity Agency. The Commission had therefore recommended that the Parliament should be transparent in its decision-making with regard to the follow-up to final and irrevocable decisions on incompatibilities, conflicts of interests and unjustified wealth against its members. The Commission has received information on the applicable procedures and on the publicity of parliamentary debates, but not yet on whether debates and decisions have indeed been taken on pending cases. Although the rules and procedures in Parliament to apply sanctions seem to be clear, the National Integrity Agency reports that there are three pending cases of Members of Parliament where final integrity decisions ruled by the courts in 2017 have still not been implemented. It is not clear whether there are deadlines for the Parliament to implement the sanction. Furthermore, there are also three cases of Members of Parliament whose mandates have been confirmed after the elections at the end of 2016 despite the fact that they are under a three-year ban from occupying an elected function following a final court decision. The National Integrity Agency informed the Parliament in February 2017, but the Parliament has not yet taken steps to resolve these three cases.

Concrete steps which could give reality to the transparency proposed in the recommendation would be for example that the President of the respective chamber of Parliament publically acknowledges receipt of the final court decision (or a report of the National Integrity Agency which has not been challenged in court); announcing a calendar for decision; and providing information to the public and to the National Integrity Agency once this decision process is completed. Action from the Parliament on these six cases would allow rapid positive progress on this recommendation.

*On the basis of an analysis of recommendations 8 and 9, the Commission considers that overall Romania has made significant progress on benchmark two. The implementation of recommendation 8 is satisfactory. Rapid decision on all outstanding cases of Members of Parliament subject to final integrity decisions would allow rapid positive progress on benchmark two.*

### **3.3 Benchmark three: Tackling High-level corruption**

***Recommendation 10:*** *Adopt objective criteria for deciding on and motivating lifting of immunity of Members of Parliament to help ensure that immunity is not used to avoid investigation and prosecution of corruption crimes. The government could also consider modifying the law to limit immunity of ministers to time in office. These steps could be assisted by the Venice Commission and GRECO.<sup>21</sup> The Parliament should set up a system to report regularly on decisions taken by its Chambers on requests for lifting immunities and could organise a public debate so that the Superior Council of Magistracy and civil society can respond.*

Recommendation 10 concerns the accountability of the Parliament in its decisions on requests from the prosecution to authorise preventative measures such as searches or arrest and on requests to authorise the investigation of Members of Parliament when they are or have been a Minister (referred to as "lifting of immunity"). Previous CVM reports have highlighted that such decisions had appeared to the public as attempts to limit or avoid investigation and

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<sup>21</sup> The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor compliance with the organisation's anti-corruption standards.

prosecution of corruption offences. Therefore having criteria for deciding on such requests from the prosecution is one way of being able to show that decisions have an objective basis.<sup>22</sup>

Three recent requests for lifting immunities of Members of Parliament were rejected. In a step to improve transparency, the Chamber of Deputies has started to release the arguments of the Legal Committee for rejection or agreeing before the plenary vote. In two cases the arguments for rejection invoked by the Legal Committee was that the deeds have no legal ground – though opposition parties challenged this on the grounds that only judges can assess whether a person has committed a crime. The Commission welcomes the fact that consideration is given to the need for more transparency on the follow up to requests from the prosecution but considers that more work is needed on recommendation 10. It reiterates its advice to seek assistance of the Venice Commission and GRECO who are in the position to provide valuable expertise on practices in this area.

In the January report, the Commission made clear that weakening or shrinking the scope of corruption as an offence, or major challenges to the independence and effectiveness of the anti-corruption prosecution office, would constitute backtracking.

*The Commission considers that more work is needed on recommendation 10. Overall, a positive assessment of progress under benchmark three relies on an independent National Anti-Corruption Directorate to be in a position to perform its activities with all the tools at its disposal and maintain its track record. In previous reports, the fact that the National Anti-Corruption Directorate had maintained its track record in the face of intense pressure was noted as a sign of sustainability. For this reason, the Commission limited its recommendation under benchmark three to a single one. Were that pressure to start to harm the fight against corruption, the Commission may have to reassess this conclusion.*

### 3.4 Benchmark four: Tackling Corruption at all levels

**Recommendation 11:** *Continue to implement the National Anti-corruption Strategy, respecting the deadlines set by the government in August 2016. The Minister of Justice should put in place a reporting system on the effective implementation of the National Anti-corruption Strategy (including statistics on integrity incidents in public administration, details of disciplinary procedures and sanctions and information on the structural measures applied in vulnerable areas).*

**Recommendation 12:** *Ensure that the National Agency for the Management of Seized Assets is fully and effectively operational so that it can issue a first annual report with reliable statistical information on confiscation of criminal assets. The Agency should put in place a system to report regularly on development of administrative capacity, results in confiscation and managing criminal assets.*

#### *National Anti-Corruption Strategy*

The National Anti-Corruption Strategy 2016-2020 (NAS) presented by the Government in August 2016 has the potential to be an effective corruption prevention policy if it is properly implemented and followed up on the ground. The strategy is addressed to central and local public institutions. At technical level, the Strategy's technical secretariat within the Ministry of Justice has pursued implementation. A positive development is that a high number of

<sup>22</sup> Based on guidelines from the Venice Commission and GRECO.

public institutions have decided to participate in the Anti-Corruption Strategy. A large part of the year was devoted to the development of integrity plans within each public institution and the set-up of the first peer-review monitoring cycle. Other institutions such as the National Integrity Agency, and the judicial anti-corruption police from the Ministry of Interior are also involved in prevention measures.<sup>23</sup> The Strategy will also be supported by EU funds. The first reporting on the implementation of the measures will take place at the beginning of 2018, which will then provide a comprehensive view of progress.

As the implementation of the anti-corruption strategy has kicked-off at technical level, the strategy now needs visible political support from the Government and local authorities to demonstrate progress, as it was the case when the initial strategy was implemented and efforts were made to spread best practice and encourage public bodies to devote resource and attention to anticorruption work. Ministers responsible for central and public administration, and Ministers in key sectors such as Education or Health, could play a particularly important role. In June, the Minister of Justice invited the two Chambers of Parliament to sign a joint statement supporting the National Anti-Corruption Strategy 2016-2020. This has not yet taken place. In general, a political priority should be set on corruption prevention, notably by putting in place the necessary measures to fully support the implementation of the National Anti-Corruption Strategy at central and local level, ensuring the stability of the relevant legal framework, as well as maintaining the positive track record of the General Prosecution.

#### *National Agency for the Management of Seized Assets*

The National Agency for the Management of Seized Assets (ANABI) is now fully operational. The Agency published its first annual report in February 2017 and with the help of the fiscal administration, was able to pin down the total sums of money resulting from the selling of confiscated assets in 2016 (about EUR 5 million), part of which is to be redistributed for social and public re-use. The first call for proposal will be launched in 2018.

The January 2017 report highlighted that the Agency should eventually contribute to increase the proportion of assets effectively recovered. This work is already under way, with the collection of data from all courts and with the launch of a project to keep track of all relevant court decisions in relation to confiscation of criminal assets, linked with the execution database from the fiscal administration. This project should be complete by the end of 2018 and should provide a clearer picture, so that appropriate measures can be taken to increase the proportion of assets effectively recovered.

The next annual report of National Agency for the Management of Seized Assets in 2018 should give clear indications on the results achieved by the agency in 2017.

*The Commission considers that more work is still needed to progress towards the completion of benchmark four. The Commission considers that stronger political priority should be given to promote corruption prevention and support the implementation of the National Anti-Corruption Strategy, and concrete indications that corruption prevention is taking root are needed for the implementation of recommendation 11. Concerning recommendation 12, if good operational results are confirmed, this would allow the Commission to conclude this recommendation is fulfilled.*

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<sup>23</sup> As reported in a Report on the progress registered by Romania in the framework of the Cooperation and Verification Mechanism provided by the Ministry of Justice, September 2017.

#### **4. CONCLUSION**

During the nine-month period since the January 2017 report setting out the key recommendations to fulfil all CVM benchmarks, progress has been achieved on a number of recommendations, in particular recommendation 8, which has been satisfactorily implemented, and, subject to practical application, recommendations 2, 7 and 12. While progress in meeting some recommendations was advancing well, the reform momentum in course of 2017 was lost overall, slowing down the fulfilment of the remaining recommendations, and with the risk of re-opening issues which the January 2017 report had considered as fulfilled. Challenges to and questioning judicial independence have also been a persistent source of concern.

On this basis, though progress has brought some benchmarks closer to the point of fulfilment, the Commission cannot yet conclude that any of the benchmarks are at this stage satisfactorily fulfilled. The Commission remains of the opinion that with loyal cooperation between State institutions, a political steer holding firm to past achievements and with respect for judicial independence, Romania will be able to fulfil the remaining outstanding CVM recommendations in the near future.

The Commission invites Romania to implement the necessary actions and fulfil all recommendations, and will assess progress again towards the end of 2018.