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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) 25 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. With the CVM having reached its tenth anniversary this year, the Commission is taking stock with an overview of the achievements, the challenges outstanding and the remaining steps needed to achieve the CVM's objectives.

As repeatedly made clear by the Council,<sup>2</sup> the CVM will end when all of the four benchmarks applying to Romania are satisfactorily met. The benchmarks were defined at the time of accession and cover issues essential to the working of Member States – judicial independence and efficiency, integrity and the fight against corruption. To be met, they require a combination of legislative and institutional steps. In addition, such steps can only be fully assessed by looking at whether their intended effect is felt in practice, and whether they can be considered to be embedded in the legal and institutional framework of Romania and to be irreversible. This allows citizens to have confidence that decisions and practices in Romania fully respect the rule of law and provides the basis for the mutual trust that is required for effective implementation of EU law.

Judicial reform and the fight against corruption have been key issues for Romanian society over the last ten years.<sup>3</sup> The CVM has an important role in Romania as driver for reform, as well as a tool to track progress. The Commission's conclusions and the methodology of the CVM have consistently received the support of the Council, as well as benefiting from cooperation and input from many Member States. Cooperation has also been reinforced by targeted support to Romania under EU Funds.

As well as tracking progress over the past 10 years, CVM reports since 2014 have been able to underline how the consistency of progress has started to point to sustainability. Legislative and institutional steps have borne fruit in terms of track record, thanks to the commitment shown by many judges and prosecutors, the implementation work of Ministers of Justice and the good cooperation between the Romanian authorities and the Commission. The strong involvement of civil society has also been key to encouraging reform of the justice system and concrete steps to address corruption at all levels. At the same time, CVM reports have continued to highlight that there remained areas where further reform was proving difficult – and was sometimes resisted. Underlying issues like questioning of judicial independence and the authority of court decisions, and sometimes specific attempts to reverse reforms, have inevitably slowed the pace of progress towards the objectives of the CVM.

This report looks back at the developments in Romania since 2007. As in previous years, it 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.

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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> The Council concluded in March 2016 that "Building on substantial progress already achieved, the Council encourages Romania to focus its efforts on further consolidating progress made, and to sustain the current positive momentum by addressing all the recommendations set out by the Commission in its report" (<http://data.consilium.europa.eu/doc/document/ST-7118-2016-INIT/en/pdf>).

<sup>3</sup> Flash Eurobarometer 445: The Cooperation and Verification Mechanism for Bulgaria and Romania, published on 25 January 2017.

In this respect it is important to be clear about the scope of the CVM. The Decisions establishing the CVM set out the parameters of the CVM's scope on judicial reform and the fight against corruption. Action inside these parameters will determine when the benchmarks are met. However, the pace and depth of reform has necessarily been conditioned by the wider societal, legal and political environment in Romania in which the specific issues covered by the CVM can progress. For example, the efforts being made in recent years in Romania to build administrative capacity are still under way, having consequences for the reform process. Legislative practice allows for the sudden introduction of changes through Parliament, by-passing better regulation and consultation, and making it harder to demonstrate the sustainability of the legal framework in areas like corruption. Adherence to the principles of loyal cooperation between institutions and the principle of respect for judicial independence is still to be enhanced, with attacks against judges and prosecutors voiced through Romanian media and a need for stronger mechanisms for redress. While these issues are outside the CVM remit, they have a direct bearing on the ability to deliver reform and in particular, have made it more difficult for Romania to show that reform has taken root on a permanent basis.

One area where this broader environment has evolved in a positive direction is transparency. In many areas of the CVM's work, there has been a noticeable trend – including over the past year – towards better quality information about the judicial system and about corruption, and more openness in making this accessible. Further steps in this direction by a wider range of Romanian institutions would cement a change in practice which would help to demonstrate progress. In the area of the CVM's work, this report therefore makes a number of recommendations for more intensive reporting and transparency. In the short term, this would help the Commission to reach final conclusions; once the CVM comes to an end, it would also provide support to the sustainability of reform by helping accountability.

Finally, it should also be underlined that the distinct nature of the CVM's scope also militates against making links with other policy areas. The Commission does not therefore consider that it is appropriate to link the CVM to decisions in other areas, such as eligibility for European Structural and Investment Funds or the access to the Schengen area.

This report uses the longer-term perspective to identify the key remaining steps to realise the goals of the CVM. The momentum built up so far allows the focus to shift to the key remaining steps which need to be taken. When the steps set out under the benchmarks in this report are taken, the respective benchmark will be considered provisionally completed. When this applies to all benchmarks, the CVM will be closed. The recommendations set out can therefore be considered as sufficient to meet this goal – except if developments were to clearly reverse the course of progress. The Commission believes that this should also bring an acceleration of the process by the Romanian authorities and by the EU as a whole. In the benchmarks where it is considered that substantial progress has been made, the Commission considers that a determined implementation and maintaining both the pace and the consistent direction of reform would allow those benchmarks to be closed quickly – for other benchmarks, this would be more challenging. The Commission therefore intends to bring forward the next report to the end of 2017, and stands ready to provide further assistance to help reinforcing the irreversibility of progress and therefore bring the mechanism to a conclusion.

## **2. ASSESSMENT OF PROGRESS ON THE FULFILMENT OF THE BENCHMARKS SINCE THE START OF THE CVM**

As well as looking at progress on the recommendations made in the 2016 CVM report, this section makes an overall assessment of ten years of reforms. The most relevant developments and results are set out in detail in the accompanying technical report<sup>4</sup>. Though the benchmarks are self-standing, there are also important interconnections which impact on their fulfilment. The assessment of progress has involved looking at the structural conditions (such as laws, institutions, and resources); at the results and track record; and at whether progress can be considered irreversible. It should also be noted that since the time when the CVM benchmarks were agreed, there have been major developments in ECHR case-law, international standards and best practices, and comparative information on national justice systems in the EU, which have guided the Romanian authorities in their reforms and also help to give an objective and comparable measure of the development of the Romanian judicial system and fight against corruption within the remit of the four benchmarks.

### **2.1 The judicial process**

The first benchmark concerned *the judicial system*, focusing on establishing an independent, impartial, and efficient system, strengthening the consistency of the judicial process, and improving transparency and accountability. In this area, institutional and legislative progress has been substantial. Since 2012, the Superior Council of the Magistracy (SCM) has established itself as manager of the judicial system and has shown an increasing willingness to fulfil its constitutional role, notably in terms of defending the independence of the judiciary, a key role that will now fall to the new Superior Council, recently elected. In 2016, polling continued to suggest a strong public perception of judicial independence and trust in the judiciary.<sup>5</sup> But as previous CVM reports have shown, there has also been a reaction to this trend: with political and media attacks on magistrates and judicial institutions. Attacks against the National Anti-corruption Directorate were particularly intense in 2016.

Progress in structural reforms in certain areas relating to efficiency, resources and workload has been slower to show significant changes – though the quality of the information that the Ministry of Justice has been able to provide to the Commission in recent years has shown the development of the information on the functioning of the judicial system now at the Ministry's and SCM disposal. In the last three years the Ministry of Justice, the SCM, and the judiciary have shown their willingness and capacity to work together and find solutions to take reform forward. This has been supported by the increased resources allocated to the judiciary, notably by the last two governments. However, progress has been slow on addressing issues such as workload balance between and within courts, such as how to address the discrepancies of workload between large and small courts and the distribution of tasks between judges and court clerks. Legislation to address those problems did not advance in 2016, and managerial action alone has not been able to provide a solution. The major progress is that now all tools are in place to monitoring the functioning of the courts and of the human resource situation, and there is a comprehensive Strategy for the Development of the Judiciary 2015-2020.

The rigour of entry procedures into the magistracy, supported by obligatory training by the National Institute of Magistracy, has also been seen to have played an important part in consolidating the professionalism, as well as the independence, of the magistracy. As for the

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<sup>4</sup> SWD (2017)25.

<sup>5</sup> The 2016 EU Justice Scoreboard (COM 2016) 199 final, graphs 48, 44 and 46. Polling of April 2016 shows 60% very high to high confidence in DNA <http://www.inscop.ro/wp-content/uploads/2016/04/INSCOP-raport-martie-2016-INCREDERE-INSTIUTII.pdf>

appointment of senior judges and prosecutors, the last CVM report identified 2016 as a test year for appointments. This was notably the case for the appointment of the prosecutorial leadership, and their deputies. In terms of results, none of the appointed candidates raised issues of integrity and professionalism or controversies within the magistracy or civil society, and some of them already had a very solid track record. However, the process used did not allow for a clear, open and transparent procedure for the selection of all candidates to be put in place, and consolidated into a stable and permanent system.<sup>6</sup>

The SCM is also responsible for sanctioning professional misconduct and disciplinary offences by magistrates. The investigation of such cases rests with the Judicial Inspection. In 2012, a major reform of the Judicial Inspection consolidated it as an independent and professional institution. This has made the Inspection more efficient and authoritative, as confirmed again by its track record in 2016. The disciplinary decisions of the SCM can be appealed before the High Court of Cassation and Justice and the 2016 CVM report noted that the chain of decisions seems to have become more predictable and consistent.

Romania has adopted and implemented new Civil and Criminal Codes with a view to modernising the substantive law and improving the efficiency and consistency of the judicial process. The new Civil Code entered into force in 2011, the Code for Civil Procedures in 2013 and the new Criminal Codes in 2014. The transition to the new Civil Codes has been gradual and now applies to nearly all cases. For the Criminal Codes, all provisions applied on day one, so that 2014, 2015 and 2016 have been dedicated to ensuring its consistent implementation in all courts and prosecution offices and to stabilisation of its legal provisions. By adapting to this major reform, the judicial system as a whole has shown its professionalism. There is evidence that the result has been some acceleration in the length of court proceedings, enhanced respect for fair trial rights as well as more consistency in judicial decisions. These major reforms are nearly finalised. However, finalisation of these important reforms of the Codes, as recommended in the 2016 CVM report, has proved difficult and points to continued shortcomings. In the case of the Civil Code, provisions requiring new infrastructure have had to be successively postponed, suggesting deficiencies in planning. In the case of the Criminal Codes, an inevitable process of refinement through rulings of the Constitutional Court has been further complicated by an unpredictable legislative approach in Parliament. Important amendments to the Criminal Codes tabled by the Government to align provisions with Constitutional Court rulings were still pending at the end of the legislatures in December 2016; while attention was given to amendments in Parliament which raised controversy on the grounds of weakening the legal framework on corruption, even if these have not been passed. On 18 January 2017, the Government put forward for consultation two draft emergency ordinances, one on pardon and one amending the Criminal Code and Code of Criminal Procedures.<sup>7</sup>

The Constitutional Court has played an important role in further development of the rule of law and the consolidation of an independent justice system. Since the constitutional upheaval of 2012, many decisions of the Constitutional Court have contributed to upholding the independence of justice and have sought to provide solutions linked to the balance of powers and respect for fundamental rights that could not be solved by the justice system alone. The majority of the 12 decisions by the Constitutional Court in 2016 annulling provisions of the new Criminal Code and Code of Criminal Procedures were taken on the basis of respect of the European Convention on Human Rights.

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<sup>6</sup> Technical Report Section 2.2

<sup>7</sup> The drafts under consultation would suggest modifications of the provisions on the corruption crimes of abuse of office and conflict of interest, and that the pardons law would also apply to persons sentenced for certain corruption crimes.

At the point of Romania's accession to the European Union, one persistent shortcoming identified was inconsistency in court decisions. The major legislative reforms have all sought to strengthen the mechanisms for consistency. After the entry into force of the new Codes, CVM reports have noted the increasing use and the effectiveness of the legal consistency mechanisms implemented by the High Court of Cassation and Justice (HCCJ). In recent years the legal mechanisms were complemented by managerial efforts to promote consistency and the online availability of all court decisions. The 2016 CVM report also noted signs of a cultural shift in favour of consistency within the judiciary.

Linked to both independence and consistency is respect and implementation of court decisions. A court decision which is not implemented deprives the court decision of all useful effect, as well as having a direct impact on the workload of the courts through follow-up cases or appeals on repetitive decisions.<sup>8</sup> Problems with the respect and implementation of court decisions by State institutions and public administration have been a recurring theme: the Commission has adopted successive recommendations on this in 2014, 2015 and 2016, while it has been also recognised as a structural deficiency by the ECtHR.<sup>9</sup> One important development in 2016 in the area of implementation of court decisions relating to confiscation of criminal assets was the agreement to set up the new National Agency for Management of Seized Assets, which is now starting its work: part of its remit will be to apply procedures to stimulate public bodies to carry through on asset recovery and address the consequent losses to public finances.

Overall, Romania has made substantial progress on much of Benchmark One, but this has not been without difficulties, and efforts are still required to demonstrate track record in areas including respect for judicial independence in Romania's public life, finalising reforms of the criminal and civil codes and ensuring efficiency in the implementation of court decisions by all.

## **2.2 Integrity framework and the National Integrity Agency**

The second benchmark concerns the establishment of an *integrity agency* with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken. The history of this benchmark illustrates why it is essential to be attentive to irreversibility. While the National Integrity Agency was established in 2007, its legitimacy came under frequent challenge in its first years. In 2010, after a Constitutional Court decision, the Agency's founding law was annulled and without external pressure, it is not clear that a new legal framework would have been put in place, as happened six months later.

Now Romania has a comprehensive framework for integrity for public officials, and the National Integrity Agency has established itself as an independent institution to implement these rules. When challenged, its decisions and the sanctions it can apply have been consistently endorsed by the courts. The track record of the Agency in investigating unjustified wealth, incompatibilities and administrative conflicts of interest has gradually increased, with a consistent trend of significant results since 2013, confirmed again in 2016. Importantly, the good track record of ANI has been maintained in spite of the management

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<sup>8</sup> An example of repetitive case in 2016 was VAT or environmental tax cases whether the national and European level (ECJ) had already given clear rulings, but where the administration continued to bring cases forward.

<sup>9</sup> Săcăleanu (group) 73970/01: Failure or significant delay of the administration or of legal persons under the responsibility of the State in abiding by final domestic court decisions. An action plan from the RO authorities has been transmitted to the Council of Europe in December 2016. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806d8adb](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806d8adb) .

upheaval caused by the resignation of the Agency's President.<sup>10</sup> ANI will have another tool with the PREVENT system of ex ante checks on public procurement, the legislation for which was agreed in Parliament in autumn 2016 and which should include all conflicts of interests as defined by the new Public Procurement laws.

In line with the recommendation in the last CVM report, ANI also worked closely with the Permanent Electoral Authority in 2016 to ensure that decisions on integrity were carried forward into the eligibility of candidates. This proved effective, with candidates elected in the local elections, despite an integrity ruling, subsequently removed or resigning from office, and with parties and the electoral authorities using the ANI information to avoid ineligible candidates presenting themselves for the parliamentary elections: there seems to be only one outstanding case here.

However, the legal framework for integrity, the set of laws defining the situations of conflicts of interests and incompatibilities for civil servants and elected or appointed officials, has been regularly re-opened in Parliament. It has not yet been possible to put in place a clear, consolidated legal framework as the bedrock for sustainability, although 2015 and 2016 did see increased efforts by the High Court of Cassation and Justice to promote a consistent application of the integrity laws. There has also been a recurring problem concerning resistance to the implementation of the Agency's reports, even when confirmed by a court decision, and reluctance from the responsible institutions and authorities to apply the sanctions required (which consist normally in either dismissal of public function or administrative fines). In the last two years, the general situation has significantly improved, but some decisions by Parliament have still appeared to question or delay the implementation of final court decisions confirming the Agency's reports.

In its July 2013 recommendations, the Commission set out the expectation that Ministers set an example in respect of integrity rules and that the same should be expected with regard to corruption charges. This remains of great importance to the public credibility of the Government and the Parliament.<sup>11</sup>

Overall, Romania has made substantial progress on Benchmark Two and the National Integrity Agency can be considered to have established itself as a respected institution. This was also demonstrated by the fact that it was entrusted in 2016 with the development of the PREVENT system, a system for ex-ante checks on conflict of interest in public procurement, the working of which will need to be demonstrated in 2017. It also plays an important role in the National Anti-Corruption Strategy 2016-2020 for corruption prevention.

### **2.3 Tackling high-level corruption**

Benchmark Three concerns professional, non-partisan investigations into allegations of *high-level corruption*. Corruption is a deep-seated societal problem with consequences for both governance and the economy. It is widely recognised as a major issue in Romania, as shown regularly in perception surveys<sup>12</sup> and most recently in a Eurobarometer on the CVM.<sup>13</sup> CVM reports have been able to report a steadily growing track record in terms of investigating,

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<sup>10</sup> CVM reports 2014, 2015, 2016. The resignation followed the start of a criminal investigation into activity which preceded the President's term at the Agency.

<sup>11</sup> In early January 2017, the Ombudsman challenged to the Constitutional Court the provisions of the law stating that people sentenced for corruption cannot be members of the Government.

<sup>12</sup> Flash Eurobarometer 428: Businesses' attitudes towards corruption in the EU , available at <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2084> ;

<sup>13</sup> Flash Eurobarometer 445: The Cooperation and Verification Mechanism for Bulgaria and Romania, published on 25 January 2017

prosecuting and deciding upon high-level corruption cases over the years, with a clear acceleration after 2011. Since 2013, the track record of the institutions involved in investigating, prosecuting and ruling on high-level corruption has been strong, with regular indictments and conclusion of cases concerning politicians of all ranks and parties, as well as civil servants, magistrates and businessmen. The National Anti-corruption Directorate investigates a high number of cases and establishes hundreds of cases for trial for high and medium level corruption every year; and the High Court of Cassation and Justice and the Courts of Appeal rule final sentences in a still high number of high-level and medium level corruption cases. There has also been a strong trend towards confiscation of assets to recover the damage caused by corruption offences. The track record – consistently maintained in 2016 – is a sign of the independence and professionalism of the judicial institutions; however, the repetition of similar offences also suggests that corruption prevention has not been effective.

With the entry into force of the new Criminal Codes in 2014, Romania now has a comprehensive legal framework for combatting corruption crimes. Since the early days, the stability of the legal framework has been a recurring concern, with, as mentioned earlier, regular attempts to modify the laws incriminating corruption, often without consultation of the key state and judicial institutions in this area.<sup>14</sup>

CVM reports have also noted the clear link between the effectiveness of this work and widespread media and political reaction, in terms of public criticism of individual magistrates and the justice system in general. They have also noted the lack of a systematic approach to explain refusals to lift parliamentary immunities to allow for investigation or preventative measures. But overall, the achievements of Romania in this area have rightly attracted widespread recognition and substantial progress has been made on the third benchmark.

#### **2.4 Tackling corruption at all levels**

The fourth benchmark concerned further measures to prevent and *fight against corruption*, in particular within local government. Medium and low-level corruption is widely perceived to be a problem in Romania, with consequences for Romania's economic and social development. Public procurement, for example, is an area where the prevalence of corruption holds back the galvanising impact of investment. Healthcare is another area where corruption has serious consequences. Corruption prevention and a proactive approach from public administration to closing off opportunities for corruption is an indispensable complement to the work of the prosecution in pursuing transgressions after they have taken place. Progress on asset recovery will accelerate with the establishment of the new national agency for the management of seized assets (ANABI), which started to operate in January 2017. The prosecution of lower-level corruption has become a more standard part of the prosecution's work and remains a priority of the prosecution. But additional steps have to be taken to effectively address such a widespread problem.

The National Anti-Corruption Strategy is the core instrument of corruption prevention by public administration at national and local level. Anti-corruption strategies until 2011 produced little results. The National Anti-Corruption strategy 2012-2015 was more successful in reaching out to many institutions, including at local level, by its methodology of discussions within sectorial platforms and the active involvement of each institution, as well as peer reviews with NGOs. However, evaluation in 2015 showed that progress was slow and the application of prevention measures ineffective, with insufficient political will from the top of the institutions to implement corruption prevention measures. The Government adopted a

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<sup>14</sup> The two draft emergency ordinances put forward for consultation by the government on 18 January 2017 could affect the legal framework for corruption and the results of the fight against corruption.

new anti-corruption strategy for 2016–2020 in August 2016, notably seeking to target the identified weaknesses with specific measures. The main challenge will be to effectively implement the measures, in all sectors and including at local level, where many observers see corruption risks as particularly high.

There is no doubt that measures have been introduced by successive governments to address corruption, with a serious effort to develop anti-corruption strategies and some innovative preventive measures. However, though some progress has been made towards fulfilling the fourth benchmark, important challenges remain in the effective implementation of the preventive policies that have recently been defined.

### **3. KEY REMAINING STEPS**

Overall, the ten years perspective shows that Romania has made major progress towards the CVM benchmarks. A number of key institutions and much important legislation are in place and an established track record can be seen in many areas. The Commission also considers that Romania has demonstrated that a number of internal safeguards exist against abrupt reversals of the progress. There are however important remaining shortcomings which need to be addressed. Reform needs to continue on the same path and internal safeguards need to be further strengthened in order to ensure the irreversibility required to satisfactorily fulfil the benchmarks. This section therefore aims to set out the remaining steps needed to ensure that the objectives of the CVM are reached.

#### **3.1. Judicial independence**

##### *Appointments*

Successive CVM reports have highlighted that even if there has been a trend towards more merit-based and transparent appointments, the law on appointments of top prosecutors and the practice of its implementation is not sufficiently robust in terms of avoiding excessive political discretion in the appointments. From past experience, this can result in doubts being cast on the independence of a candidate, create delays in appointments due to political deadlock, or even lead to the appointment of magistrates who may later prove to have integrity issues. Within Europe, there are different legal traditions with regard to the appointments to the position of Prosecutor General (or similar top prosecution posts), and this is recognised by the Venice Commission. But the key is to ensure appropriate safeguards in terms of transparency and checks and balances, even in cases where the final decision would remain with the political level.

- **Recommendation:** 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.

##### *Respect for judges and the judicial process*

The successful prosecution and conviction of many prominent politicians in Romania is a sign of judicial independence, showing that even high office holders are not beyond the law if they have committed a crime. However, this seems to be at the root of attacks often directly targeted at individual magistrates, which go beyond criticism or disapproval of a sentence or a decision to challenge it by the available legal means. Attacks that aim at discrediting individual magistrates or the judicial institutions risk undermining public confidence in the judicial system as a whole, as well as potentially intimidating individual magistrates. Excessive or personalised criticism of judges from Parliament or government is contrary to

principles of mutual respect between institutions and in contradiction with respect for judicial independence.

The Constitution establishes the Superior Council of the Magistracy (SCM) as main defender of the independence of justice. Their conclusions provide valuable support to magistrates, but the difficulty in securing an equivalent level of media coverage for the SCM compared to the initial criticisms is symptomatic of the challenge facing the judiciary in terms of the media. Although the decisions of the SCM are always transmitted to the National Audio-Visual Council, there has been no progress in terms of effective redress or corrections in the media that launched or relayed the attacks: a consequence of broader issues concerning freedom of expression in line with Council of Europe standards and the case law of the European Court of Human Rights. Whilst the wider issue of media regulation and redress is as such outside the CVM, there is a direct link with judicial independence. The new SCM and government could also further follow up on the recommendation to explore a more robust mechanism so that the SCM can support magistrates wishing to defend themselves in court or itself defend magistrates in courts.

- **Recommendation:** 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.

The SCM should continue to report on actions it has taken in defending the independence of justice and protection of reputation, independence and impartiality of magistrates, and could organise a public debate so that the Government, the Parliament and the National Audio-Visual Council are invited to respond to the report.

### 3.2. Judicial reform

#### *New Codes*

The current phase of the reforms of the Civil and Criminal Codes needs to be finalised. For the Criminal Code and Code of Criminal Procedures, the next stage would be for Parliament to take forward its plans to adopt the amendments brought together by the government in 2016 to ensure stability of the legal framework.

For the Civil Procedure Code the government decided in December 2016 to postpone the application of the remaining provisions of the new Civil Procedure Code for two years, until 1 January 2019. The Ministry of Justice announced a plan to determine by 30 June 2017 the exact needs of the system to allow full application of the remaining provisions, and to give enough time for their implementation by the end of 2018.

- **Recommendation:** 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 SCM 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.
- **Recommendation:** 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.

### *Consistency of court decisions*

In 2016, the High Court of Cassation and Justice continued to provide solutions to inconsistencies of court decisions through the legal mechanisms of appeal in the interest of the law and preliminary questions. The attitude of rank and file judges has changed as well, with a better consideration for the need to take into account decisions of other courts in similar cases. The judicial management and the National Institute of Magistracy will need to continue promoting consistency in law and practice and developing the tools to facilitate the consistent application of the law as the follow-up of jurisprudence by public administration and excessive workload of courts continue to impact on the consistency of court decisions. Further obstacles to the consistency of court decisions relate rather to broader issues concerning the legislative process.

### *Respect for court decisions*

Respect and implementation of court decisions is an integral part of the efficiency of the judicial system as set out in Benchmark One.<sup>15</sup> Non-implementation or delayed implementation of court decisions by the administration erodes confidence in justice and wastes time and resources in follow-up cases or appeals on repetitive decisions.<sup>16</sup>

- **Recommendation:** 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 SCM and Court of Auditors in order to ensure proper implementation of the Action Plan.

### *Structural reforms*

The comprehensive Action Plan adopted in 2016<sup>17</sup> setting out the structural reform steps to be taken until 2020 now under way should bring major benefits to the users of the justice system, and altogether improve public trust in the system. However, as well as addressing structural obstacles to an effective balance in workload, the action plan will need to be fully implemented for the end users of the justice system to experience an effective judicial proceeding. The users of the court system would also benefit in efficiency if motivations were issued at the same time as a decision was taken.

- **Recommendation:** The Strategic Judicial Management, i.e. the Minister of Justice, the SCM, the HCCJ and the Prosecutor-General should ensure the implementation of the Action Plan as adopted and put 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.

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<sup>15</sup> Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (civil limb), [http://www.echr.coe.int/Documents/Guide\\_Art\\_6\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf)

<sup>16</sup> An example of repetitive case in 2016 was VAT or environmental tax cases whether the national and European level (ECJ) had already given clear rulings, but where the administration continued to bring cases forward.

<sup>17</sup> Action Plan for implementing the Strategy for the Development of the Judiciary 2015-2020 approved through the Government Decision no. 282/2016

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

In 2014, the CVM report noted that the Superior Council of the Magistracy (SCM) could take a more proactive role in increasing trust in the judicial system. The 2016 report underlined the importance of the SCM now taking office to the momentum of reform, to articulate a clear collective philosophy on the basis of a new programme and to take measures for increased transparency and accountability.

- **Recommendation:** The new SCM 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.

### **3.3. Integrity framework and the National Integrity Agency**

Integrity should be the guiding principle in public life and the legal framework and integrity institutions are designed to promote this goal. The National Integrity Agency (ANI) can now be seen as an established institution, with a consistent track record. It is important to continue to maintain the results of ANI and to improve further public acceptance of incompatibility rules and to put an emphasis on upstream prevention. The PREVENT system of ex ante checks on public procurement is an important new tool, which ANI and the National Public Procurement Agency will need to bring into operation in 2017. There has also been substantial progress in the follow-up of ANI reports, but the court proceedings remain very long and there are still exceptions to the applications of sanctions.

The legal framework for integrity remains under challenge. It is unfortunate that it does not seem currently possible to consolidate the long-term sustainability of the integrity framework through a single codification.

- **Recommendation:** 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.

ANI should continue reporting on the follow-up of ANI reports in courts and the implementation of final decisions; and on measures taken for prevention and education in the area of integrity.

- **Recommendation:** 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.

### **3.4 The fight against corruption**

#### *Tackling High-level corruption*

The National Anti-Corruption Directorate (DNA) and the High Court of Cassation and Justice (HCCJ) have established an impressive track record in terms of solving high and medium-level corruption cases. Maintaining the effort of the judicial institutions addressing high-level corruption remains the most important sign of consolidating the fight against corruption. The DNA has also been something of an example in terms of its reporting, which shows a high degree of openness and a willingness to analyse. In particular, the fact that similar corruption

cases recur points to shortcomings in the process of learning lessons and closing loopholes within public institutions. The strong media and political attacks on magistrates and the justice system also remain a serious threat to the irreversibility of the fight against corruption.

Corruption laws must apply equally to all and be applied at all levels. Discussions in Parliament on objective criteria to justify a refusal to lift immunities have not led to change on the lines of previous CVM recommendations.

Clearly legal amendments with the effect of weakening or shrinking the scope of corruption as an offence, or which represented a major challenge to the independence or effectiveness of DNA, would entail a reassessment of the progress made.<sup>18</sup>

- **Recommendation:** 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>19</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.

#### *Tackling Corruption at all levels*

Corruption prevention is still weak and is not yet established as a core obligation of public administration. The new National Anti-Corruption Strategy (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, including at local level. EU funds can also have a major part to play in supporting this work. The following actions foreseen under the NAS appear of particular importance, and have deadlines which should be adhered to:

- All institutions will adopt integrity plans and apply the planned steps in terms of transparency of decision making and budget allocation, and access to information.
- The Ministry of Justice will set up relevant statistical indicators to provide a baseline situation, and follow this up with statistics on integrity incidents, corruption perceptions or bribe giving.
- The legal framework for ethics counsellors will be strengthened, both in terms of mandate and resources.
- An integrity index will be created for local administration, measuring key indicators to allow a comparison.

The National Agency for the Management of Seized Assets has been set up and now needs to demonstrate it can function properly, provide transparent data on the confiscation of criminal assets and eventually increase the proportion of assets effectively recovered.

Preventing conflicts of interest, fraud and corruption in public procurement remain a serious challenge. The steps defined in 2016 for reinforcing internal control systems within the contracting authorities and the IT system for random and risk based ex-ante checks within the

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<sup>18</sup> Any finally-adopted version of the two draft emergency ordinances put forward for consultation by the government on 18 January 2017 would need to be looked at in this light.

<sup>19</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.

National Public Procurement Agency are promising, but still under development. More training and specialisation of judges in public procurement would also be important.

- **Recommendation:** 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:** 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.

#### 4. CONCLUSION

The Commission's 2014, 2015 and 2016 CVM reports were able to highlight a positive trend and a track record pointing to strong progress and growing irreversibility of the reforms under the CVM. This positive trend was confirmed in 2016 with a continued track record for the judicial institutions in a time of change in leadership and a strong impetus by the government to strengthen corruption prevention. The 10 years' perspective of developments under the CVM shows also that, despite some periods when reform lost momentum and was questioned, Romania has made major progress towards the CVM benchmarks.

At the same time a number of key issues already identified in earlier reports have remained outstanding, and therefore this report cannot conclude that the benchmarks are at this stage satisfactorily fulfilled. However this report is able to identify a very limited number of key recommendations to lead to the provisional closing of individual benchmarks, and then the conclusion of the CVM process. Most of them focus on the responsibility and accountability required by the Romanian authorities and the internal safeguards needed to ensure the irreversibility of the results. It will also be supported by development of reporting and accountability mechanisms to continue once the CVM has ended. The Commission considers that the CVM objectives can be achieved by following up the recommendations set out in this report. The speed of the process will depend on how quickly Romania will be able to fulfil them in an irreversible way, and on avoiding negative steps which call into question the progress made so far.

The Commission therefore invites Romania to take action to fulfil the recommendations contained in the present report. The Commission will assess progress made towards the end of 2017.