

*Translation from Romanian*

Outgoing No. C.E. 2/Jan. 28, 2010

Seal: Romania, the National Integrity Council

Incoming No. 8

Day: 18 Month: 02 Year: 2010

## **REPORT**

**THE EVALUATION COMMISSION**

**OF THE NATIONAL INTEGRITY COUNCIL**

## THE NATIONAL INTEGRITY COUNCIL

### THE EVALUATION COMMISSION

#### THE EVALUATION COMMISSION OF THE NATIONAL INTEGRITY COUNCIL

Appointed by virtue of the Decision of the National Integrity Council No. 22/February 12<sup>th</sup>, 2009 on the appointment of the Commission as laid down in art. 26 para. (2) of Act No. 144/2007, republished

Pursuant to the provisions of Law No. 144/2007 on the establishment, organization and functioning of the National Integrity Agency, republished;

The verifications are based on:

- *the notification* submitted by Mrs. FLUTURE Carmen Florentina, former Head of Cabinet, on the potential state of incompatibility of the National Integrity (ANI) Agency President, Mr. Alexandru Cătălin Macovei,
- *the memorandum* submitted by Mr. Burciu Fănel Nicolae, former Integrity Inspector of the Agency, and recorded with the Secretariate of the **National Integrity Council** under No. 139/12.02.2009.

The verifications considered the following:

- the National Integrity Agency operates under the principle of ***operational independence*** and is a ***main credit release authority***;
- some of the notified matters fall outside the competences of the Council's Commission and obtaining opinions from the competent public institutions is required;
- after February 12, 2009, notifications of the same subject matter were sent by Mrs. Fluture Carmen Florentina (pages 26-28), former Head of Cabinet of the ANI President, via the postal services / electronic mail, administrative and jurisdictional institutions, civil society, mass-media institutions, non-governmental organizations and the Romanian Presidency, Romanian Parliament, Romanian Government, General Secretariate of the Government etc.
- after February 12<sup>th</sup>, 2009, the notifications sent by Mrs. Andreea Ilie (former Gridan), former Head of Office, the Public Investments and Purchases Division within the ANI General Economic Department, of the same subject matter, as well as other concerns (pages 26-58);
- Mr. Burciu Fanel Nicolae, Mrs. Fluture Carmen Florentina and Mrs. Ilie Andreea Nicoleta set up as "integrity warners", invoking the provisions of Law No.571/2004 and the certificates issued by the Anti-Corruption Resource Centre within the Romanian Association for Transparency – Transparency Romania;
- some of the notified aspects cannot be taken into account because they are or can become subject to competent courts of law and other legal provisions regulatory for that field.

Hence, the *Evaluation Commission* of the National Integrity Agency started the verification procedure pursuant to the legal provisions and requested the National Commerce Registry Office, the Ministry of Public Finance, the Tax Administration Agency, the Public Finance Administration of the 1<sup>st</sup> district, the National Authority for Public Purchase Regulation and Monitoring, the National Agency of Public Servants, the Romanian Gendarmerie – Special Unit 70, the Romanian Court of Accounts, to communicate their opinions or send the outcome of the verification documentation.

Following said requests, ANI provided the Commission copies of the relevant documents that were later recorded with the Secretariate of the National Integrity Council.

The notified public institutions having competences in the field of public procurement and human resources started verifications with ANI within their legally stipulated competence limitations.

The persons having submitted notifications of alleged breach of the current law were invited to support their allegations against the ANI management before the Evaluation Commission of the National Integrity Council.

Mr. Burciu Fanel Nicolae refused the invitation. He was summoned at his domicile and over the phone under the legal provisions.

During the verifications conducted, the entire ANI staff, including the management, collaborated with and provided the Evaluation Commission of the National Integrity Council all requested documentation.

Thus, as a result of **an analysis on the allegations submitted against the ANI President, Mr. Alexandru Catalin MACOVEI** and the verifications undertaken by the EVALUATION COMMISSION OF THE NATIONAL INTEGRITY COUNCIL, as well as following the verification procedures by the competent institutions, **the results were as follows:**

**AS CONCERNS THE NOTIFICATIONS ON THE ALLEGED INCOMPATIBILITY OF THE ANI PRESIDENT, MR. ALEXADRU CATALIN MACOVEI:**

Following the data, documentation and information analysis conducted by the EVALUATION COMMISSION OF THE NATIONAL INTEGRITY COUNCIL, the results were the following:

1. List of trading companies where Mr. Alexandru Catalin Macovei was a shareholder and director before his appointment to the position of Vice-President of the National Integrity Agency:

<b>Name of trading company</b>	<b>No. of incorporation within the Commerce Registry</b>	<b>Sole tax number (CUI)</b>	<b>Date of incorporation</b>	<b>Shareholder of company establishment</b>	<b>Date of Mr. Macovei's leaving the company</b>
Teacher Consult s.r.l.	J40/2917/2007	21082127	14.02.2007	Macovei Alexandru Catalin (director); Balan Alina Bianca	Resignation from the position of Director: <b>Oct. 2, 2007</b> Assignment of shares: <b>Oct. 1, 2007</b>
Macovei & Asociatii Consultanta s.r.l.	J40/2915/2007	21082135	14.02.2007	Macovei Alexandru Catalin (director); Macovei Irina	Resignation from the position of Director: <b>Oct. 2, 2007</b> Assignment of shares: <b>Oct. 1, 2007</b>

## 2. Appointment to public office position within the National Integrity Agency:

Position	Appointment document	Date of appointment following the examination and validation by the Romanian Senate
Vice-President of the National Integrity Agency	Decision of the Romanian Senate No. 47/Nov. 5, 2008, published in the Romanian Official Journal, Part I, 759/Nov. 8, 2007	Nov. 8, 2007
President of the National Integrity Agency	Decision of the Romanian Senate No. 13/April 15, 2008, published in the Romanian Official Journal, Part I, 299/April 16, 2008	April 16, 2008

### Applicable legal provisions:

**Art. 84 para. (2)** The position of State Secretary, State Vice-Secretary and **associated positions** are incompatible with the exertion of another public office, as well as the **exertion of the positions** laid down in **para. (1) letters b)-i)**:

- b) a position of remunerated professional representation within commercial organizations;
- c) the position of president, vice-president, manager, director, member of the Board of Administration or auditor in commercial companies, including banks and other credit institutions, insurance and financial companies, as well as public institutions;
- d) the position of president or secretary of Shareholders' General Assemblies or shareholders in the trading companies as laid down in letter c);
- e) the position of State's representative in the General Assemblies of trading companies laid down in letter c);
- f) the position of manager or member of the Board of Administration of independent administrations, companies and national companies;
- g) capacity of merchant natural entity;
- h) capacity member of a group of economic interest;
- i) a public position entrusted by a foreign state, except for the positions laid down in the agreements and conventions that Romania is part of.

**Law No. 144/2007** on the establishment, organisation and operation of the National Integrity Agency, republished:

**Art. 13 para. (2)** The Agency staff includes the Agency President, the Agency Vice-President, Integrity Inspectors, public servants and contracting staff. The Agency President is a high official equivalent to a State Secretary, the Agency Vice-president is a high official equivalent to a Deputy State Secretary, and the Integrity Inspector is a public position with special status.

### Primary ideas:

- The time of making the decision to leave the trading companies should be estimated considering the time of actual internal legal will;

- The breach of the amendment recording administrative procedure, as per art. 22 of Law 26/1990 on the Commerce Registry, republished, as subsequently amended and supplemented, is sanctioned by judiciary fine, yet it does not affect the time of actual internal legal will;
- The opposability granted by recording amendments with the Commerce Registry concerns undergoing trade deeds and acts, with no effect on other legal obligations for which the time of actual internal legal will is a primary guide mark;
- Secondarily, considering that a person has a company incorporated within the Commerce Registry does not mean that has the merchant quality.

**Nonetheless**, though unnecessary, Mr. Macovei understood that he should render his resignations official by certifications of identity, content and date under the law. This is shown in pages 36, 37 for SC Teacher Consult SRL and pages 41, 42 for SC Macovei & Asociatii CConsultanta SRL.

Thus, an analysis of the submitted documentation, resulted that Mr. Alexandru Catalin Macovei held the position of director in two trading companies, assigning his owned shares in early October 2007 prior to his appointment to the vice-presidency of the National Integrity Agency (pages 37, 38) for SC Macovei & Asociatii Consultanta SRL and pages 43, 45 for S.C. Teacher Consult S.R.L.).

As a result, in early October 2009, the S.C. TEACHER CONSULT S.R.L. and S.C. MACOVEI & ASOCIATII CONSULTANTA S.R.L. Shareholders' General Assembly decided as follows:

S.C. TEACHER CONSULT S.R.L.	<p><b>The Shareholders' General Assembly, via Decision as of Oct. 1, 2007, orders:</b></p> <p>Assignment of the shares owned by Mr. Alexandru Catalin Macovei to Balan Alina Bianca who consequently became the unique shareholder;</p> <p>Mr. Alexandru Catalin Macovei's revocation from the position of director</p>	<p>The decision of share assignment was made on the basis of the parties' mutual will via the <b>Share Assignment Contract</b> entered into by the two shareholders as of <b>Oct. 1, 2009</b>.</p> <p>The resignation from his position of director consisted of Mr. Alexandru Catalin Macovei's statement, certified by a Certification on identity and document date, as of <b>Oct. 2, 2009</b>.</p>
S.C. MACOVEI & ASOCIATII CONSULTANTA S.R.L.	<p><b>The Shareholders' General Assembly, via Decision as of Oct. 1, 2007, orders:</b></p> <p>Assignment of the shares owned by Mr. Alexandru Catalin Macovei to Macovei Irina who consequently became the unique shareholder;</p> <p>Mr. Alexandru Catalin Macovei's revocation from the position of director</p>	<p>The decision of share assignment was made on the basis of the parties' mutual will via the <b>Share Assignment Contract</b> entered into by the two shareholders as of <b>Oct. 1, 2009</b>.</p> <p>The resignation from his position of director consisted of Mr. Alexandru Catalin Macovei's statement, certified by a Certification on identity and document date, as of <b>Oct. 2, 2009</b>.</p>

The failure to record with the Commerce Registry does not lead to the nullity of the amending document. **The opposability granted by recording amendments with the Commerce Registry concerns the undergoing trade deeds and acts, with no effect on other legal obligations for which the time of actual internal legal will is a primary guide mark.**

**Secondarily,**

According to the provisions of art. 84 para. (1) and para. (2) of Law No. 161/2003 on *some measures for transparency in exerting public high offices, public positions and in the business field,*

*the prevention and sanction of corruption, as subsequently amended and supplemented,* corroborated with the provisions of Law No. 144/2007 *on the establishment, organisation and operation of the National Integrity Agency*, republished, the President and Vice-president of the National Integrity Agency shall be applied the **rules of incompatibility as laid down for the Romanian Government members**.

The fact that **no business was conducted via the two trading company** was shown via the Account Sheets concerning the two trading companies, as enclosed to pages 46, 47 – for S.C. TEACHER CONSULT S.R.L. and 49, 50 for S.C. MACOVEI & ASOCIATII CONSULTANTA S.R.L.

Consequently, in the case of the **two trading companies** that Mr. Alexandru Catalin Macovei was a **shareholder, and director respectively** of, prior to his appointment to the position of *Vice-president/President of the National Integrity Agency*.

- on the one hand, his **actual internal legal will** that was expressed via an official document, which is more than required by law, **resulted in his resignation from his director position in the two trading companies and his assignment of share starting October 1<sup>st</sup>, 2007;**

- on the other hand, even if one does not consider the documents evidencing the share assignment and resignation from his director position in the two trading companies, which capacity was held by Mr. Macovei until October 1, 2007, that fact that he did not carry out business activities/conducted trade deeds and acts, result in the compliance with the obligation not to carry out business, hence compliance with the provisions of art. 84 para. (1) and (2) of Law No. 161/2003 on some measures for transparency in exerting public high offices, public positions and in the business field, the prevention and sanction of corruption, as subsequently amended and supplemented. The circumstance has been proved by the Account Sheets of the two trading companies, as enclosed.

<p><b>As a result, given the legal competences granted to it, the Evaluation Commission of the National Integrity Council decides that the notifications of alleged incompatibility of the ANI President, Mr. Alexandru Catalin Macovei, are ungrounded and unjustified, no guilt may be associated to him.</b></p>
---

The facts above are based on the following documents:

Reply sent to the National Integrity Council by the National Commerce Registry Office No. 46838/18.03.2009	Pages 1-34
Resignation from his position of director of S.C. TEACHER CONSULT S.R.L., certified for parties' identity, document content and date as of Oct. 2, 2007	Pages 36, 37
Share Assignment Contract S.C. MACOVEI & ASOCIATII CONSULTANTA S.R.L.	Page 37
Decision of the S.C. MACOVEI & ASOCIATII CONSULTANTA S.R.L. Shareholders' General Assembly	Page 38
S.C. MACOVEI & ASOCIATII CONSULTANTA S.R.L. Certificate of incorporation with the Commerce Registry	Page 39
Resignation from his position of director of S.C. TEACHER CONSULT S.R.L., certified for parties' identity, document content and date as of Oct. 2, 2007	Pages 41, 42
Share Assignment Contract S.C. TEACHER CONSULT S.R.L.	Page 43
Decision of the S.C. TEACHER CONSULT S.R.L. Shareholders' General Assembly	Page 45
2 account sheets resulting in the conclusion that, via S.C. TEACHER CONSULT S.R.L., no business was conducted	Pages 46, 47
S.C. TEACHER CONSULT S.R.L. Certificate of incorporation with the Commerce Registry	Page 48
2 account sheets resulting in the conclusion that, via S.C. MACOVEI & ASOCIATII CONSULTANTA S.R.L. Certificate of incorporation within the Commerce Registry, no business was conducted	Page 49, 50

**ON THE NOTIFICATIONS ON ALLEGED NON-COMPLIANCE IN PUBLIC PROCUREMENT PROCEDURES**

Based on the notification of the National Integrity Council No. 147/26.02.2009, recorded with A.N.R.M.A.P. (the National Authority for Public Procurement Regulation and Monitoring) under No. 3286/26.02.2009, an audit team in the competent authority, conducted a supervision procedure at the National Integrity Agency. In this context, A.N.R.M.A.P. sent ANI the communication on supervision procedure commencement No. 4312/24.03.2009. The audit report No. RC 336/3286/April 9, 2009 states there is no case of non-compliance as concerns the public procurement activity. Quoting from the Report:

*“The Contracting Authority conducted two assignment procedures as follows:*

*1. Procedure for assigning the contract with the subject matter of “IT equipment (desktops and laptops)”, CPV code 30213300-8 and 30213100-6 via call for proposal. The procedure was started by the publication in SEAP of the participation invitation No. 176949/13.10.2008. On 06.11.2008, the procedure report is recorded and approved under No. 165. Following this report, several objections are filed with CNSC. The latest CNSC decision No. 6270/414 C1 0/6221/29.12.2008 decides the cancellation of the procedure report, subsequent documents and resumption of the assignment procedure.*

*As of 13.01.2009, the procedure report is recorded under No. 14 and approved deciding on the cancellation of the assigning procedure as the budget funds approved for the purchase of said products were related to year 2008 whereas for 2009 no financing sources are provisioned.*

*The decision to cancel was made based on the provisions of art. 209 of the Government's Emergency Ordinance No. 34/2006, as subsequently amended and supplemented, and was communicated to the participants in the procedure.*

2. *The contract assignment procedure with the subject matter of:*

- *electronic archiving services for ANI documents, CPV code 72252000-6;*
- *electronic archive management and use solution, CPV code 72260000-5;*
- *related infrastructure services, CPV code 51610000-1. The procedure selected for contract assignment was open bid.*

*The assignment procedure started by the publication in SEAP of the participation notice No. 63883/17.09.2008.*

*As of 19.01.2009 the procedure report is recoded and approved via which the two submitted bids are declared unacceptable. It is decided to cancel the procedure as per the provisions of art. 209, para. 1), letter c) of the Government's Emergency Ordinance No. 34/2006, as subsequently amended and supplemented.*

*As of 04.02.2009, UCVAP (Unit for the Coordination and Verification of Public Procurement) activity report is drafted that, at entry 2.6 states that, in fact, the cancellation decision was correct, however, cancellation was erroneously ordered as per art. 209, para. 1), letter c) of the Government's Emergency Ordinance No. 34/2006, as subsequently amended and supplemented; in reality, the correct applicability as concerns the cancellation is the one in art. 209, para. 1, letter b) of the Government's Emergency Ordinance No. 34/2006, as subsequently amended and supplemented.*

*The Contracting Authority sent the participants in the procedure the communication on procedure cancellation.*

*Distinctly from the two conducted procedures, the Contracting Authority entered into some other three contracts as follows:*

1. *IT system renting service contract No. 25/01.07.2008 entered into with SC ABACUS SYSTEMS & SOLUTIONS SRL. The contractual value was Euro 9,897.24, exclusive of VAT.*
2. *Service contract No. 13/11.06.2008 on the provision of Internet service and product package, entered into with SC HOSTWAY ROMANIA SRL. The contractual value was Lei 24,990 of which the VAT was Lei 3990.*
3. *Service contract No. 08/17.12.2007 on services of corporate identity creation entered into SC KONDIMENT nKUBATOR SRL. The contractual value was Euro 9,250, exclusive of VAT.*

*The audit team notices that the three contracts had been entered into via direct purchase, as they were worth less than Euro 10,000 each, as per the provisions of art. 19 of the Government's Emergency Ordinance No. 34/2006, as subsequently amended and supplemented.*

*Though the value of the contracts was under Euro 10,000, the audit team noticed that the Contracting Authority did not limited itself to recording a purchase invoice, but also drafted, for each single contract, necessity-motivated reports, as well as other documents that were the basis of contract execution.*

*The three contracts were executed owing to the special nature of the procurement, as the provider's activity covered a longer timeframe, and this way the Contracting Authority wanted to make sure of the providers' activity clear of incidents.*

#### *Conclusions*

*According to the above, the audit team notices that the Contracting Authority complied with the provisions in the Government's Emergency Ordinance No. 34/2006, as subsequently amended and supplemented".*



*Therefore the Evaluation Commission of the National Integrity Council agrees to the conclusions drawn by the specialized body competent in the field of public procurement, i.e. it finds no irregularities.*

## **ON THE NOTIFIED IRREGULARITIES CONCERNING THE STAFF STRUCTURE**

Pursuant to art. 16 para. (4) of Law No. 144/2007 republished:

*“(4) The Agency’s organizational structure, the duties, tasks and responsibilities of the Agency’s own staff shall be defined in the Rules of Organisation and Functioning as approved by an order of the Agency’s President.”*

Pursuant to these legal provisions, in February 2008, the institution’s organizational structure was approved by an Order of the ANI President No. 65/19.02.2008 in compliance with the above-mentioned legal provisions.

**In this context, mention must be made of the fact that Law No. 144/2007 did not set any condition that the Agency’s organisational structure should take into account the current budget provisions (Law No. 388/2007 and the Government’s Emergency Ordinance No. 112/2008), but that it should be devised without going beyond the approved number of jobs ad the budgeted sums.**

Moreover, the organizational structure approved by Order No. 65/19.02.2009, including the public management positions of General Manager, Deputy General Manager and Head of Office, was favourably endorsed under No. 1424883/29.02.2008 in compliance with the provisions of art. 100 and art. 112 para. (2) of Law No. 188/1999 on the Status of Public Servants, republished, and the National Agency of Civil Servants.

Hence, the remunerations for the management positions were legally paid as the persons who held these positions conducted related activities, undertaking the responsibilities deriving from these positions, in compliance with the provisions of art. 6 para. (4) and (5) of the Government’s Ordinance No. 6/2007, as subsequently amended and supplemented.

*“Public servants occupying under the law a public management position shall benefit from the baseline salary as laid down for the relevant executive public position plus the management remuneration.”*

*“For candidates, accepted following contests for public management positions, who previously did not have the public servant capacity, the baseline salary is defined by the administrative document of the credit release authority based on the financing level laid down in the position list.”*

**Mention must be made of the following as concerns the employment of these positions:**

In 2008, the positions of General Manager, Deputy General Manager and Head of Office were occupied within the limit of the number of management positions defined under Law No. 188/1999 (15% of the total public positions) and set forth in the position list, being communicated to the Ministry of Economy and Finance (M.E.F.), currently the Ministry of Public Finance, for the purpose of making the amendments in Annex 3/30/06 on the occasion of the first budget rectification.

At the same time, we mention that the Deputy General Manager position no longer exists in the ANI position list as of 11.08.2008, when, by Order No. 353/11.08.2008 the Agency’s new

organizational structure was approved, endorsed under No. 1447921/05.08.2009 by the National Agency of Civil Servants. As of this date, the position list also includes the position of Manager and not Deputy General Manager, as argued in the Court of Accounts report.

To this end, as early as July 2008, the Agency communicated the Ministry of Public Finance the situation of the maximum number of positions and the baseline salary-related fund on the structure of the position list approved by the Agency's President for the purpose of updating Annex 3/30/06 as of the first rectification.

**As concerns the positions of 1<sup>st</sup> remuneration level Senior Integrity Inspector**, earning a baseline salary of Lei 3,500, mention must be made that the Agency defined the same, in line with Law No. 144/2007, thus communicating with the Ministry of Economy and Finance for the purpose of inserting these sums in the IT system of this Ministry to be taken over in Annex 3/30/06. The reply was that such sum cannot be inserted in the existing software of the Ministry as it does not allow it, i.e. the same management position cannot be remunerated with different salaries, **though the current legislation applicable to our institution allows it** on the determination of the salary rights for the two management positions, as this is a general public management position and a special management public position.

As to these mentions, we believe that our institution cannot be held responsible for the incompatibilities of the IT system of the Ministry of Economy and Finance as long as said salary was determined in compliance with the provisions of Law No. 144/2007.

Furthermore, the Ministry of Economy and Finance supported us in determining and granting these sums, upon the indication that they are actually an average baseline salary and not a fixed salary that cannot be exceeded.

**On the total number of Integrity Inspector positions**, mention must be made that the determination and employment of these were done in compliance with the maximum number of positions laid down in Law No. 144/2007 and aimed at ensuring the human resources required for the optimum operation of the institution for the purpose of fulfilling **Conditionality 2** of the Government's Decision No. 1346/2007 on the approval of the Action Plan for fulfilling the *conditionalities* within the mechanism of cooperation and verification of the progress made by Romania in the field of the judicial system reform and fight against corruption, that constantly materialized in the Agency's results reported in the Country Report on Justice.

In that respect, art. 107 of Law No. 188/1999, republished, as subsequently amended and supplemented, contains similar provisions supporting and fully agreeing with those of Law No. 144/2007 as follows:

*“Public positions shall be defined for each public authority and institution by its leader or by a decision of the County Council or, as the case may be, the Local Council, based on the activities laid down in art. 2 para. (1) and (3) and upon the endorsement of the National Agency for Public Servants.”*

According to the Romanian Constitution, Law No. 144/2007 and Law No. 188/1999 are organic laws of which legal power requires their enforcement as a matter of priority before that of ordinary laws, as the budget law for instance; this is why we estimate that the structure of positions approved by the President of the National Integrity Agency by Order No. 10/19.12.2007 was devised upon compliance with the current legal provisions that are regulatory in that respect and upon compliance with the staff-related expenses assigned by the Law of the State Budget.

**In fact, as evidence of the lack of justification of the solution to deny the Agency's defense, mention must be made that, though we presented the situation with numbers obviously showing the compliance with all legal requirements, this was not taken into account. This is the reason why, given their importance, here they are in a clear and precise form:**

**As concerns budgetary commitments**, by Annex 3/30/06 to the Agency's 2008 expense budget, approved by Law No. 388/2007, **18 public management positions were approved** and a baseline salary-related fund for such positions amounting to Lei 596 thousand.

For these 18 management public positions, the management remunerations amounted to Lei 45 thousand, though the application of the legal percentage to the Lei 596 thousand amount results in a 2008 management remuneration fund of Lei 195.45 thousand, as follows:

**Lei 99 thousand x 50% = Lei 49.5 thousand**

**Lei 66 thousand x 40% = Lei 26.4 thousand**

**Lei 232 thousand x 30% = Lei 69.6 thousand**

**Lei 199 thousand x 25% = Lei 49.75 thousand**

**TOTAL management remuneration fund = Lei 195.45 thousand/year 2008 = Lei 16.28 thousand/month**

Thus, the ***deficit of funds*** required for the payment of the management remunerations for the 18 public management positions, approved by Annex 3/30/06, ***amounted to Lei 150 thousand, which justified the transfer of loans, in compliance with Law No. 500/2002 on public finance, for the supplementation of the 2008 management remunerations by Lei 180 thousand.***

In July 2008 our institution communicated to the Ministry of Economy and Finance the status on the maximum number of positions and the baseline salary-related fund in the structure of the position list approved by the Agency's President for the purpose of updating Annex 3/30/06 as of the first rectification.

Though the update of Annex 3/03/06 was done on the second budgetary rectification via the Government's Emergency Ordinance No. 12/24.09.2008, **the payment of the management remunerations related to the public management positions in the position list approved by the Agency President was done upon compliance with the budget provisions approved for the relevant destination under the law *for said destination*.**

Thus, **the payments made in the first 9 months** of year 2008 for management remunerations amounted to **Lei 133.67 thousand** as compared to Lei 146.52 thousand (16.28 thousand/month x 9 months = **Lei 140.52 thousand**) which stands for the amount that could have been spent for payment of the management remunerations related to the 18 public management positions approved by Annex 3/30/06 to the initial budget.

**Overall, in 2008**, the payments of the management remunerations amounted to Lei 204.7 thousand, which is compliant with the final budget provisions of Lei 207 thousand and Lei 259.05 thousand that could have been spent for payment of the management remunerations related to the 24 public management positions approved by Annex 3/30/06 to the initial budget.

(Lei 116 thousand x 55% = Lei 63.8 thousand; Lei 116 thousand x 50% = Lei 58 thousand; Lei 33 thousand x 40% = Lei 13.2 thousand; Lei 331 thousand x 30% = Lei 99.3 thousand; Lei 99 thousand x 25% = Lei 24.75 thousand. Total = Lei 259.05 thousand)

Annex 3/03/06 does not stand for the payment legal basis for granting the salary rights that the Agency staff benefits from under the law, but is an annex intended to substantiate the baseline salary fund related to the positions approved by the budget.

**Annex 3/03/06 does not stand for the payment legal basis for granting the salary rights that the Agency staff benefits from under the law, but is an annex intended to substantiate the baseline salary fund related to the positions approved by the budget.**

Furthermore, pursuant to principles consecrated and regulated by the Labour Code - Law No. 53/2003, the simple fact that the work was done based on job-related duties equals the performance of that activity and the justification of subsequent withholdings from the defined rights is at least suspect. In that respect, both jurisprudence and doctrine are unitary. Also, according to the provisions of the same law, the employee is entitled to a salary appropriate to the provided/done work (art. 39 para. (1) of the Law).

***In conclusion, we ask the court to find that the conditions the Agency's budget was managed were grounded and justified given that, during the first year of activity of this institution, the expense limit was not exceeded, to the contrary important unspent sums were refunded to the state budget and the number of jobs regulated by the organic law was not exceeded either.***

## PENAL ASPECTS

As of March 18<sup>th</sup>, 2009, a **denunciation by Mr. Burciu Fanel Nicolae**, former President Cabinet Head and former Integrity Inspector, was recorded with the Prosecutor's Office attached to the High Court of Cassation and Justice - the National Anti-Corruption Division. The denunciation was the subject matter of file No. 56/P/2009.

In the submitted denunciation, Mr. Burciu Fanel Nicolae argues that, in his capacity within the Agency, had access to certain information on penal deeds committed by the Agency's Secretary General, Mr. Georgescu Horia, i.e.:

1. on April 17, 2008, drafting notice No. 383/17.04.2008 recorded with A.N.F.P. (National Authority of Public Servants) under No. 1434665/17.04.2008 requesting that he may temporarily exert the position of ANI Secretary General, upon the inaccurate indication that Georgescu Horia had a five-year experience in legal studies;
2. work recording and remuneration in 2008 of the ANI employees Munteanu Monica Iuliana and Fluture Carmen Florentina though they were absent from work;
3. rental of a duplex apartment of a 201 square meter area on Aviatorilor boulevard against the sum of Euro 8,000/month, which apartment was not finished on contract execution and was not used as of the date of rental (November 2008) to date.

By *Ordinance* as of June 29, 2009, the Prosecutor's Office attached to I.C.C.J. (High Court of Cassation and Justice) - D.N.A. (the National Anti-Corruption Department) – Division of Prevention of Corruption-Related Crimes, ordered:

### **I. Drop criminal charges against:**

- MACOVEI ALEXANDRU CATALIN, (...), for the crime set forth and sanctioned under art. 132 of Law No. 78/2000 as related to art. 248 of the Penal Code; (...)

### **II. Disjunction of the case concerning the deeds described in sections 1, 2 and 3 of this Ordinance and the declension to the Prosecutor's Office attached to the Court of Law of the 1<sup>st</sup> district of Bucharest for making a competent decision.**

Subsequently, via Ordinance as of July 24<sup>th</sup>, 2009, the Prosecutor competent for settling the *complaint submitted by Burciu Fanel against the aforementioned Ordinance as of June 29, 2009 ordered its denial as unacceptable as the claimant did not hold an active capacity to sue; the procedural standards being those of strict interpretation.*

Following **measure II** of the Ordinance of *June 29, 2009* and becoming aware of the decision to deny the complaint submitted by claimant Burciu Fanel Nicolae against this Ordinance, the Prosecutor's Office attached to High Court of Cassation and Justice) - D.N.A. (the National Anti-Corruption Department) – Division of Prevention of Corruption-Related Crimes sent the case to the Prosecutor's Office attached to the Court of Law of the 1<sup>st</sup> district of Bucharest for investigations.

The Prosecutor's Office attached to the Court of Law of the 1<sup>st</sup> district of Bucharest recorded the case in file No. 10962/P/2009.

At the same time, the Prosecutor's Office attached to the Court of Law of the 1<sup>st</sup> district of Bucharest noted that, on 10.06.2009, the Prosecutor's Office attached to the Court of Cassation and Justice submitted the Prosecutor's Office attached to the Court of Law of the 1<sup>st</sup> district of Bucharest **the denunciations by Fluture Carmen Florentina** requesting investigations on Macovei Alexandru Catalin, ANI President, for the crimes of misrepresentation and violation of mail secrecy as laid down in art. 292 and art. 195 of the Penal Code.

Noting that the denunciation on Macovei Alexandru Catalin's crime of misrepresentation is also found in file 10692/P/2009, for the purpose of better justice making, under art. 34 of letter d) of the Penal Procedure Code, the case prosecutor ordered the association of this file to file 10692/P/2009 denied by and transferred from the Prosecutor's Office attached to the High Court of Cassation and Justice by *Ordinance* as of June 29, 2009.

**As concerns Mr. Burciu Fanel Nicolae's notification and Mrs. Fluture Carmen Florentina's denunciations, via Resolution of October 9, 2009,** having fully analyzed the existing evidence in the case, as administered both before the investigation bodies of the Prosecutor's Office attached to the High Court of Cassation and Justice – the National Anti-Corruption Division, and the Prosecutor's Office attached to the Court of Law of the 1<sup>st</sup> district of Bucharest, the latter **noted the following:**

#### **1. "As concerns the inaccurate data in the ANI notice No. 383/17.04.2008 to A.N.F.P. (National Authority of Civil Servants):**

*De facto, in 16.04.2008-24.11.2008, Georgescu Horia had the position of 1<sup>st</sup> class expert and was delegated Secretary General duties. Over the same time interval, Georgescu Horia was not paid according to the Secretary General level, but chose to collect the salary rights prior to said delegation.*

*Thus, the Prosecutor's Office found that notice No. 383/17.04.2008, containing inaccurate data, had no legal consequences.*

*At the same time, given the motivation provided by Macovei Alexandru Catalin on the circumstances where he erroneously filled in said notice, alongside the fact that, as soon as he was informed by the HR Department on the actual situation, he no longer issued the order for the*

appointment of Georgescu Horia, my estimation is that the committed deed lacks a subjective side, i.e. intention, as a constituent of the crime of forgery of official documents as laid down in art. 289 of the Penal Code, so, given that, as concerns the provisions of art. 10 letter d) of the Penal Procedure Code, the penal action is hindered, and the subsequent court's order would be drop criminal charges.

2. As concerns the A.N.I. employees Fluture Carmen Florentina and Munteanu Monica Iuliana whose work was recorded and paid for in 2008, though they were absent from work

The statements of the involved parties result that, in late October – early November, a work conflict started between Mrs. Fluture Carmen and Mr. Macovei Alexandru as there were suspicions that Mrs. Fluture Carmen was in breach of the confidentiality principles as concerns the documents and information she had access to by virtue of her position.

Following said conflict, Mrs. Carmen Fluture notified she could no longer be present at work as she was on medical leave and was to submit justificatory documents to that end.

In early 2009, the ANI President notified the institution's discipline commission, and a decision was made for Mrs. Fluture disciplinary termination because on her unjustified absence from work.

Carmen Fluture Florentina objected to the termination decision before the courts of law and won.

ANI submitted an appeal against the Bucharest Tribunal decision, as well as a request to suspend the court's decision enforcement, based on the criminal investigations underway. The Prosecutor's Office found that Mr. Macovei's and Mrs. Fluture's justifications differed, however the evidence of the case results in the conclusion that ANI filed criminal complaints against several of the institution's employees, among whom Mrs. Fluture Carmen Florentina, requesting that investigations are conducted for the crime laid down in art. 243 of the Penal Code (penal file No. 606/P/2009 of the Prosecutor's Office attached to the High Court of Cassation and Justice).

On the other hand, the Prosecutor's Office also found that the justification of the civil objection submitted against the Employment Termination Order pending with the Bucharest Tribunal states differently than in this present file, i.e. it is true that Mrs. Fluture was absent from work in November and December 2008, however she worked at home, sending materials to the Agency's President via e-mail.

Thus, it is estimated that she deserved the salary she collected in November and December as she worked at home for ANI.

Given the above, the case Prosecutor estimated that the crime of forgery of official documents lacks its subjective side, as an essential constituent of the crime.

At the same time, he/she found that there are no constituents of abuse of office against public interests involved as there is neither a subjective side to this crime, nor an objective side/immediate legal consequence, i.e. major prejudice or damage caused to the optimum operation of the state institution.

As concerns Mrs. Munteanu Monica Iulia, the Prosecutor's Office found that she had been absent from work for several months, but had been on unpaid leave, hence she had not been remunerated, and later resigned. Therefore, it was estimated that there are no constituents of forgery of official documents and abuse of office, and objectively there were no material element to the case and an immediate consequence of these crimes.

3. As concerns the fact that ANI paid Euro 8,000/month as rent for a three-month interval

The evidence of the case resulted in the conclusion that in the fall of 2008, ANI advertised several contests for additional staff employment.

On the other hand, the institution estimated that an additional office space is necessary to be rented for the Agency that should serve approximately 30-35 persons.

**The National Anti-Corruption Division found that the rental procedure had been carried out in compliance with the legal provisions.**

Furthermore, it is confirmed that Mr. Macovei Alexandru Catalin's statement that, prior to the disputed real estate rental procedure, ANI had already started to organize bids for procurement of the necessary office equipment and archiving system so as, after the office arrangement, all goods purchased following the bids should have been transferred directly to the new location.

As, on the one hand, the furniture, computer and archiving software bid procedure was interrupted because of objections, and, on the other hand, because of the effectiveness of the Government's Ordinance recommending budgetary expense cuts, ANI decides on terminating the rental contract.

Therefore, the Prosecutor's Office found that there was no intention, as a subjective side of the crime of abuse of office against public interests, and no objective side/immediate consequence, as the contract termination was resorted to for the precise purpose of not causing damages to the institution by spending additional sums of money for the rent of an additional location.

3. As concerns the crime of abuse of office by refusing certain rights as laid down in art. 247 of the Penal Code committed by the ANI Secretary General, Georgescu Horia, against Burciu Fanel Nicolae, the Prosecutor's Office found the following:

As of 03.04.2009, Mr. Burciu Fanel Nicolae, an Integrity Inspector of ANI, being on sick leave, went to the institution's headquarters and, while visiting the Financial Office, was urged by a security guard to leave the premises.

While heard in this case, Mr. Georgescu Horia stated that, on the date of the deed, there had been a conflict for several months between the ANI management and Mr. Burciu Fanel Nicolae, justified by the fact that, on the one hand, it had been discovered that Mr. Burciu Fanel Nicolae had made untrue statement to cover his failure to fulfill certain employment requirements, and, on the other hand, he was being investigated as there were clues that he had taken copies of documents he had no legal access to from the institution.

Thus, Mr. Burciu Fanel Nicolae was appointed to the Integrity Inspector position following an examination in May 2008. Among the examination participation requirements, a resume and medical certificates should have been submitted as concerned the candidate's health status.

Later that year, it was found that Mr. Burciu Fanel Nicolae had hidden the institution that he had benefited from early retirement based on sickness grounds, which situation is at present the subject matter of penal complaints submitted by ANI

Attempting to avoid the consequences of this situation, Mr. Burciu Fanel Nicolae started applying for sick leaves.

On the other hand, the same period that year, there were suspicions that Burciu Fanel had gone beyond his job-related duties and made several servants of ANI to provide him with accounting and other internal documents that he had no access to by virtue of his position.

Given the circumstances, in March 2009, ANI issued a termination order for Mr. Burciu Fanel Nicolae that was supposed to become effective on his return to work from his sick leaves.

This was the status quo as of April 3, 2009, when Mr. Burciu, still on sick leave, came to the institution's headquarters and visited the Financial Office. Just because an investigation was underway as concerns Mr. Burciu's having secretly taken copies of accounting documents, the management had decided to allow Mr. Burciu Fanel's access only to the areas related to his job.

The evidence in the case showed indeed that, prior to April 3, 2009, ANI was conducting termination procedures related to Mr. Burciu Fanel Nicolae and had already submitted a penal complaint against him.

The Prosecutor's Office also found that, as of March 3, 2009, the Romanian Government – the National Registry of State Secret Information cancelled the decision of positive endorsement for access to national classified information or Mr. Burciu Fanel Nicolae and requested ANI to order the cancellation and destruction of the security certificate for access to classified information issued to Mr. Burciu Fanel Nicolae by virtue of art. 177 of the Government's Decision No. 585/2002 on national standards for the protection of classified information in Romania.

*On the other hand, as to the special juridical object of the investigated crime, it was found that it concerned the social relations inherent to job and one's optimum job performance is incompatible with limitations of legitimate rights and interests.*

*Therefore, for lack of the premises of the crime set forth in art. 247 of the Penal Code, Mr. Horia Georgescu's deed does not fulfill the constituents of this crime.*

4. As concerns the crime of forgery of official documents as laid down in art. 292 of the Penal Code (that is, inter alia, the subject matter of Mrs. Fluture Carmen Florentina's denunciation)

*The conducted verifications resulted in the conclusions that Mr. Macovei Alexandru Catalin was a shareholder and director of two trading companies, S.C. Macovei & Asociatii Consultanta S.R.L. and S.C. Teacher Consult S.R.L.*

*As resulting from the Articles of Association of the two companies, Macovei Alexandru Catalin was a shareholder and director of both companies as of February 2007 to early October 2007 when he assigned his shares owned in both companies and submitted his resignation from his director position.*

*The share assignment contract were certified by a lawyer, whereas the law does not require that share assignment contracts shall be authenticated, the resignation from the director position were also date as of October 1 and 2, 2007 though the law does not require an authentic form, but merely a written form.*

*Thus, the penal investigation body estimated the fact that the related amendments were not submitted to the Commerce Registry is not legally relevant, first because such registration of amendments to the Articles of Association with the Commerce Registry lies with the new shareholders.*

*Second, this is a matter that is not sanctioned by the "law on the Commerce Registry" at least, either de facto, or de jure.*

*On the other hand, following verifications, the Prosecutor's Office found that the two companies had had no economic activity prior or subsequent to the share assignment by Macovei Alexandru Catalin.*

*Thus, in terms of the crime of misrepresentation, both the requirement of the material element on untrue statements, and that of the objective side/immediate legal consequence are not complied with, so, by virtue of art. 10, letter d) of the Penal Procedure Code, the penal action is denied and an order is given for dropping the penal charges.*

5. As concerns the crime of violation of the mail secrecy as laid down in art. 195 of the Penal Code, the Prosecutor's Office found as follows:

*Mrs. Fluture Carmen Florentina complaint that Mr. Macovei Alexandru Catalin violate mail secrecy by opening an envelope that was addressed to her.*

*When heard in that respect, Mr. Macovei stated that, in late March 2009, when the work relations had already ceased between Fluture Carmen Florentina and the National Integrity Agency, an envelope was recorded with the President's Cabinet, reading "to the National Integrity Agency – Att.: Mrs. Carmen Fluture".*

*Given that the envelope mentioned the institution's name and also that Mrs. Fluture no longer worked there, the President shows that he found it normal to open the envelope, in particular given that he had the letter heading of the Romanian Government and was addressed, first, to the Agency.*

*Later he found out that the envelope contained a report drafted by the National Agency of Public Servants following a notification submitted by Mrs. Fluture to this institution about the manner Mr. Georgescu Horia had been appointed to the position of Secretary General of ANI.*

*This is the reason why Mr. Macovei Alexandru Catalin also sent Mrs. Fluture Carmen Florentina the report by mail.*



The case prosecutor also stated that the text incriminating violation of mail secrecy is the essential condition for the existence of the objective side of the deed “*without being entitled to it*”. On the other hand, given that the envelope is also addressed to ANI, the conclusion was that the President of this institution legitimately thought himself entitled to opening the mail and even more so given that Mrs. Fluture Carmen Florentina no longer worked with ANI even if she had previously had the very position of head of President’s Cabinet.

Following the findings, the Prosecutor’s Office attached to the Court of Law of the 1<sup>st</sup> district, Bucharest, ordered the following via the *Resolution* as of October 9<sup>th</sup>, 2009:

1. *Drop criminal charges against Macovei Alexandru Catalin for the crime laid down in art. 248 Penal Code (section 1) – abuse of office.*
2. *Drop criminal charges against Macovei Alexandru Catalin for the crime laid down in art. 248 Penal Code by enforcing art. 41 para. 2 Penal Code and art. 289 Penal Code by enforcing art. 41 para. 2 of the Pena Code (section 2) – abuse of office and forgery of official documents.*
3. *Drop criminal charges against Macovei Alexandru Catalin for the crime laid down in art. 248 Penal Code (section 3) – abuse of office.*
4. *Drop criminal charges against Georgescu Horia for the crime laid down in art. 247 Penal Code (section 4) – abuse of office by limitation of rights.*
5. *Drop criminal charges against Macovei Alexandru Catalin for the crime laid down in art. 292 Penal Code (section 5) – misrepresentation.*
6. *Drop criminal charges against Macovei Alexandru Catalin for the crime laid down in art. 195 Penal Code (section 63) – breach of mail secrecy.*

#### **Conclusion:**

The Evaluation Commission finds that the same aspects notified to the National Integrity Council were the subject matter of the denunciations submitted by Mr. Burciu Fanel Nicolae and Mrs. Fluture Carmen Florentina to the Prosecutor’s Office attached to the High Court of Cassation and Justice and transferred to the Prosecutor’s Office attached to the Court of Law of the 1<sup>st</sup> district of Bucharest.

Thus, both the administrative investigation conducted by the commission of the National Integrity Council, and the penal investigation conducted by the competent prosecutor’s offices concerned all accusations against Mr. Alexandru Catalin Macovei.

Following administrative verifications, the Commission of the National Integrity Council finds that the accusations are ungrounded, and no evidence can prove a breach of legal standards by Mr. Macovei. In the same context, the commission also noted the Prosecutor’s Resolution ordered in file No. 10962/P/09 via which the competent penal authorities ordered dropping criminal charges against Mr. Alexandru Catalin Macovei for all charges.

## **THE EVALUATION COMMISSION OF THE NATIONAL INTEGRITY COUNCIL**

- Pursuant to the provisions of Law No. 144/2007 on the establishment, organization and operation of the National Integrity Agency, republished;
- The Decision of the National Integrity Council No. 22/February 12, 2009 on the appointment of the Commission as laid down in art. 3 related to the provisions of art. 26 para. (2) of Law No. 144/2007, republished;
- The documents fled and provided to the **EVALUATION COMMISSION OF THE NATIONAL INTEGRITY COUNCIL**, as well as the hearing of the involved parties and the Agency's staff;
- Based on the conclusions following the audit conducted by the competent institutions on ANI (the Romanian Gendarmerie, the National Agency of Public Servants, the National Authority for Public Procurement Regulation and Monitoring);
- Considering the Decision (civil decision) of the Bucharest Court of Appeal made in file 9145/2/2009 via which Report No.VIII/3/9.09.2009 of the Romanian Court of Accounts was cancelled, accepting the objection of the National Integrity Agency against Decision No. 4/21.07.2009 of the same body;

## **THE EVALUATION COMMISSION OF THE NATIONAL INTEGRITY COUNCIL**

**Based on the filed evidence *concludes* that none of the charges in the *notifications* are confirmed, all notified aspects being ungrounded and hereby**

### **ORDERS:**

- a. **submittal of the conclusions of the EVALUATION COMMISSION TO THE PLENUM OF THE NATIONAL INTEGRITY COUNCIL;**
- b. **communication of the conclusions of the EVALUATION COMMISSION OF THE NATIONAL INTEGRITY COUNCIL to all the institutions and persons who requested the verification of these aspects;**
- c. **publication of the conclusions EVALUATION COMMISSION OF THE NATIONAL INTEGRITY COUNCIL on the Internet page of the National Integrity Agency after the Report approval by the plenum of the National Integrity Council;**
- d. **typing and sending a press release to the mass-media as concerns the conclusions of the Evaluation Commission Report after approval;**
- e. **recording of this Report with the Secretariate of the National Integrity Council.**

**ROMANIA  
THE NATIONAL INTEGRITY AGENCY (A.N.I.)  
THE ORIGINAL SIGNED DOCUMENT IS FILED WITH THE SECRETARIATE OF THE  
NATIONAL INTEGRITY COUNCIL  
RECORDED UNDER NO. 8 AS OF 18.02.2010**