

**EXTRACT OF SUPPORTING DOCUMENT**  
*Accompanying the*  
**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**  
**On Progress in Romania under the Co-operation and Verification Mechanism**

***ROMANIA: Technical Update***

**BENCHMARK 2: ESTABLISH, AS FORESEEN, 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.**

***Legal Framework and Track Record***

Romania responded swiftly to the Commission's recommendation by adopting a new law on the National Integrity Agency (ANI),<sup>1</sup> which re-established the possibility to seek the confiscation of unjustified wealth. The law also ought to address various procedural shortcomings and enhance transparency.<sup>2</sup>

**ANI has been operational under its new legal framework for over six months and begun to re-establish the track record of investigations.<sup>3</sup> Efforts will be needed to consolidate and expand this new, emerging track record. ANI is seeking to focus on more serious and complex cases of conflicts of interest and unjustified assets<sup>4</sup>. The planned investment to upgrade software is aimed to further strengthen ANI's capacity.**

Whilst ANI is beginning to rebuild its track record of investigations, the actual impact of their work is in many cases still missing, as the follow up to ANI's referrals or findings by competent institutions and courts is often slow or inefficient.<sup>5</sup> As a result, in the three years ANI has been operational:

- No final determinations of unjustified assets have yet been reached by the Courts and therefore no assets finally confiscated.
- Only one case of administrative conflicts of interest was confirmed by a final court decision and the legal process to cancel contracts signed by the official concerned is still ongoing.
- Whilst a number of final decisions were reached in incompatibility cases (confirmed either based on ANI's decision or by court decision following appeal), with some leading to voluntary resignations by officials, where the official did not resign in few cases were sanctions imposed by competent authorities.<sup>6</sup>

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<sup>1</sup> The new law, adopted by the Parliament on 24 August 2010 and promulgated by the President on 31 August 2010, came into force on 6 September 2010.

<sup>2</sup> The new law: extends prescription periods; re-introduces daily fines for non-submission of requested information; re-establishes a single asset declaration form and a single interest declaration form, including for publication; and increases the period of time during which declarations forms will remain published online. Furthermore the new law introduces a requirement to declare contracts financed from public funds.

<sup>3</sup> As of 6 June ANI had completed 323 cases under the new law, issuing findings or referrals to other institutions of 68 infringements. This included: 38 findings of incompatibility (including against 8 Members of Parliament); 9 conflicts of interest findings or referrals (including findings of conflicts of interest against two Members of Parliament and two Presidents of County Councils); and 4 referrals for unjustified assets (including against one former Member of Parliament and one former county police chief). They have also referred a number of cases concerning high ranking officials to prosecutors and to tax authorities.

<sup>4</sup> ANI has identified more conflict of interests in the six months since November 2010, than in the entire two year period they were operational under their previous legal framework. Since November 2010 they have issued findings of administrative conflict of interest in seven cases, compared to just two cases between 2008 and April 2010. They have also already referred four unjustified wealth cases since November 2010, compared to six in the two year period between 2008 and April 2010.

<sup>5</sup> ANI issues findings of incompatibilities and administrative conflicts of interest. However, these decisions are subject to appeal in the courts and furthermore the application of sanctions rests with the courts or disciplinary bodies. Under the new legal framework unjustified wealth cases are referred by ANI to Wealth Investigation Commissions attached to Courts of Appeal, who in turn are competent to refer the cases to the Courts for determination and applying the sanction of confiscation.

<sup>6</sup> As of 14 April 2011, since 2008 and the beginning of ANI's activity 82 definitive findings of incompatibility had been reached. Whilst a significant number (35 in total) of these persons resigned of their own accord indicating a certain persuasive pressure of ANI's activity, disciplinary commissions applied only 14 sanctions of which 5 were merely warnings. In only 5 cases was the incompatible person dismissed from public office.

**Court proceedings in many cases (even relatively simple ones) cases tended to be lengthy. This is illustrated by the track record in determining incompatibilities cases. For more complex case the judicial proceedings are even longer.<sup>7</sup> Inconsistent practices have also emerged, with for instance some trials pending at the time of the April 2010 Constitutional Court decision continuing, in accordance with the transitional provisions in the new law, whilst in other cases the courts have cancelled the trials.**

Regarding the disciplinary commissions, problems of delay and leniency persist. Few sanctions have been applied and in some cases disciplinary commissions refused to consider definitive findings of incompatibility.<sup>8</sup> ANI applies small administrative fines to institutions whose disciplinary commissions do not adjudicate such referrals but by law it cannot challenge disciplinary decisions issued.

Co-operation between ANI and the prosecution should be further strengthened. Since its inception, ANI has made a significant number of referrals to prosecutors, predominantly for false statements concerning wealth and interest of public officials.<sup>9</sup> However, these signals have so far only led to one single indictment.<sup>10</sup>

**The insufficient follow-up to ANI's findings and referrals by administrative and judicial authorities undermine the effectiveness of the entire process to strengthen the integrity of public administration and limit the impacts of ANI's work. Prompt and thorough follow-up by administrative and judicial authorities is necessary to ensure the integrity system achieves results in this regard.**

**ANI's work also appears jeopardised by two elements of the new legal framework:**

- **Introduction of prescription periods applying to investigations, which did not exist under the previous law and were introduced by the Parliament last summer, though not required by the Constitutional Court decision. The prescription period is absolute and requires ANI to complete their investigations within three years of the end of a mandate of a public official. As a result of the new prescription periods, a host of important cases eligible under the old law had to be closed with more cases soon to be closed on these grounds.<sup>11</sup> In effect, the new law has created a de facto amnesty in certain cases for unjustified wealth and other integrity violations.**

- **Wealth Investigation Commissions were created at the level of Courts of Appeal to address concerns of the Constitutional Court regarding confiscation of unjustified assets. The new procedure obliges ANI to refer cases of suspected unjustified wealth to these Commissions, who are in turn competent to decide on their transmission to courts. Although the track record is so far limited, concerns have emerged as to how the new legal arrangements are being applied in practice. There are concerns that the Commissions may delay cases reaching the courts and act as an unwarranted filter, in particular as the procedure is not public and their decisions are reportedly not appealable, only through an appeal against the judgement of the court. There are concerns that the Wealth Investigation Commissions duplicate the role of courts of appeal and reportedly adjudicate the merits of the case to the same standard of proof as the trial court and therefore to a higher standard of proof than should be applicable for a pre-trial phase.. No steps have been taken to ensure consistent practices across the 16 different commissions.**

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<sup>7</sup> This is illustrated by unjustified wealth cases. So far no cases have been finally determined. A number of cases were determined in first instance in 2009, but these decisions were quashed following the Constitutional Court ruling. New first instance decisions have been reached in two cases this year; two further cases have been rejected by the Courts. The potential length of such trials is illustrated by cases dating from 2004 and 2005 which ANI inherited from the previous integrity arrangements. The case dating from 2004 received a first instance decision in December 2010 and is now on appeal.

<sup>8</sup> Of definitive findings of incompatibility reached since 1 August 2010, as of 14 April 2011 disciplinary commissions had applied one sanction (a dismissal concerning a public official in a prefect's office) and in one case decided to take no action (this case concerned a local councillor and his fellow councillors repeatedly left the council chamber every time this issue was to be discussed). All other cases remained pending. There are also cases pending since 2009 and 2010 for action.

<sup>9</sup> As of 14 April 2011, since 2007 of 169 referrals made by ANI to general prosecution offices for false statements, just one indictment had resulted and 117 cases had been closed. In recent months, in a promising new development, ANI has also begun to refer specific allegations of criminal conflicts of interests and other corruption offences to prosecutors. These referrals are still pending but indicate a positive trend.

<sup>10</sup> ANI has contested many of the non-indictment decisions in court but in a number of high profile cases – reportedly contrary to previous jurisprudence – the High Court of Cassation and Justice has ruled that ANI does not have legal standing to challenge non-indictment decisions in these cases, despite having been the body which submitted the notification.

<sup>11</sup> **The list of closed cases includes cases against Members of Parliament, Government officials, mayors and county counsellors. In total ANI has so far identified 150 cases that have reached prescription. However, this number is expected to increase significantly.**

Finally, whilst the new law adopted last summer has allowed ANI to recommence its administrative verifications of assets and interests, challenges to the new law are already pending with the Constitutional Court.

### *Institutional Developments*

ANI has continued to consolidate its institutional capacity. An action plan of priorities was adopted in October 2010. Particular focus is placed on strengthening the efficiency of ANI's activities. Since summer 2010 operational training has been delivered to each integrity inspector and the computerised case management system has been further upgraded. Further software enhancements foreseen could make a significant contribution to improving ANI's operational capabilities<sup>12</sup> and compensate for the reduced staff capacity. The number of integrity inspectors in particular had been reduced, with 17 released, leaving 36 inspectors in total.

ANI has also taken steps to develop prevention activities, delivering training courses for local authorities and publishing guides on incompatibilities and conflict of interest and on the completion of asset and interest declarations.

ANI's initial budget settlement for 2011 was below 2008 figures and was considered insufficient to guarantee the operation of the Agency. Following the Commission's Interim Report of February 2011, additional financing has been made available, which appears to have in part allowed for the continued operation of ANI. Further financing remains necessary to allow for further investments.

Despite the Commission's recommendation, the legal provisions governing the National Integrity Council have not been significantly altered. The Council adopted a new Strategy, however, questions remain as to their effectiveness in fulfilling their core responsibilities to scrutinise ANI's performance, to ensure ANI's good functioning and to promote its further development. The Council has not taken a proactive stance in for instance actively ensuring a sufficient budget. It has also not been vocal in defending ANI from political attack. In all these tasks the annual independent external audit report should provide a valuable source in providing the Council and other stakeholders with a periodic independent assessment of ANI.

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<sup>12</sup> Workflow management tools have been incorporated within the system, facilitating more standardised procedures and efficiency savings. Future upgrades will introduce intelligent data analysis modules and more efficient handling of declaration forms. Financing has not yet been confirmed for these upgrades.