

COMMISSION STAFF WORKING DOCUMENT

ROMANIA: Technical Report

Accompanying the document

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL
On Progress in Romania under the Co-operation and Verification Mechanism
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2. 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 8

▫ *Adopt legislation establishing an effective and independent integrity agency with responsibilities for verifying assets, potential incompatibilities and conflicts of interest, as well as issuing mandatory decisions on the basis of which dissuasive sanctions can be taken*

▫ *Establish such a National Integrity Agency; ensure it has the necessary human and financial resources to fulfil its mandate*

1. INTRODUCTION

2. BENCHMARK 1: ENSURE A MORE TRANSPARENT AND EFFICIENT JUDICIAL PROCESS NOTABLY BY ENHANCING THE CAPACITY AND ACCOUNTABILITY OF THE SUPERIOR COUNCIL OF MAGISTRACY. REPORT AND MONITOR THE IMPACT OF THE NEW CIVIL AND PENAL PROCEDURES CODES

3. 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.

The combating of corruption is the second overarching theme monitored under the Cooperation and Verification Mechanism in Romania. One part of the requirements was to establish an integrity agency to verify assets, incompatibilities and potential conflicts of interest of holders of public office. At the point Romania joined the EU, this Agency – the National Integrity Agency (ANI) – did not exist. Today the Agency has been operational for over four years, albeit with its activity severely interrupted in 2010. The key objectives that Romania needed to address with a view to fulfilment of this benchmark were to establish an effective, robust and secure legal and institutional framework for the Agency, and to deliver a convincing track record of investigations, findings / referrals and sanctions.

Legal Framework

The founding law of ANI was adopted by the Parliament in the year after accession, and strengthened by a Government Emergency Ordinance of the same year. However, central elements of this legal framework were declared unconstitutional by the Constitutional Court in spring 2010⁶¹. For a number of months, work at ANI ceased, in the absence of a legal framework. Following extremely difficult discussions in the Parliament that summer, when draft laws were approved by the Parliament reducing ANI's powers over and beyond amendments required to comply with the Constitutional Court decision – an episode detailed extensively in the Commission's report of July 2010 – new legislation was finally adopted in August 2010⁶². This law now underpins ANI's activities.

The 2010 law was discussed at length in the CVM report of July 2011⁶³. Whilst the new law addressed the key points of concern identified in the July 2010 report, concerns remained as to its effectiveness in a number of specific areas, in particular concerning the prescription periods (which were introduced by the 2010 law) and the functioning of the Wealth Investigation Commissions⁶⁴.

The constitutionality of the new law has also been questioned. However, in June 2012 the Constitutional Court rejected a series of Constitutional exceptions, upholding the Constitutionality of central elements of the 2010 law. Nevertheless, a number of other Constitutional exceptions remain pending, whilst there have also been periodic attempts in the Parliament to change ANI's legal framework, including amendments proposed late last year which would have undermined the efficiency and impact of ANI's activities⁶⁵.

Institutional Capacity

Since ANI first became operational in 2008, significant efforts have been made to develop and consolidate the institutional capacity of the Agency. Staff have been recruited, internal procedures adopted, codes of conduct drafted, trainings undertaken and protocols signed with other public institutions⁶⁶.

In particular, important investments were made to develop computer systems within the Agency, providing for an effective case management system, assisting with the standardisation of procedures and enhancing the efficiency and effectiveness of the work of ANI's inspectors. Such investments and efficiency savings have been especially important given the reduction in the total number of personnel – in particular integrity inspectors – in recent years, reflecting austerity measures faced by the public sector as a whole⁶⁷. ANI has also established a public portal where all asset and interest declarations submitted by holders of public office are published, an important measure for transparency⁶⁸. In total the Agency and their contractors – the scanning and uploading of these declarations is currently outsourced – process over half a million declarations annually⁶⁹. Steps have also been taken to provide guidance on incompatibilities and conflicts of interest, on the completion of asset and interest declarations, and to train contact points in public institutions, with a view to raising awareness and improving the efficiency and accuracy of the declaration submission procedure⁷⁰.

Work continues to further consolidate the capacity of the Agency, with important further upgrades under way to ANI's information systems, part of a 4 million EUR project financed with European funds. This will simplify the process of filing, archiving and analysing asset and interest declarations, providing for the introduction of electronic completion and submission of declarations. It will also introduce an improved public portal and significant enhancements to the information system used by inspectors, including secure access to other state databases and automated analysis of the data compared to that contained in previous declarations, as well as with information held by other public institutions and with open sources. This should significantly increase the proactive capabilities of the Agency. To help finance the further investments foreseen, ANI has received a significant budget increase this year⁷¹.

Altogether much progress has therefore been made in establishing suitable infrastructure and capacity within the Agency to perform their tasks and important further steps are already foreseen. These measures should continue. However, the adequacy of the total number of personnel will need to be kept under review, given indications of increased workload, as well the level of remuneration of inspectors and staff retention⁷².

The National Integrity Council

To monitor the performance of the Agency and to guarantee its independence, a National Integrity Council was created, comprising of representatives of key institutions and sectors covered by the Agency's activity. The Council has important attributions including proposing the leadership of the Agency, analysing its performance and making recommendations to improve its performance. To assist them in their tasks, they receive each year an independent external audit report.

However, despite playing an important role during the initial phase of the creation of the Agency, the early years of the Council's existence were marred by controversy and conflict with the Agency⁷³. This led the Commission to conclude in 2010 that the Council had not effectively exercised its role and to propose legal amendments⁷⁴.

Since 2010 the legal provisions governing the composition and the functioning of the Council have not significantly changed, nor by July 2011 had the appointment of a new Council in late 2010 addressed significant questions as to the effectiveness of the Council in fulfilling its core responsibilities⁷⁵. Nevertheless, in the last twelve months the Council has responded constructively to the Commission's concerns and has begun to demonstrate a more proactive and effective approach. In October 2011 a new procedure was adopted governing the Council's role in guaranteeing the Agency's operational independence and importantly the Council has begun to translate these intentions into reality. Interventions have included publicly advocating for sufficient resourcing for the Agency, opposing amendments to the Agency's legislation and defending the Agency before Parliament. The Council also successfully organised the contest for appointing the new leadership of ANI. The Council has therefore shown that it can act as a key instrument to defend the independence of the Agency, defending ANI's personnel against outside pressure, and could develop still further its role in promoting integrity more generally.

Track Record, Results and Impacts

The crucial determinant of success under this benchmark is the track record of investigations, referrals, findings and dissuasive sanctions applied. This track record can demonstrate whether the system can deliver efficiency and ultimately impact.

Since 2008 ANI has undertaken a significant number of verifications, issuing a sizeable number of referrals or findings. In total as of March 2012, the Agency had commenced over 7,000 verifications against a full range of office holders, including high-level office holders.

Over 70% of these verifications have been commenced ex officio by the Agency, indicating a positive, proactive approach by the Agency. The rest of the cases result from complaints from the public or notifications from other public institutions. Although notifications have been received from a broad range of public institutions, surprisingly few notifications have been received from the judicial and law enforcement authorities, public procurement control bodies, and relatively few from local public administration. This raises questions as to whether other institutions are yet fully exploiting the potential of the Agency, with further efforts apparently required on the part of such institutional partners to ensure that appropriate notifications are made to ANI and that the protocols signed with ANI deliver operational value⁷⁶. The Commission's recommendation of July 2011, to improve the co-operation between ANI and other administrative and judicial authorities, particularly in the area of public procurement, remains valid⁷⁷.

The CVM report of July 2011 also recommended ANI further strengthen its proactive approach⁷⁸. Since summer 2011, ANI has launched risk assessments to identify high risk zones and the first targeted screening of identified high risk sectors. The first screening exercise has been undertaken, focused on local public administration. A significant number of potential cases have been identified which are now being followed up on a case-by-case basis and have already delivered a significant number of findings of integrity violations and referrals of possible criminal offences⁷⁹. A second screening exercise has been launched, focused on authorities managing EU funds. This proactive, systematic approach by the Agency responds directly to the CVM recommendation.

As a result of the total number of verifications launched, as of March this year ANI had completed nearly 4,000 verifications, including issuing over 500 findings of integrity violations or referrals to competent authorities to confirm the existence of unjustified assets, possible criminal offences or other administrative violations. The 500-plus cases included 250 findings of incompatibility, 37 findings of administrative conflict of interest, 24 cases of suspected of unjustified assets referred to the courts and 239 referrals of possible criminal offences to prosecutors. A significant number of these cases have concerned high-ranking officials or dignitaries, including politicians from all the major political parties⁸⁰. Just under half the total findings and referrals have been made under the 2010 law, an indication that ANI has been able to rebuild its track after the interruption caused when its previous legal framework was cancelled by the Constitutional Court. Importantly, the efforts ANI has made since 2010 to focus on the more serious and complex cases of unjustified wealth and conflicts of interest have continued and are delivering results, with the vast majority of conflict of interest cases and unjustified wealth cases that have been finalised, finalised since 2010⁸¹.

The referrals to prosecutors have also increasingly related to suspicions of more serious criminal offences. The next step would be to further extend this track record, in particular in the fields of conflict of interest and unjustified wealth.

However, whilst the overall scale of ANI's activity is significant, there has also been a notable increase in the length of verifications, in particular for conflict of interest and incompatibilities cases, reflecting in part the reduction in personnel numbers. Despite ANI's efforts, a significant number of cases have also been lost to the prescription periods introduced in the 2010 law, with a large proportion of the cases concerning holders of political office⁸².

Moreover, it is important to note that in the vast majority of circumstances, ANI is not competent to apply sanctions itself. The ultimate impact of the Agency's activity therefore depends upon the prompt and rigorous follow up to their findings or referrals by other administrative and judicial authorities⁸³. For a number of years the Commission's reports have consistently flagged inadequate follow up to ANI's cases by other administrative and judicial authorities and made a series of recommendations in this regard⁸⁴. However, whilst there have been some small improvements since summer 2011, notably with the first final court rulings confirming unjustified assets and ordering their confiscation, the final results remain limited.

Specifically, as of March 2012, in the four years ANI has been operational:

The Courts have confirmed the existence of unjustified wealth in just four cases⁸⁵. In addition, whilst they had ordered the confiscation of assets totalling 1.1 million EUR in these cases, it is not yet clear whether these confiscation orders have been enforced.

Just two definitive findings of administrative conflict of interest have been reached, one by virtue of a final court ruling and the other having not been appealed⁸⁶. In neither case have the respective contracts signed been cancelled, and in one case the courts have concluded that it is not possible to cancel the contract, meaning the benefits gained through the conflict of interest have not been annulled.

Prosecutors have issued just one indictment resulting from an ANI referral, whilst the tax authorities have issued just one additional tax demand as a result of an ANI referral⁸⁷. The track record on incompatibilities cases is more substantial. A significant number of incompatibility findings have become definitive – either through final judgments on appeals before the courts or because of the time period for appeal expiring – and whilst the total number of disciplinary sanctions remains rather limited, there have been a significant number of incompatible officials who have resigned, either before their file is referred to the disciplinary committee or before a disciplinary sanction is applied. In total definitive findings of incompatibility have been reached in 118 cases, resulting in 53 incompatible officials resigning of their own accord and disciplinary committees applying sanctions in a further 24 cases, including 8 dismissals⁸⁸. However, the 24 sanctions applied also included six verbal or written warnings, whilst in a number of further cases disciplinary commissions either refused to take action or took no action before the disciplinary liability was prescribed or the mandate ended⁸⁹.

In general, court proceedings remain lengthy for unjustified wealth cases, conflict of interest cases and even the relatively simple issue of incompatibilities. Some of the unjustified wealth cases now being finally determined by the courts were inherited by ANI and had actually first been referred to the judicial authorities in 2004 and 2005. All the unjustified wealth cases finally determined by the courts pre-date the new law. Other cases have been delayed by a number of retrials and procedural circuits as competence is debated between courts. Whilst trials of appeals to incompatibility findings are in some instances determined relatively promptly in first appeal, in other cases, often but not exclusively involving high profile parties, delays in obtaining hearings mean the trials take far longer. Significant delays are also routinely incurred pending first hearings in final appeals. As a result, the courts can take over two years to reach a final decision on an appeal to a simple case of incompatibility. This is problematic as it can mean that by the time the decision becomes final, the subject may already have served the rest of their mandate and no sanction can be applied. This could be addressed by streamlining the tiers of jurisdiction. Inconsistent jurisprudence also remains an issue between and sometimes within the same courts, indicating that there is not yet a settled interpretation in these domains, including on the elements of the violations or the degree of proof, whilst there have also been a number of controversial decisions raising considerable public comment⁹⁰.

Celerity is also an issue in follow-up by the prosecution⁹¹. There remains an important need to strengthen co-operation between ANI and the prosecution, in particular the regular prosecution service. Although a protocol was signed with the Prosecutors' Office attached to the High Court of Cassation and Justice, this does not appear to have yet delivered results. ANI should be an important source of investigative leads for the prosecution leading to indictments, whilst ANI should itself receive a significant number of notifications from the prosecution services. It will be especially important that the regular prosecution adopt a proactive and rigorous approach in following up notifications of possible conflicts of interest.

Follow up by disciplinary bodies to final rulings of integrity violations also remains inconsistent, with some sanctions dissuasive and prompt, whilst in other cases sanctions are delayed, lenient or not applied at all⁹². Concerns have in particular been raised at the efficiency and dissuasiveness of the sanctioning regime for holders of elected office, including for Parliament⁹³.

The CVM report of July 2011 raised specific concerns that the wealth investigation commissions re-established by the 2010 law may delay cases, act as an unwarranted filter – especially given their proceedings are not public and there is uncertainty as to whether their decisions are appealable – and duplicate the role of the courts in ruling on both substance, procedure and to the same standard of proof as the trial court⁹⁴.

The report also raised concerns that no steps had been taken to ensure consistent practice across the 15 different commissions. The Commission therefore recommended Romania to “take measures to unify the practice of the Wealth Investigation Commissions and to ensure they handle the cases efficiently without prejudging the decision of the courts”. Since last summer, steps have been taken to begin to address the first part of this recommendation, with a series of seminars held for members of the commissions in autumn last year, and a non-binding guideline in preparation. However, the other concerns remain.

Since their re-introduction in 2010, as of March 2012 nine cases have been decided by the commissions, with five sent to court and four dismissed, and a further seven pending. However, the deadline provided in law (three months for the commissions to reach a determination) is exceeded in the vast majority of cases⁹⁵. Concerns that the commissions duplicate the courts have been confirmed⁹⁶. In addition, it has not yet been established whether ANI can appeal their rulings, whilst concerns have been raised at the lenient practices of the commissions in certain cases. Given that the commissions are effectively functioning as a first instance chamber, but without the transparency of a court proceeding, and with one of the parties, the Agency, potentially denied the right of appeal, further changes would appear necessary. These commissions should explicitly constitute a pre-trial procedure and, if the current law is deemed not to provide such a possibility, ANI needs a right of appeal to their dismissal ordinances. Such changes would strengthen the efficiency of the proceedings and, by guaranteeing ANI a right of appeal, ensure the transparency and fairness of the process. The lack of clarity on the role of the Wealth Investigations Commissions makes difficult the task of the judges and prosecutors sitting in these commissions, who already have to juggle this work with their regular magistrate tasks.

Experience of applying the existing law has also led to the identification of further weaknesses that undermine the efficiency and impact of the integrity system. These include significant questions as to:

- The efficiency of the legal framework and its application in pursuing unjustified wealth. Assets have on occasions been dissipated whilst the investigation and subsequent legal proceedings are under way, with preventive measures not currently provided by law at the point of initial verifications and subsequent preventive measures not being taken by the judicial authorities. This may mean that there are no assets to confiscate when a final ruling is reached.
- The efficiency and dissuasiveness of the sanctioning of conflicts of interest. At present, separate legal processes are required to adjudicate on any appeals lodged against a finding of conflict of interest, and then to enforce that decision and cancel any legal acts signed whilst an official was in a conflict of interest.

This can add years to the legal proceedings before sanctions are applied.

Recent court jurisprudence has also called into question the ability of the courts to cancel contracts in such circumstances. So far not a single contract has been cancelled or prejudice rectified in the case of a conflict of interest. This is a clear shortcoming in terms of the efficiency and dissuasiveness of mechanisms to pursue and sanction conflicts of interest.

The follow-up to ANI's findings or referrals therefore continues to raise questions as to its celerity, rigour and dissuasiveness, with a negative impact on the dissuasiveness of ANI's activity. Despite ANI's endeavours, the end results of the integrity system are therefore not yet convincing and the asset and interest verification procedure is not yet delivering the results and impacts expected. There are also systemic weaknesses which undermine the efficiency of current efforts.

These weaknesses are known to the Romanian authorities and a working group established by the Agency and the Ministry of Justice has produced a series of legislative proposals. These include streamlining the degrees of jurisdiction, strengthening sanctions and addressing deficiencies in the legal provisions governing the Wealth Investigation Commissions and the handling of conflict of interest cases.

However, these proposals have not yet been proposed in new legislation. This reflects persisting concerns over the stability, sustainability and political support for the Agency and its activities, in particular concerns as to the tendency of debate on ANI in Parliament to turn into a fundamental challenge to its functions and powers.

These concerns have increased in the light of the events of recent weeks. The experience of the past five years suggests that improvements to integrity in public office requires not only ANI, but also other key actors in the executive, the legislature and the judiciary, to be committed to a comprehensive framework for addressing integrity.

61 See the Supporting Document to the Commission's Report of 20 July 2010, SEC(2010) 949, pages 8 –9.

62 The Commission's report of 20 July 2010 (COM(2010)401) concluded that the legislation approved by the Parliament on 30 June 2010 "seriously undermines the process for effective verification, sanctioning and forfeiture of unjustified assets... restricts the transparency of financial and economic interests of dignitaries and public officials and excludes dissuasive sanctions that protect against corruption... interrupts the encouraging development of ANI and breaches commitments taken by Romania upon accession". Following the Commission's report, at the request of the Romanian President, the Parliament met in emergency session in August and approved a revised new law, Law 176/2010, which was adopted on 24 August and promulgated by the President on 31 August. The new law came into force on 6 September 2010.

63 See the Supporting Document to the Commission's Report of 20 July 2011, SEC(2011) 968, pages 8 –11.

64 These Commissions were re-established by the 2010 law – they had existed prior to the creation of ANI – with a view to addressing concerns of the Constitutional Court.

65 These amendments would have limited publication of declarations, removed the ability of ANI inspectors to obtain documents from other institutions and therefore to undertake their verifications, and reduced sanctions for incompatibilities and conflicts of interests.

66 Protocols have been signed with 17 public institutions including the tax authorities (National Agency for Fiscal Administration), the Ministry of Administration and Interior (which provides for ANI's inspectors to have access to the records of persons, passports, driving licenses and vehicle registrations), the National Trade Register Office, and the public procurement agency (the National Authority for Regulating and Monitoring of Public Procurement). In some cases these protocols have granted ANI direct electronic access to the databases of the partner authorities.

67 From a high of 56 integrity inspectors in 2009, by June 2012 the number of integrity inspectors had reduced to 35.

68 As of June 2012, this portal contained approximately 3 million asset and interest declarations.

69 This is based on 2011 figures. In 2011 ANI processed 545,000 asset and interest declarations.

70 Three guides have been drafted on: conflicts of interest and incompatibilities; completion of asset and interest declarations; and on effective methods for identifying incompatibilities and conflicts of interest of locally elected officials.

71 ANI's total budget for 2012 is approximately 43 million RON. Excluding European project funds, their total budget is still over 20 million RON, which contrasts to 13.5 million RON in 2011 and 14 million RON in 2009, their previous highest ever budget.

72 A draft law is in preparation to enhance remuneration for inspectors.

73 This included an attempt by one member of the Council to influence decision making in an ongoing ANI case. These events were detailed in the Commission's Report of 12 February 2009, COM(2009) 70 final, and the Supporting Document to the Commission's Report of 22 July 2009, SEC(2009) 1073.

74 See the Commission's Report of 23 March 2010, COM(2010) 113 final, page 5, and the Commission's Report of 20 July 2010, COM(2010) 401 final, page 9. Further details were also provided in the Supporting Document to the Commission's Report of 20 July 2010, SEC(2010) 949, page 11.

75 Supporting Document to the Commission's Report of 20 July 2011, SEC(2011) 968 final, page 13.

76 Between April 2008 and March 2012 ANI received 66 notifications from police and judicial authorities, of which the largest element was supplied by the National Anti-Corruption Directorate (27 notifications). The Anti-Corruption General Directorate supplied a further 18 notifications, whilst only 8 notifications were supplied by other prosecutors' offices. Public procurement control bodies have supplied 5 notifications, including only 1 notification from the National Authority for Regulating and Monitoring Public Procurement. Local public administrations supplied 239 notifications, of which the majority were supplied by prefects offices, with relatively few supplied by local or county councils.

77 The Commission's report of 20 July 2011, COM(2011) 460 final, recommended that Romania "improve the co-operation between ANI and other administrative and judicial authorities, particularly in the area of public procurement".

78 The Commission's report of 20 July 2011, COM(2011) 460 final, recommended that Romania "improve the investigative capacity of ANI through upgrades to their information system and through targeted risk assessments".

79 The screening exercise identified 78 county and local councillors whom, either personally or in the capacity of their spouse, owned or held shares in 105 companies which had contracts and commercial dealings with their respective county or local councils worth over 68.5m. The screening exercise has so far resulted in 75 findings of incompatibility, 9 findings of administrative conflict of interest, and referrals to prosecutors covering 50 suspected criminal offences.

80 The cases include: findings of incompatibility against 16 Members of Parliament, 1 Minister and 2 judges; findings of administrative conflict of interest against 17 Members of Parliament, 3 County Council Presidents, 1 judge and a former Secretary General of the Government; and referrals concerning suspected unjustified assets of 4 Members of Parliament. ANI has also referred to prosecutors cases involving 31 Members of Parliament, 2 Ministers, 7 County Council Presidents and 5 magistrates for suspected criminal offences.

81 Since autumn 2010 ANI has issued 35 findings of administrative conflict of interest, compared to just two in the period between 2008 and spring 2010. Since autumn 2010 ANI has referred 18 cases of suspected unjustified assets to the Wealth Investigation Commissions, compared to just 6 referred to courts between 2008 and spring 2010.

82 As a result of the prescription periods introduced, 154 cases were closed. A further 217 cases have also so far been affected, with ANI no longer able to pursue alleged integrity violations during earlier mandates. Beneficiaries have included 41 Members of Parliament, 10 County Council Presidents and a significant number of Mayors, County Counsellors and Local Counsellors.

83 This could be the courts adjudicating upon whether assets are unjustified and ordering their confiscation, the courts cancelling contracts signed whilst an official was in a conflict of interest, prosecutors investigating alleged criminal offences, or disciplinary bodies applying disciplinary sanctions for incompatibilities or conflicts of interest.

84 In July 2009, the Commission recommended that Romania "ensure timely follow up by judicial and disciplinary bodies to cases submitted by ANI concerning unjustified wealth, incompatibilities and the conflict of interest". In July 2011 the Commission recommended that Romania "Demonstrate a track record in prompt and dissuasive sanctions taken by administrative and judicial authorities regarding incompatibilities, conflicts of interest and the confiscation of unjustified assets in follow up to the findings of the National Integrity Agency"

85 Two of these cases were cases ANI inherited from the previous mechanisms for pursuing unjustified wealth and therefore were already on trial at the point ANI was created.

86 In one further case the courts have definitively cancelled ANI's finding of administrative conflict of interest.

87 In a further 32 cases prosecutors issued administrative fines where they concluded that the criminal act exists, but was not of sufficient social danger to warrant prosecution.

88 In 11 further cases ANI's findings of incompatibility were definitively quashed by the Courts.

89 In five cases the disciplinary committees refused to take action, whilst in 11 cases the disciplinary committees either took no action before the disciplinary liability was prescribed or before the mandate ended.

90 For example, Courts of Appeals judges at the same and different Courts of Appeal have reached conflicting verdicts on whether there is an incompatibility between the function of an MP and that of a University rector. Media attention has focused on judgments in a number of conflict of interest cases.

91 As of March 2012, just one of the 70 referrals made by ANI since autumn 2010 to the prosecution had led to a decision, and this was a decision not to open criminal investigations as the prescription period had been reached for the alleged criminal acts. Of the 138 cases referred by ANI to prosecutors since 2008 in which prosecutors had reached a decision on whether to pursue a prosecution or not, most cases took approximately one year. However, there have also been cases that have taken over two years, and there remain 101 cases pending a decision by the prosecutors.

92 Three quarters of disciplinary sanctions applied by disciplinary committees were applied within six months of either the finding of incompatibility becoming definitive or, if later, the disciplinary committee being notified by ANI. However, there are also three cases where it took over one year for a sanction to be applied and a further seven cases which have been pending over one year.

93 Parliament is yet to act upon definitive findings of incompatibility and conflict of interest against three of its Members.

94 This is a higher standard of proof that would not normally be required for a pre-trial phase.

95 Decisions are usually forthcoming in approximately six months.

96 The commission apply the Civil Procedure Code and administer evidence in line with the Code.