

# Corruption and Anti-corruption Policy in Romania

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# Corruption and Anti-corruption Policy in Romania

## EXECUTIVE SUMMARY

Romania appears to be the EU candidate country most seriously affected by corruption. Corruption is endemic if not systemic in many areas of public life: the customs authorities, judiciary, police, State Property Fund, Parliament and ministers are all perceived as highly corrupt, while “State capture” is also perceived to be a serious problem, particularly through the purchase of parliamentary votes and political party funding. The health service is ranked as the most corrupt institution according to citizens’ actual experience.

The Romanian Government has made major progress in developing a national anti-corruption strategy, and some progress in reforming institutions to limit corruption, notably the public procurement system. The Government’s National Plan against Corruption contains an impressive list of measures and commitments that constitute a key benchmark for judging the Government’s commitment to the fight against corruption.

However, despite the flurry of Government activity in the area of anti-corruption policy, so far the anti-corruption drive has focused on low-level corruption. The political establishment has refrained so far from carrying out reforms that would allow prosecution of corruption at the highest level. In particular, there has so far been no progress towards limiting the immunities enjoyed by members of Parliament, ministers and former ministers, or any progress towards establishing the independence of prosecutors. Likewise, criminal prosecutions and convictions for corruption have touched only lower-level officials and functionaries. This situation justifies the concern that the Government may be as much a source of corruption as a solution to it.

Anti-corruption policy has been to a large extent driven by pressure from the EU, and has recently been given added momentum by the prospect of joining NATO. NATO in particular has labelled corruption as one of the most important barriers to Romania’s accession. The EU has provided extensive assistance to the development of an anti-corruption policy, although it has not been able to secure the creation of a truly independent anti-corruption agency. Romania has ratified the Council of Europe Criminal Law Convention on Corruption.

Romanian anti-corruption legislation is fairly comprehensive, although criminal liability of legal entities is not yet recognised. In addition to bribery provisions, the Anti-Corruption Act lays down a number of other anti-corruption provisions. Sentences are severe, which may paradoxically hinder convictions.

Regulation of conflict of interest remained virtually non-existent as of early 2002, with the exception of vague provisions of the Anti-Corruption Act and incompatibility provisions that apply only to local officials. As of June 2002, a draft Act on Conflict of Interest was under discussion in Parliament. Conflicts of interest remain endemic in Romanian politics and the public administration. All public functionaries are subject to the duty to submit asset and income declarations. However, the Act is totally ineffective: the declarations are not public, the framework for investigating violations is not in place and there are draconian sanctions against citizens submitting information on violations that turns out to be false.

State financial control is largely inadequate. The Court of Audit does not enjoy complete operational independence, and its findings are submitted very late and have little impact. The legal basis for internal State financial control has been established, but hardly implemented as of May 2002.

There are several anti-corruption agencies with overlapping agendas, the most important of which (the Anti-Corruption Section of the prosecution service) appears to have been kept weak deliberately. The most important issue for Romanian anti-corruption policy remains the continuing refusal of the Government to give up direct control of prosecution activities. An ombudsman was established in 1997; however, its powers are weak and it is not known to have investigated or initiated any cases of corruption.

Corruption appears to be widespread if not endemic in the executive branch and civil service, ranging from straightforward bribery to widespread traditions of gift giving. This situation is underpinned by executive discretion stemming from the widespread use of ordinances, excessive immunity provisions for both current and former members of the Government, poorly defined civil servant responsibilities, patronage at all levels and the ineffectiveness of procedures for redress against administrative decisions. Although a Civil Service Act was passed in 1999, its implementation requires substantial secondary legislation, for example a Code of Ethics that has yet to be formulated. Provisions to prevent conflict of interest situations or their abuse are inadequate, and are little observed.

Although all public expenditure is included in the official budget, the Government makes extensive use of ordinances to change the budget *post hoc*. There are no specific provisions on conflict of interest for MPs, many of whom are also practising lawyers or carry on other ancillary activities. Generous immunity provisions have proved effective in preventing the prosecution of corruption cases, and may be an important incentive

for gaining election to Parliament: according to some estimates as many as half of MPs bribed political parties to be placed in a favourable position on their candidate lists.

Surveys indicate that corruption is widespread in the judiciary, and extremely high levels of distrust contribute to a generalised perception that Romania is governed by vested interests rather than by the rule of law. Interference by the executive branch in the judiciary and corruption within the judiciary itself raise doubts about the will or ability of the Government to pursue an effective anti-corruption policy. The courts are overloaded, resulting in lengthy delays in judicial proceedings, although the backlog of cases has been slowly decreasing.

Political party finance remains non-transparent, uncontrolled and probably highly corrupt. Standard problems of party corruption by business interests are supplemented by a problem of funding by individuals in exchange for places on party candidate lists (see above). Even senior politicians admit that the majority of party funding is illegal or hidden. Party finance yielded the largest corruption affair since 1989.

Corruption appears to be systemic in public procurement, ranging from collusion and strong patron-client networks to standard bribery. However, the most important progress made by the Government in anti-corruption policy so far has been reform of the legal framework for public procurement. However, there is still no independent body for supervising procurement or dealing with appeals. The implementation of the new legislation will be an important test of the State's ability to follow through on anti-corruption policy.

On the available evidence, corruption in Romanian public services appears to be endemic, with the exception of the education system, where unofficial payments appear to be relatively infrequent, small and not required in return for benefits. Corruption in the police is underpinned by widespread collusion between the police and organised crime. There is a long history of corruption in customs, with the involvement of State officials up to the highest level. Corruption of tax authorities is linked in particular to their wide discretion at both local and central level to grant tax breaks to companies. Widespread corruption to gain access to health services (the most seriously affected area according to surveys of experience) deters the poor from visiting doctors. The burden of licensing and regulation authorities is heavy, resulting in widespread corruption to ward off inspections.

The role of the media in exposing corruption is threatened by the continuing existence of draconian defamation provisions in the Criminal Code, which remain on the statute books despite strong criticism from international organisations. A new Act on Free Access to Public Information came into effect in January 2002. Public broadcasting is systematically and politically biased. Corruption of or pressure on media outlets through advertising is common. Despite these problems, the press has been active in exposing corruption.

## 1. INTRODUCTION

### 1.1 The data and perceptions

Romania appears to be the EU candidate country most seriously affected by corruption. Corruption is endemic if not systemic in many areas of public life: the customs authorities, judiciary, police, State Property Fund, Parliament and ministers are all perceived as highly corrupt, while “State capture” is also perceived to be a serious problem, particularly through the purchase of parliamentary votes and political party funding. The health service is ranked as the most corrupt institution according to citizens’ actual experience.

Figures on criminal convictions alone would indicate that corruption is a very limited phenomenon. Table 1 shows the numbers of convictions under the main anti-corruption paragraphs.

**Table 1: Convictions for corruption in Romania, 1995–2001**

<i>Criminal Act</i>	1995	1996	1997	1998	1999	2000	2001
Passive bribery (Article 254)	217	281	314	215	168	117	122
Active bribery (Article 255)	92	119	124	107	57	35	89
Receiving undue benefits (Article 256)	34	35	33	22	13	10	4
Trafficking in influence (Article 257)	86	113	165	190	143	136	128
Total	429	548	636	534	381	298	343

**Source:** Directorate for Coordination of Corruption and Crime Prevention and Control Strategies, Ministry of Justice.

The number of convictions fell steadily on an annual basis from 1997 to 2000, although officials believe the number is now back on an upward trend as a result of the Government’s commitment to fighting corruption. Most convictions have been of low-level officials (or their bribers) whose crimes were relatively minor and whose exposure is harmless to the Government, and the complete absence of convictions of high-level officials or politicians is striking. As the Ministry of Justice’s *2001 Report on Anti-corruption Activities* notes,

The activity of fighting corruption was directed... [in 2001] towards the achievement of quantity indicators, focusing in minor deeds committed by persons who... did not represent a substantial social danger.<sup>1</sup>

### *Surveys*

Survey evidence paints a very different picture and indicates that corruption is a more severe problem in Romania than in any other EU candidate country. The main data from surveys of public opinion and enterprise behaviour are summarised below:

- Romania ranked 63<sup>rd</sup> out of 99 countries in the Transparency International CPI in 1999, 68<sup>th</sup> out of 90 in 2000 and 69<sup>th</sup> out of 91 countries in 2001. Romania's score ranged between 3.44 (1997) and 2.8 (2001), where a score of ten indicates least corrupt and 0 indicates most corrupt.

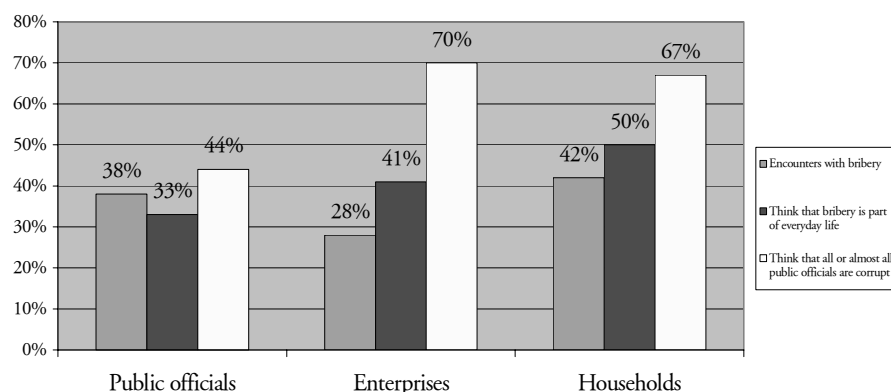
According to the results of the EBRD/World Bank *1999 Business Environment and Enterprise Performance Survey*, Romania is the only country of Central and Eastern Europe outside the former Soviet Union that suffers from both high "State capture" and high "administrative corruption."<sup>2</sup>

- The World Bank's *2000 Diagnostic Survey of Corruption in Romania*, commissioned by the Romanian Government in 2000, found that two-thirds of the citizens believed all or most public officials to be corrupt (see Figure 1).<sup>3</sup>

<sup>1</sup> Ministry of Justice, *2001 Report on Anti-corruption Activities*, p. 6. According to the official statistics provided by the Ministry of Justice, more than half of the public officials convicted of corruption until 2000 were from the lowest levels of public administration such as guards or train conductors. (*Information Regarding the Evolution of Criminality in 1999*, Directorate for Coordination of Corruption and Crime Prevention and Control Strategies, Ministry of Justice, Bucharest, 2000, pp. 9–13).

<sup>2</sup> World Bank, *Anti-corruption in Transition: A Contribution to the Policy Debate*, 2000, pp. 14–16.

<sup>3</sup> The survey was conducted between April and May 2000 on three samples: 353 Romanian public officials, 417 enterprise managers, and 1,050 ordinary people. World Bank, *Diagnostic Surveys of Corruption in Romania*, an analysis prepared by the World Bank at the request of the Government of Romania, Bucharest, March 2001, p. 4.

**Figure 1: Overall corruption: perceptions and experiences**

**Note:** Encounters with bribery means percentage of respondents who encountered bribery in the previous 12 months.

**Source:** World Bank, Diagnostic Surveys of Corruption in Romania, 2001

- A three-country survey commissioned by the Romanian Academic Society (SAR) found that 26 percent of citizens believed that almost all public officials are involved in corruption (compared to nine percent in Bulgaria and 18 percent in Slovakia) while 44 percent thought most officials are corrupt.<sup>4</sup>
- A *Survey of Official Corruption in Seven Southeast European Countries*, commissioned by the Southeast European Development Initiative (SELDI), showed that the highest perception of overall corruption was in Romania: on an index calculated from 0 (least corrupt) to ten (most corrupt) Romania ranked first (7.3),

#### BOX A: Leading businessmen's views on Romanian corruption

“Corruption is rife. Crazy people have called my researcher offering bribes in return for a job. Clients have also tried to bribe me by asking for an official lower price, and then offering me a chance to fill my own pockets. The worst case was when an extremely high-level administrator, a person who makes strategic recommendations of national importance, suggested he receive ‘a cut’ before our consultations went any further. I expressed myself extremely forcibly to him and walked away.”

“A major in the Police asked me for €540 before he would instruct his officers to even begin the investigation of the theft of three of our company cars.”

“In order to get proper deals even started in, say, the real estate field, officials here don’t hint at bribes any more. It’s now almost part of the formal conditions.”

**Source:** Tim Johnson, “The Dark Side,” *Bucharest Business Weekly*, vol. 4, no. 2, 24 January 2000.

<sup>4</sup> A. Mungiu Pippidi (SAR), *For an Institutional Approach to Post-communist Corruption: Analysis and Policy Proposal Based on a Survey of Three Central European States*, Bertelsmann Conference on Accountability, Bucharest, 3-5 May 2001.

followed by Albania (6.8) and Serbia (6.6).<sup>5</sup> Sixty percent of Romanians regarded corruption as the most important problem their country faces.<sup>6</sup> The SELDI survey also indicated that Romania has the lowest level of tolerance in principle toward corruption (1.7), but the highest inclination to engage in corrupt practices (4.4). While this indicates that corruption is more-or-less acceptable to citizens in everyday life, it raises worrying questions about the possible destabilising effect of corruption on overall political legitimacy.<sup>7</sup>

Meanwhile, evaluations of Government anti-corruption policy are generally negative. Since 1995, around 80 percent of the population remained dissatisfied with the anti-corruption policy, with a dramatic but brief improvement in early 1997 probably related to the establishment of the National Council of Action against Corruption and Organised Crime.<sup>8</sup>

## 1.2 Main loci of corruption

According to surveys of perceptions, corruption is very widespread in most Romanian public institutions. The World Bank's *2000 Diagnostic Survey* found that the customs administration is perceived as the most corrupt institution, followed by the judiciary, State Property Fund and Parliament (see Figure 2, below). The SELDI survey found MPs to be perceived as the most corrupt professional group, followed by police officers, customs officers and ministers (see Figure 3, below). Strong perceptions of high-level corruption are in stark contrast to the complete absence of convictions at that level.

<sup>5</sup> SELDI corruption indexes assume values from 0 to ten. Index values closer to 0 indicate approximation to the "corruption-free" ideal. Southeast Legal Development Initiative (SELDI), *Regional Corruption Monitoring* (Albania, Bosnia and Herzegovina, Bulgaria, Macedonia, Romania, the Federal Republic of Yugoslavia, and Croatia), September 2000 – February 2001, p. 12.

<sup>6</sup> For Romanian citizens, the main problems are corruption (59.90 percent), followed by poverty (50.60 percent), and low income (41.3 percent). See SELDI, *Regional Corruption Monitoring*, p. 6.

<sup>7</sup> SELDI, *Regional Corruption Monitoring*, p. 11. SELDI measured citizens' assessments of "the extent to which corruption is becoming an effective means of solving private problems" and it found out that the practical effectiveness of corruption is highest in Romania (7.5), followed by Albania (7.1), and Serbia (7.0). This shows clearly that incentives to engage in corruption are greater than the awareness of its bad effects. In fact, the SELDI survey took also into account citizens' reports of their "involvement in corrupt practices:" Romania ranks third (1.5), after Albania (2.8) and Serbia (1.8).

<sup>8</sup> Surveys since 1995, carried out by Centre for Urban and Regional Sociology, Bucharest; Metro Media Transylvania, Brasov; University Laboratory of Social Analysis, Bucharest; Institute for Research on Quality of Life, Bucharest.

According to President Ion Iliescu,

In the past four years, we have witnessed a growing complicity between the structures of organised crime and high officers in the Police, Gendarmerie, and secret services, judges, and politicians. This complicity represents a great threat for the national security.<sup>9</sup>

Surveys of citizens' experience with corruption indicate that unofficial payments are most common in the health service (see Figure 3, below). The results must be interpreted with caution, however, since the poor showing of the health service may also be related to the fact that a high percentage of respondents would actually have had contacts with the health system, whereas far fewer would have been involved in other activities, such as obtaining a construction permit.

Both the BEEPS 1999 Survey and the World Bank's 2000 Diagnostic Survey measure, among other things, the percentage of firms reporting that they are affected by "State capture" in various spheres (see Table 2). The sale of parliamentary votes figures high in both surveys, although there is a marked difference between the two surveys. The surveys indicate that private contributions to political parties, the National Bank of Romania, and the judiciary are also significant problem areas.

**Table 2: Shares of Romanian firms affected by different forms of State capture (percent)**

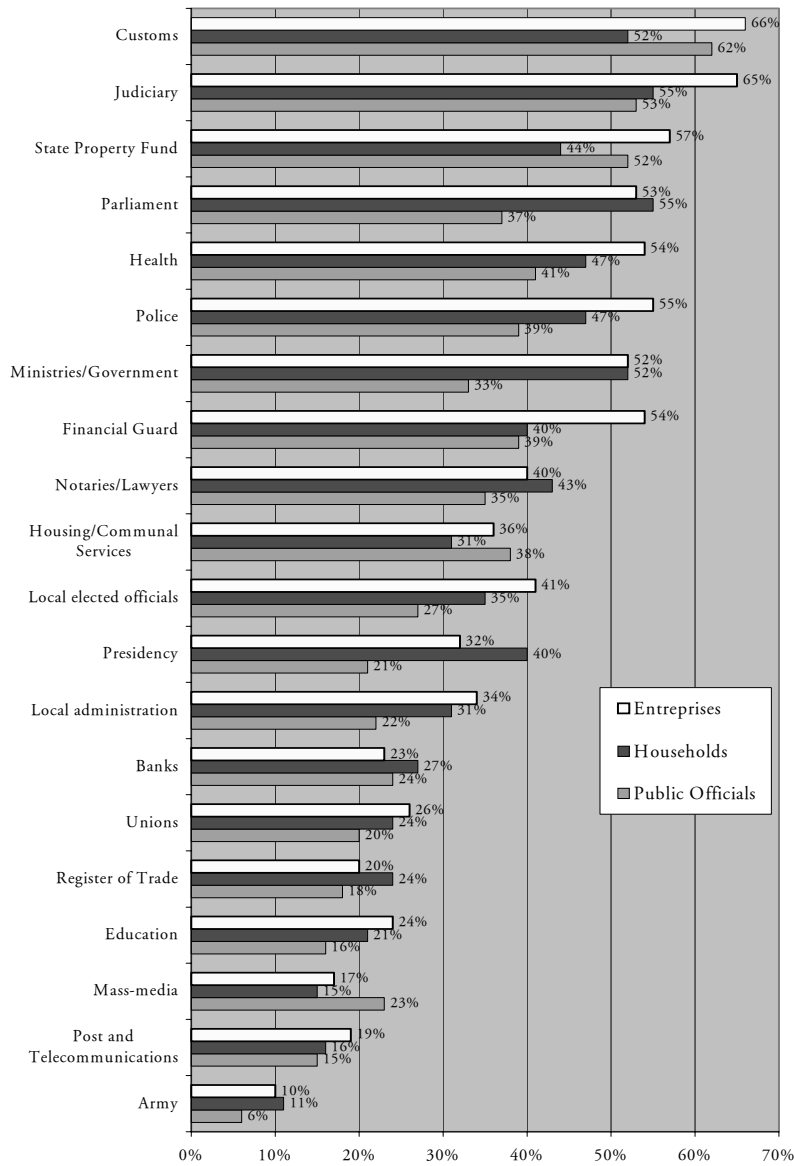
<i>Romania</i>	<i>Parliamentary votes</i>	<i>Central Bank</i>	<i>Political Party Finance</i>	<i>Commercial Courts</i>	<i>Civil Courts</i>	<i>Criminal Courts</i>	<i>Presidential decrees</i>
BEEPS (1999)	22	26	27	17	–	14	20
WB (2000)	42	27	24	13	20	–	–

**Sources:** World Bank, *Anti-corruption in Transition: A Contribution to the Policy Debate*, 2000; World Bank, *Diagnostic Surveys, 2000 Diagnostic Survey of Corruption in Romania*.

The evidence presented in this report indicates that corruption is a serious problem in almost all areas, and endemic in several areas, particularly public procurement, the police, political party funding and MPs. The evidence is often not direct: for example, judgements concerning high-level corruption are conditioned to a significant extent by the absurdly indulgent immunity provisions applying to ministers and MPs, and the interference of the Executive in the activities of prosecutors attempting to investigate high-level officials and politicians. Conflict of interest remains a fundamental and largely unsolved problem.

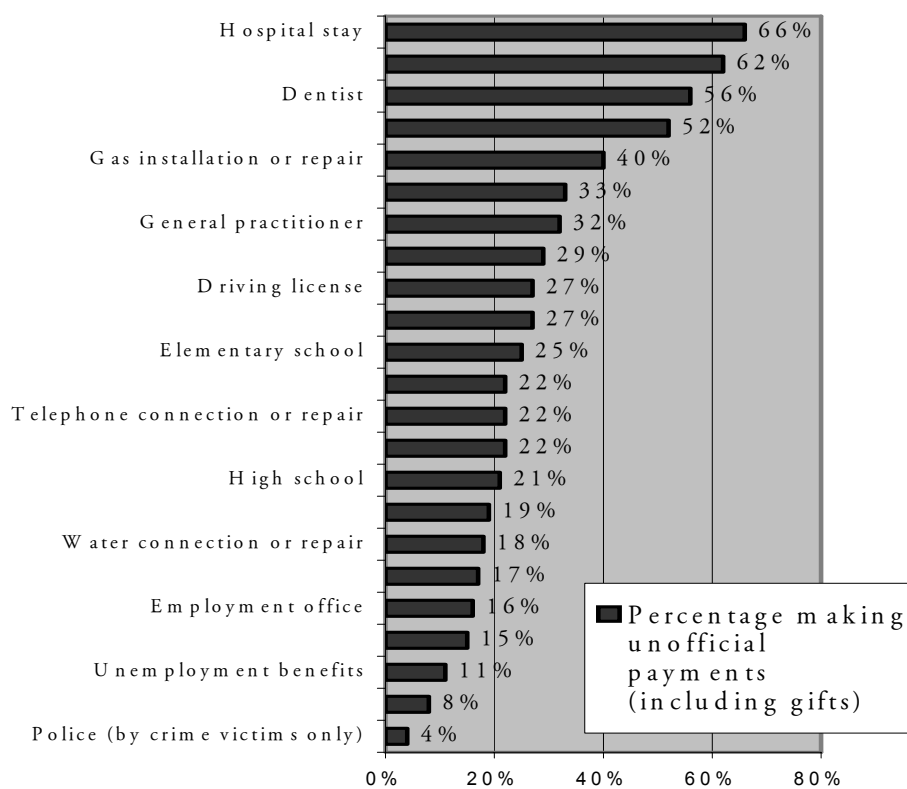
<sup>9</sup> President Ion Iliescu, speech at the presentation of the *2001 Activity Report of the Ministry of Interior*.

**Figure 2. The perceived level of corruption in various state agencies**



**Source:** WORLD BANK, Diagnostic Surveys of Corruption in Romania, 2001

**Figure 3: Likelihood that Households Would Make Unofficial Payments while Using Service**

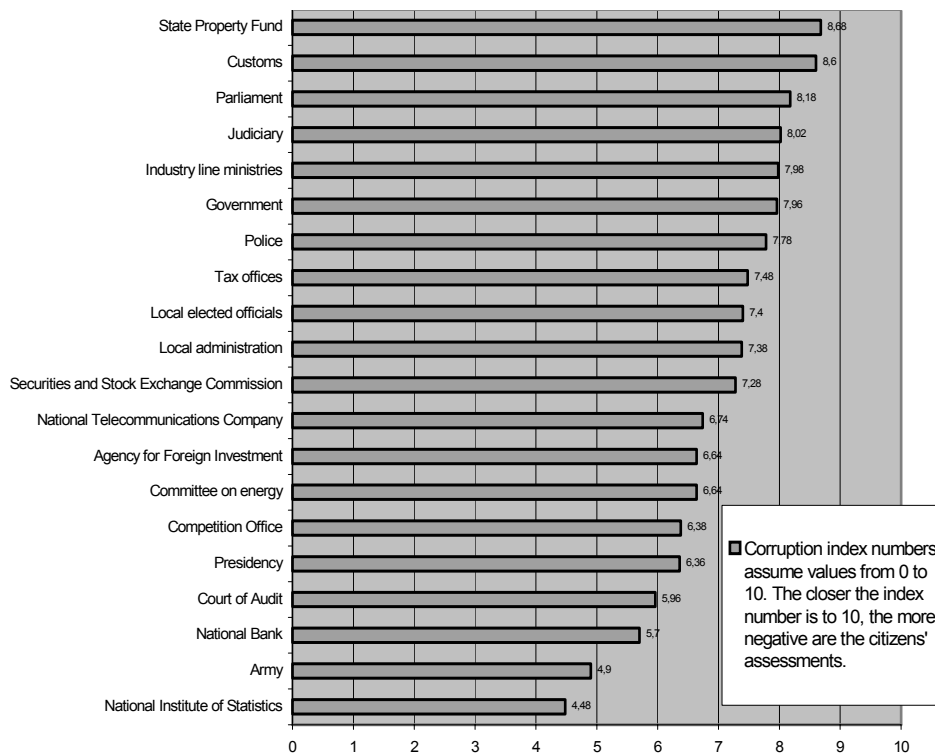


**Source:** World Bank, Diagnostic Surveys of Corruption in Romania, 2001

### 1.3 Government anti-corruption policy and the impact of the EU Accession Process

The Romanian Government has made major progress in developing a national anti-corruption strategy, and some progress in reforming institutions to limit corruption, notably the public procurement system. However, so far the anti-corruption drive has focused on low-level corruption and the political establishment has refrained from carrying out reforms that would allow prosecution of corruption at the highest level. Anti-corruption policy has been to a large extent driven by pressure from the EU, and has recently been given added momentum by the prospect of joining NATO, and the EU has provided extensive assistance to the development of anti-corruption policy.

**Figure 4: Perceived level of corruption in Romanian State agencies**



Source: SELDI, Regional Corruption Monitoring, 2001

Any discussion of Romanian anti-corruption policy must take into account the extent and depth of the corruption problem. As one of the creators of the UK's anti-corruption policy and a participant on an EU expert mission to Romania in September 2000 put it,

A change in "attitude" and "culture" is necessary. This will inevitably take at least 10 to 15 years to effect, perhaps even two generations... There may well be a will to change but their [the Government's] capacity, in all probability, has been exceeded. Therefore progress must be measured in terms of small steps rather than large leaps.<sup>10</sup>

The European Commission's *Regular Reports on Romania's Progress towards Accession* have all concluded that Romania fulfils the Copenhagen political criteria for accession.<sup>11</sup> However, the reports have placed important caveats on this opinion, and singled out corruption as a "widespread and systemic problem" in 2000.<sup>12</sup> The *2001 Regular Report* reiterated this assessment:

Last year's *Regular Report* noted that corruption was a widespread and systemic problem that undermined the legal system, the economy and public confidence in Government. Despite a general recognition of the seriousness of this problem by the Government there has been no noticeable reduction in levels of corruption and measures taken to tackle corruption have been limited.<sup>13</sup>

The EU's criticisms led to (and also reflected failure to meet) corresponding commitments in the *1998* and *1999 Accession Partnerships* (hereafter, "AP"). The *1998 AP* includes under "Justice and Home Affairs," a commitment to implement measures to combat corruption and organised crime and improve border management. The *1999 Regular Report* concluded that these priorities had not been addressed, and criticised the absence of a comprehensive anti-corruption strategy.<sup>14</sup> The *1999 AP* included as short-term priorities the adoption of an act on preventing and fighting corruption, the establishment of an independent anti-corruption department;

<sup>10</sup> D. Martin, RO98.01 – *A mission report of September 2000*, PHARE, 2000, pp. 4–5.

<sup>11</sup> The Copenhagen European Council in 1993 established the following political criteria: stability of political institutions guaranteeing democracy, the rule of law, human rights, and the protection of minorities. The 1995 Madrid European Council has also emphasized the administrative capacity criterion. See <<http://www.europa.eu.int/comm/enlargement/>>, (last accessed 20 April 2001).

<sup>12</sup> Commission of the European Union, *1998 Regular Report from the Commission on Romania's Progress towards Accession*, 4 November 1998, p. 13; *2000 Regular Report*, 13 October 2000, p. 18.

<sup>13</sup> Commission, *2001 Regular Report*, p. 21.

<sup>14</sup> "A number of initiatives have been launched to combat corruption, but a comprehensive approach is still lacking... Therefore, this priority has only been partially met." In: Commission, *1999 Regular Report*, 13 October 1999, p. 81.

ratification of the European Convention on Laundering Proceeds of Crime and the Council of Europe Criminal Law Convention on Corruption, and signing the OECD Convention on Bribery.<sup>15</sup>

Although the *2000 Regular Report* acknowledged that acceptance of the anti-corruption law fulfilled one *Accession Partnership* commitment, it not surprisingly concluded that, “[L]ittle progress has been made in reducing the levels of corruption and improved coordination is needed between the various anti-corruption initiatives that have been launched.”<sup>16</sup> The *2001 Regular Report* repeated the same opinion, and, in addition, singled out public procurement, access to information and political party finance as areas in need of reform.<sup>17</sup> The *2001 AP* priorities include strengthening all bodies involved in the fight against corruption, improving coordination between them and clarifying their competencies; ratifying relevant international conventions against corruption; and introducing legal liability of legal persons into Criminal Act.<sup>18</sup> The *2001 AP* also contains a number of other commitments relevant to the fight against corruption, for example adopting a comprehensive public administration reform package, guaranteeing the independence of the judiciary and removing provisions of the criminal code that threaten freedom of speech (see individual sections of this report).

### *Romanian anti-corruption policy*

The first example of an articulated anti-corruption policy was the creation in 1997 by President Emil Constantinescu of a National Council for Action against Corruption and Organised Crime following his election victory on an anti-corruption platform. The Council was abolished in September 1999.<sup>19</sup> It had no obvious effect or any public findings, but it initiated a real debate on anti-corruption policy and led to the 2000 Act on the Prevention, Detection and Prosecution of Corruption Offences (hereafter, “Anti-corruption Act”).

<sup>15</sup> Corruption is also addressed as a short-term priority under the Internal Market chapter, more precisely in what concerns customs: “apply measures to combat fraud and corruption.” Commission, *Romania: 1999 Accession Partnership*, 13 October 1999.

<sup>16</sup> Commission, *2000 Regular Report*.

<sup>17</sup> Commission, *2001 Regular Report*, pp. 21–22.

<sup>18</sup> Commission, *2001 Accession Partnership*, p. 6.

<sup>19</sup> This was to deal with “grand corruption” cases threatening to national security, identify sectors controlled by mafia structures and increase cooperation between bodies involved in the fight against corruption.

After two draft acts that would have created a new separate anti-corruption body,<sup>20</sup> Parliament rejected this proposal and opted in February 2000 for an act establishing an Anti-corruption Section within the General Prosecutor's Office and attached to the Supreme Court of Justice.<sup>21</sup> However, the Section has faced problems ever since its establishment due to continuing executive interference, inadequate resources and the lack of political will to grant it sufficient independence to pursue important corruption cases. This model was opted for (chosen) despite the preference of the EU for a body that would enjoy independence from the Executive.<sup>22</sup> The Section was created in October 2000, and has faced problems ever since due to continuing executive influence (see Section 2.5).

In March 2002, the Government approved an Emergency Ordinance transforming the Section into a National Anti-corruption Prosecutor's Office, operating as of September 2002, with 320 staff, including 150 criminal police officers and 75 prosecutors. The Ordinance solves some of the previous problems, for example, establishing a six-year term of office for prosecutors in the Office. However, the key issue – the independence of the Office's chief – was still not solved satisfactorily. It will be headed by a prosecutor appointed by the President of Romania on the recommendation of the Minister of Justice, and will be subordinate to the Prosecutor-General. Moreover, the Minister of Justice may order a reorganisation of the Office.

### *The National Anti-corruption Policy*

Parallel with developments in the Anti-corruption Section, the Government has developed a broader anti-corruption policy. In July 2001, the Government established the National Committee for the Prevention of Criminality (NCPC) led by the Prime Minister and coordinated by the Minister of Justice. Within the NCPC, a Central Group for Analysis and Coordination of Corruption Prevention Activities (CGACCPA) was formed, coordinated by the Prime Minister's Control Department.

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<sup>20</sup> The original draft of the Anti-corruption Act provided for the establishment of a National Anti-corruption Commission, an inter-departmental body subordinated to the Government and formally led by the Prime Minister. In 1999, this was replaced by a proposal to transform the Government Control Department (GCD) into a new Control and Anti-corruption Department (GCAD) coordinated by the Prime Minister, headed by an apolitical Secretary of State and empowered to control the activity of all governmental organizations.

<sup>21</sup> *Report 133* (supplementary report), Juridical Committee for Discipline and Immunities of the Chamber of Deputies, <<http://www.cdep.ro/pls/parlam>>, (last accessed 10 May 2001).

<sup>22</sup> This preference has been stated in successive *Regular Reports*, and formulated clearly by twinning partners from the Spanish *Fiscalia Anticorrupcion*. Delegation of the European Commission in Romania, Briefing Note for OSI Roundtable Discussion, Bucharest, 28 March 2002.

The CGACCPA includes representatives of NGOs, while international organisations such as the EC Delegation and the World Bank have permanent observer status.

Based on the activities of the CGACCPA, in October 2001 the Government published a “National Programme for the Prevention of Corruption” and “National Action Plan Against Corruption.” The Action Plan sets out specific measures for different areas, and places more emphasis on prevention than previous policies.<sup>23</sup> Programme deadlines and commitments are shown in Table 3. As of May 2002, the Government had failed to meet planned deadlines for a number of the more important measures, namely passing a Lobbying Act, amending asset disclosure legislation and initiating drafts for a new act on political party funding.

While the National Plan contains a large number of measures that are clearly desirable, and, *inter alia*, urged or required by the European Commission, the strategy and focus of Government policy has so far been clearly on low-level corruption. For example, President Ion Iliescu told a meeting of Interior Ministry officials in March 2002 that corruption “must be eradicated from the bottom up,”<sup>24</sup> and there has been a notable absence of even a surface commitment to dealing with corruption at the highest level.

Moreover, a notable absence from the strategy is any specific commitment to change the system of appointing the Prosecutor-General, which this report suggests has been a fundamental obstacle to effective prosecution of important corruption cases (see Sections 2.5 and 5.1). Although the Government has formally fulfilled its commitment to strengthen the role of the Supreme Council of Magistracy and the Anti-corruption Section (see above), it has not addressed the issue of prosecutors’ independence, despite the fact that both the EU and the Council of Europe, especially, have highlighted this as a key problem. The Government’s inaction on this issue is reflected by its retention of the current system of appointing the chief of the Anti-corruption Section (see Section 2.5).

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<sup>23</sup> Government of Romania, *National Programme for Prevention of Corruption*, October 2001, p. 17.

<sup>24</sup> “Romanian President says corruption must be eradicated ‘from the bottom up,’” RFE/RL Newline, 14 March 2002.

**Table 3: Selected measures in the October 2001 National Plan Against Corruption.**

<i>Measure</i>	<i>Deadline</i>	<i>Fulfilled</i>
Elaboration of Sectoral Anti-corruption Plans (Public Ministry, ministries of Justice, Interior and ministries involved in National Security, Public Administration, Public Finances, Public Information, Forecasting and Development)	2 <sup>nd</sup> quarter 2002	Yes
<b>Prevention measures</b>		
Adoption and implementation of ethics codes for magistrates, police, customs officers and other public officials	3 <sup>rd</sup> quarter 2002	N/A
Amend legislation on asset disclosure establish monitoring mechanism to eliminate non-disclosure	4 <sup>th</sup> quarter 2001	No
Limit immunities to prevent their abuse to hide abuse of power	4 <sup>th</sup> quarter 2002	N/A
Adopt Act on Conflicts of interest	3 <sup>rd</sup> quarter 2002	N/A
Adopt Act on Lobbying	1 <sup>st</sup> quarter 2002	No
Initiate draft act on funding of political parties and campaigns	4 <sup>th</sup> quarter 2001	No
<b>Strengthening capacity</b>		
Strengthen role of Anti-corruption Section, anti-corruption departments in prosecutors' offices and courts	2001–2004	Yes*
<b>Institutional reform</b>		
Increase role of Supreme Council of Magistracy in selection and appointment of magistrates on strict objective professional criteria	1 <sup>st</sup> quarter 2002	Yes*
<b>Reform of public administration</b>		
Set up system for selection, promotion and evaluation of public officials based exclusively on professional skill and performance	2004	N/A
<b>International cooperation</b>		
Introduce criminality for corruption in international business transactions, liability for foreign public officials, liability of legal persons	2002	N/A

**Note:** \* Although these objectives have been formally met, the impact of the changes on judicial and especially prosecutorial independence is doubtful (see above).

### *The role of NGOs*

There is significant activity by Romanian NGOs in the area of anti-corruption. Among the most important is the Pro Democratia Association (PDA), which

collaborated with the Ministry of Justice in the implementation of a Public Awareness Campaign (1999–2000).<sup>25</sup> Pro Democratia also carried out an important study on political party funding (see Section 6.3).

### *EU assistance*

This process was accompanied by growing EU assistance for anti-corruption policy. The key project is the 1999 PHARE Inter-institutional Project on Anti-corruption. Due to delays, the cause of which is not clear, the project did not begin until August 2001, with the first component a project twinned with the Spanish *Fiscalia Anticorrupcion*.<sup>26</sup> The remainder of the project envisages support for staff training.

Other anti-corruption-related PHARE projects are assistance for the creation of a case and document management system and legal library documentation system (2000–2002, €3.5m), continuation of assistance to the Ministry of Justice (2001, €4.1m), a twinning project for judicial reform (1999–2001, €1m), and “Prevention and Control of Money Laundering” (started June 2001, €0.5m).

### *The impact of NATO accession*

While EU accession has been a very important influence on the development of anti-corruption policy, from late 2001, a more urgent goal for Romania (as for Bulgaria) has become accession to NATO. In the run-up to the November 2002 NATO Summit in Prague, officials from the alliance and from NATO members have sent clear signals that the most important barrier to NATO accession for Romania is corruption.<sup>27</sup> This has injected visible energy into the Government’s efforts to step up

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<sup>25</sup> The campaign was part of a larger project undertaken by the Ministry of Justice together with UNDP and UNCICP on “Institution Building and Strengthening of Corruption Control Capacity in Romania.” The campaign combined advertising, roundtable discussions and press conferences on corruption and a series of local level debates on corruption. In general, the project was a good example of dialogue and cooperation between an NGO and state authorities.

<sup>26</sup> The programme is planned to benefit primarily the Public Prosecutor's Office with three other partners: the ministries of Justice, Interior and Finance (General Customs Administration); see <<http://www.europa.eu.int/comm/pas/phare/prog.search>>, (last accessed 15 May 2001).

<sup>27</sup> E. Tomiuc, “Balkan neighbours press ahead with NATO bid, vow to tackle corruption,” RFE/RL Newsline, 7 February 2002.

its anti-corruption efforts, at least on the surface, and has induced a noticeable change in the public atmosphere.<sup>28</sup>

### *Other international activities*

In addition to EU activities in the area of anti-corruption policy, Romania has participated in a number of international anti-corruption activities and initiatives, including signing up to GRECO in May 1999, participating in the anti-corruption activities of the Stability Pact, establishing a Regional Centre for fighting corruption and organised crime as part of the Southeast European Co-operative Initiative, receiving assistance for institution building from the UNDP and UN Centre for International Crime Prevention in Vienna and judicial assistance from the US Department of Justice as part of a Strategic Partnership between Romania and the USA.

## **2. INSTITUTIONS AND LEGISLATION**

### **2.1 Anti-corruption legislation**

Romanian anti-corruption legislation is fairly comprehensive. The Romanian Criminal Code sanctions both passive and active bribery. Until the passage of the 2000 Anti-corruption Act, the penalties were as follows:

- Passive bribery (bribe taking): imprisonment of 3-12 years;
- Active bribery (offer or provision of a bribe): imprisonment of six months to five years;
- Influence trafficking: imprisonment of two to ten years;
- Receipt of unauthorised benefits: imprisonment of six months to five years.

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<sup>28</sup> For example, an open letter published in March 2002 to Prime Minister Adrian Nastase from one of the editors of *Evenimentul Zilei*, one of the two Romanian dailies involved in real investigative journalism on corruption, called on the Prime Minister to move radically against corruption as the main condition to take the “historic chance” to be invited into NATO at the November Summit. See C. Nistorescu, Open Letter to Prime Minister Adrian Nastase. For English version of open letter, see front page of *Evenimentul Zilei*, 29 March 2002 (provided by Nicoleta Savin, journalist at *Evenimentul Zilei*).

These paragraphs applied only to public officials <sup>29</sup> until the 2000 Anti-corruption Act extended them to cover managers, persons with control functions, executives, administrators, consultants and internal auditors in private firms, State monopolies, national companies or any other economic structures; leading officials in political parties, trade unions, management bodies and foundations or non-profit associations. Penalties for corruption offences are increased by two to three years if committed by persons with control responsibilities or by persons with investigation, prosecution or judicial powers and by five years if committed for the benefit of a criminal entity or to influence international business transactions.

Bribe givers who notify the police or prosecutors are exempt from punishment. GRECO noted in its *Evaluation Report on Romania* that active bribers could easily abuse this provision, especially as the law provides for the return of assets to the briber.

The extension by the 2000 Act of the Bribery Provisions means that they apply partly to the private sector. However, Romanian legislation does not allow criminal liability of legal entities for corruption. Romania ratified the Council of Europe Civil Law Convention in April 2002, but has not yet ratified the Criminal Law Convention.

The Anti-corruption Act also established a number of other corruption-related offences, including the following:

- Deliberate under-valuation of public assets during privatisation or commercial transactions.
- Violations of law in the provision of loans or subsidies, failure to pursue/collect outstanding loans.
- Using loans or subsidies for purposes other than those for which they have been granted.

If committed in order to obtain money, goods or unauthorised benefits, these three offences are punishable by 5-15 years' imprisonment.

- Persons responsible for supervising, controlling or liquidating a private company who intermediate or facilitate commercial or financial operations by the company in order to obtain, directly or indirectly, undue benefit, are punishable by two to seven years' imprisonment.

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<sup>29</sup> Under Romanian law, a public official is any person exercising, on a permanent or temporary basis, a mandate within a public authority or institution, regardless of official position or remuneration. An official is any person exercising a mandate in the service of a legal entity other than a public authority or institution.

The Act also applies sanctions to a number of other corruption-related offences. These include hiding benefits obtained through corruption, conspiracy, false declarations and forgery, money laundering, smuggling, fraudulent bankruptcy and drug trafficking.

The sentences laid down in the law for anti-corruption offences are much more severe than is typical in OECD states. This raises questions about the wisdom of punishing corruption so severely, as long sentences may paradoxically deter courts from conviction.

In addition to other anti-corruption provisions, the 1999 Act on Ministerial Responsibility<sup>30</sup> (amended by Government Ordinance 130/1999) defines as criminal offences for members of the Government, “the obstruction, through means of violence or fraudulent methods, of the exercise in good faith of one’s rights and liberties; the presentation in bad faith to the Parliament or the President of Romania of inexact or false information regarding the activity of the Government or of a ministry, in order to hide committed deeds of a nature that would cause damage to national interests.”<sup>31</sup> This provision is vague and has never been applied.

## 2.2 Conflict of interest legislation

Conflict of interest legislation remained skeletal in early 2002. A general provision of the Anti-corruption Act forbids

[T]he undertaking of financial operations, such as commercial acts incompatible with the position, duties, or mandate that a person has, or closing financial transactions by making use of the information received due to one’s position, responsibilities, or tasks; using by any means, directly or indirectly, information that is not public, or giving permission for unauthorised persons to have access to this information.<sup>32</sup>

In addition, an Emergency Ordinance passed by the Government in February 2002 introduced incompatibility provisions for officials in local authorities. Neither local government representatives nor their spouses or second-degree relatives, nor employees of local or county councils may conclude services, works or supply contracts with local authorities of which they are members. Representatives who get into such situations

<sup>30</sup> Act no. 115/1990.

<sup>31</sup> Act no. 115/1999, as amended by Ordinance no. 130/1999, Article 6. The sanctions provided by the Act consist of a principal punishment, i.e. imprisonment, and a complementary one, i.e. the interdiction to hold a high public office for a period of three to ten years.

<sup>32</sup> When committed in order to obtain, for oneself or for another person, money, goods, or undue benefits, the actions described shall be punished by imprisonment from one to five years. Act no. 78/2000, Article 12.

should resign from their position in the company no later than five days after the ordinance entered into force (2 February 2002) or after signing the contract with the public authority. If these provisions are violated, the representative's mandate is to be revoked by the respective prefect. There are no such restrictions for MPs or other functionaries of the central State administration. Work on incompatibility provisions for a broader range of officials is in progress.

In May 2002, the Government adopted a draft Act on Conflict of Interests. The draft Act would apply only to the following executive branch officials: Prime Minister, ministers, deputy ministers, secretaries of State and other positions equivalent to secretary of State in specialised bodies subordinate to the Government or ministries, prefects and deputy prefects.

The Act would forbid these officials, *inter alia*, from performing other functions, including in commercial entities; performing commercial transactions for their own or others' benefit. Functionaries would have to declare conflicts of interest in specific decision-making processes, whereupon the superior would delegate a different official for that decision. The Prime Minister's Control Department would be responsible for investigating conflict of interest situations and proposing sanctions (including removal).

### **2.3 Asset declaration and monitoring**

The process of financial disclosure for public functionaries is regulated by the 1996 Act on the Obligation of Public Officials to Declare their Personal Wealth and the Procedure for Controlling Wealth Obtained through Illicit Means.<sup>33</sup> The Act applies to: the President of Romania; MPs, ministers; State secretaries and under-secretaries; judges; public prosecutors; county and local councillors; mayors; public officials from the central and local public administration; and directors and other people with controlling responsibilities within self-managed public companies, commercial companies where the State holds the majority of shares, the State Property Fund, National Bank of Romania, and banks in which the State holds a total or the majority of shares.<sup>34</sup>

Such persons are obliged to submit declarations of all personal and joint assets and those of spouses and children living in the same household at the beginning and the end of their term of office. The declarations are not public.

Civil servants submit their declarations to the public authority that employs them, whereas local elected officials (together with the mayor) make their statements to the

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<sup>33</sup> Act no. 115/1996.

<sup>34</sup> Act no. 115/1996, Article 2.

prefect. A control procedure should take place if officials fail to submit a declaration within 15 days of the deadline or if there is a significant difference between the initial and final declarations and if there is clear evidence that some assets could not have been obtained by legal means.<sup>35</sup> Control procedures are the responsibility of investigation commissions within the Courts of Appeal on receipt of a written and signed petition from any citizen containing evidence of illicit appropriation of wealth.<sup>36</sup> The commission must decide within three months whether to annul the case, send it to the Court of Appeal or transfer it to the Public Prosecutor's Office. The sessions of the investigation commission are not to be public.<sup>37</sup>

Senior officials submit declarations to the Prime Minister, MPs to the President of their respective Chamber of Parliament, the Prime Minister and the Presidents of the two Chambers of Parliament to the President of Romania, the President to the Head of the Constitutional Court, judges to the Minister of Justice and prosecutors to the Prosecutor-General. The control procedure is supposed to be run by an investigative commission in the Supreme Court<sup>38</sup> at the request of the Minister of Justice, the General Prosecutors or the officials concerned, if their wealth is publicly questioned.<sup>39</sup> Officials whose wealth was declared totally or partially unjustified by the court are removed from office, while Members of Parliament are to be stripped of their mandate. Officials who file incomplete or false declarations may be punished by imprisonment from three months to two years or a fine.

In practice, asset monitoring is totally inadequate. In particular, a person who produces false evidence on officials' assets also faces imprisonment from one to five years,<sup>40</sup> and any witness who provides inaccurate information about the illicit nature of a public official's wealth by imprisonment from six months to three years. This makes it highly unlikely that ordinary citizens would ever question public officials' assets. Ministry of

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<sup>35</sup> Act no. 115/1996, Article 7.

<sup>36</sup> The commission is made up of two judges from the Court of Appeal, a prosecutor from the Public Prosecutor's Office attached to the Court of Appeal, and a secretary (they all serve a three-year term).

<sup>37</sup> The law provides for publicity only cases which have been quashed by the investigation commission or if the competent court decides that wealth was obtained by lawful means. In these cases, decisions shall be published in the Romanian *Official Gazette*.

<sup>38</sup> The investigation commission has a three-year term of service and includes two judges from the Supreme Court, a prosecutor from the General Prosecutor's Office, and a secretary.

<sup>39</sup> However, in these cases the competent court is the Supreme Court of Justice. For the President of Romania, the wealth control procedure may be undertaken at the end of his office or during the mandate only at his request, or upon approval of the Parliament with a simple majority vote.

<sup>40</sup> This sanction does not apply if the petitioner is an institution, e.g. the Public Prosecutor's Office.

Justice officials expect these provisions to be removed by a new conflict of interest act in preparation as of April 2002.

Moreover, investigation commissions for senior officials had not even been established by early 2002, making it pointless to submit a petition.<sup>41</sup> In the four years following the adoption of the 1996 Act, no control procedure was ever initiated. Media reports suggest that it is the norm for officials not to file asset declarations.<sup>42</sup>

As of June 2002 draft amendments to the Act were under discussion in Parliament, although the details of the proposals were not available.

## 2.4 Control and audit

State financial control is largely ineffective. The Court of Audit does not enjoy complete operational independence, its findings are submitted very late and are not used to impose corrective measures. The legal basis for internal state financial control has been established, but hardly implemented as of May 2002.

### *The Court of Audit*<sup>43</sup>

The Court of Audit (COA) is the supreme audit body for the public sector. The Chairman and members of the Court are appointed by Parliament for six years, and the President of Romania appoints and recalls financial judges and prosecutors on the proposal of the Plenum of the Court. Members of the Court and financial judges are subject to similar conflict of interest provisions as public officials, violation of which may be punished by removal from office.

The COA's main responsibility is to verify the annual accounts of the State budget, social security budget, local government budgets, special funds, the treasury fund, public debt,

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<sup>41</sup> The spokesman of the Supreme Court of Justice (where the investigation commission for senior officials should have been created) explained to journalists that, "[T]he establishment of the commission was not necessary, because there were no petitions submitted. In addition, the creation of the commission would have entailed supplementary and inefficient expenses." In: "Statesmen, magistrates and civil servants protect their wealth," *Capital*, no. 43, 26 October 2000.

<sup>42</sup> For instance, almost a year after the local elections, Bucharest General-City Councillor Adrian Badila said he had never completed any wealth declaration because nobody asked him to. Statement made at a conference organised by Transparency International Romania and the Foundation for Civil Society Development on Solutions for Combating Corruption in Local Public Administration, Bucharest, 17 May 2001.

<sup>43</sup> The legal framework for the Court is provided by the 1992 Act on the Organization and Functioning of the Court of Audit.

and Government guarantees. It may also audit the budgets of the Presidency, the Government, the Supreme Court of Justice, Constitutional Court and legal entities that administer public resources including companies in which the State holds a majority stake.

The Chamber of Deputies and the Senate can also require the Court to carry out specific audits, and to stop an audit if the Court has exceeded its legal competence. The Court may audit the budgets of the Senate or Chamber of Deputies *only* at the request of each Chamber's Standing Bureau; no such request has ever been submitted.

The Court must report annually to the Parliament. However, reports are not properly debated there – there is no parliamentary committee specifically charged with this task – and are largely ignored by the Government. Under the law, reports are to be published in the *Official Gazette*, but in practice they are too long to be published in ordinary issues of the *Official Gazette* and are published only in its summary or not at all. The full reports can only be viewed at the Court of Audit or Parliament.

The Court sent its *1999 Annual Report* to the Parliament only in March 2001. The Report contained scathing reports on financial irregularities within the banking sector, the Ministry of Finance's allocation of tax relief and illegal reimbursement of VAT,<sup>44</sup> the General Customs Administration (GCA), Ministry of National Defence, and Ministry of External Affairs.<sup>45</sup> However, the report generated little interest as most of the issues had already been covered in the media.

The Court of Audit exercises only *ex-post* financial control, monitoring compliance with legal regulations. It does not yet carry out performance audit, the introduction of which has been urged by the European Commission. A 2001 PHARE project for the Court is intended to support the introduction of performance audit so the Court will be able to audit pre-accession funds.

### *Internal audit and control*

Internal audit and control remains underdeveloped. A 1999 Government Ordinance<sup>46</sup> set out the legal basis for the creation of a financial control system. The act regulating this area is on the public internal audit and the preventive financial control. However, the EU *2001 Regular Report* urged the creation of functionally independent internal audit units, as well as the establishment of a co-ordinating role for the Ministry of Finance in developing a harmonised methodology for financial management, control and audit. As of March 2002,

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<sup>44</sup> *Evenimentul Zilei*, 17 March 2001.

<sup>45</sup> For further details, see *Romania Libera*, 19 March 2001.

<sup>46</sup> Government Ordinance on Public Internal Audit and Preventative Financial Control, no. 119/1999.

the Office of the Financial Controller was thought to be taking steps to introduce and implement reform of internal financial control.<sup>47</sup>

## 2.5 Anti-corruption agencies

Romania boasts several anti-corruption agencies with overlapping agendas. However, the common denominator of continuing executive control over and/or interference in the activities of such bodies has fundamentally undermined any real attempt to move against corruption at higher levels.

### *The Anti-corruption Section*

The main specific anti-corruption agency is the Anti-corruption Section, formed in October 2000. The activities of the Section have been directly or implicitly undermined since its creation by the fact that its chief can be removed at any time without justification by the General Prosecutor, who himself is effectively subordinate to the Minister of Justice (see Section 6.1). In March 2001, the first chief of the Section, Ovidiu Budusan, was removed without official justification after moving to investigate a corruption scandal allegedly involving illegal party financing, money laundering and smuggling of fuel to Serbia during the Yugoslav embargo (see the Costea scandal below). The investigation would have resulted in the implication of several former ministers and senior officials.

Second, the Section's staff worked on the basis of secondary secondment from the police and other prosecution offices on an uncertain basis for up to one year, which created insecurity and discontinuity. The Office was not supplied with sufficient resources or even a building for several months.

As of early 2002, the section still did not have enough staff to engage in a twinning project and at the same time fulfil its functions.<sup>48</sup> According to the EU's *2001 Regular*

<sup>47</sup> Comments from officials, OSI Roundtable Discussion, Bucharest, 28 March 2002. *Explanatory note: OSI held a roundtable meeting to invite critique of the present Report in draft form. Experts present included representatives of the Government, international organisations, and civil society organisations. References to this meeting should not be understood as an endorsement of any particular point of view by any one participant.*

<sup>48</sup> The Anti-corruption Section and its territorial structures have, according to the law, the following legal responsibilities:

- to undertake criminal proceedings in cases of corruption offences and offences committed in conditions of organized crime;
- to lead and control activities undertaken by other authorities involved in the detection and criminal proceeding of these offences;
- to collect, analyse and evaluate data and information related to the fight against corruption and organized crime.

*Report* the section only had 17 prosecutors instead of 38 as planned.<sup>49</sup> It was not possible to obtain consistent information on the staffing of the section for this report. Whether the new Anti-corruption Bureau (see Section 1.3) will solve this problem remains to be seen, since the Ordinance establishing the bureau has failed to establish the independence of its chief.

### *The Costea scandal*

The biggest scandal in Romanian politics since 1989 was the Costea Affair, named after Adrian Costae, a French businessman of Romanian descent. Costea had been suspected by French authorities of laundering around €6.5m. In 2001, the Romanian media claimed to have discovered Costea's prior involvement in the illegal smuggling of petroleum over the Yugoslav border during the UN embargo. Numerous MPs and ministers were called in 2000 to testify before a commission of visiting French judges and prosecutors, after Budusan provided the French authorities with documents relating to the case. He was subsequently removed. In addition, Costea claimed to have provided the Party of Social Democracy in Romania (PSDR) with hundreds of tons of posters for Ion Iliescu's 1996 presidential campaign before the 1996 elections.<sup>50</sup> A former Secretary-General of the Alliance for Romania Party (APR) also claimed that Costea financed the PSDR electoral campaign and later the political activities of APR.<sup>51</sup>

### *The Prime Minister's Control Department*

In April 2001, the Prime Minister's Control Department was established under the 2000 Anti-corruption Act. In reality, it was created from the previous Government Control and Anti-corruption Department. The department has around 50 staff and may undertake inspections of any form of legal violation in governmental structures, ministries or other specialised bodies subordinate to the Government or ministers, and also, since May 2001, in financial and banking operations that are related to acts of public officials.<sup>52</sup> Evidence of criminal activity is passed onto the prosecution offices and may be used as evidence. Between April and October 2001, the PMCD carried out around 60 inspections. An inspection by the department into conflict of interest in Bucharest carried out in late 2001 concluded that 38 out of 65 city councillors were involved in firms that gained contracts

<sup>49</sup> Commission, *2001 Regular Report*, p. 21.

<sup>50</sup> Interview with Adrian Costea, *Evenimentul Zilei*, 18 May 2000.

<sup>51</sup> *Evenimentul Zilei*, 10 May 2000.

<sup>52</sup> The PMCD is divided in five units: the Direction for control of privatisation, post-privatisation and the application of free market mechanisms; Direction for control of actions of corruption and organised crime; Direction for control of the contracting and utilization of funds and international credits granted to Romania; Direction for control of ministries and other institutions subordinated to the Government; Direction for control of institutions and persons with special jurisdictional regime.

from the City. The inspection resulted in the resignation of the City Council. However, concerns exist that the inspection may have been motivated primarily by the Prime Minister's opposition to the Mayor of Bucharest.<sup>53</sup>

### *Other anti-corruption agencies*

Other agencies with a special role in fighting corruption are listed below.

- Within the General Police Inspectorate<sup>54</sup> two departments play roles in combating corruption: the Directorate of Financial and Economic Police, which includes a central Anti-corruption Service (ten people) and territorial anti-corruption bureaus (five to six people each); and the Criminal Police Directorate, which has a small anti-corruption unit. The Public Prosecutor's Office has to cooperate with these two departments separately when investigating corruption, which appears to burden their activity.
- At the Ministry of Justice, the Directorate for Relations with the Public Prosecutor's Office and for the Prevention of Corruption and Criminality is responsible for communication with the Public Prosecutor's Office in criminal investigations.

### *Money laundering*

To fight money laundering, the Office for the Prevention and Control of Money Laundering was established in 1999,<sup>55</sup> composed of seven representatives from the Ministries of Finance, Interior and Justice, Prosecution Service at the Supreme Court, National Bank, Court of Audit and Association of Romanian Banks. Under the Act, financial institutions, notaries, casinos and other selected entities must notify suspicious transactions or those over a certain threshold to the Office. By early 2002, the General Prosecutor's Office had investigated around 20 cases transferred to it by the Office, but there were no known convictions. A new Ordinance passed by the Government in March 2002 widened the circle of entities with the duty to notify transactions to the Office, and also lowered the threshold for mandatory reporting of transactions from €10,000 to €5,000.

<sup>53</sup> As of June 2002, the PMCD's findings were being contested in court by several city councillors, and no elections to the City Council had been scheduled.

<sup>54</sup> The former Squad for Countering Organised Crime and Corruption under the General Police Inspectorate was reorganised in March 2000 as the Directorate for Countering Organised Crime, thus removing its anti-corruption role.

<sup>55</sup> Act no. 21/1999.

## 2.6 Ombudsman

The ombudsman (*Avocatul Poporului*) was established in 1997<sup>56</sup> to defend citizens' rights and freedoms in their interactions with public authorities. The ombudsman is appointed by the Senate for a four-year term and can be removed from office by a majority vote of the Senate only for violating the Constitution or other laws. The ombudsman reports to Parliament annually.

The office investigates complaints from citizens, press or NGOs concerning infringements of fundamental rights and freedoms by the public administration. Complaints may not be anonymous. The ombudsman does not have authority to investigate complaints concerning the judiciary.

The powers of the ombudsman are weak. Although public authorities are bound to provide the office with all documents and information relating to a specific complaint, public authorities are not sanctioned if they fail to do so. The ombudsman may request that an authority or official undertake corrective measures if an individual's rights were infringed. If this does not happen within 30 days, the ombudsman notifies the superior authority, which in turn must reply within 45 days (20 days in the case of the Government) and specify measures that will be taken. The office has no further powers to enforce corrective measures.

The number of complaints to the ombudsman has grown from 1,168 in 1997 to around 4,500 in 2000. However, most complaints are rejected because they relate to the judiciary<sup>57</sup> – a sign of limited public awareness of the office's role.<sup>58</sup> No cases of corruption have been mentioned in the ombudsman's annual reports.

## 3. EXECUTIVE BRANCH AND CIVIL SERVICE

Corruption appears to be widespread if not endemic in the Romanian executive branch and civil service. This situation is underpinned by executive discretion stemming from the widespread use of ordinances, excessive immunity provisions for both current and

<sup>56</sup> 1997 Act on the Organization and Functioning of the Office of the Ombudsman.

<sup>57</sup> Ninety-one percent of complaints were rejected in 1997, 81 percent in 1998, while in 1999 the number decreased to 61 percent.

<sup>58</sup> Most of the complaints concern land restitution cases and other infringements of property rights. In 1999, 35 percent of the complaints dealt with infringements of individuals' right to private property. In: *Ombudsman's Annual Activity Report, January 1999-December 1999*, <<http://www.avp.ro>>, (last accessed 20 April 2001).

former members of the Government, poorly defined civil servant responsibilities, patronage at all levels and the ineffectiveness of procedures for redress against administrative decisions. Although a Civil Service Act was passed in 1999, its implementation requires substantial secondary legislation. Provisions to prevent conflict of interest situations or their abuse are inadequate, and are little observed.

### 3.1 Structure and legislative framework

Public administration reform represents one of the main challenges facing the Romanian Government. Corruption is widespread both in central and local administration, exacerbated by poorly defined responsibilities, a blurred boundary between administrative and political functions and a lack of transparency in administrative procedures.<sup>59</sup> Both central administration – ministries and other central agencies – and local administration suffer from poor organisation and facilities as well as a lack of equipment. In practice, citizens have limited rights of redress against administrative decisions.

For the purposes of this report, a fundamental legal issue is the immunity from investigation or prosecution enjoyed by both current and former members of the Government, against whom criminal proceedings may only be initiated by the Chamber of Deputies, Senate or President. As is similar for MPs, this provides *de facto* complete immunity, and no minister or former minister has ever been stripped of immunity (and therefore never been prosecuted or convicted).

The Romanian Parliament took a major step towards the creation of a modern civil service by passing the Act on the Status of Civil Servants (hereafter Civil Service Act) in November 1999.<sup>60</sup> The adoption of a Civil Service Act was a short-term priority under the 1998 AP,<sup>61</sup> and pressure from the EC on the Government was a vital factor in

<sup>59</sup> The following depressing picture of the civil service was provided by one former local public official: “I have worked for seven years in local public administration, yet I don’t know what it means or whether such thing as ‘public administration’ even exists. The only thing that I know for sure is that public administration is run according to the law of the ‘seven Fs’: ‘Steal from my brother with no fear, just push paper!’ (*Fura Frate Fara Frica, Formele Fie Facute!*)” Interview carried out for TI Romania project, “Corruption in Local Public Administration,” 9 February 2001.

<sup>60</sup> Act no. 188/1999 on the Status of Civil Servants, adopted 29 November 1999, in: *Official Gazette*, no. 600, 8 December 1999.

<sup>61</sup> According to the General Secretary of the new National Agency for Civil Servants, the Act was delayed because, “[N]o political party wanted a class of professional civil servants, dependent only on the law.” Interview with Paul Mitroi, General Secretary of the National Agency for Civil Servants, 9 May 2001.

securing the passage of the Act.<sup>62</sup> However, the implementation of the Act will require substantial secondary legislation. For example, it envisages a Code of Ethics for public officials, but none had been prepared as of summer 2002.

The Act defines a civil servant as a person appointed to a public office, defined as “the totality of competencies and responsibilities established by the public authority or institution, according to the Act, in order to realise its competencies.”<sup>63</sup> According to the Act:

- Civil servants must carry out their activities in a prompt, efficient, impartial manner without corruption, abuse of power or political pressure;
- Selection for public office is to be governed by competence as the sole criterion;
- Accession and promotion within the civil service is to be governed by equality of opportunity;
- Civil servants are to enjoy stability in their office.<sup>64</sup>

Among the conditions Romanian citizens must satisfy to be eligible for employment is a record free of convictions for offences that would render them unfit to occupy public office; however, corruption offences are not mentioned explicitly.<sup>65</sup>

The Act stipulates the creation of a National Agency for Civil Servants, the main management body for the Civil Service.<sup>66</sup> As of June 2001, the NACS was understaffed and lacked resources.<sup>67</sup> Moreover, the NACS’s tasks are tied to the adoption of several secondary acts that will clarify the provisions of the Statute (for example regarding recruitment and the establishment of disciplinary commissions). As of April 2002 these acts had not been passed. In the meantime, the NACS was subordinated to the

<sup>62</sup> The Commission consistently criticised the delays, and regarded the law as the “prerequisite for any meaningful reform of the public administration.” See Commission, *1999 Regular Report*, p. 62.

<sup>63</sup> Act no. 188/1999, Article 2, paragraph 1; Article 3, paragraph 1.

<sup>64</sup> Act no. 188/1999, Article 4.

<sup>65</sup> Act no. 188/1999, Article 6.

<sup>66</sup> The Agency is subordinate to the Ministry for Public Administration. It is responsible for: elaborating civil service legislation, policy and strategy; implementing and enforcing the Act on the Status of Civil Servants; setting criteria for evaluating civil servants’ activity; keeping records of civil servants’ careers; organising a system of professional training; and preparing an annual report for Parliament on the management of the Civil Service.

<sup>67</sup> At the time of writing, the Agency had 85 staff. According to General Secretary Paul Mitroi, Agency employees had to queue for computers.

Ministry of Public Administration by a Government decision,<sup>68</sup> meaning it is no longer an independent agency.

In practice, the Act has not prevented patronage at senior levels. After the 2000 elections, the Romanian Government replaced a large number of civil servants, including a number of state secretaries. The Prime Minister has criticised and cautioned against the hiring of friends and relatives by local government officials.<sup>69</sup> The press recently reported the case of a prefect who appointed his wife as director of his own cabinet. Press exposure and an investigation by the Prime Minister's Control Department resulted in her resignation.<sup>70</sup>

### *EU assistance*

The 1998 PHARE programme for public administration reform includes a €1.7m project focused on "Support for the NACS in Designing and Implementing Civil Service Reform." The project, which was in progress at the time of writing, is aimed at strengthening the operational capacity of the NACS, elaborating on the civil service regulatory framework relating to the Act (including an ethical code), and improving civil service training.

## **3.2 Administrative procedure and redress**

Under Romanian rules of administrative proceedings, administrative decisions must be issued within 30 days. Under the Romanian Constitution, "Any person aggrieved in his legitimate right by an administrative act or failure of a public authority to solve his application within the legal term is entitled to the acknowledgement of his right, annulment of the act, and remedies for the damage."

Appeals against administrative decisions must first be filed to the authority that issued the decision, after which they may be filed to a county court or Court of the City of Bucharest.<sup>71</sup> The Administrative Disputes Section of the Supreme Court of Justice decides appeals. Courts have the power to annul an administrative decision and decide on compensation for damages.

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<sup>68</sup> Government Decision 8/2001.

<sup>69</sup> *Evenimentul Zilei*, 26 April 2001.

<sup>70</sup> *Adevarul*, 24 April 2001.

<sup>71</sup> Act no. 29/1990 on Administrative Litigation.

However, the Act is limited by the fact that there are certain types of acts of the Executive that may not be appealed by citizens in court.<sup>72</sup> Moreover, public authorities are not required to justify administrative decisions, which means in practice that persons can only make an appeal against the failure of an authority to meet the legal deadline.

In practice, the review of executive actions is much more often pursued by prefects (the county level representatives of the Executive) against the county or local council, and by the Mayor against the Prefect, than by citizens against the public administration. A draft of a new Act on Administrative Litigation that would give citizens the right to appeal the acts of any public authority in court was under discussion in Parliament as of May 2002.

According to GRECO, investigations of corruption in the public administration are hampered by shortcomings in legislation on conserving, filing and archiving official documents. Although destruction of documents is subject to penalties of up to five years' imprisonment, "[I]tems of this sort are destroyed relatively frequently in order to conceal acts of corruption that would entail a more serious penalty."<sup>73</sup>

### 3.3 Conflict of interest and asset monitoring

In addition to the general provision against conflict of interest in the 2000 Anti-corruption Act (see Section 2.2), the Act on the Organisation and Functioning of the Government<sup>74</sup> forbids members of the Government "from the exercise of any commercial acts, except the selling and buying of shares; the exercise of the office of administrator or auditor of a commercial company or member of the administration council of self-administered companies, state companies and national companies; or the exercise of public office within a foreign organisation, unless otherwise provided by agreements and conventions to which Romania is a party."<sup>75</sup> The Prime Minister is responsible for judging whether situations violate these provisions and taking steps to end such situations, but has never taken actions to enforce the law.

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<sup>72</sup> Such acts refer, among others, to the relations between Parliament, President and Government; the administrative acts concerning internal and external security of the State; those that relate to the interpretation and enforcement of international acts; emergency measures taken by the Executive in cases of natural calamity or other serious events; commanding acts of a military character; acts of the State regarding the administration of its patrimony; and administrative acts adopted in the exercise of powers of hierarchical control. See Act no. 29/1990, Article 2.

<sup>73</sup> GRECO, *Evaluation Report on Romania*, p. 13.

<sup>74</sup> Act no. 90/2001, Article 4.

<sup>75</sup> Act no. 90/2001, Article 4.

No minister or other senior official has ever been sanctioned for violating incompatibility rules. However, the media have covered widely the ancillary activities of ministers, including the apparently universal practice of state secretaries and other senior officials sitting in on the administrative councils of companies where the State is shareholder.<sup>76</sup>

The occupation of ancillary positions and business activities by civil servants is widespread. The President of one County Chamber of Audit described the reality as follows:

Very many employees of the Ministry of Finance have supplementary jobs (as auditors, accountants, etc), thereby ensuring the protection of the firms that hired them. In my county, there are cases of high officials of the Finance Department who take as many as 19 salaries from different secondary employments. This means at least 19 days wasted per month – do they still have time for their official jobs? Another effect of this is that officials are put in a situation where they control each other and not the firms themselves.<sup>77</sup>

Although Romanian officials believe this is an extreme example, it is noteworthy that such a situation is not against the current law. Senior officials defend such situations on the grounds that such officials are paid very low wages and must make money from additional sources.<sup>78</sup>

The 1991 Act on Local Public Administration also forbids prefects and sub-prefects from performing professional, paid activities in self-managed public companies, and other companies or profit-seeking organisations.<sup>79</sup> Infringement of these provisions is also widespread. When the media exposed a prefect who was also a member of the administrative council of a trade company,<sup>80</sup> the prefect's superiors took no action.

Under the 1999 Civil Service Act, all public officials are obliged not to solicit gifts during the exercise of their duties.<sup>81</sup> However, Romanian law defines neither gifts nor hospitality, mirroring a reality that is very difficult to regulate given the high social and cultural acceptability of gift giving and receiving. In practice, the provision of gifts to public officials is widespread and goes unsanctioned. In 2000 and 2001, the media covered the practice of giving "Easter Bribes" (*Spagile de Pasti*) – where delegates from country directorates of the Ministry of Agriculture supply various gifts of lamb meat to senior officials in the Ministry,

<sup>76</sup> For example, the *Adevarul* daily recently published a series of 12 articles titled "The firms of MPs," analysing the commercial interests and businesses of MPs representing various constituencies. In: *Adevarul*, weekly from 26 April 2001.

<sup>77</sup> Interview within the TI Romania project, "Corruption in local public administration," 22 April 2000.

<sup>78</sup> OSI Roundtable Discussion, Bucharest, 28 March 2002.

<sup>79</sup> Act no. 69/1991, Article 107.

<sup>80</sup> *Adevarul*, 6 April 2001.

<sup>81</sup> Act no. 188/1999, Article 46, paragraph 1. For details, see chapter on Civil Service.

for example to maintain favour in subsidy allocation or keep jobs which depend on the discretion of ministry officials.<sup>82</sup> The director of a local branch of the Ministry of Transport invited the author to come and witness how local ministry officials also load cars with all kinds of presents for their superiors in Bucharest: a necessary ritual by which local officials demonstrate their loyalty towards “Bucharest.”

### 3.4 Internal control mechanisms

Control mechanisms in the executive have been covered under Section 2.4 (Control and audit) and 2.5 (Anti-corruption agencies – the Prime Minister’s Control Department).

### 3.5 Interaction with the public

The Civil Service Act states a number of duties for civil servants, including:

- the obligation to fulfil their responsibilities with professionalism, loyalty, correctness and conscientiousness and to refrain from any act that may prejudice a public authority or institution;
- the obligation to perform their official duties as assigned;
- the obligation not to receive requests or applications whose resolution does not fall under their area of competence or to intervene in favour of such petitions.<sup>83</sup>

Breaking these provisions results in the application of administrative sanctions (warning, reprimand, wage penalty, suspension of promotion for one to three years, transfer to an inferior office for 6-12 months, or removal from office).<sup>84</sup> However, the Act is too vague to provide any real framework for interactions with the public and has not been supplemented by any specific instructions.

There is no legal protection for whistleblowers in Romania.

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<sup>82</sup> “Easter Bribes,” *Evenimentul Zilei*, 24 April 2000. Lambs were also supplied to high officials in the National Health Insurance House, and the General Inspectorate of Police; see “Operation the Lamb,” *Evenimentul Zilei*, 13 April 2001.

<sup>83</sup> Act no. 188/1999, Articles 41–48.

<sup>84</sup> Act no. 188/1999, Article 70.

### 3.6 Corruption

The most straightforward accusation of governmental corruption was issued by the chief of a Parliamentary Commission of Inquiry into the privatisation of RomTelecom, the national telecommunications company. He accused four ministers from the RomTelecom Privatisation Committee of having received several million dollars as a “commission” to favour the winner of the contract, Greek OTE.<sup>85</sup> The report of the Parliamentary Commission of Inquiry also stated that the State lost more than €867m because of the manner in which the privatisation contract was drafted.

The media has also covered evidence from military contracts that indicate widespread corruption in the allocation of defence contracts, resulting *inter alia* in damage to Romania’s preparations for NATO membership.<sup>86</sup>

As Section 1 has already made clear, citizens’ perceptions of the civil service are, to a large extent, dominated by their views on corruption, with over 70 percent of survey respondents believing that all or most public officials are corrupt.

#### *Ordinances*

According to the Romanian Constitution, the Government may *de facto* legislate directly through ordinances in fields that do not require an organic law.<sup>87</sup> Emergency ordinances may be issued “in exceptional cases.” Ordinances come into effect immediately and are approved by Parliament retrospectively<sup>88</sup> while emergency ordinances must be approved by Parliament before they come into effect. In practice emergency ordinances come into effect in the same manner as normal ordinances.

In recent years, all Governments have extensively used ordinances and emergency ordinances, officially to compensate for the sluggishness of Parliament. Moreover, emergency ordinances are used not just in exceptional cases but in all areas, even to alter organic laws. For example, an emergency ordinance was used in 2001 to alter the Code of Civil Procedure, specifically the process of appeal against the General

<sup>85</sup> *Evenimentul Zilei*, 25 October 2000.

<sup>86</sup> According to Mircea Toma, an investigative journalist and Director of the Media Monitoring Agency, only four of the army’s 19 investment projects in early 2002 were useful for NATO preparation; defence contracts are mediated mainly through a network of 30-40 small Romanian arms trading companies that are linked to or corrupt officials at the Ministry of Defence. One of the consequences of the system was a contract for ammunition that is not used by any weapon the army possesses. See M. Toma, “Arma scapa tuma,” *Academia Catavencu*, 12 March 2002.

<sup>87</sup> Under the Romanian Constitution, there are three types of laws: constitutional (dealing with constitutional revision), organic (regulating areas of special importance), and ordinary.

<sup>88</sup> Constitution of Romania, Article 114.

Prosecutor's final judgements.<sup>89</sup> In 2001, the Prime Minister at the time of writing has himself admitted that issuing numerous emergency ordinances is a "perverse practice," but has continued using them.<sup>90</sup>

The European Commission has repeatedly criticised the abuse of ordinances. The *2001 Regular Report* notes that, although an increase in the efficiency of Parliament has led to a fall in the number of ordinances,

[L]egislation by ordinance remains too common and has frequently been used without a clear justification for bypassing parliamentary procedures. This... can result in legislative instability... [and a] further concern is that Parliament's ability to carry out the essential function of scrutinising legislation remains limited.<sup>91</sup>

The extensive use of ordinances opens up wide space for executive discretion – especially in the area of public expenditure – thereby facilitating corruption. For example, several emergency ordinances have been issued over the past three years to reschedule the debts or exempt from taxes both state companies and private firms. SIDEX (the largest state-owned steel plant in Romania) has benefited from more than €226,333 in State subsidies, mainly through tax relief.

#### 4. LEGISLATURE

Although all public expenditure is included in the official budget, the Government makes extensive use of ordinances to change the budget *post hoc*, facilitating the allocation of favours to selected interests in return for bribes or contributions to political parties. There are no specific provisions on conflict of interest for MPs, many of whom are also practising lawyers or carry on other ancillary activities. Generous immunity provisions have proved effective in preventing the prosecution of corruption cases, and may be an important incentive for gaining election to Parliament. Contributions to parties by their own candidates in return for favourable positions on candidate lists may be a widespread phenomenon.

<sup>89</sup> Emergency Ordinance no. 59/2001.

<sup>90</sup> Prime Minister's speech, issued at the Presentation of the Annual Activity Report of the Ministry of Justice, 28 February 2001, cited in: *Evenimentul Zilei*, 3 March 2001.

<sup>91</sup> Commission, *2001 Regular Report*, p. 17.

## 4.1 Elections

Romanian elections are regarded as generally free and fair. A Central Electoral Bureau (CEB), together with constituency bureaus and electoral bureaus of polling stations, is responsible for maintaining the “good conduct” of electoral proceedings. The CEB is established at election time and is composed of seven Supreme Court judges chosen by lot, and 16 representatives of the political groups contesting the elections, represented according to their share of the total number of candidates.<sup>92</sup>

The only area which appears to have been prone to illegalities is the registration of candidates for presidential elections, where candidates must present a list of 100,000 signatures. Before the 1996 and 2000 elections, several media reports drew attention to the CEB’s lack of control of signature lists, which contained many signatures that were invalid for various reasons.<sup>93</sup>

## 4.2 Budget and control mechanisms

Under the 1996 Public Finances Act all public expenditure is subject to parliamentary approval, including the State budget, social security budget, local government budgets and budgets of special funds for other public institutions.

However, during the implementation of the budget, the Government may modify the provisions of the Annual Budgetary Act. In practice, the budget as approved by Parliament only bears limited resemblance to the real pattern of public expenditure and revenue, as the Government makes extensive use of ordinances to alter the budget *ex post*.

### *Audit*

Although the Court of Audit audits the fulfilment of the national budget and performs numerous audits of specific government activities, it does not function in practice as an effective mechanism for controlling public expenditure (for a full description of the Court, see Section 3). The Court’s reports are generally submitted very late to Parliament, which does not debate them properly.

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<sup>92</sup> No grouping may have more than five representatives on the CEB, and candidates may not be members.

<sup>93</sup> Up to summer 2002, neither the CEB nor any other authorities had investigated this matter further.

### 4.3 Conflict of interest and asset monitoring

The Standing Orders of the two chambers of Parliament do not constrain MPs' involvement with private firms or require them to disclose their interests (such as public and private appointments, property, shares, or campaign accounts). There are also no legal provisions regulating the acceptance of gifts or hospitality by MPs. The majority of MPs sit on the administrative councils of State enterprises or manage their own companies.<sup>94</sup>

The media recently exposed a senator's position as a consultant in a Romanian bank that itself played a key role in a major investment funds scandal.<sup>95</sup> Following repeated media coverage and criticism from other politicians, he gave up the banking position. The GRECO Evaluation Report on Romania criticised in particular the practice of elected representatives practicing simultaneously as lawyers.<sup>96</sup> Senator Antonie Iorgovan, a member of the governing Party of Social Democracy for several years, defended judges and other senior officials accused of corruption.<sup>97</sup>

Monitoring of assets is covered in Section 2.2.

There is no regulation of lobbying in Romania, although the National Anti-corruption Plan envisaged the passage of a lobbying act by the first quarter of 2002.

### 4.4 Immunity

Under the Romanian Constitution, deputies and senators enjoy immunity from prosecution not only for opinions expressed during the exercise of their mandate, but also from arrest, detention, search and prosecution for any criminal offence or transgression unless the Minister of Justice submits an application for removal of immunity and Parliament authorises prosecution by a two-thirds majority in the Chamber of Deputies and a simple majority of the Senate. The case is then heard by the Supreme Court of Justice.<sup>98</sup> Immunity is automatically restored if an MP is re-

<sup>94</sup> The *Adevarul* daily recently published a series of 12 articles titled "The firms of MPs," analysing the commercial interests and businesses of MPs representing various constituencies. In: *Adevarul*, weekly from 26 April 2001.

<sup>95</sup> Information provided by Mircea Toma, Director of Press Monitoring Agency.

<sup>96</sup> GRECO, *Evaluation Report on Romania*, p. 20.

<sup>97</sup> He agreed to stop only after the Prime Minister Adrian Nastase requested that he cease in order not to make the anti-corruption efforts of the government look ridiculous.

<sup>98</sup> In cases of *flagrante delicto* (capture in the act of committing the offence), a deputy or senator may be detained and searched but not prosecuted. The respective Chamber must be promptly informed and may order the cancellation of the detainment.

elected,<sup>99</sup> and is not terminated when elections take place. As GRECO noted, “This situation has an undeniable potential for permanent obstruction of the judicial system.”<sup>100</sup>

There have been very few cases of MPs being stripped of their immunity, and none concerning corruption cases. For example, in 1997 the Chamber of Deputies refused to cancel Deputy Gabriel Bivolaru’s immunity in connection with a €2.425m fraud. The Anti-corruption Section has unsuccessfully requested that the Minister of Justice apply to lift another MP’s immunity. According to one prosecutor from the Section,

We have problems with parliamentary immunity. In my opinion, it is not normal that an MP who plundered a bank or who engages in smuggling benefits from immunity. These are some of the reasons why the judiciary is often powerless.<sup>101</sup>

Indeed, immunity may have itself become a significant source of corruption as persons needing legal protection pay their way onto party election lists in order to enter Parliament. One respected investigative journalist estimates that almost half of all current MPs paid to gain places on party candidate lists.<sup>102</sup>

The Government’s National Anti-corruption Plan includes a commitment to limit immunity in general by the end of 2002, although according to senior officials the Government plans to solve the issue by 2004.<sup>103</sup> The EC *Regular Reports* have not mentioned the issue of immunity.

## 4.5 Corruption

Taken together, the factors described above provide an ideal environment in which corruption can flourish in Parliament. This is exacerbated by the weaknesses of regulation of party financing (see Section 6).

<sup>99</sup> This happened in the case of Senator Vadim Tudor, who was stripped of immunity in 1996 in connection with a case of defamation. After being re-elected before the final court judgment, he was stripped of immunity again in 1999 for participating in a miners’ march on Bucharest, only to be re-elected again in 2000.

<sup>100</sup> GRECO, *Evaluation Report on Romania*, pp. 24–25.

<sup>101</sup> Interview with Flavius Craznic, prosecutor from the Anti-corruption Section, cited in *Evenimentul Zilei*, 18 August 2000.

<sup>102</sup> Interview with Nicoleta Savin, journalist. A businessman from Hunedoara confessed to having paid €10,833 to the Democratic Convention in order to be given the first place on the county list for the Chamber of Deputies before the 2000 elections. Despite making the payment, was not placed on the list. *Evenimentul Zilei*, 27 June 2001.

<sup>103</sup> OSI Roundtable Discussion, Bucharest, 28 March 2002.

World Bank research indicates that the capture of parliamentary votes by private interests is a major problem for almost half of Romanian firms.<sup>104</sup> More than two-thirds of the public thinks that almost all or most MPs are involved in corruption,<sup>105</sup> while Parliament is regarded as the fourth most corrupt institution<sup>106</sup> and is the least trusted Romanian institution.<sup>107</sup>

## 5. JUDICIARY

Surveys indicate that corruption is widespread in the judiciary, and extremely high levels of distrust contribute to a generalised perception that Romania is governed by vested interests rather than by the rule of law. Although the main foundations of an independent judiciary have been put in place,<sup>108</sup> interference by the executive branch in the judiciary and corruption within the judiciary itself raise doubts about the will or ability of the Romanian Government to pursue an effective anti-corruption policy. These problems are exacerbated by the overloaded court system and consequent lengthy delays in judicial proceedings; the average length of criminal proceedings is two years,<sup>109</sup> although the backlog of cases has been slowly decreasing.<sup>110</sup>

<sup>104</sup> Forty-two percent of Romanian firms think they are significantly affected by the capture of parliamentary votes. See World Bank, *Diagnostic Surveys of Corruption in Romania*, p. 18.

<sup>105</sup> Sixty-six percent of Romanians consider that most MPs are corrupt. This makes MPs the most corrupt professional group. See SELDI, *Regional Corruption Monitoring*, p. 14.

<sup>106</sup> World Bank, *Diagnostic Surveys of Corruption in Romania*, p. 5.

<sup>107</sup> Eighty-eight percent of Romanians have little or very little trust in the Parliament. See Open Society Foundation, *Public Opinion Barometer*, Bucharest, November 2000, pp. 19–20.

<sup>108</sup> See EU Accession Monitoring Program, *Monitoring the EU Accession Process: Judicial Independence*, Open Society Institute, Budapest 2001, p. 352., available at <<http://www.eumap.org>>

<sup>109</sup> GRECO, *Evaluation Report on Romania*, p. 12. Sixty-eight percent of Romanian enterprises reported that slow courts are a serious obstacle to doing business; see World Bank, *Diagnostic Surveys of Corruption in Romania*, p. 11.

<sup>110</sup> The Commission's *2000 Regular Report* noted that the number of files pending in courts has been slowly decreasing since 1998 (in 1998 the number of pending files in civil cases was 357,307, in 1999 it was 284,942, while in July 2000 it had been reduced to 173,056). See Commission, *2000 Regular Report*, p. 17.

## 5.1 Legislative framework

The Romanian judiciary is described in detail in the Open Society Institute's *2001 Report on Judicial Independence in Romania*.<sup>111</sup> The most important aspects of the legal framework for the purposes of this report, drawn from the above-mentioned OSI report, the GRECO *Evaluation Report* and the findings of this report are as following.

Although the Constitution asserts the independence of judges, it places "Courts of Law" and the "Public Ministry" under the same heading of Judicial Authority, blurring the distinction between the Judiciary and the Executive.<sup>112</sup> Both judges and prosecutors have the quality of magistrates, meaning "judicial authority" in the Romanian system.

The President of the Republic appoints judges for life on the nomination of the Superior Council of Magistracy (SCM), which also handles promotions and transfers. Although the SCM consists of ten judges and five prosecutors and is elected for a four-year term by both chambers of Parliament, the operation of the Council gives more room for influence by the Minister of Justice than is compatible with Council of Europe recommendations. The SCM is chaired by the Minister of Justice in a non-voting capacity, the Minister may impose disciplinary sanctions on judges and prosecutors, and may give permission for them to be investigated and prosecuted. Moreover, Supreme Court judges are appointed for a renewable term of only six years, which GRECO noted "with concern" and regarded as unjustified.<sup>113</sup>

More serious concerns relate to the independence of prosecutors. The Prosecutor-General is appointed and recalled by the President on the proposal of the Minister of Justice, and other prosecutors are nominated by the SCM and appointed by the President. The prosecution system is strongly hierarchical: the Prosecutor-General can order any subordinate prosecutor to drop a case, although formally only on the grounds that the subordinate had proceeded illegally. The Minister can give written instructions directly to prosecutors or through the General Prosecutor's Office to initiate criminal proceedings. Moreover, criminal investigation of a magistrate, MP or minister requires the approval of the Minister, which effectively makes prosecutions of politicians dependent on political will.

This situation is exacerbated by the nature of disciplinary proceedings against judges and prosecutors. The SCM is responsible for disciplinary proceedings against judges,

<sup>111</sup> Open Society Institute, *Monitoring the EU Accession Process: Judicial Independence*, pp. 349–94.

<sup>112</sup> A 1997 amendment of the Act on Judicial Organization clarifies in part this confusion by stating that, "Judicial Power is separate from other powers and shall be exercised only by courts of law." In: Act no. 92/1992 on the Organization of the Judiciary, as amended by Act no. 142/1997, Article 1.

<sup>113</sup> GRECO, *Evaluation Report on Romania*, p. 23.

but the Minister of Justice decides whether a disciplinary measure will be imposed. Disciplinary proceedings against prosecutors are initiated by the Minister or the Prosecutor-General, but the decision to proceed is made by a Discipline Committee of five prosecutors. In the case of both judges and prosecutors, the Act on the Organisation of the Judiciary allows for two types of proceedings: a standard procedure with the right of appeal, and a similar process with no right of appeal. According to the former Head of the Anti-corruption Section, the former is very rarely used, while the use of the second type of procedure has “promoted political obedience.”<sup>114</sup>

Although disciplinary proceedings against judges appear to have been mainly used weakly rather than as tools of political influence,<sup>115</sup> recent developments confirm that the independence of prosecutors is not guaranteed in practice. The current Government removed the Prosecutor-General, Chief of the Military Prosecutor's Office and the Chief Prosecutor of the Anti-corruption Section – all of whom had investigated important cases involving senior politicians or officials.<sup>116</sup> In March 2001, the Minister of Justice issued a letter to all appellate courts in the country, advising judges to favour the rights of tenants over landlords in restitution cases.<sup>117</sup> In April of the same year, the Government wrote to the Cluj Local Court requesting that bankruptcy procedures against a specific bank be suspended until the Government took a decision “favourable to the interests of the Romanian economy.”<sup>118</sup> Although the Government subsequently admitted to the European Commission that this was a mistake,<sup>119</sup> media reports suggest that, “Since the November 2000 elections, interference of the Executive in the Judiciary has reached unprecedented levels.”<sup>120</sup> In April 2001, EU Commissioner for Enlargement Guenter Verheugen singled out judicial independence in Romania as an important accession issue and asked the Government to explain recent personnel changes in the judiciary.<sup>121</sup>

In 2001, the SCM adopted the Magistrates' Deontological Code (Code of Conduct), and in early 2000 was negotiating with the International Centre for the Prevention of

<sup>114</sup> Interview with Ovidiu Budusan, 27 March 2002.

<sup>115</sup> On leaving office, former Minister of Justice Valeriu Stoica labelled the Council as too indulgent, a fact that in his opinion it “disappointed and discouraged honest magistrates, while encouraging the others to persevere in their erroneous practices.”

<sup>116</sup> When leaving office in 1998, Sorin Moisescu, a former General Prosecutor, made a significant declaration. He said he had received “hundreds of interventions from politicians for the appointment or dismissal of prosecutors.” Cited in: *Evenimentul Zilei*, 22 June 1998.

<sup>117</sup> *Evenimentul Zilei*, 3 April 2001

<sup>118</sup> *Evenimentul Zilei*, 30 April 2001

<sup>119</sup> Comments from OSI Roundtable Discussion, Bucharest, 28 March 2002.

<sup>120</sup> Interview with Liviu Mihaiu, deputy editor of *Academia Catavencu*, 11 April 2001.

<sup>121</sup> *Adevarul*, 27 April 2001.

International Crime and the United Nations in Vienna for an assistance programme to consolidate the integrity of the judiciary, including a mechanism to monitor adherence to the Code.

### *The Judiciary and EU accession*

Reform of the Romanian judicial system has been identified by the European Commission as one of the important requirements for Romania's accession to the EU. The judiciary is dealt with both in the *Regular Reports* and the *AP*, and has been the main target of PHARE programmes related to corruption (see Section 1.4).

## 5.2 Corruption

Trust in the judiciary is low. The percentage of citizens expressing little or very little trust in the judiciary rose from 62 percent in November 1998 to 74 percent in November 1999 and 77 percent in November 2000.<sup>122</sup> The judiciary is less trusted than the police, army or church.

According to the World Bank's *2000 Diagnostic Survey*, 65 percent of private businessmen agreed that all or most officials in the judiciary engage in corruption, making the judiciary the second most corrupt agency in their perception. Fifty-five percent of ordinary citizens and 53 percent of public officials shared the same opinion.<sup>123</sup> Twenty-two percent of ordinary citizens reported that they pay bribes while dealing with the judiciary. However, only five percent of companies reported encountering bribery in courts, interpreted by the survey to mean that most bribes in the judiciary are mediated by lawyers.<sup>124</sup> Corrupt practices seem to be most commonly used to speed up court proceedings or secure the assignment of a case to a particular judge.<sup>125</sup>

Ironically, security of tenure has been viewed in this context as an institution encouraging corruption in the judiciary.<sup>126</sup> A number of cases of corrupt judges have recently attracted public attention. The most publicised case is that of the President of

<sup>122</sup> Open Society Foundation, *Public Opinion Barometer*, Bucharest, November 2000, p. 19. The poll was performed on a sample of 1,775 persons.

<sup>123</sup> World Bank, *Diagnostic Surveys of Corruption in Romania*, p. 5.

<sup>124</sup> Recently an attorney has been arrested for demanding money (€15,680) from his client in order to bribe the judge. See *Evenimentul Zilei*, 26 January 2001.

<sup>125</sup> World Bank, *Diagnostic Surveys of Corruption in Romania*, p. 15.

<sup>126</sup> Both the former and present Ministers of Justice, as well as the current President and Prime Minister, have expressed concerns that judges invoke lifetime appointment as a shield against accountability.

the Criminal Section of the regional Appellate Court of Cluj, who was recently convicted of influence trafficking and sentenced to four years imprisonment. This was the first ever conviction of a Romanian judge for corruption. The testimony of the local businessman who broke the affair (an important figure of the Cluj underworld, according to witness testimony in court) implicated local police, a local prison commander and two other officials in corruption.

Another case concerns the arrest of a judge and a prosecutor for influence trafficking. Allegedly, the judge served as an intermediary to bribe another judge in Bucharest to facilitate the release of a famous arms dealer from custody. This dealer is already famous for having escaped prosecution for trading with embargoed countries. The case was in court as of June 2002.

## **6. POLITICAL PARTY FINANCE**

Political party funding is non-transparent, uncontrolled and probably highly corrupt. Standard problems of party corruption by business interests are supplemented by a problem of funding by individuals in exchange for places on party candidate lists (see Section 4.4). Even senior politicians admit that the majority of party funding is illegal or hidden. Party finances yielded the largest corruption affair since 1989.

### **6.1 Legislative framework**

Under the 1996 Act on Political Parties, political parties may receive the following sources of income:

#### *Membership fees*

There is no limit on total income from membership fees, but the total fees paid by a single person in one year may not exceed fifty times the minimum monthly salary.

#### **Income from own activities**

Permitted sources of income include editing and distribution of party publications; entertainment, sporting and cultural activities; internal services; rental of spaces for conferences and social and cultural activities; interest on bank deposits; and sales of assets, excluding those received as donations from abroad.

### Donations and legacies

Donations represent the main funding source for Romanian political parties. The 1996 Act prohibits donations from companies, public organisations and foreign organisations or states. Donations received by any single party in a non-election year may not exceed 0.005 percent of GDP (approximately €162,500 in 2000), and 0.01 percent in an election year.

Parties must publish in the Government's *Official Gazette* a list of all persons who donated amounts exceeding ten times the monthly minimum wage in any given year. Anonymous donations may not exceed 20 percent of the state subsidy allocated to the party in that year.

Parties violating provisions on donations are subject to symbolic sanctions: donations received under illegal conditions become "income to the State budget."<sup>127</sup> Although the 1996 Act states that "donations of material goods and money obviously made to obtain a political or an economic advantage are prohibited," no method of determining the intent of donors has been established.

### State subsidies

Total State subsidies to political parties may not exceed 0.04 percent of that year's GDP (around €2.6m in 2000). State subsidies to political parties are divided into three shares:

- Political parties, which at the beginning of the legislature are represented by a parliamentary group in at least one Chamber, are entitled to receive a so-called "basic subsidy." Basic subsidies make up one-third of the total budgetary subsidies allocated to political parties.<sup>128</sup>
- All political parties represented in Parliament also receive a subsidy proportional to their number of mandates. The sum allocated for one mandate is calculated by dividing the remaining two-thirds of budgetary subsidies by the total number of MPs.
- Political parties that did not win any parliamentary mandates but obtained at least two percent of votes cast receive equal subsidies calculated by dividing the remaining part of state subsidies by the number of such parties. The total subsidy granted to a non-parliamentary party cannot exceed a basic subsidy.<sup>129</sup>
- Any sum remaining after this redistribution is allocated to parliamentary parties according to their number of mandates.

<sup>127</sup> Act no. 27/1996, Article 45.

<sup>128</sup> Act no. 27/1996, Article 39, paragraph 3.

<sup>129</sup> Act no. 27/1996, Article 39, paragraph 6.

- The State subsidises political parties indirectly, as all party income is tax-free and donations from abroad are duty-free.
- The total yearly subsidy granted to one political party cannot exceed five times the basic subsidy (around €433,340).
- Income from subsidies cannot be spent on electoral campaigns.

### *Reform*

Before the November 2000 elections, the former Minister of Justice initiated a draft Act on the Financing of Political Party Activities and Electoral Campaigns.<sup>130</sup> The draft Act would set limits on campaign expenditure, forbids certain categories of expenses, specify clearly the duties of the electoral treasurer, oblige political parties to submit financial reports to the Court of Audit within 15 days of the end of electoral campaigns, and increase sanctions for violations. According to Ministry of Justice officials, three draft acts were under discussion as of March 2002, although none had been submitted to Parliament by June 2002.

## 6.2 Control and supervision

Apart from the obligation to publish donations in the *Official Gazette*, parties do not publish any other kind of financial documents. The electoral treasurer of each party is responsible for keeping the accounts of the party and making them available on request to the Court of Audit or special Commissions of Inquiry set up by Parliament.<sup>131</sup>

In practice there has been no control of party finances. The Court of Audit began its first audit of party finances in February 2001, based only on financial documents provided by parties. A Parliamentary Commission of Inquiry established in June 2000 was to submit a report to the Parliament by 1 October 2000, but the report had not been submitted by early 2002.

## 6.3 Party finance in practice

Political party financing is troubled by widespread non-compliance with disclosure provisions, together with extensive evidence of corruption. The real extent of corruption in Romanian political party financing is impossible to measure. However, Valeriu Stoica, former Minister of Justice, summarised the situation in the following statement:

<sup>130</sup> The draft Act was designed together with the members of Pro Democratia Association.

<sup>131</sup> Constitution of Romania, Article 61, paragraph 4.

Political parties should have the courage to admit that, at this moment, the financing of political parties' activities and of their campaigns is carried out 80 percent illegally. And, even though the proportion of illegality is 80 percent, there is no sanction to counter it.<sup>132</sup>

In December 2001, Traian Basescu, president of the Democratic Party and General Mayor of Bucharest, denounced the corruption existent in the financing of political parties, offering examples from his own party. According to his estimations, the Democratic Party officially declared €108,340 as revenue from donations, while the whole cost of the campaign was around €1.625m, adding that,

We all know that we used money from donations made by businessmen or firms, which hoped that DP would continue to govern and thus pay them, back the services they had made during the campaign... If this is what happened in our party, I wonder what was going on in the others?<sup>133</sup>

A recent study of the Pro Democratia Association shows that political parties have spent much larger amounts than they declared in the *Official Gazette*, based only on media reports (see Table 4).<sup>134</sup>

**Table 4: Difference between the amounts declared and actually spent by parties in the 2000 electoral campaign**

	<i>Amounts declared in the Official Gazette (€)</i>	<i>Amounts monitored by APD (€)</i>
National Liberal Party	420.567	2,664.846
Party for Social Democracy in Romania	51.502	4,046.877
Democratic Party	354.033	2,767.471
Alliance for Romania	72.158	1,183.243
Union of Rightist Forces	54.167	247.937
Socialist Party of Labour	1.741	215.867
National Alliance (Party of National Unity in Romania – National Romanian Party)	2.851	351.632

<sup>132</sup> Valeriu Stoica, cited in: *Dilema*, no. 405, 17-23 November 2000, p. 8. When he made this statement, Stoica was the Minister of Justice. Valeriu Stoica is now the President of the National Liberal Party.

<sup>133</sup> Nicoleta Savin and Ondine Ghergut, "Inviting Adrian Nastase to do the same thing, Basescu admits that DP did not declare all the money from the campaign," *Evenimentul Zilei*, 27 December 2001. The meaning of the last sentence from Traian Basescu's declaration is that bigger parties receive many more illegal donations than the smaller ones.

<sup>134</sup> Pro Democratia Association, *Romanian Political Parties' Funds in the Electoral Year 2000*, Bucharest, May 2001. The study is part of the project "Transparency, Trust, Democracy," financed by Open Society Foundation Romania.

In its *2001 Regular Report*, the EC referred to these discrepancies in calling for “a fully transparent system of party funding.”<sup>135</sup> Moreover, the Pro Democratia Association did not monitor several important categories of expenses, such as those for the design and production of electoral materials, street posters, transportation and accommodation expenses, the cost of electoral polls, staff and communication expenses. Pro Democratia estimated that the amounts actually spent by political parties in the 2000 electoral campaign were twice as big as the ones the organisation evaluated.<sup>136</sup> Finally, many firms finance parties indirectly, for example by paying directly for election advertisements.<sup>137</sup>

Numerous media reports have linked the illegal financing of parties with the rescheduling of debts of certain firms, with the privatisation of many state enterprises, with the questionable lending policies of some banks, illegal reimbursement of VAT, tolerance of tax evasion and allocation of public contracts. For example, contributions to parties by alcohol producers in Romania and promotion on party lists of candidates favourable to their cause (they supported financially almost 100 candidates for the 2000 parliamentary elections) provide substantial circumstantial evidence of corruption.<sup>138</sup> Tax evasion is rampant in this field: it is estimated that only ten percent of total alcohol production is officially taxed. In addition to tolerance of tax evasion, after the elections the same companies received huge tax exemptions and debt rescheduling.<sup>139</sup>

The biggest affair to have been publicised concerning Romanian party financing is the so-called Costea Affair (see Section 2.5).

All this helps to explain the fact that according to opinion surveys 86 percent of Romanians have little or very little trust in political parties,<sup>140</sup> while more than half of the public thinks that “nearly all” or “most” political party leaders are involved in corruption.<sup>141</sup>

<sup>135</sup> Comission, *2001 Regular Report*, p. 22.

<sup>136</sup> C. Pirvulescu, “Political parties and illegal funding,” *22* (weekly), 15-21 May 2001, p. 6.

<sup>137</sup> Interview with Adrian Moraru, coordinator of the APD project “Transparency, Trust, Democracy.”

<sup>138</sup> *Capital*, no. 47, 23 November 2000, pp. 8–9.; *Capital*, no. 14, 6 April 2000.

<sup>139</sup> The media has covered extensively the cases of European Drinks, the biggest alcohol producer and recipient of several billion Lei debt relief, and of Moldo Production company, which in June 2000 owed more than €1.94m in taxes. As one small alcohol producer explained, “It is only natural that the Minister of Finance, police and prosecutors tolerate the huge illegal production of alcohol... because there is no political party in this country without a distillery... and... no distillery without political backing.” In: *Capital*, no. 47, 23 November 2000, p. 8.

<sup>140</sup> Open Society Foundation, *Public Opinion Barometer*, Bucharest, November 2000, p. 20.

<sup>141</sup> The exact percentage is 53.7. See SELDI, *Regional Corruption Monitoring*, p. 14.

## 7. PUBLIC PROCUREMENT

Corruption appears to be systemic in public procurement, ranging from collusion and strong patron-client networks to standard bribery. The most important progress made by the Government in anti-corruption policy so far has been reform of the legal framework for public procurement, and the implementation of the new legislation will be an important test of the State's ability to follow through on anti-corruption policy. As of June 2002 there was still no independent body for supervising procurement or dealing with appeals against procurement decisions.

### 7.1 Legislative framework

Until 1999, the only public procurement legislation in effect was a 1993 Government ordinance, which together with secondary legislation established a rough legal framework for procurement. Under these rules, contracts with a value exceeding a certain threshold had to be procured through an open public tender, a public tender with pre-selection, or through a restricted procedure. The 1993 legislation (changed around 600 times) contained very unclear tender rules, allowed excessive discretion in the use of sole sourcing, did not include provisions on transparency or conflict of interest or any significant sanctions for violation of the law.

#### *The 1999 and 2001 Public Procurement Acts*

In 1999, a comprehensive new governmental ordinance was passed to amend the shortcomings of the previous regulations.<sup>142</sup> The ordinance was drafted with the support of the European Commission (SIGMA experts).<sup>143</sup> In 2001, the Government changed the law again through an emergency ordinance, largely as a result of EU pressure.<sup>144</sup> There is widespread agreement that the Government's main goal in postponing the 2001 ordinance was to allow officials to raise funds for the coming electoral campaign and to award many contracts in exchange for the generosity of private firms that had contributed to the electoral campaign of 2000.<sup>145</sup>

Under current legislation, public authorities must submit contracts to open tender if they exceed €40,000 in value for a goods or services contract and €100,000 for a public works contract. Contracts may be allocated by sole sourcing:

<sup>142</sup> Government Ordinance no. 118/1999.

<sup>143</sup> Government Ordinance no. 118/1999, regarding Public Procurement, *Official Gazette*, no. 431, 31 August 1999.

<sup>144</sup> Commission, *2000 Regular Report*, p. 39.

<sup>145</sup> See, e.g., *Capital*, no. 39, 28 September 2000.

- if only a single contractor is capable of fulfilling the contract;
- to supplement or replace products already purchased from the supplier (for up to three years after the original contract) or which for unforeseeable reasons have become necessary and can only be purchased from the same supplier;
- if the authority decides to purchase new services or works similar to the subject of a previous contract, which was originally awarded according to an open or restricted tender and which mentioned the possibility of such sole sourcing, provided that the services or works observe the original terms of reference, are valued as they were in the original contract and are purchased within three years of the award of the initial contract;
- when contractors that operate in the utilities sectors purchase goods that are quoted and transacted on the stock exchange, or have an extremely profitable short-term opportunity to purchase goods at a price considerably lower than market price;
- in situations of *force majeure* (for example, a natural disaster).

The 2001 Ordinance is published in the *Official Gazette* and is available on the Internet. Contracting authorities must publish a notice of intent to procure in the *Official Gazette* for all contracts exceeding €750,000. Invitations to bid must be published similarly for all contracts to be allocated by tender. Tender documentation must be prepared containing standard tender information including general and specific contract conditions and the criteria used for assessing bids. The results of tender procedures must be published in the *Official Gazette* within 30 days of the award of the contract.

The following persons may not be members of an assessment commission or jury deciding a tender: spouses or relatives (to the third degree) of one of the bidders or candidates; persons who have in the last three years been members of the statutory, management or administrative organ of a bidder, or had any commercial contract with a bidder. There is no code of ethics or behavioural guidelines for public procurement officials or provisions to monitor the assets of members of commissions assessing bids, with the exception of the (entirely ineffective) provisions applying to all public officials since 1996 (see Section 2.2).

Bidders may be excluded from a tender if they are in bankruptcy or liquidation, have tax arrears, provide false information, or did not fulfil obligations under another public contract. Bidders who can be proven to have been involved in corrupt or fraudulent practices related to the procedure for the contract in question must be excluded.

The European Commission acknowledged the new Procurement Act as an exception to Romania's poor progress in the fight against corruption, and expressed the opinion

in 2001 that, “[E]ffective implementation of new legislation on public procurement should play an important role in the fight against corruption...”<sup>146</sup>

In addition, in January 2002 the Government passed an Emergency Ordinance on Public Procurement by Means of Electronic Devices, providing a legal framework for e-procurement and facilitating use of the Public Procurement Electronic System.<sup>147</sup>

## 7.2 Review and audit

Under the new Act, bidders may appeal procurement decisions first to the contracting entity and thereafter to an administrative court. There are no official statistics concerning the number of administrative or judicial appeals made in public procurement in the last three years. Indeed, there is no official data even on the number of contracts, their size or the winners. Unofficial estimates are that as many as 50 percent of procurement decisions are challenged.<sup>148</sup> However, the widespread practice of collusion between bidders (see below) may make this proportion much lower.

The Ministry of Finance and the Ministry of Public Works are responsible for enforcing the public procurement legislation, while a new Directorate for Public Procurement Regulation at the Ministry of Finance is responsible for producing an annual report on the operation of the public procurement system and building a database of public contracts awarded. GRECO recommended in its March 2002 evaluation report that the Service be strengthened, and preferably that an independent Public Procurement Office be created.<sup>149</sup> The Court of Audit is responsible for *post hoc* audit of public contracts.

## 7.3 Corruption

According to the available evidence, corruption in public procurement is endemic both at central and local levels although the media has tended to cover scandals in central Government procurement. Factors leading to corruption include the lack of qualified staff running tenders, problems in existing legislation (see above) and the existence of strong clientelistic networks binding officials to business interests.

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<sup>146</sup> Commission, *2001 Regular Report*, p. 101.

<sup>147</sup> The system can be accessed at <<http://www.e-licitatie.ro>>, (last accessed 15 August 2002).

<sup>148</sup> Interview with Simona Nanescu, European Commission Delegation, 19 April 2001.

<sup>149</sup> GRECO, *Evaluation Report on Romania*, p. 26.

*Collusion and fixing*

Local businessmen and even public officials “take it for granted” that small contracts should be fixed by means of an agreement between local bidders. A businessman (and local councillor) from Olt county explained that he had to obtain “bids” from two other firms for a contract to provide bread to a local military unit. These offers were drawn up so that he could win the contract. In return he does the same for other firms in other tenders. According to Court of Auditors officials from three different counties, 99 percent of all public tenders in Romania are “arranged” or “fixed.” Officials from the Prime Minister’s Control Department identify the preparation of tender documents in order to favour a particular contractor as one of the most important forms of corruption in procurement.<sup>150</sup>

*“Commissions”*

Another widespread corrupt practice is the “commission” (*comisionul*), usually estimated as at least ten percent of the contract value. The commission is a bribe that is taken for granted before negotiations on procurement even begin.<sup>151</sup>

*Conflict of interest*

Large proportions of firms winning public contracts are those with important officials from the local government among their shareholders. Many public officials do not even hide the fact that they work, at the same time, as private managers or consultants of local companies doing business with the municipality.

*Clientelism*

Entrance into local markets for public procurement (especially construction work) is invariably controlled by a group of firms that are protected by corrupt local officials and/or politicians. The relationships between businessmen and politicians are not transitory, but embedded in powerful networks of reciprocity and solidarity.

The extent of corruption in procurement is so severe that it has resulted in a number of Sicilian-style public contracts that will never be completed.

<sup>150</sup> OSI Roundtable Discussion, Bucharest, 28 March 2002.

<sup>151</sup> Public officials sometimes raise the amount demanded as commission: in this case, firms will either adapt to the new bribe thresholds or be forced to withdraw. The latter option is most common for small firms, which usually survive from subcontracting. The owner of a small firm doing road maintenance explained how he prepared for a tender organized by the County Directorate for Roads and Bridges with the ten percent “commission” in mind; however, the officials running the tender asked for 20 percent, forcing him to withdraw, as the revenue remaining would not cover the cost of participation in the contract.

## 8. PUBLIC SERVICES

Corruption in Romanian public services appears to be endemic, with the exception of the education system. Corruption in the police is underpinned by widespread collusion between the police and organised crime, while corruption in the customs authorities has rich historical roots and has implicated politicians up to the highest level. Corruption in the tax authorities is underpinned by wide discretion of tax authorities to grant tax breaks to companies. Widespread corruption to gain access to health services deters the poor from visiting doctors. The burden of licensing and regulation authorities is heavy in Romania, resulting in widespread corruption to ward off inspections.

### 8.1 Police

Corruption among Romania's 52,000 police is by all accounts endemic, although there are very few convictions – 21 cases in 1997, 24 in 1998, 26 in 1999 and only 17 in 2000 according to the Minister of Interior.<sup>152</sup> Many media reports suggest that the police and organised crime operate in cooperation, and the Prime Minister stated at the launch of the Ministry of Interior *2000 Activity Report* that,

The police cannot ensure public order if at the same time it shares the city of Bucharest with fifteen bands of robbers and pretends not to see the tax evasion taking place in the domain of alcohol.<sup>153</sup>

According to the World Bank's *Diagnostic Surveys*, 55 percent of enterprises, 47 percent of households and 39 percent of public officials consider that all or most police officers are corrupt.<sup>154</sup> The same surveys found that although bribery is not frequent during police investigations, it is very common in interactions with the traffic police.<sup>155</sup>

Puiu Latea, board member of Transparency International Romania, commented on police corruption in the following way:

I myself could give 17 examples of corrupt policemen (never proven) from a single town... [who] coordinate the trade in scrap iron, protect the illegal functioning of the only "exchange office" in town, don't pay a thing for their daily purchases (not even for bread!) and take bribes in order to return driving licenses that they themselves had previously confiscated. In my opinion, the

<sup>152</sup> *Curentul*, 27 April 2001.

<sup>153</sup> *Adevarul*, 6 March 2001.

<sup>154</sup> World Bank, *Diagnostic Surveys of Corruption in Romania*, p. 5.

<sup>155</sup> World Bank, *Diagnostic Surveys of Corruption in Romania*, p. 15.

Police of this town are very similar to a firm with a diffuse area of activity, which extracts profit by protecting a vast array of illegal activities.<sup>156</sup>

One investigative journalist cited the example of a number of businesses that have had to close down as a result of police harassment, and according to one EU pre-accession adviser, the situation in the police “could not be worse.”<sup>157</sup>

Corruption in the police is underpinned by several fundamental institutional deficiencies. First, the police remain a military organisation. It is deeply hierarchical and is not amenable to any concept of responsiveness to community needs. Police officers are not governed by any civil statute on their role, rights and duties, and are disciplined and tried for offences by military courts that are not public. Demilitarisation remains a fundamental condition for any real reform of the police. Although demilitarisation has been under discussion for a decade, the relevant acts have not yet been adopted.<sup>158</sup>

Second, police salaries are extremely low, at around €130 a month. According to GRECO, “[T]he absence of appropriate remuneration appears as one of the main risks of corruption of police officers in Romania.”<sup>159</sup> This is compounded by very poor working conditions. According to research carried out by the Institute for the Research and Prevention of Criminality, only 301 of 2,688 rural police posts have a permanent telephone connection, while rural police posts have 495 cars of which only 58 are effectively functioning. According to the same research, 73 percent of police officers considered their present financial situation as poor, while 1.5 percent was content.<sup>160</sup>

Corruption offences among police officers are investigated by the Minister [of Interior]’s Control Group and the General Directorate for Information and Protection (Military Unit 0962). Both units, and especially MU 0962, are fundamentally non-transparent: for example, although citizens can submit complaints to both units, there

<sup>156</sup> Interview with Puiu Latea, Board Member of Transparency International Romania, 3 May 2001.

<sup>157</sup> OSI Roundtable Discussion, Bucharest, 28 March 2002.

<sup>158</sup> Ever since 1998, the Commission has urged in its *Regular Reports* the initiation of a reform of the police. For instance, the *1999 Regular Report* includes the following observations: “In general, a fundamental reform of the Ministry of the Interior is required before the Ministry can become an efficient and ‘civil’ organisation with sufficient capacity to implement the acquis in this important area... The demilitarisation of the police must also be pursued as a prerequisite for the development of an effective and accountable police force.” In: Commission, *1999 Regular Report*, pp. 74–75.

<sup>159</sup> GRECO, *Evaluation Report on Romania*, p. 21.

<sup>160</sup> Institute for the Research and Prevention of Criminality, *Diagnosis of Institutional Abandon. Police Officers' Perception of Professional Satisfaction in the Present Social Context*, Bucharest, 2001.

is no feedback or information available on whether investigations are started as a result.<sup>161</sup> In early 2001, the Control Group carried out a number of investigations in county police inspectorates, some of which resulted in transfers and disciplinary sanctions. One investigation was initiated by the appearance of an Internet site describing corrupt police activities.<sup>162</sup> According to the GRECO *Evaluation Report*, in 2001, 140 cases of corruption in the police were investigated by judicial authorities and around 3,000 dealt with at disciplinary level.<sup>163</sup>

### *EU assistance*

EU assistance for the Romanian police consisted, at the time of writing, of a two-year €2m twinning project with the UK (France and Spain are the other two partners) to aid the fight against organised crime and corruption. The project began in 2000 and has the ambitious objectives of legal approximation, demilitarisation, institutional reform of the Ministry of Interior, and improvement of the police structures countering organised crime.

Although the project has had led to some changes (for example, the transformation of the Organised Crime and Corruption Squad into a Directorate for Countering Organised Crime), the process of providing assistance has been troubled from the beginning by lack of will and cooperation from the Ministry of Interior. For example, in September 2000, a twinning expert from the UK submitted a report on anti-corruption policy: it took the Ministry until March 2002 to respond, and there appears to have been little or no change in police structure or policy in that period.<sup>164</sup>

## 8.2 Customs

The Romanian customs authority is considered to be one of the sectors most vulnerable to corruption, exacerbated by the fact that, like its neighbours, the country is an important transit route for trafficking in various illegal goods. According to the

<sup>161</sup> The President of the Chamber of Deputies Committee for Defence, Public Order and National Security has also complained about the lack of parliamentary oversight over the activities of MU 962. See interview with deputy Razvan Ionescu, President of the Commission for Defence, Public Order and National Security of the Chamber of Deputies, in: *Adevarul*, 2 May 2001.

<sup>162</sup> The site <<http://www.politisti-corupti.go.ro/politia>> was launched in March 2001, but has since been removed from the Internet. Another Internet site dealing with the corrupt policemen of a different County Inspectorate was launched two weeks after the first one: <<http://aradeana.homestead.com/arad-main.html>>, but has also been removed from the Internet.

<sup>163</sup> GRECO, *Evaluation Report on Romania*, p. 7.

<sup>164</sup> Comments at OSI Roundtable Discussion, Bucharest, 28 March 2002.

World Bank's *2000 Diagnostic Survey*, the customs authority is regarded as the most corrupt institution in Romania: 66 percent of companies believed that all or almost all customs officials are corrupt (see Section 1.1).

As in Bulgaria, the integrity of Romanian customs and border control was seriously undermined by the Yugoslav embargo, which resulted in extensive smuggling operations involving the Romanian Intelligence Service and Adrian Costea. The investigation of these activities by the Anti-corruption Section appears to have been the reason why the Chief of the Section was removed in 2001 (see Section 2.5).

Direct evidence on corruption among customs officials is patchy, but available indicators are worrying. For example, one investigative journalist was told by an unsuccessful candidate for the post of Head of the Customs Authority that the "price" to secure the post was €1.3m.<sup>165</sup>

In 1995, the Customs Authority introduced asset monitoring for customs officials as an anti-corruption measure, although it is not known whether the provisions have had any effect. The Government also introduced compulsory tax returns for customs officials in January 2001 as a further means of monitoring discrepancies between lifestyle and declared assets. GRECO noted in its *Evaluation Report* the absence of specialised training in preventing and combating corruption among customs staff.<sup>166</sup>

### 8.3 Tax collection

There is little evidence available on the general prevalence of corruption among the Romanian tax authorities, and they were not investigated by the World Bank's *2000 Diagnostic Survey*. However, it appears that the tax system is used by political parties to return favours to donors (see Section 6.3). According to Mugur Isarescu, former Romanian Prime Minister,

[T]he situation of the budget is devastating. Practically, there are no budgets anymore. There are only exceptions, facilities, tax exemptions – an overwhelming corruption that originates in the very text of laws. And this is because everything is discretionary, everything is negotiable.<sup>167</sup>

The Government and tax authorities have wide discretion to award companies tax relief in various forms. A report of the Government Control Department issued in November 2000 identified the wide discretion of tax officials to grant tax breaks to

<sup>165</sup> Interview with Nicoleta Savin, journalist at *Evenimentul Zilei*, 29 March 2002.

<sup>166</sup> GRECO, *Evaluation Report on Romania*, p. 21.

<sup>167</sup> *Evenimentul Zilei*, 17 January 2000.

private or State-owned companies as a major source of corruption. The report underlined the existence of “a permissive and optional legal framework” (for example, the lack of criteria for determining companies as having liquidity problems) and arbitrary interpretation of the Act by officials.<sup>168</sup>

## 8.4 Health

According to the World Bank’s *2000 Diagnostic Survey*, health services were regarded as the fifth most corrupt institution by families (see Section 1.1). More importantly, the survey indicated that a larger proportion of respondents that used medical services had paid bribes than for any other category of service: 66 percent made unofficial payments for hospital stays, 62 percent for treatment in an emergency, 56 percent for dental treatment and 52 percent to a medical specialist.<sup>169</sup> According to the World Bank one of the worst effects of corruption may be the fact that poor households were twice as likely as rich households to say they had not sought healthcare even when they needed it.<sup>170</sup>

## 8.5 Education

Compared to other institutions, the Romanian education system is not regarded as particularly corrupt, and was among the least corrupt institutions according to the World Bank’s *2000 Diagnostic Survey*. While up to a quarter of respondents reported providing some unofficial payment to education staff in the previous year, these were mostly in the form of small gifts, and more than half those doing so reported that the payments were not required.<sup>171</sup>

## 8.6 Licensing and regulation

A major source of corruption remains the heavy burden of State controls on businesses. As the *2001 Regular Report* notes:

A large number of bodies are authorised to conduct inspections and audits of businesses. Businesses can be expected to be investigated several times a year

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<sup>168</sup> *Adevarul*, 9 December 2000.

<sup>169</sup> World Bank, *Diagnostic Surveys of Corruption in Romania*, p. xi.

<sup>170</sup> World Bank, *Diagnostic Surveys of Corruption in Romania*, p. 15.

<sup>171</sup> World Bank, *Diagnostic Surveys of Corruption in Romania*, p. 16.

and the wide degree of discretion left to inspectors creates opportunities for corruption.<sup>172</sup>

The former head of the Anti-corruption Section expressed the opinion that the fear of being inspected by such bodies is a more serious concern for businesses than organised crime.<sup>173</sup>

## 9. ROLE OF THE MEDIA

The role of the media in exposing corruption is threatened by the continuing existence of draconian defamation provisions in the Criminal Code, which remain on the statute books despite strong criticism from international organisations. A new Act on Free Access to Public Information came into effect in January 2002. Public broadcasting is systematically and politically biased, and increasingly so since the last elections. Corruption of or pressure on media outlets through advertising is common. Despite these problems, the press has been active in exposing corruption.

### 9.1 Freedom of speech

Freedom of expression and prohibition of censorship are enshrined in the Romanian Constitution.<sup>174</sup> However, the Constitution allows restriction of this right to prevent a number of actions such as “defamation of country and nation,” “instigation to class hatred” or “instigation to territorial separatism.”

In addition, the Penal Code contains offences that entail potentially severe threats to freedom of expression, in particular provisions on defamation.<sup>175</sup> Since 1996, over 400 cases under such articles have been brought (mainly against journalists), the vast majority under the provision,<sup>176</sup> and up to July 2001, around 50 journalists had been convicted. Another article forbids “communication or dissemination, by any possible means, of false news, facts or information or forged documents, if this could impair state security or its international relations,” with penalties from one to five years

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<sup>172</sup> Commission, *2001 Regular Report*, p. 74.

<sup>173</sup> Interview with Ovidiu Budusan, 27 March 2002.

<sup>174</sup> Constitution of Romania, Article 30.

<sup>175</sup> Criminal Code, Articles 205 and 206.

<sup>176</sup> Interview with Mircea Toma, Director, Media Monitoring Agency, 21 March 2002

imprisonment. Although this is rarely used against journalists, it was used in a recent case against an anonymous Internet news portal.

According to human rights experts, “[Such] prohibitive grounds... cannot be found in any international document related to the acceptable limitations on freedom of expression.”<sup>177</sup> A resolution of the Parliamentary Assembly of the Council of Europe explicitly referred to Romania’s failure to reform these Acts, despite the fact that they “seriously imperil the exercise of fundamental freedoms.”<sup>178</sup> Repealing the provisions on outrage and insult are priorities of the *2001 AP*, although in March 2002 it was unclear when or if the Government would do so.

The media regulations mentioned above provide potentially serious barriers to corruption reporting. A 1999 Freedom House report noted that in the previous three years the Romanian Committee for the Protection of Journalists documented at least 19 instances of harassment, legal action and threats of violence against journalists.<sup>179</sup> According to the Committee, harassment of journalists creates huge pressure, and has been getting worse as financial claims in court have increased.<sup>180</sup> One of the main Romanian dailies (also one of the two publications that carries out effective investigative journalism) faced defamation charges in March 2002 that could financially threaten its existence.

The legal framework regulating the media contains several other shortcomings. There is no legal limitation of searches of media facilities/premises during criminal investigations. Finally, although the Act on Public Television and Radio gives journalists of public radio and TV the right to conceal sources, they may be forced to reveal their sources by a court order “where the public interest is at risk,” and other journalists have no such right.

## 9.2 Access to information

Although Romanian authorities have been notoriously poor at providing information – most Government agencies hide behind a veil of secrecy and journalists are forced to use clandestine channels of information including paying public officials for

<sup>177</sup> Monica Macovei, *Some Aspects of the Media Law*, report prepared for the FreeEx network for the protection of freedom of expression in Southeast Europe, available at <<http://www.freeex.org/medialw.htm>>, (last accessed 15 August 2002).

<sup>178</sup> Parliamentary Assembly of the Council of Europe, Resolution no. 1123/97.

<sup>179</sup> Freedom House, *Media Responses to Corruption in the Emerging Democracies: Bulgaria, Hungary, Romania, and Ukraine*, May 1999, p.12.

<sup>180</sup> In one recent case a journalist was fined the equivalent of €32,500 for insulting another journalist. Interview with Mircea Toma, Director of Press Monitoring Agency, 21 March 2002.

information – recent legislative developments and the stated commitments of the Government provide reasons for optimism.

In October 2001, Parliament adopted the Act on Free Access to Public Information. The Act was prepared in close cooperation with NGOs (especially the Media Monitoring Agency), and is regarded by media representatives to be of high quality. Under the Act, verbal requests submitted by the media for public information are to be granted immediately or within 24 hours. Any other person can make oral or written requests for public information – these are to be granted by the public institution in ten or 30 days, depending on the complexity of the request. Information of public interest is defined as “any information regarding the operations or resulting from the operations of a public authority or public institution, irrespective of the information source, form or expression.” *Public authority* or *institution* is defined as “any public authority or institution, as well as any autonomous administration [*regie autonomă*], utilising public financial resources and operating on the territory of Romania, under the Constitution.”

Citizens do not have right of access to: information concerning national defence, security and public order, if such information is classified; information on the deliberations of the authorities; information concerning the economic and political interests of Romania if such information is classified; information on commercial or financial operations, if disclosure would violate the principle of fair competition under the law; information on personal data as defined by law; information on criminal or disciplinary investigation procedures if disclosure would endanger the result of the investigation, reveal confidential sources or endanger the life, physical integrity or health of an individual; and information on court proceedings if disclosure might undermine a fair trial or the legitimate interest of any of the parties to a trial.

The Act states explicitly that, “[I]nformation which favours or conceals law-breaking by a public authority or institution cannot be considered classified information, but information of public interest.” This might provide the media with explicit legal protection when exposing corruption cases.

If refused access to information, a citizen may complain to the head of the respective public institution; and thereafter to an administrative court, which can force the respective public institution to grant the information requested.

As of early 2002, it was too early to judge the effect of the new Act in practice.

### 9.3 Broadcasting regulation

#### *Licensing*

The regulatory body for the broadcast media is the National Council of Broadcasting (NCB). The NCB is composed of 11 members: two appointed by the President of Romania, six by Parliament and three by the Government.

Broadcasting licenses are granted on a competitive basis for a period of seven years (for television) and five years (for radio), and renewed by a new tender. Criteria for awarding the licenses must be published 45 days before the competition date. The final selection criteria must be defined so that “they ensure pluralism in the opinions expressed, equal treatment of competitors, quality and diversity of programmes, open competition, editorial independence and impartiality.” However, the law does not establish precise criteria and procedures to ensure transparency in license allocation. The Government recently took away from the NCB the allocation and administration of radio high frequencies.

#### *Public broadcasting*

There are two State-owned broadcast media institutions: the Romanian Broadcasting Company (RBC) and the Romanian Television Company (RTC). RBS and RTS are managed by an Administration Council composed of 13 members elected by Parliament: Parliament nominates members for eight positions, the President of Romania and the Government one each, the employees of the RBS and RTS two positions, and representatives of ethnic minorities in Parliament one position which appoints a Director General and Board of Directors to RBS and RTS.

Although the Committee regards the public media coverage of the 1996 and 2000 elections as relatively unbiased, since then the state news agency Rompres has been put under control of the Ministry of Information and the PSD has received approximately 70 percent of airtime devoted to political parties by main terrestrial TV stations.<sup>181</sup>

### 9.4 Corruption in the media

Although corruption of individual journalists has not attracted significant attention, advertising is widely used by both State institutions and business interests to influence the printed press in particular. Some public authorities (e.g. the State Property Fund)

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<sup>181</sup> Economist Intelligence Unit, *Romania Country Report*, January 2002, p. 16. The representative of the Committee for the Protection of Journalists confirmed that this proportion applied also to public television.

have used advertising to channel public funds to complacent media outlets. This has been mentioned in international reports, such as those of Freedom House.<sup>182</sup>

A bigger problem, according to the Media Monitoring Agency, are ties between business interests and/or politicians and the media, especially at the local level; in at least two cases the mayor of a medium-sized town is also the most important local businessman and owner of the local press.

## 9.5 Media and corruption

Despite the limits on press freedom, the Romanian print media has been active in exposing corruption. Quality investigative journalism is carried out by a few national newspapers, particularly *Evenimentul Zilei* and *Adevarul* and the weekly *Academia Catavencu*. Neither private nor public TV stations play a significant role in reporting corruption.

The Government's National Action Plan Against Corruption includes measures to strengthen investigative journalism, in particular through courses for investigative journalists and the establishment of journalists' unions to provide journalists with a collective voice and protection against employers.

## 10. RECOMMENDATIONS

The following recommendations have been highlighted as particularly important to Romania. For additional recommendations applicable to candidate States generally, please see Part 5 of the Overview report.

1. Streamline the anti-corruption framework by consolidating the Anti-corruption Bureau and abolishing the Prime Minister's Control Department.
2. Restrict immunity provisions for current and former Government members and MPs.
3. Remove legislative barriers to effective media activity.

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<sup>182</sup> Conversely, following a series of articles about suspicious privatisation deals, *Adevarul* (the largest circulation Romanian daily) lost advertising from the State Property Fund. See Viorel Salagean, "Presa economica – fata in fata," *Adevarul Economic*, no. 41/18, 24 October 2000: "The freedom of press is still relative... There are 3-4 newspapers literally bought by the State Property Fund. One newspaper [*Adevarul*] which officially won the tender [for advertising] has been ruled out for being too critical."