

REPORT ON ROMANIA'S PROGRESS ON ACCOMPANYING MEASURES FOLLOWING ACCESSION

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels – June 27, 2007

- EXCERPTS -

3.2.3. Benchmark 3: Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption

There has been continued progress in the prosecution of high-level corruption cases. The specialized prosecution services for corruption (National Anti-Corruption Department - DNA) have been established throughout the country and show a positive track record concerning investigations and indictments for high-level corruption. This includes high-profile cases with the indictment of well-known and influential public figures. However, rigour in prosecution is not reflected by judicial decisions. Data provided on sentences show that penalties on average are not dissuasive and a very high-number of suspensions of these penalties in cases of high level corruption. The rationale for these suspensions, including awareness and attitudes among the judiciary towards dissuasive sentences of cases of high level corruption needs to be clarified. This undermines recent progress in investigation and affects negatively public perception of the political commitment to tackle corruption. In addition, a series of recent events could have negative impacts on the fight against corruption. These include the decriminalization of bank fraud, the intention of parliament to shorten the maximum duration for penal investigations and the request for dismissal of a senior member of the DNA.

Overall, progress in the judicial treatment of high-level corruption is still insufficient.

Detailed Assessment

- *Continue to provide a track record of professional and non-partisan investigations into high-level corruption cases. Ensure the legal and institutional stability of the anti-corruption framework, in particular by maintaining the current nomination and revocation procedure for the General Prosecutor of Romania, the Chief Prosecutor of the National Anti-Corruption Directorate and other leading positions in the general prosecutor's office.*

In March 2006, the Romanian Parliament ratified law n° 54/06 that restored the competence of the "National Anti-corruption Department" to investigate all cases of high-level corruption. The office is now named the National Anti-corruption Directorate (DNA). It is established as a legal entity within the Prosecutor's Office at the HCCJ. The General Prosecutor of the Prosecutor's Office attached to the HCCJ directs the DNA through the Chief Prosecutor of the matter. DNA has a budget and a staff of its own.

The commitment and capacity of the DNA in prosecuting high level corruption cases continued. The number and profile of the new investigations initiated by the DNA in this period contributed to a good track record of non-partisan investigations into high level corruption.

The timeframes in which DNA conducts and concludes its investigations continues to illustrate a high level of professionalism in the Department's multi-disciplinary investigating teams. 84 new indictments have been filed since September 2006, concerning 195 defendants. During the same period, courts have rendered 47 non-final convictions in corruption trials, as well as 33 final convictions. Three cases were finalized with acquittal.

However, the efforts and results of the DNA in the prosecution of high level corruption are not upheld by a similar output of the court system. There are several elements in the practice of the courts that indicate either insufficient awareness of the corruption phenomenon or lack of training/knowledge.

First, the sentences applied by courts in corruption cases do not have a dissuasive effect and fail to fulfill their preventive function. With an average length of sentence for corruption offences at 1-2 years imprisonment and the vast majority of the convictions having the execution conditionally suspended, the courts fall short in demonstrating that they understand their essential role in the efforts to curb corruption in Romania.

Second, in all of the most important corruption cases investigated by DNA and brought before the court in the past half-year, the courts suspended the proceedings and referred the cases to the Constitutional Court for its ruling on various unconstitutionality claims submitted by the defense. While procedurally correct, questions could be raised about the tendency of the courts to refer cases to a higher level of jurisdiction instead of dealing with them at a lower level. Consequently, trials of two high level former politicians, which had both been acknowledged at the time as a convincing signal of commitment towards investigating high level corruption in Romania, are now left pending for the duration of a constitutionality verification procedure that may take well over a year.

With regards to the nomination and revocation procedures, the early departure or replacement of officials holding key positions to the reform process can be damaging to the continuity of the reform process. As to the nomination and revocation procedure of the General Prosecutor and the Chief Prosecutor of the DNA, the decision of the Senate's Legal Committee to activate an older proposal pending in the Senate since 2006 was reversed by the Plenum in late March 2007. It remains to be seen whether the intent to modify the nomination procedure is abandoned irreversibly. The number of personnel changes in the past months is not reassuring in that respect. Examples are the departure of figures of the GAD and the nomination for dismissal of leaders of DNA and of NIM¹. In addition, several high officials of the Ministry of Justice have resigned.

Moreover, another concern relating to the fight against corruption is the potential amendments of the Procedural Code, currently being discussed within the Parliament. This might have a substantial negative impact on the fight against corruption, particularly with reference to the following three issues: (1) Notwithstanding concerns expressed, the abolition of the possibility for the Public Prosecutor to authorize suitably motivated provisional interception for urgent cases even though authorization of the judge is required - *in any case* - within the next 48 hrs; (2) the limitation of the investigation to a maximum period of six months; (3) the limitation of running wire tapping to a maximum of 120 days. These amendments would seriously limit the potential of the investigators in collecting evidence, particularly when tackling well established criminal groups or powerful governmental representatives deeply involved with corruption.

¹ CSM however advised that none of the proposal for dismissal is sufficiently grounded; therefore both requests are pending until more evidence is gathered.

Finally, a new law was passed in late March 2007², decriminalizing certain aspects of bank fraud previously under the jurisdiction of the DNA³ challenges the legal stability of the anti-corruption framework. If the law is being applied retroactively, which appears to be the case, decriminalization would apply to bank officers that received kick-backs for granting questionable and illegitimate loans. This would have as a result the dismissal of numerous pending cases by the DNA⁴.

² Law 69/2007 of 26th March 2007, modifying Law 78/2000 (the Law for Preventing and Investigating Corruption).

³ The law decriminalizes the granting of loans in violation of bank policies and the use of loans for purposes other than as declared in the loan application (other than loans involving public funds). These offences were originally placed under the DNA jurisdiction because of their relationship to corruption and because of the negative impact of bank fraud on Romanian banks.

⁴ Currently 52 cases are potentially concerned and around an equal number of cases in the DNA that will be taken off criminal investigations.