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THE NATIONAL INTEGRITY SYSTEM

TRANSPARENCY INTERNATIONAL ROMANIA

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I. LIST OF ACRONYMS AND ABBREVIATIONS

CC	– Constitutional Court
CoE	– Council of Europe
CPI	– (Transparency International's) Corruption Perception Index
DNA	– National Anticorruption Department
FOIA	– Freedom of Information Act
GRECO	– Group of States against Corruption
MONEYVAL	– Evaluation of Anti-Money Laundering Measures (CoE)
MP	– Member of the Parliament
NACS	– National Agency for Civil Servants
NAPO	– National Anticorruption Prosecution
PA	– Public Attorney (Ombudsman)
RCA	– Romanian Court of Auditors (Romanian Court of Accounts)
SIGMA	– Support for Improvement in Governance and Management (OECD)
SUNSHINE	– Act on Transparency of Decision Making
The Council	– the National Council of the Audio-Visual
The 2001 Program	– The 2001-2004 National Program against Corruption
The 2001 Plan	– The 2001-2004 National Plan against Corruption
The 2002 Plan	– "Measures to expedite the implementation of the national strategy"
The 2005 Strategy	– The 2005-2007 National Strategy against Corruption
The 2005 Plan	– The 2005-2007 National Plan against Corruption

II. ABOUT THE TI NATIONAL INTEGRITY SYSTEM (NIS) COUNTRY STUDIES

Aims and Objectives

Transparency International's National Integrity System country studies are qualitative reports that provide a detailed and nuanced assessment of anti-corruption systems at country level. Via these studies, TI aims to provide an overview of the National Integrity Systems in countries from all regions of the world. The studies provide both benchmarks for measuring further developments in these countries, and a basis for comparison among countries.

The NIS country studies are an important measurement tool that complements TI's global indices and surveys (such as the Corruption Perceptions Index, Bribe Payers Index, and Global Corruption Barometer) by exploring the specific practices and constraints within countries. TI believes it is necessary to understand the provision for and capacity of National Integrity Systems to be able to diagnose corruption risks. NIS Country Studies are uniquely placed to assess such systems, creating a strong empirical basis upon which to promote better governance across all aspects of a particular society and enable the formulation of targeted and effective national anti-corruption reforms.

The NIS Approach

The NIS encompasses the key institutions, laws and practices (the 'pillars') that contribute to integrity, transparency and accountability in a society. When it functions properly, the NIS combats corruption as part of the larger struggle against abuse of power, malfeasance, and misappropriation in all its forms.

The concept of the NIS has been developed and promoted by Transparency International, as part of TI's holistic approach to combating corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient features of anti-corruption systems that work best. The NIS country studies are based on an assessment of the institutions and processes relevant to such an anti-corruption system.

The main pillars of the NIS are considered to be the following:

- Executive
- Legislature
- Political Parties
- Electoral Commissions
- Supreme Audit Institution
- Judiciary
- Public Sector
- Police and Prosecutors
- Public Procurement
- Ombudsman
- Anti-corruption agencies
- Media
- Civil Society
- Private Sector

- Regional and Local Government
- International Institutions

Country Study Features

Key features of the NIS Country Studies are:

- Provide a qualitative assessment of the integrity system in a country. An exploration of the formal framework is followed by an assessment of what actually occurs in practice.
- Include key data such as legislation, governmental and non-governmental reports, news media coverage, corruption diagnostics, academic analysis, expert interviews and focus group discussions.
- Based on a combination of desk and field research.
- Refer only to corruption cases that have entered the public domain and that can be referenced with reputable sources.

The Structure of the Studies

Each NIS Country Study consists of two parts: a main report (15,000 words) and a summary report (2,500 words), the latter based on the main report. The main NIS report contains the following elements:

- An ***executive summary*** providing a succinct and clear summary of the study's findings, major themes, conclusions and/or recommendations.
- A ***country profile*** providing a short description of the country's political, economic and social development.
- A ***corruption profile*** describing the causes, levels, costs, types and impact of corruption in the country.
- A section on ***anti-corruption activities*** providing an overview of anti-corruption reforms or activities with a direct impact on the NIS from the past five to ten years.
- An extensive section describing the country's ***National Integrity System***, providing a well-rounded picture of the institutions and processes of the NIS, how they work and how they interact with other NIS pillars.
- An ***evaluation of the NIS*** focusing on how the NIS works overall in practice, providing identification of any trends observed in the country studied and examples of good practice where ever possible.
- A section providing an overview of the ***priority areas*** where further progress is particularly needed and where real opportunities for reform exist.
- A ***recommendations*** section highlighting areas for further investigation in terms of particular types of corruption and good anti-corruption practice, as well as areas or activities that require attention in the short- or medium-term.

Project Management

The NIS Country Studies are conducted by local, in-country organizations, TI national chapters or independent country experts in corruption and governance. Each study is commissioned via a selective process managed by TI. Each study is refereed by at least two independent experts, also selected by TI. Final quality control and management of the method resides in the TI Secretariat. A total of fifty-five NIS Country Studies have been published since 2000.

III. EXECUTIVE SUMMARY

The study reveals that until very recently almost all pillars of integrity were very weak in terms of legal and institutional structure and practice intended to deliver their role in upholding national integrity in Romania, and that even at the moment of writing this report the National Integrity System is not completely adequate for insuring effective prevention and sanctioning of corruption at all levels.

The major upholders of national integrity in a democracy – the Parliament ,and the Executive - were incapable in the first half of transition to produce public policies to promote public integrity, while the Judiciary lacked independence and capacity to make up for the defaults created by the other two powers in the state. The rest of the public pillars like the Court of Accounts, the Police, and Public Administration etc were even weaker and incapable to strike a balance. Moreover, most public pillars were perceived by the general public as being corrupt or very corrupt, which obviously allowed for no foundation for national integrity policies or practice. The only pillar that made a striking difference from the rest of the pillars was the private media, which has been very active throughout transition in exposing corruption. Civil society was mainly concerned with safeguarding basic democratization, rule of law and respect for human rights, which were also issues of top agenda, while international institutions were also putting more stress on basic economic and democratic reforms.

The main pillars of integrity started to mark a change only after Romania was invited to start accession talks with EU in 1999. It was also the moment when the international agencies' pillar started to show interest in Romania's public integrity and initiated programs and exerted political pressure in order to speed up the reform drive. It was the moment when the main pillars of integrity - the Executive and the Legislative - recognized the seriousness of the level of corruption in the country and started the debate on public policies to tackle the problem. It was only in 2001 that the Government elaborated an anticorruption strategy, which triggered an avalanche of regulations and institutions to combat or prevent corruption. Major pillars of integrity such as the Romanian Court of Audit, and the Ombudsman grew stronger in this period, while other pillars like the judiciary, the police, public procurement, the Parliament have not made important steps ahead and are even at this point in time weak in terms of their capacity to deliver their role in the National Integrity System. In the same period, the civil society started to make its voice heard and made important breakthroughs by pushing the problem of corruption on the public agenda and by successfully advocating essential legislation for public integrity. However, the capacity of the emerging integrity system was very low, as public policies bore little inter-pillar coherence and especially little capacity for implementation.

At this point in time, Romania does not find itself at a point where the National Integrity System is capable of ensuring integrity due to a low institutional capacity for policy design and implementation. Romania has a weak Parliament in terms of its capacity to control the executive branches and in terms of its accountability vis-à-vis the people. The judiciary is another weak pillar due to a prolonged lack of reforms in the past and to the constant political pressures it faces from shifting political interests. The special Anticorruption Prosecution has been recently put under the authority and control of the Executive and so its professional freedom is still to be observed. The Public Administration is also a weak pillar due to constant political interference with the principle of professional stability. Public Procurement is another weak pillar due the weak implementation of the existing legislation. 'Control Agencies' also form a very weak pillar

due to a lack of a coherent authority in charge of monitoring and investigating conflicts of interest, asset declarations, gifts and hospitality services. On the other hand, media, civil society and international agencies have been and remain the most important pillars of integrity in Romania. Their role in the existing context of a weak NIS is to counterbalance the fragility of the rest of the pillars and hopefully to determine an increase of their capacity to perform well and within the equilibrium of powers.

IV. COUNTRY PROFILE

Romania is a former communist country with a long-standing negative legacy in terms of political, economic and societal structures. As one of the most rigid and oppressive dictatorships in the former communist block, the Romanian state in the late 80's stifled any form of political, economic or social expression outside of the matchbox imposed by the strict megalomaniac ideology of the one-person leadership. Alternative political ideas were considered criminal activities and their proponents were treated like dangerous criminals and thrown in jails with fake judicial process. Almost all aspects of the economy were in the hands and at the command of the state, there was no media or speech freedom, the entire society was atomized, and no forms of civic organization were allowed. The shortages of every-day life turned citizens into individuals struggling for survival and adaptation to the strict conditions through political and ideological obedience, and informal behavior like bribing for getting access to public services or even foodstuff.

At the end of 1989 Romania broke away from communism with a bloody Revolution that created a brief political vacuum which, in the absence of any non-communist political opposition, allowed for figures in the second-ranks of the communist party to assume power. In the ensuing months, the main liberties gained as a result of the fall of communism – freedom of speech and freedom of association – generated an explosion of the written media as well as the emergence of dozens of small and insignificant political parties. Despite these transformations, Romania did not succeed in making clear steps in the direction of democracy, rule of law and economic transformation. First of all, the emerged political structure was decisively dominated by a unique political party established on the former communist bureaucratic structure, while the opposition parties were too small to have an input into the policies adopted. Secondly, the monopolistic political structure thus created was more interested in the economic and institutional status-quo rather than in producing reforms conducive to market economy and rule of law. This generated a long period (about 7 years) of economic stagnation and legal vacuum which created the propitious ground for the emerging elite to make fortunes by embezzling money from state-owned companies, banks and public budgets, as well as from twisted privatizations.

In 1999 the country initiated accession negotiations with the EU 1996, while in 2002 Romania started membership talks with NATO. These two moments marked a decisive twist in the country's reform drive, which from that point on had to be properly adapted to accession requirements. Following elections in 1996, Romania experienced its first shift of political power with the centre-right opposition winning the presidency and the parliamentary majority. Economic and legal reforms took pace in view of EU demands, with major privatizations taking place, as well as important regulatory initiatives in the field of financial markets, justice and anticorruption. In 2000, Romania witnessed another shift in political power, with the former leftist party in power until 1997 assuming the Presidency and the majority in Parliament. However, the reforms trend kept up with major privatizations and institutional reforms in the administration, military, and the judiciary. Romania witnessed the first anticorruption strategy and the set up of a special anticorruption prosecution. As recognition of the significant progress Romania acquired, in 2004 the country was accepted as NATO member, and managed to successfully close EU accession negotiations with the prospect of becoming a member in 2007. In late 2004, Romania experienced a third shift of power, with the centre-right coalition in between 1996 and 2000 assuming power for a second time, and marking a definitive indication of full-fledged democratic life.

Currently, Romania is set up to join the EU in 2007 but it still has several sectors to improve until that moment. While the main political and economic conditions (Copenhagen criteria) for EU accession have been met, Romania must prove effective implementation of the EU standards in the functioning of the judiciary, the level of corruption, competition and border control. These are the most important and urgent areas of reform which presuppose strong integrity standards and effective fight against corruption so that the *safeguard clause*[1] will not be invoked by the European Parliament.

In conclusion, post-communist Romania has taken a difficult and sometimes faltering road from totalitarianism and state-socialism to democracy and market economy. The initial lack of economic and institutional reforms created an environment of poor rule of law, widespread corruption, societal frustration, conflicts and distrust in the state institutions. Following the prospect of EU integration and NATO membership, Romania embarked in the second half of the 1990's on a road of reforms, which have partly been recognized by the recent accession to NATO and by the signature of the Accession Treaty with the EU. Nevertheless, Romania has yet to prove its capacity to meet EU standards in fields such as justice, anticorruption, competition, and customs control so that the country does not fail accession in 2007.

V. CORRUPTION PROFILE

Romania has constantly been considered as one of the most corruption-afflicted countries in Europe, and among the countries worst affected by corruption in the world. Romania scored in the 1997[2] Transparency International's Corruption Perception Index (CPI) 3.47[3]. In the following years the country followed an aggravating trend hitting the lowest point in 2002 with 2.6, and then started to slowly go up again reaching in 2004 the score of 2.9. Therefore, at this point according to the CPI score of 2004, Romania is perceived as a country with an endemic and systemic corruption at almost all levels of public institutions.

Various causes of corruption have been employed to explain this current social phenomenon in Romania. The cultural explanation points out the Balkan tradition of bribing officials to perform their duties, dating back to the 18th and 19th century in the former Romanian provinces under Ottoman sovereignty, whereby public officials were considered *de jure* owners of state offices, which, in their turn, were officially treated like business entities for their owners. The structural explanation is based on the communist economic and state structures, which developed a culture of informalities and corruption as a legitimate survival kit in the strict and depriving communist environment. After the fall of communism, another explanation entered the scene and established the idea that corruption in transition was an adaptive reflex to a changing environment with the aim of extracting the best gains/rents of the volatile economic and institutional structures.

Romanians experienced extremely negative aspects of corruption in the decade after the fall of communism. Almost every aspect of public, social and economic life was affected by corruption, to the extent that trust in the democratic institutions and their ability to deliver good results after 40 years of communism was extremely low[4]. The extent of fraud and corruption within the public financial sector (state owned banks and financial schemes) left millions of Romanians without their life-times savings in a period when inflation was counted in several hundred of percentages per year. Rigged privatizations turned former communist bureaucrats into cardboard millionaires, while people were losing jobs. Many industries and economic sectors were turned bankrupt by unscrupulous managers whose only goal was to siphon money into their pockets.. At the same time, the judiciary and the law enforcement agencies were much too unprepared and corrupt to deal with such cases. Governments themselves and members of the Parliament were also incapable to tackle the expanding problem, as they were also part of the problem. Accordingly, corruption started to be perceived by Romanians as a fatality of transition that could never be uprooted.

As a result of the start of EU accession talks and following strong demands for institutional strengthening in the fight against corruption in the European Commission regular reports[5], the Romanian Government commissioned in 2000 the World Bank for the elaboration of a diagnostic evaluation of corruption in Romania[6]. The study revealed that two thirds of Romanians believed that 'all' or 'most' officials are corrupt. The study also identified the sectors perceived as being the most corrupt: customs offices, courts and prosecution, State Property Fund, Parliament, ministries/Government, healthcare, police etc. Local administration officials and unions were also perceived as corrupt, while the education and media sectors were considered to be less corrupt. State capture was also identified by 44% of businesses as having a significant negative impact on their activity. In 2002, the Regional Corruption Monitoring Report by Gallup revealed that Romanian citizens perceived corruption as the most important problem of their lives. At the same time, Romanians perceived corruption as an illegitimate social act, but they were more inclined to accept its utility to solve daily issues. According to the last Public Opinion Barometer[7], 79% of the Romanian population believes that corruption in Romania is

generalized at all levels of public authorities, and that the most important problems lie with the judiciary and the police.

Following EU and NATO accession prospects and ensuing pressure, Governments started to draw anticorruption agencies and strategies, while the civil society initiated studies and raised awareness on the problem of corruption in Romania. In 2001 the Government passed the first anticorruption strategy and plan and set up the special Anticorruption Section within the national prosecution, in 2001 a law on the free access to information came into being, in 2002 the National Anticorruption Prosecution was set up, and in 2003 the Parliament passed the law on transparency of decision-making, and regulated for the first time the concept of conflict of interest. In 2004, a major reform of the judiciary was performed in order to secure its independence. At the beginning of 2005, the Government passed another anticorruption strategy and action plan with the clearly stated purpose to stifle high-level corruption, and whose degree of success is a criterion for triggering the safeguard clause that may delay EU accession by one year. Until the writing of this report, the Government proved to have a tougher stance on corruption. However, political wrangling and lack of administrative capacity may delay or dilute the strong political will to make a definitive turn in the levels of corruption.

International actors have been extremely important in producing a genuine reaction against corruption in Romania, both at the civil society level and at the public authority level. Since 1999, when Romania was invited to start accession talks with the EU, the European Commission's Accession Partnerships and Regular Progress Reports made of corruption one of the most urgent issues for the Romanian Government to tackle. NATO also expressed strong criticism at the level of corruption in Romania and warned repeatedly that corruption is an obstacle against membership. Ambassadors in Romania of EU member states and the US ambassadors in Romania voiced criticism and also encouragement to the Government's stance on corruption and the steps against it. Virtually, throughout the transition, Romania's will and ability to fight corruption at all levels depended to an important extent on the conditionalities and pressures exerted by various international actors. Even at this point in time, after NATO accession and the signature of the Accession Treaty, Romania is still dependent on the EU accession requirements and assistance, and has yet to produce practical results in the fight against high-level corruption.

VI. ANTI-CORRUPTION ACTIVITIES.

ANTICORUPTION STRATEGIES OVER THE PAST 15 YEARS

IX.1.INTRODUCTION

The evolution of the anticorruption policies in Romania follows the main lines of the anticorruption strategies. Largely inexistent until 2001, the anticorruption strategies meant in fact spontaneous measures to fix the outrage of the population vis-à-vis the level of corruption in the country rather than treating the problem in earnest. Measures such as the obligation of asset declaration in 1996 (Law 115) or the creation of the Special Anticorruption Section within the General Prosecution in 2000 were not able to properly address the issue. After 2001, the anticorruption strategies and plans started to be adopted only as a result of Romania's bid to adhere to the European Union.

The first strategy adopted in 2001 was based on the international studies on corruption in Romania[8] and was well structured to address the issue at different stages and levels of corruption, as well as to internalize the most important international instruments in the field. Following this first strategy, anticorruption plans were adopted almost yearly as an outcome of an evolved understanding of the complexities of the phenomenon, of the developments in the field, of the pressures of civil society and as a consequence of the EU demands for reform. Thus, following delays and emerging needs for regulation, a new anticorruption plan was adopted in 2002 which was more inclined toward the combating side and which resulted in the creation of the special Anticorruption Prosecution Office (hereinafter PNA and consequently DNA). In 2003, following a critical evaluation from the EU Commission, the Government adopted a new plan meant to establish priorities in view of the 2004 closure of accession negotiations delays, which addressed problems in the business sector and the use of the European funds in Romania. In 2004, following a good collaboration with Transparency International - Romania, a new set of measures were adopted to fix some urgent problems among which the most important was the adoption of an act on the protection of whistleblowers. Following general elections at the end of 2004, the new Government adopted a new anticorruption strategy which aims at fine-tuning the existing complex institutional and legal framework, at using mostly preventive tools in fighting corruption, at completing the internalization of the international instruments in the field and at improving the practice of the existing regulations.

The next sections will detail the anticorruption strategies and plans and will indicate what was accomplished and what was not accomplished, as well as what is important to achieve next in order to improve both the perception and the actual level of corruption in the country. We will look not only at the strategies *per se* but also at the intermediary measures to improve or adapt them to various international or internal requirements. Finally, we will look at how the strategies impacted on the perception of corruption in Romania, and at what is needed to improve both the negative perception on corruption in the country as well as the actual level of the phenomenon.

IX.2.THE STRATEGIES

THE 2001-2004 NATIONAL PROGRAM AND PLAN AGAINST CORRUPTION (hereinafter the 2001 Program and the 2001 Plan)

The 2001 Program is the first official Romanian document that recognizes corruption as "a threat for democracy, the rule of law, equity and justice, public administration, market economy and the stability of public institutions". The Program bases itself on the 2000 World Bank study on corruption in Romania[910], and identifies the main loci with high risk of corruption: public administration, customs, defense and public order, culture and education, healthcare, judiciary, economic sectors, as well as political parties. The 2001 Program establishes three lines of action: institutional reform, legal reform, and the creation of a competitive private sector. In addition, the

Program aims at increasing transparency within political activity, at ratifying the most important international conventions relevant to the fight against corruption, as well as at having a good cooperation with the civil society.

The Plan is structured in 7 sections: research of the causes of corruption and elaboration of plans against corruption for distinct sectors, preventive measures (codes of conduct, asset disclosure, immunities, conflict of interests, financing of political parties, access to information, lobby), strengthening the capacity to combat corruption (specialized structures to fight corruption, statute of the anticorruption prosecutor), institutional reform (reform of the judiciary), public administration reform (professional career system for civil servants, public procurement, international cooperation (ratification of the Council of Europe civil and penal conventions against corruption, OECD Convention against bribery of foreign officials, regulation of the criminal responsibility of the legal persons), and the relationship with the civil society (monitoring the implementation of the Plan, awareness raising, annual reporting on corruption), and monitoring the implementation of the objectives of the Program.

The Plan accomplished most of its objectives, albeit some were late or very late to come or were not adequate for their purpose. Thus, within the prevention section the Plan accomplishes the adoption of codes of conduct for magistrates (Superior Council of Magistrates' Decision 169/2001), policemen (Ministry of the Interior Order 260/2002), customs officers, for civil servants (Law7/2004), regulation of political party financing (Law43/2003), on conflicts of interests and incompatibilities (Law 161/2003), on the free access to public information (Law 544/2001) and on the regulation of procurement (Urgency Ordinance 60/2001 and Ordinance 20/2002 on electronic procurement), on the set up of the unique bureau for company registration (Urgency Ordinance 76/2001); on the strengthening the capacity for combating corruption an important step was the creation of the National Anticorruption Prosecution Office (PNA - Government Urgency Ordinance 43/2002), the regulation of the protection of witnesses of crimes (Law 682/2002), on the protection of the victims of crimes (Law 211/2004), on the Romanian Police (Law 218/2002); on the institutional reform the most important steps were the modifications of the laws on the function and organization of the judiciary (Laws 303, 304 and 317 in 2004); on the reform of public administration (Government Ordinance 27/2002 on the treatment of petitions, Law 215/2002 on the local public administration, Urgency Ordinance 5/2002 on establishing interdictions for local elected officials); on the section of international cooperation the country adopted laws on the Council of Europe Penal and Civil Conventions (Laws 27/2002 and Law 147/2002), ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Law 263/2002), established the criminal responsibility of legal person (the new Criminal Code – Law 301/2004), regulations on international judicial cooperation (Law 302/2004), and on the civil society cooperation with the adoption of an act on transparency of decision-making (Law 52/2003).

On the other hand, a great number of the measures envisaged by the Plan were very late to come into being (such as the reform in the judiciary, which was planned for the first half of 2002 and was actually realized in the second half of 2004, the financing of political parties which was scheduled for the first half of 2002, and which was actually accomplished in 2003, in the public administration with regards to conflicts of interests etc).

Following delays and low impact in the implementation of the first anticorruption plan - the 2001 Plan, the Government decided to launch another plan in order to expedite the implementation of the measures decided in the previous one. Consequently, the Government launched in December 2002 the plan regarding "Measures to expedite the implementation of the national strategy" – the 2002 Plan. The measures targeted the main loci in need of reform: the judiciary, the public administration, business sector and media and civil society. Within the judiciary, the 2002 Plan targeted the revaluation of the immunity system, the elaboration of an act regarding the litigations on confiscated

property taken to the European Court of Justice, the set up of the National Office for the Protection of Witnesses, elaboration of the lobby act. Within the domain of public administration, the strategy planned a reshuffle of the civil servant hierarchy structure and the creation of the Corpus of High Civil Servants, the adoption of the Code of Conduct of civil servants, regulation of interdictions for local elected officials, training on civil service standards, the establishment of the 'unique bureaus' within all public administration units, adoption of a law on the 'governmental inspector', adoption of an act on local public finances. Within the business sector, the Plan aims at establishing clear criteria for awarding tax rebates for companies, elaboration of the fiscal and fiscal procedure code, the establishment of the Unique National Office for Public Procurement. With regards to the relationship with the media and civil society, the plan envisages the establishment of a telephonic line for complaints about corruption, development of investigative journalism, anticorruption campaigns etc.

Some of the reform initiatives were important and timely accomplished such as the reconsideration of immunities for MPs through the amendment of the Constitution, the set up of the National Office for the Protection of witnesses, the amendment of the structure of the civil servants system through Law 161/2003, the creation of a Corpus of High Civil Servants, the adoption of a law on the act on local public administration (Urgency Ordinance 45/2003), the regulation of interdictions for local elected officials (Urgency Ordinance 5/2002), the establishment of a telephonic line for victims of acts of corruption. On the other hand, important measures were not accomplished such as a thorough reshuffle of the immunities system, the elaboration of an act regarding litigations on confiscated property, the adoption of act on lobby, establishing clear criteria for awarding tax rebates for companies, the establishment of the Unique National Office for Public Procurement, the adoption of the law on the governmental inspector, the establishment of the 'unique bureaus' within public administration units (albeit there were established unique bureaus for company registration) etc.

Following requirements for more reform within critical chapters within EU accession talks expressed by the 2003 Regular Report on Romania's Progress Towards Accession (Regular Report) and the need to close accession negotiations with the EU by the end of 2004, the Government adopted a new Plan of priority measures in view of preparations for Romania's EU accession[11]. The new plan followed the recommendations in the 'Regular Report' and envisaged measures for the period December 2003-December 2004 in the areas of reform within public administration, judiciary, anticorruption, business environment etc. Within the judiciary the new plan proposed the reform of the judiciary in order to increase its independence and celerity, and the introduction of IT operational systems within the case flow; within the field of anticorruption, the plan envisaged an increase into the PNA's capacity, evaluations of corruption within the most affected fields, to eliminate the procedural exclusivity to trigger the asset control; within the business environment the plan proposes the adoption of the Fiscal Code, elaboration of the Ethical Code for fiscal inspectors, astreamlining the company registration procedures; within the strengthening of the capacity of implementing European funds the plan envisages the strengthening of the Court of Auditors' control over the use of Community funds, the strengthening of the capacity of the Government Control office over the regular use of Community funds.

In the course of 2004, the Government managed to speed up the reform procedures and adopt the laws for the reform of the judiciary (Laws 303, 304 and 317 in 2004), to start the introduction of IT court management, to increase PNA capacity, to adopt the Fiscal Code (Law 571/2003) and the Code of Ethics for Fiscal Inspectors (Government Ordinance 1753/2003), to adopt the Act for easing and streamlining the company registration (Law 359/2004), to start extending the capacity of the Romanian Court of Auditors to overview the use of Community Funds (although only in a limited manner to SAPARD funds), and the set up of the Prime Minister's Special Department for the Control of Use of Community Funds (Government Decision 1348/2004). On the other hand,

there have been measures that were not adopted such as the elimination of the strict procedural exclusivity to trigger the asset control for dignitaries and high officials, the introduction of thorough use of IT infrastructure within the judiciary and especially with regards to case management and distribution, and the expansion of the Court of Auditor's administrative capacity to all community funds in Romania.

Following a Memorandum of Understanding with Transparency International in 2004, the Government supported the adoption of a package of acts meant to strengthen the framework against corruption: the modification of the criminal procedure in order to make the prosecutor's acts more transparent (Law 480/2004), the closure of a legal default which permitted acts of corruption without proper punishment (Law 521/2004), the adoption of the Code of Conduct for the Contractual Personnel within the Public Administration (Law 477/2004), and the adoption of the Act on the Protection of Whistleblowers (Law 571/2004), the ratification of the UN Convention against corruption (Law 365/2004).

THE 2005-2007 NATIONAL STRATEGY AND PLAN AGAINST CORRUPTION (hereinafter the 2005 Strategy and Plan)

The new Government in power after the general elections at the end of 2004 proposed a new Strategy and Plan against corruption for the period until the scheduled accession in 2007. The strategy comes as a result of Romania's needs of reform within the anticorruption field, and as a consequence of the Accession Treaty to the EU, which provides corruption among other domains as a potential trigger for the 'delay clause'. The 2005 Strategy is structured in three main directions: 1) prevention, transparency and education, 2) combating corruption, 3) international and national cooperation. The strategy announced the need to continue the achievements of the previous strategy and notes the special need for spreading integrity standards within the public administration, law enforcement, justice, education, and health-care, as well as the prompt suppression of any corrupt act. Within the field of prevention, the strategy aimed at strengthening transparency within public administration decision-making, public procurement, financing of political parties, regulation of public funds for publicity purposes, sectorial inspection actions, awareness raising. Within the judiciary, the Strategy plan aims at adopting and spreading a new deontological code for magistrates, increasing the independence of prosecutors vis-à-vis their superiors, the thorough implementation of the IT court management system, reducing the number of agencies fighting against corruption, strengthening the institutional capacity of the National Anticorruption Prosecution, increasing the celerity of criminal prosecution and criminal trials, as well as using administrative means to fight corruption. Within the section of internal and international cooperation, the strategy aims at fully implementing international instruments such as the recommendations from GRECO and MONEYVAL, implementing the Merrida Convention, as well as the criminal responsibility of legal persons.

The 2005 Plan comes with measures meant to insure the coherence of the existing anticorruption framework and to fix the existing black areas of the institutional system. For example, with the prevention field, the Plan provides for a transparent system of awarding public grants, review of the existing system of codes of conduct, regulating the public advertisement, publication of the donors to political parties, review of the free access to information legislation, implementation of the practice of one-stop shops within the public administration, execution of sectorial controls, elaboration of an updated strategy to fight corruption within the customs, reviewing the law on money-laundering, awareness-raising campaigns. In the area of combating corruption, the Strategy proposes the strengthening of the independence of the prosecutor within all stages of prosecution, enhancing the control of prosecutors over the judiciary police, improving the flow of information from the intelligence services to the prosecution, establishing incompatibilities within the SCM, reshuffling the special intelligence service within the Ministry of Justice, reorganizing the anticorruption prosecution

in order to target high-level corruption, revising the Criminal Procedure Code to expedite the due course of cases, the designation of a special agency to oversee and control the asset declaration, declaration of interests, the regime of incompatibilities and whistleblowing. Within the area of internal and international cooperation, the Plan envisages the establishment of an agency to supervise its execution, and the implementation of the international instruments.

Since the adoption of the 2005 Strategy and Plan, some of the proposed measures have already been adopted such as: the adoption of the deontological codes for magistrates and judicial clerks (Government Decisions 144 and 145 in 2005), the regulation of public procurement of advertisement services (Government Urgency Ordinance 40/2005), the requirement of GRECO's second round of recommendations to waive the immunity of former ministers (Government Urgency Ordinance 3/2005), the award of grants from public budget.

IX.3.CONCLUSION ON THE STRATEGIES

Following slight improvement in the perception of corruption starting with 2003 (see the CPI score throughout the 90's and during the last 5 years) one may conclude that the anticorruption plans and strategies reverse a negative trend in terms of perceptions of corruption. The improvement of the business climate, of the financial system, of the public administration services, and of the access of civil society to information and public decision-making, as well as the acknowledgement of the political class that the issue of corruption is decisive for EU accession, democracy and general wellbeing was conducive to a slight improvement in the perception of corruption level. Despite the low political will to genuinely fight high-level corruption reflected in the low evolution of the CPI score in the past years, there are good circumstances to produce a breakthrough in the level of corruption in the country generated by a positive attitude of both the public and the political class. However, political will and support from the population is not enough. Nevertheless, there is also need for strong institutions capable of implementing this vast web of legislation. Mostly, there is need for strong prevention at the low and medium level of corruption and strong combating institutions against the high-level corruption.

IX.4.NEXT STEPS

The areas where there's need for improvement in order to obtain a better perception and better results in the fight against corruption are the following:

At the low and medium level corruption:

- strong campaigns of awareness-raising on the impact of corruption
- strong enforcement of the control of assets, of conflicts of interests and incompatibilities
- the implementation of the protection of whistleblowers (which will create the perception that those who speak out against corruption are indeed protected and praised),
- the shortening of the judicial procedure, the improvement of the court and case management including by using IT means, and the successful implementation of the codes of conduct for magistrates and court clerks (which will improve one of the worst percepted institutions - the judiciary),
- the improvement of the access to information and transparency of decision-making for all private actors, including citizens and businesses (which will further draw near the authorities and the private actors)

At the high level corruption:

- increase the role and the impact of the intelligence onto the combat side of corruption (so that useful information may be used by the investigators)
- strong enforcement of the control of assets, of conflicts of interests and incompatibilities (which is also cause for great outrage in the public and cynicism with regards to the anticorruption policies of the public authorities),

- ensure independence and autonomy of the prosecution and courts from politics;
- implement the Merrida Convention (so to ensure repatriation of the proceeds of corruption);
- improve the framework for money-laundering prevention and combat (so to ensure prevention of the use of the proceeds of corruption)
- implement conflict of interests regulations at the level of political party finance in between the parties or the agents who receive donations and the legal persons who award the donations.

VII. THE NATIONAL INTEGRITY SYSTEM

THE PARLIAMENT

1. Role of the institution as pillar of NIS

The Romanian Parliament has essential functions in the NIS with regards to the legitimacy it awards to the whole institutional system from the point of view of its integrity and capacity to serve the citizens. In terms of its legislative power, but also in terms of its control over the Executive and other institutions, the Parliament is the main body to initiate and enforce public integrity. From this point of view, it is also the main body to be held responsible in terms of public legitimacy. Accordingly, throughout the transition, the Parliament ranked among the poorest positions in terms of public trust. Apart from the state of integrity amongst its own ranks, the Parliament has also been perceived as a poor authority as to its capacity to initiate coherent, effective legislation to prevent and combat lack of public integrity.

The main functions of the Parliament are to legislate, to proclaim the Cabinet, to control the Executive (the Government and the Presidency), to pass and oversee the state budget, and to establish and monitor the performance and integrity of autonomous institutions[12].

2. Resources/Structure

In Romania, the Parliament is composed of two chambers: the Chamber of Deputies (the lower chamber) and the Senate (the upper chamber). Despite their nominal distinction, the two chambers have similar powers and roles, the only difference being that the number of members of the two chambers differs according to their representation[13]: 332 deputies and 137 senators (for the current legislature). Both chambers must discuss and approve draft laws so that they enter into force. However, if the second chamber dismisses the draft law already adopted in the first chamber, the latter must resume discussions on the rejected draft and submit it a second time for approval at the other chamber. A second rejection of the other chamber strikes down the draft law definitively for the legislative session in progress.

Both chambers are organized in commissions which are permanent, special or investigative. The permanent commissions are established throughout the mandate of the chamber; the special commissions are set up only for situations of complex legislation elaboration, while the investigative commissions are formed for special criminal inquiries such as those involving the members of the Cabinet. Among the most relevant commissions from the point of view of the NIS are: the Commission on Budget, Finances and Banks, the Commission on Abuses and Petitions, and the Commission on law, appointments, immunities and validations. The Commission of Budget, Finances and Banks acts in domains such as the national budget, the social securities budgets, financial policy, loans from foreign markets etc. The Commission on Abuses and Petitions examines the petitions submitted to the two chambers and investigates abuses and corruption. The Commission on law, appointments, immunities and validations monitors the constitutionality of draft laws, debates on amendments regarding the civil, criminal, and administrative law and procedures, judicial organization, and discusses matters of parliamentary discipline, incompatibilities and immunities. The Special Commissions' role is to monitor, validate or draft complex legislation. The Investigative Commission may call any person to give testimony on investigated issues, may weigh evidence, and may order expertise. Based on the workings of any commission, a report is then submitted to the plenum of the chamber for discussions and decision.

The two chambers of the Parliament have financial independence from the Executive. They approve their budgets before the debate on the state budget and submit them to the Government for

inclusion in the state budget. Only the capital expenditure must be discussed with the Government. However, the latter cannot strike or modify the budgets as approved by the two chambers.

3. Legislative function

The Parliament has been a weak authority with regards to its capacity to generate legislation able to fight corruption after the fall of communism. Apart from a few scattered and fragile initiatives[14], until 2000[15] the Parliament was not able to even start to generate specific acts against corruption. Moreover, subsequent legislation adopted after this date was mostly due to Romania's bid to enter the EU.

As already mentioned, the Parliament has not generated specific legislation regarding fight against corruption for a long period of time after the fall of communism. For example, until 2000, the framework defining corruption was similar to that from the communist Criminal Code[16]. However, it did provide complementary legislation[17] with regards to institutions such as the Romanian Court of Auditors[18], administrative litigation[19], the Constitutional Court[20], the judiciary[21] etc. As we argue in the relevant sections, even in these regards the legislation can by and large be assessed as ineffective or defective.

It is only with Law 78/2000 on the prevention and sanctioning of crimes of corruption that the Legislature marked a major breakthrough in the regulation of corruption at the official level in Romania. Following serious outcry from many international institutions and from the Romanian public opinion as well, the adoption of a specific anticorruption law meant an official recognition from the highest authority in the state that corruption reached a severe condition. After this date, Romania entered into a stage of anticorruption legislative proliferation, which was less generated by a real consideration for the phenomenon rather than by a political need to win votes or to abide by EU requirements. As a consequence of this poor foundation of anticorruption legislation (and as a result of poor or artificial consultation with specialized civil society organizations[22]), the result was a regulatory web that has been neither coherent, nor effective.

4. Control of the executive

According to the Constitution, the Parliament controls the Executive by means of the following mechanisms:

- Approval of the Government and its political program, and withdrawing the mandate of the Government;
- Queries, interpellations, and motions;
- Parliamentary investigations;
- Government requesting responsibility for a program, a declaration or a draft law;
- Suspending the President and impeachment;
- Demanding criminal proceedings against members of the Government for crimes perpetrated during their mandate.

By means of the procedure of approval of the Government, the Parliament has control over the members of the Cabinet. Before giving its approval, the Parliament hears the proposed membership of the Cabinet and gives its preliminary OK. The Parliament must also review the proposed governing program of the Cabinet and vote it. By means of the queries mechanism, any MP may inquire any member of the Cabinet with regards to any issue, and the latter must answer back. By means of interpellations, the MP's may request the Government to give explanations with regards to important problems regarding the internal or external policies. Simple motions are political positions of the Parliament with regards to matters of internal or external policy within the powers of the Government. The adoption of this type of motions does not invalidate the Government. However, it

may negatively affect the political authority of the Government with regard to that specific policy issue.

Censorship motions are the strongest political control measures that the Parliament may take against the Government. They can be initiated by ¼ of the total number of MPs, which makes it a relatively open procedure in terms of accessibility. If the censorship motion is voted by the simple majority of the total number of MPs, the Government is struck down and the President must appoint a new Cabinet.

The Parliament may also strike down the Government upon the procedure of request of Government responsibility. This procedure implies the request from the Government of a trust vote from the Parliament with regards to a political program, a policy declaration or a draft law of major importance, which also involve a certain degree of political contestation. If the MPs initiate and pass a motion under the same procedure as the one regulated for the censorship motion, the Government is invalidated immediately. On the contrary, in case the motion is rejected, the Government gains even more authority in the debated matter.

All the above control mechanisms aim at controlling the policy-making power of the Government. However, as the Government draws its authority from the Parliament[23], it is supposed to answer for its members' penal acts in front of the Parliament, as well. According to the Constitution, the Chamber of Deputies or the Senate can request opening of criminal proceedings against members of the Government for crimes committed during their tenure. The President may also be held criminally liable by the Parliament not as a consequence of a different level of popular legitimacy, yet as a result of the principle of separation of powers.

The Parliament may also start suspension or impeachment procedures with regards to the President in two distinct situations: in case of 'serious breach of Constitution' or in case of high treason committed by the President. In the first case, the Parliament may decide to suspend the President from office on reasons of grave breach of the Constitution. If such decision is being taken, the Parliament must request the opinion o the Constitutional Court. The suspension procedure needs the votes of a third of the total number of MPs to be initiated, and a simple majority of the total number of MPs to be concluded[24]. The impeachment procedure in case of high treason is a bit more complex than the one involving suspension. It may be initiated by a simple majority of the total number of MPs, and it needs a qualified majority of 2/3 of the total number of MPs to be passed. When the proposal for impeachment for high treason is passed, the President is automatically suspended from office. The case is then referred to the High Court of Justice and Cassation for adjudication. If the President is found guilty, he is automatically dismissed from office[25].

5. CONTROL OVER THE PUBLIC BUDGET

The Romanian national public budget is formed of the state budget, the social protection budgets, and the local budgets of communes, cities and districts[26]. The state and social protection budgets are adopted by the Parliament, under common sessions, upon proposals from the Government. The draft budgets are debated in the Parliament, upon relevant reports from the two special budget commissions within the two Chambers of the Parliament. Once the Parliament passed the state budget and the social protection budgets, it still enjoys a supervision power over their execution beyond the control employed through the Court of Auditors[27]. The Parliament and its members can at any point raise questions, interpellations or motions with the Ministry of Finance or with any other ministry on how the public money is used by the Executive. It can also strike down the Government on reasons of public budgets expenditure.

6. INCOMPATIBILITES

According to the 1991 Romanian Constitution, nobody can be at the same time deputy and senator. Also, MPs may not hold any other public authority positions apart from that of member of the Government. Other incompatibilities may only be established by organic law[28]. This Constitutional principle implies a couple of problems. First, the conflation of the MP function with that of member of the Cabinet may become risky from the point of view of the potential conflict of interests in between the two functions. First, the control function of the MP against the members of the Government may be endangered. Also, as a member of the Executive, the MP may try to expand the legislating power of the Parliament over to the Executive. Both functions of the Legislature are thus compromised with regard to that specific MP. In addition, the Constitutional article provided only for incompatibilities in the public sector, which in actuality implied a free ride in the private sector. In other words, being member of the Parliament was perfectly compatible with any private sector positions.

This situation stayed even until 2003, when Law 161/2003 regulated additional incompatibilities. It introduced essential incompatibilities with regards to any private administrative positions such as: president, general manager, administrator, etc within a public or a private company. Nonetheless, there is an exception from the incompatibility provisions, which allows MP's to take executive positions at administrative or shareholders' boards of companies, 'whenever a public interest calls for that'[29]. Accordingly, an MP could hold executive positions within public owned companies, upon request from the Government and approval from the Permanent Bureau of the relevant chamber. The exception is quite vague, and has the potential of overriding the rule of incompatibility by means of abusive interpretation of the elusive condition of 'public interest'. The institution of incompatibility regime for MP's itself is for public interest reasons, as well, so the question is what public interest comes first: that of incompatibility or that for which the exception is instituted?

An important field of unregulated incompatibilities has been with regards to the possibility of MPs to act as lawyers. It was not until 2003[30] that MPs were forbidden from pleading at district courts and tribunals, and from providing legal advice in cases prosecuted by prosecution offices at similar levels. They are also forbidden from providing expertise or from pleading in specific cases such as: corruption, drugs trafficking, people smuggling, money laundering, crimes against state, against justice and against peace and humanity. However, it still seems unreasonable to allow MPs to act as lawyers in all cases for two reasons. One is because there is a problem of moral hazard for both prosecutors and judges when an MP pleads for a case. Secondly, MPs with lawyering activities may have an interest into influencing legislation so as to favor certain parties or litigated interests.

In terms of sanctioning, the law provides for the obligation of all MPs to inform the Permanent Bureau of each chamber about his/her incompatibilities within 15 days term from the day of entering into force of the law, and to relinquish one of the positions that create the incompatibility status within 60 days from the same day of entering into force of the law. If the incompatibility status continues to exist after the expiration of the 60 days term, the MP is considered dismissed from his/her position and the relevant Chamber must take official note of the situation. An interesting aspect that reflects the lack of regulatory coherence is the fact that the obligation to disclose the incompatibility status and so to relinquish it is strictly related to the day of entering into force of the law, and not to the timing of taking over the official/public position. This further means that in actuality there is no obligation of disclosing and so of relinquishing incompatible positions for MPs that entered into incompatibility status after the expiration of the 15 days term from the entering into force of the law, which in fact may comprise a very large array of incompatibilities and a lot larger than the one regulated by the law in any case. In addition, the lack of a monitoring system of incompatibilities adds to this incoherence of the law. A positive step would have been the requirement that all MPs assume written responsibility regarding the inexistence of any incompatibility status. Such a declaration would have partly made up for the inexistence of a monitoring system regarding incompatibility situations for MPs.

In conclusion, the history of incompatibility regulations for MPs has been an incoherent one. It is emblematic for the interest that the most important and representative authority in the state has shown into the issue of its own integrity throughout transition. Starting with the 1991 Constitution, which offered a debilitated regime of incompatibilities, and throughout the 1990s when no regulation was adopted in this regard as the Constitution required, and coming to the latest period after 2003, the regime of incompatibilities remains an impaired one with serious consequences on the NIS.

7. CONFLICTS OF INTEREST

The framework of conflicts of interest for MPs has been in an even more impaired situation. For a very long post-communist period Romania did not regulate conflicts of interest for MPs. It was not earlier than 2003 that conflicts of interest were regulated in Romania by Law 161/2003. Nevertheless, despite the law provided for conflicts of interest for a wide range of dignitaries and civil servants, MPs were exempted from this list. The situation hasn't changed until today. Therefore, with regard to the conflicts of interest framework, one could say that MPs designed Law 161 so that it would not harm their own interests. The law did provide for disclosure of interests by means of a declaration of interests, which should comprise the following: positions within associations, foundations, or political parties, paid professional activities, shareholder within companies of any nature. However, what it did not provide was the interdiction to make decisions in case of conflicts of interest vis-à-vis the above positions, and sanctions for such decisions. So, irrespective of the regulation that all MPs must disclose their interests, this does not have any kind of logical continuity without the interdiction and sanctions.

8. ASSET MONITORING

Unlike conflicts of interest, the first law to regulate asset monitoring – Law 115/1996 did not discriminate MPs from other categories of dignitaries or civil servants. As such, the law itself enjoyed all the flaws the law provided[31] and had a minimum impact for the same reasons.

9. GIFTS AND HOSPITALITIES

See the section with the same name within the 'Executive' pillar.

10. CRIMINAL AND CIVIL REPONSABILITY OF PARLIAMENTARIANS

The 1991 Constitution provided for a blanket immunity regime for MPs which protected the latter against any criminal proceedings with regard to all categories of crimes. The modifications in 2003 reduced the immunity regime only to political opinions and votes. Therefore, they can be criminally investigated and prosecuted for the rest of crimes. However, they cannot be searched, taken under custody or arrested without the approval of the chamber they are member of. Only the Prosecutor's Office from the High Court of Justice and Cassation can start criminal investigations and can prosecute deputies or senators and only the High Court of Justice and Cassation is competent to judge such criminal cases. In case of flagrante delicto, MPs may be detained and searched without any special procedure. However, the Minister of Justice must inform the president of the relevant chamber immediately. In case the Chamber thus notified finds no grounds for his or her detention, it shall immediately order that this detainment be repealed.

In terms of civil responsibility, MPs enjoy the same regime as any Romanian citizen.

In conclusion, the criminal responsibility regime of MPs can be characterized as very generous and thus of negative influence to the NIS until 2003. After constitutional amendments in 2003, the regime of immunities can be assessed as reasonable and positive vis-à-vis the NIS.

11. ELECTION SYSTEM

According to the first law on the election of Chamber of Senate and Deputies[32], members of Parliament are elected according to an electoral list provided by each competing party. In line with this system, MP's are elected not by the citizens, but by the parties that prop them on the upper sections of the list, and then proposed for election to voters. For this reason, there have been several allegations of businessmen, potentates and even criminals buying Chamber of Deputies or Senate positions[33] *per se* in order to obtain immunity from criminal allegations, to commit offenses with impunity, or to better advance their economic goals. Accordingly, the electoral system based on lists has had a great corruption potential due to the fact that the emphasis falls on the financial power of the candidate rather than on his or her political capacity to communicate and deliver specific community goals. It thus encourages the economic power of the candidate to the detriment of his/her capacity to conceive and deliver policies (a strong corruptive circumstance).

Based on these reasons, the Romanian civil society advocated for opening the election system by introducing the 'nominal vote', which would ensure a more transparent election of the members of the Legislature. Despite multiple modifications, the election system still remains closed to better scrutiny at this point because of the perpetuation of the 'electoral list'[34].

12. THE STANDING OF THE LEGISLATURE WITHIN THE NIS

The Legislature has been a very weak pillar of integrity throughout the transition. Almost all components of the pillar have proven to be weak both in terms of regulation and in practice. For example, the Legislature has been very weak first of all in its role of generating good and timely regulation to prevent and combat corruption. Secondly, it avoided to generate a good framework for incompatibilities, conflicts of interest and gifts for MPs, as well as on the electoral system. Finally, the immunity regime for MPs has been very generous until 2003 when it was amended and turned to the normal standards in the field.

THE EXECUTIVE

1. INTRODUCTION

The Executive in this study includes the President, and the Presidential Administration, the Cabinet, and its subordinate structures (chancellery, secretariat etc). We assume that the public administration is a separate function from the Executive, as the former puts into execution strategies and policies designed by the latter. This is also apparent from the point of view of the required degree of autonomy the public administration should enjoy vis-à-vis the Executive.

2. ADMINISTRATIVE LITIGATION

The general mechanisms of administrative litigation will be analyzed within the 'Judiciary' section of the NIS. However, there are a couple of issues that are important to be discussed regarding the control of the Executive acts through administrative litigation. According to the latest form of the law on administrative litigation[35], there have been instituted the following forms of control:

1. any citizen may directly challenge Government normative acts – ordinances, on constitutionality grounds;
2. the Public Ministry may challenge Government individual or normative acts when they are deemed to breach a public interest[36];
3. the Prefect, the National Agency for Civil Servants, or any other institution may challenge Government acts on grounds of breach of a legitimate interest;

The first method of control empowers citizens to counter acts of Government that infringe the Constitutional provisions. It represents a step forward from the previous mechanism, which only allowed for citizens to challenge unconstitutional provisions indirectly within another case of common jurisdiction and whose settling depends upon the challenged provisions. Thus, citizens may themselves act to safeguard the constitutional provisions.

The second form of control represents a substantiation of the Constitutional principle according to which the Public Ministry represents the general interests of society and protects the rule of law, the civic rights and liberties.[37] Accordingly, the Public Ministry may challenge acts of both the Executive and Administration, which further explains the Constitutional principle that the Prosecution may not represent the interests of the 'state', yet it represents the reinforcement of the rule of law and of the fundamental rights and legitimate interests provided for in the Constitution and in the rest of the legal framework. Therefore, the Prosecution needs to maintain its separation of powers and independence from the Executive.

The last mechanism of control represents the substantiation of other principles such as the principle of stability of civil servants in their public positions, or the review authority of the district prefects over the acts of mayors or municipal council within their territorial jurisdiction[38]. Yet, what is more important is the power the law gives to any public institution to challenge any decision of the Executive for breaching legitimate interests. This provision has the capacity of enforcing the rule of law and the supremacy of the Constitutional and of the primary legislation over secondary regulations that may abuse rights or interests of autonomous or independent institutions.

Overall, the new administrative litigation framework empowers the average citizens to exert control over the normative acts of the Government on the basis of their compliance with the fundamental law of the country, gives substance to the prosecution's role as defender of the rule of law and of the fundamental rights and interests of citizens and, as well as to the rest of institutional framework to defend their statutory rights. This is also relevant for the NIS as the administrative litigation system is

a form of judicial control against abusive, damaging, or non-statutory acts of the executive and administration. Therefore, the new administration litigation strengthens the formal framework wherein citizens, private legal persons as well as institutions may challenge abusive regulations or decisions.

3. CRIMINAL AND CIVIL LIABILITY OF THE EXECUTIVE

According to the 1991 Romanian Constitution, the members of the Cabinet – ministers – benefit from procedural immunity: only the Chamber of Deputies, the Senate, or the President may call for the prosecution of the members of Cabinet[39]. Also, the Constitution provides for a detailed regulation of the ministerial responsibility in a special law to be adopted by the Parliament[40]. However, it was not until 1999 that the Law on ministerial responsibility[41] was adopted. Accordingly, for a period of about 8 years after the adoption of the first democratic Constitution since the fall of communism, Romania did not have the legal framework for holding the ministers accountable for the criminal acts perpetrated during their tenure. This is also corroborated by the fact that during the mentioned period, there were no prosecutorial proceedings initiated against ministers.

Law 115/1999 on ministerial responsibility (Act on Ministerial Responsibility) regulates the political, penal, and civil accountability of members of the Government. It stipulates that ministers' responsibility follows the common provisions in the field, with the exception of the criminal procedure, which contains some particular rules. Accordingly, only the Chambers of Senate or Deputies, or the President have the right to demand the penal inquiry into the ministers' activities. The latter send their request to the Minister of Justice, who subsequently may or may not request the General Prosecutor to start criminal proceedings[42]. The case is referred into the jurisdiction of the Supreme Court of Justice. This procedural immunity for ministers is very complex, and, more importantly, leaves the decision for prosecution to the minister of justice, usually a political colleague to the accused. Also, the provision gives the minister of justice unwarranted magisterial competence, which blurs the principle of separation of powers[43]. Moreover, the act on ministerial liability provides an exception for the situation wherein the minister of justice is the person under inquiry, when the request for starting of criminal inquiries pertains to the Prime Minister. However, it does not provide exception provisions for the situation whereby the latter may be under investigation.

The Act on Ministerial Responsibility regulates four special crimes that may have as perpetrators only members of the Government:

- Preventing the *bona fide* exercise of civic rights and/or liberties by means of threat, violence or fraud;
- The deceitful presentation of inaccurate data to the Parliament or to the President; the data has to be related to the Government's or ministries' activities and has to incur damages to the state's interests;
- Unwarranted refuse to present to the Chamber of Deputies, the Senate or to the special commissions within the two chambers of the Parliament the required information under a 30 days period;
- Adoption of Governmental regulations with a discriminatory character[44].

Law 161/2003 on measures to ensure transparency in official public positions, in the private sector, and on prevention and punishment of corruption brings some amendments to the previous law. One important modification is that any citizen can notify the Prime Minister, the General Prosecutor of the Supreme Court of Justice, or the General Prosecutor of the National Anti-Corruption Body to further inform the President, who subsequently may asks the minister of justice to order the start of criminal proceedings against the minister.

The recent package on the reform of the judiciary[45] waived the competence of the ministry of justice to order the prosecution to start criminal proceedings[46]. However, the modification did not provide

for a change in the procedure for initiating criminal investigation against ministers, which still requires the act of the minister of justice upon the notification solely from one of the two chambers of the Parliament or from the Presidency. Despite an even more recent modification of the act on ministerial responsibility to waive the procedural immunity enjoyed by former ministers[47], the Government did not observe this incongruence of the legislation. Accordingly, at the moment of writing this report, the criminal procedure does not provide for a procedural framework whereby ministers may be trialed.

The President enjoys total immunity with regards to his or her opinions. The President may be suspended by the Parliament with a simple majority, in case of serious breach of the Constitution[48]. The President may also be indicted by the Parliament with a qualified majority (2/3 of the total number of MPs) for high treason. The President is automatically suspended from his or her position.

In conclusion, the current legal framework for ministerial responsibility has been a very weak brick in the Executive pillar of integrity. While until 1999 ministers enjoyed total immunity as there was no special law to regulate the ministerial liability, as the Constitution expressly requires, after the adoption of the package of reform of the judiciary in 2004, the law on ministerial liability has been emasculated by a procedural fault, as shown above. In addition, the very intricate procedure for starting criminal procedures against ministers constitutes another impediment against an effective control over members of the Executive.

4. ASSET MONITORING

Until 1996, Romania inherited the communist regulations for asset control. Law 18/1968 on the control of illicit assets of natural persons remained in force until 1996. Nevertheless, the law could not produce effects as it provided for procedures and institutions no longer existent[49] in the new legal order after the 1989 Revolution. In 1993, Government Decision 473 provided for the first time a framework for asset declaration. However, this regulation had several structural flaws. First, it did not provide for a control procedure in case of asset discrepancy, the declarations were not public, it did not target an important category of public persons[50], and it did not provide very clear provisions with regards to the asset declaration depository bodies, whose autonomy was weak.

Law 115/1996 on the control and account of assets pertaining to dignitaries, magistrates, civil servants, and other persons in executive positions was the first to systematically approach the issue of asset monitoring. It imposed the mandatory declaration of assets of all officials and civil servants, starting with the President, members of the Government and parliamentarians, state secretaries, under secretaries, officials from the central and local administration, mayors, county and local councilors, members of administrative boards and executives of public commercial companies whereby the state holds the majority of shares, executives from the National Bank and other commercial banks whereby the state is a majority shareholder. The declaration aims at the personal belongings of officials or public servants, the common possessions held together with the spouse, and the property of dependant children. The obligation of asset declaration rests upon the bona fide of the official or the public servant, and has to be cleared at the moment of occupation of and discharge from the public position. In addition, the requirement of assets declaration includes that of transactions of selling or donation of property made during the deployment of public service. Non-compliance with the obligation of asset declaration incurs the automatic trigger of the control procedure. The declaration must be submitted upon entrance into the office, upon exit from the office, and every four years.

In the case of the members of the Executive, the asset declaration must be submitted to the prime minister, while the prime-minister must hand it in to the President. The latter must submit his declaration to the president of the Constitutional Court. The law also regulates a control procedure: should there be any salient differences of wealth between the moment of office occupation and

office release, and strong evidence of illegal acquisition, then the automatic procedure of asset control comes into force. The special control commission which conducts inquiries into the assets of the President of Romania, of MP's, of ministers is compounded of two judges from the Supreme Court of Justice, designated by the general assembly of the court, and of a prosecutor designated by the General Prosecutor.

Nevertheless, there are a few problems with this first version of the assets control act that have the potential of making it ineffective, as it was proven in practice with regards to the members of the Executive. First it is very difficult to observe the evolution of a dignitary and his/her spouse and children's assets over a long period of 4 years. Then, the persons in charge of reporting differences in assets are either the ministry of justice, or the general prosecutor[51]. Obviously, it is quite improbable that the minister of justice would turn in one of his or her colleagues, or the persons who appointed him or her (the prime-minister directly). Then, the General Prosecutor would be nominated, at the time, by the Minister of Justice[52], which is hardly a procedure of nature to insure independence from the Executive. The law required the declaration of all deposits over €10,000 a rule which would not expose multiple deposits below this threshold. Another impediment is the legal demand for clear evidence about assets acquired by illegal means[53], which is very difficult to produce and is characteristic of *flagrante* cases of corruption. This obviously would make a procedural non-sense as the existence of corruption (criminal status) would make pointless the asset control (administrative status). Finally, the secret character of the asset declarations, under criminal penalties[54], and the libel character of the whistleblowing on illegal asset acquiring add up to a very weak piece of law, which did not produce practical effects.

Law 161/2003 on measures to ensure transparency in official public positions, in the private sector, and on prevention and punishment of corruption brings some amendments to Law 115/1996, yet it does not address the most important deficiencies. One positive amendment is the exposure of declarations, of control commission's conclusions and of court's final decisions in case of official inquiries, by means of their publication on the website of the relevant institutions, or in the Official Romanian Gazette, Part III. Another modification is the requirement of the annual declaration of assets, should there be any annual acquisition of such goods. However, this does not address the issue when the responsible person omits to update his or her declaration annually. So, the law remained ineffective after this modification as well.

In 2004, **Urgency Ordinance 24** imposed the annual declaration of assets, as well as the asset declaration for all elective positions (including that of Presidency) before the date of elections. On the positive side, it modified the monetary deposits declaration framework so it includes all deposits that exceed the cumulated value of €5,000. It also gave the General Prosecutor of the National Anticorruption Prosecution competence to request control over the assets of the President or ministers. However, the independence of the General Anticorruption Prosecutor has always been under question, as he is appointed by the President upon recommendation from the Minister of Justice. Moreover, the fact that the prosecution was not legally in charge of monitoring asset declarations made this provision pointless.

In 2005, the form under which the asset declaration takes place has been again modified, but only with regards to the form of asset declaration[55]. As we have shown so far, this was not the asset declaration's main weak point. Therefore, the most important impediments related to the procedural aspects like the libel[56] issue, the requirement for clear evidence, as well as the competent authorities in charge to request the assets control remain in place at this point, too. They continue to make the mechanism of asset declaration and control ineffective.

In conclusion, the asset monitoring and control system with regards to the members of the Executive has had a minimum impact on the integrity of the Executive pillar. The introduction for the first time

after 1996 of a law on assets declaration and control was not successful as it was affected by serious procedural and systemic flaws. The current system of asset declarations remains toothless unless mainly the control system is improved.

5. GIFTS AND HOSPITALITY

Until 2000, there have been no requirements for disclosure of gifts. **Law 78/2000 on prevention, detection and punishment of corrupt acts** stipulates that officials and civil servants must declare any direct or indirect donations or manual gifts received in relation with their duties, except for those that only have a symbolic value, in 30 days time from receipt[57]. However, the provision of the law is quite vague, because it does not explain what exactly a 'symbolic value' is. Therefore, this impreciseness of the law creates a loophole, which permits anyone to dodge the law. In addition, there is no stipulation with regards to services of hospitality provided to officials or civil servants. Finally, it is quite improper (conflictual) to give the person under scrutiny the obligation to evaluate his/her own gifts.

In 2004, the modifications[58] to **Law 115/1996 on the control and account of assets** amended the vague language of its predecessor regulation, and required the declaration of all goods and services received within protocol activities which exceed €200. In addition, Law 251/2004 came to specifically regulate the regime of gifts. Accordingly, any piece of gift received by a dignitary must be declared within 30 days from receipt. All gifts over €200 must be paid for the exact cost-equivalent or handed to the institution. A positive development is the appointment of a special commission whose role is to receive, register, and evaluate the gifts. However, a key deficiency is that the law does not provide sanctions for not declaring gifts or for not submitting them to the special commission. Also, hospitality services do not enjoy the same legal regime. Another problem remains the rather high threshold value of the gift which equals the average monthly net income in Romania.

The regime of gifts and hospitalities has been another weak integrity point of the Executive pillar. The lack of a regulation until 2000, and the vague or incomplete provisions after this date maintain a weak framework in this regard. In short, the current gifts and hospitality system remains ineffective.

6. CONFLICTS OF INTEREST AND INCOMPATIBILITIES

Law 161/2003 on measures to ensure transparency in official public positions, in the private sector, and on prevention and punishment of corruption provides the first set of conflict of interest regulations. The law defines the conflict of interest as the situation whereby an official or civil servant has a personal interest of a material nature, which would impinge upon the objective accomplishment of his or her legal duties. The law requires that the President, members of the Government, state secretaries and undersecretaries, prefects and deputy prefects abstain from adopting administrative resolutions, concluding contracts or taking decisions while in an official position if such acts would bring themselves, their spouse, or their first degree relatives pecuniary advantages. However, adoption, approval, or release of normative acts constitutes explicit exceptions from the norm. Breach of the conflict of interest provisions equate with administrative offence and are declared null and void. According to the law, anybody can report a breach of the conflict of interest regulations by one of the persons above, yet it is only the Prime-Minister who can demand inquiry into such cases. The body in charge of the inquiry is the Prime-minister's Control Office, which submits the findings to the Prime-minister. The latter must take the 'appropriate decision'. If there is evidence of material benefits following the conflict of interest situation, the case must be referred to the National Anticorruption Department or to the asset control commissions. The Prime Minister's decision or, respectively, the definitive resolution of the court has to be published in the Official Gazette, Part I. Also, any person aggrieved by an act adopted with breach of the conflict of interest provisions, may challenge it in court.

However, the previous mechanism has some important failures. First of all, it is highly questionable as to why the exception vis-à-vis the release of normative acts exists (or why does it exist in this form). Seemingly, the exception tries to avoid the situation when a normative act of public interest cannot be emitted for reasons of incompatibility of the person in charge. However, the provision doesn't tackle the situation when the person in charge takes advantage of this exception and adopts a normative act that favors personal interests. As long as it is quite notorious the extent of the phenomenon of state capture in Romania and the grave damage it inflicts to the public budged and to the policy-making process, the exception perpetuates this harmful state of affairs against the public interest. Therefore, there should be a more precise wording of this exception in order to distinguish between the situation when the exception works in favor of the public interest and the situation when it works in favor of the official or another category of interests. There is no provision for thorough or random check for conflicts of interest, and no specification as to which person demands inquiry into cases of breach of the conflict of interest regulations by the Prime-Minister and who carries them out. In addition, the Prime-Minister has jurisdictional power over the evidence he is presented with as long as he or she can decide whether the case should be referred to the prosecution or to the asset control commissions based on the given evidence.

All officials must submit a statement of interests, which should include the following: 1) shares or stock at any companies or partnerships, or membership with non-governmental organizations; 2) executive positions with companies or non-governmental organizations, foundations, and political parties, 3) membership with employers' associations or unions; 4) executive positions with political parties. The President and presidential advisors submit their declarations to the head of the Presidential Chancellery, ministers and government secretaries to the General Secretary of the Cabinet. There is no sanction related to the refusal to submit the declaration of interests, except from the exposure of the responsible persons on the websites of the Government or ministries. Again, the lack of a systematic or random monitoring of the statements of interest provisions debilitates the goal of the conflict of interest regulations.

The Romanian 1991 **Constitution** establishes some basic incompatibilities:

(1) Members of the Government shall be incompatible with the exercise of any other public office of authority, except the office of a Deputy or Senator. Likewise, it shall be incompatible with the exercise of any office of professional representation paid by a private organization.
(2) Other incompatibilities shall be established by organic law.

Law 161/2003 establishes a more detailed set of incompatibilities. Members of the Government, state secretaries and undersecretaries are incompatible with any other official positions, save for that of parliamentarian. They are also incompatible with the following positions: any executive, administrative, salaried functions at companies, banks, and public institutions, president or vice-president of shareholder boards at any companies, state-owned, private or mixed, state representative at any shareholder boards, merchant, member of an economic consortium. Nevertheless, there are exceptions, which override these provisions, allowing the above officials to be state representatives in the board of shareholders or in the administrative boards of regiés autonomés[59], national companies, public institutions, or other private companies, banks or insurance firms, whenever a 'public interest' requires that[60]. Such exceptions are dangerous whenever they are not transparently instituted. The exceptional infringement of incompatibility regulations should remain circumscribed to the 'exceptional' status, and there should be strong transparency requirements for their implementation. Otherwise, the risk is the failure of the incompatibility regulations for this important category.

Prefects and deputy prefects are to observe the same incompatibilities as ministers and state secretaries or undersecretaries, including those of mayors, deputy mayors, county and local councilors. All the above officials have to declare upon take over of their public positions that they observe these incompatibilities. There are no control procedures of such declarations of

incompatibility adherence. In case of breach of incompatibility provisions by one of the members of the Executive, the Prime-Minister is in charge of taking measures against this situation. There are no methodologies of thorough or random control of incompatibility provisions observance by all categories of civil servants and public officials.

The Constitution establishes a basic regime of incompatibilities for the Romanian President, as well. The Romanian President is forbidden from holding any public or private position[61].

So far, the incompatibility and conflict of interest system has been a weak point in the Executive pillar integrity. Apart from the vagaries of the law, the lack of a system of monitoring and controlling the incompatibility and conflict of interest situations remains the main problem of integrity within the Executive pillar.

7. THE STANDING OF THE EXECUTIVE WITHIN THE NIS

The Executive (especially the Government) has been a weak pillar within the NIS. It has been a weak pillar from the point of view of the legal capacity of the Judiciary to check the members of the Executive from the point of view of their integrity. This has been evident with regards to the criminal responsibility of the members of the Executive, as well as from the point of view of the control of the conflict of interest and incompatibility situations. Another even more important weak point of the Executive pillar that has had a negative impact on the evolution of NIS in post-communist Romania is the weak capacity of the Government to generate anticorruption and integrity policies. The fact that most integrity systems in Romania have come into being very late, and from those in force, most of them are ineffective for many reasons gives the real fundament of the current weak integrity system.

THE JUDICIARY

1. INTRODUCTION

According to the Romanian Constitution, the Romanian judiciary is formed of three components: the courts, the Public Ministry and the Superior Council of the Magistracy. The court system is structured in a three-tier system (courts of first instance, courts of appeal, and courts of review) as following: the High Court of Justice and Cassation (the supreme court), courts of appeal, tribunals, and district courts. Although improperly called Public Ministry, the latter is formed of the total body of prosecutors whose duty is to defend the public interests and values. The Superior Court of Magistracy is the representative of the judicial authority in its relations with the other authorities of the state and the guarantor of judicial independence in Romania. Its role is to defend the independence of the judiciary against the Executive and the Legislature, to safeguard the integrity of the members of the judiciary, and to manage the judicial infrastructure.

2. INDEPENDENCE OF THE JUDICIARY

The issue of judicial independence has been a pivotal one throughout the transition from communism to market economy and democratic rule. It was often questioned and challenged with regards to the most important aspects of the process such as investigating and prosecuting criminal acts during communism, upon the bloody 1989 Revolution, and in its aftermath, restoring property rights formerly abusively confiscated by the communist state, and securing proper commercial transactions.

According to the 1991 Constitution and to the statutory law 92/1992, *judges are independent and subject only to the law*[62]. Nevertheless, both in law and in practice this principle has been disregarded in the past. Most regulatory provisions, which breached the principle of independence of judges, were related to the admission in the magisterial and court managerial positions, career developments, and disciplinary responsibility. For example, the Minister of Justice was in charge of 'recommending' to the Superior Council of the Magistracy the appointment of judges and prosecutors, including those pertaining to the High Court of Justice and Cassation, as well as the president and vice-president of the High Court of Justice and Cassation[63]. More, the Minister of Justice could also directly appoint for traineeships[64] judges and prosecutors by means of ministerial ordinances. In terms of career developments, the Minister of Justice could decide on the promotion of prosecutors[65]. Finally, the Ministry of Justice held the power to order special investigations into the professional activity of magistrates as well as the power to initiate disciplinary action against them. In practice, there have been numerous media reports highlighting various instances of sanctioned magistrates who pursued sensitive cases of corruption[66]. The numerous mechanism of influencing the prosecutor's inquiry leverage as in the case of the Ministry of Justice and the superior prosecutors who would be entitled to demand prosecutors to start a criminal inquiry, to suspend or to drop it[67] are relevant again for the *de jure* limitations of independence in the judicial system. The possibility of the Executive through the Minister of Justice and its appointees at the head of the prosecution to control criminal investigations before reaching the court implies that the judicial process could be short-circuited by preventing cases from moving up the next step on the ladder: courts. Lastly, yet not less importantly, was the subordination of the Superior Council of the Magistracy (SCM) - the formal appointing authority for magistrates and disciplinary authority for judges only, to the two chambers of the Parliament, which would elect its members for a four years term. Both the election of the members of the SCM by a political body and the superposition of its membership term over the term of the MPs would give a powerful, yet harmful political vector to the judicial body.

Following vociferous critiques coming from the EU officials, and in view of closing negotiations on the Justice and Home Affairs Chapter of EU accession talks, a big reshuffle of the judicial system took place in 2004. The scope was to mostly address the issue of independence of the judiciary from the rest of the public authorities. The three laws on the reform of the judiciary[68] established a very powerful Superior Council of the Magistracy in charge of all the previous sensitive issues like appointment of magistrates, career, and disciplinary action. According to Law 317/2004, the Superior Council of the Magistracy becomes the representative of the judiciary and guarantor of its independence[69]. This is insured by the democratic election of most of its membership from among magistrates by the general assembly of magistrates. Apart from its 9 elected judges and 5 prosecutors, the CSM also contains *de jure* the minister of justice, the president of the High Court of Justice and Cassation, and the General Prosecutor, as well as two representatives of the civil society, elected by the Senate. Aside from the control the SCM holds over the magisterial development, it also has some degree of influence over the organization and finances of the judicial system. The SCM controls the National Institute for Magistracy, adopts the deontological code of magistrates, rules on the interior organization of the courts etc, approves the establishment or the dissolution of different courts or prosecution offices, and manages its own budget. Also, the Minister of Justice lost its powers with regards to the criminal investigations conducted by prosecutors, and as of January 2005, the possibility of superior prosecutors to influence the criminal decisions of their inferiors was also relinquished. The Supreme Court of Justice and Cassation received the management of its own budget. On the other hand, prosecution offices received financial autonomy, with the General Prosecutor being awarded primary budget ordinator position as the head of the Supreme Court of Justice and Cassation. Incoherently, the rest of the courts remained under the financial control of the Minister of Justice.

An important provision with regards to magisterial independence is the request that any political or economic pressure should be reported to the SCM, and the later should take action to protect the reporting magistrate[70]. No such reporting has been registered so far.

Under this framework, the judiciary becomes a powerful structure aside its potential competitors – the Executive and the Legislature. Whilst the Executive still retains its budgetary leverage over courts, it nevertheless loses most of its control mechanisms over the judiciary with regards to the influence it may exert over magistrates and their professional activity. The Legislature, in turn, loses its power to elect the members of the SCM and is required to ask the latter for its opinion on those acts which regulate the judiciary. The establishment of the SCM as the official representative body of the judiciary in its relationship to the rest of the state authorities and as a defendant of magistrates' independence is of nature to enhance the status and authority of the judiciary. Overall, the current organization of the judiciary is one which is capable to secure its independence[71] provided the SCM rises to its call as a protector of independence of magistrates. Magistrates should assume the responsibility of speaking out each time they feel their independence or impartiality is threatened by anyone, and the SCM in turn should take the responsibility of making a priority of such cases and protecting the whistleblower.

Nevertheless, important problems remain at the level of judicial infrastructure. Ever-changing legal provisions both in the procedural matters and in substance matters, as well as a poor court network and assets, low magisterial turnout and lack of computer-based files system burden a much needed coherence and celerity of the judicial system. It is only recently that the Law on the judicial organization[72] provided for an indiscriminate distribution of cases, based on a computer generated random system. A very safe method of influencing judicial decisions used to be the biased distribution of cases according to a premeditated system in sensitive cases to certain judges

recognized for their political allegiance[1]. The poor court network and endowment further contributes to the lack of transparency, celerity and ultimately authority of the judiciary. The current system of poor financial management of courts under the control of the minister of justice has been criticized for its failures for the past years of transition, and was used as an argument for transferring the financial control to the SCM.

At the beginning of 2005, the new Government made some important changes in the organization and functioning of the judicial system based on a new *Strategy on the reform of the judiciary*[73]. The Government then passed a law[74] in Parliament by assuming responsibility which performed most of the changes announced in the *Strategy* : eliminating incompatibilities in between membership positions within CSM and positions of heads of courts, introducing a competitive procedure (based on examinations) for the appointment of heads of courts and prosecution offices, regulating the procedure for the appointment of magistrates within panels and sections based on the principle of specialization, by excluding the power of the superior prosecutor of removing a desk prosecutor from the case etc. The law also changed the appointment system of the leadership of the Public Ministry, whereby the Ministry of Justice obtained the power of 'proposing' to the head of the state the persons to be appointed to the head of the prosecution. This amendment was not very well received according to a survey carried out among magistrates by Transparency International – Romania in September 2005[75]. The issues that the magistrates identified was that the appointment of the heads of the prosecution (both general and anticorruption) coupled with the hierarchical control system within the prosecution would alter the independence of the latter from the Government. There remain still unresolved sensible issues such as the evaluation of magistrates or the system of examinations which have also been questioned by magistrates, but which are also proposed for regulation in the Strategy by the SCM.

3. INTEGRITY ASPECTS OF THE JUDICIARY

According to the Romanian 1991 Constitution, judges and prosecutors are forbidden from holding alternative public or private positions, except for those in the educational system. However, even before the Constitution, the Romanian Civil Procedure Code provides conflict of interest provisions with regards to judges. The latter have to abstain or may be rejected from presiding over cases wherein they or their relatives of first degree have a direct interest in the case or when they are relative or kin in law by the 4th degree. Also, similar provisions are in force with regards to prosecutors and to court clerks.

Since 2003, a stricter set of conflict of interest provisions entered in force for magistrates, too. The *Anticorruption act* prohibits magistrates from being shareholders or administrators in companies, to be part of political parties or to carry out political activities. Also, magistrates are forbidden from investigating or presiding over cases wherein they are relatives up to the 4th degree, or they or their relatives up to the 4th degree have an interest into the case. The same rule applies to magistrates who are kin to the 4th degree to other magistrates who ruled on the case in a previous judicial stage. A judge who becomes lawyer cannot come to the bar in the same court he presided as magistrate for a period of 2 years since he or she left it. A prosecutor who becomes lawyer cannot assist the prosecution members two years after he or she left the prosecution. Magistrates who encounter political or economic pressures must report immediately to the president of the court or to the general prosecutor of the prosecution office they function in. The sanctions for failing to comply with the above requirements are 6 months suspension from the magisterial position or outright removal from the magistracy[76]. In 2004, a new law on the status of magistrates entered into force[77] which doubled the incompatibilities and the conflict of interest rule provided by the *Anticorruption*

[1] This issue may be well known to an insider of the Romania judiciary, but not to the reader. Citing a source to back up the claim would probably help emphasize what is otherwise a compelling case for the critical analysis of the Judiciary pillar.

Act. A new requirement was introduced for cases where magistrates encounter any kind of influence in their activity and where the CSM is the authority in charge of acting against the influence and protecting the magistrates[78].

Until amendments in 2004, the issue of integrity of magistrates was partly in the control of the SCM, and partly in the power of the Ministry of Justice. According to Law 92/1992, the Ministry of Justice was in charge of both initiating disciplinary inquiries and the disciplinary action against judges and prosecutors. Based on these preliminary inquiries, the Minister of Justice would then take the case to the SCM to rule on. As the SCM itself was at the time appointed by a political majority in Parliament for a similar term as the latter, it would be expected to be influenced by the appointing majority, which would also ratify the Executive membership. Consequently, the integrity of magistrates was characterized more by political criteria than by performance-based and objective requirements. Thus, magisterial integrity was not as much an important matter as could political considerations be.

In 2004, the current system has been changed to stress the professional integrity and performance of magistrates. The disciplinary investigation is initiated by the managing boards of the High Court of Justice or the Courts of Appeal and by the managing boards of the prosecution offices by the High Court of Justice or the Courts of Appeal. They are also the bodies in charge of taking the case to the disciplinary sections of the SCM. Following amendments in 2005, the disciplinary action is initiated by special commissions within the SCM, while the judges and prosecutors who perform inspections have been moved to the SCM as well.

According to the new system, it is only the body of magistrates, which has the duty to provide for its own internal integrity. However, following controversial elections for the new SCM in December 2004 and controversial decisions on disciplinary matters regarding magistrates, the integrity issues remain problematic. If the new SCM with its exclusive powers to rule on the integrity of the magisterial corpus does not react promptly and adequately to the disciplinary matters, it will be very difficult for the judiciary to perform its control function vis-à-vis the Executive and to regain its authority within the Romanian society.

4. JUDICIAL CONTROL OF THE EXECUTIVE:

The Judiciary controls the Executive by means of:
1. Administrative litigation;
2. Legal responsibility of the ministers.

1. By means of the administrative litigation procedure[79], the Judiciary can review administrative acts adopted by the Executive and other authorities, which damage recognized rights or interests. The Romanian Constitution regulates this as *the right of an aggrieved person by a public authority*[80]. Lack of resolution of a legitimate request in due time, unjustified refusals, and judicial errors are also subject to the administrative litigation procedure. The aggrieved persons (either natural or legal) may request the annulment of the abusive act, acknowledgment of their rights or interests, as well as payment for damages[81]. One cannot use this procedure to challenge the following:

a) Acts regarding the relationship between the Parliament, on the one hand, and the President or the Government, on the other;
b) Military commandment acts;
c) Administrative acts, which need a special procedure in, order to be modified or invalidated. The special procedure is to be provided by a special law;
d) Management acts of the state with regard to its own patrimony;
e) Administrative acts on hierarchical control.

Since December 2004, a new law on the administrative litigation entered into force and introduced new mechanisms for challenging abusive acts of the public authorities, including the Executive[82]. First of all, the law recognizes the right of a natural or legal person to challenge directly in the administrative courts unconstitutional provisions of Government ordinances[83]. Also, the Ombudsman may notify the administrative litigation court with regard to abusive acts of the Executive, whenever a case is brought forth and needs court review.

2. The Judiciary reviews the criminal actions of the members of the Executive, yet under a very restrictive procedure. The Constitution provides that only the Chamber of Deputies, the Senate or the President can demand the beginning of criminal investigation against the members of the Government for crimes committed during their tenure[84]. In addition, the same institutions must address a request to the Ministry of Justice to open legal proceedings against the inquired minister. Only then the case is then taken to the Supreme Court of Justice and Cassation. The procedure for the criminal responsibility of ministers is quite intricate and conditioned upon the approval of a member of the Executive (the Minister of Justice). This means that the Judiciary is restricted in its authority by the decisions of the Executive to further submit the case to the Judicial Power. More, the decision to start criminal proceedings against an existent member of the Government has a political flavor since both the chambers of Parliament and the President are political appointees and determine the Government composition. Consequently, it is quite difficult for the latter to request criminal inquiries against their own kind as this would engender political damage to the decidents.

Since January 2005[85], the new Government scrapped the previous procedure for former ministers, as it was not justifiable. Thus, former ministers account for their criminal acts during executive tenure according to the common criminal procedures. This is a normal solution, as former ministers do not need a special procedure nor they need immunity.

The criminal responsibility of the President (impeachment) can only be triggered by the decision of the Parliament, under a 'qualified majority' (two thirds of the total number of MP's) and only for reasons of 'high treason'[86]. The case is then taken to the Supreme Court of Justice and Cassation. The President is suspended during the criminal inquiry. In case of a definitive sentence, the President is *de jure* removed from office. The other employees (for example, Presidential Advisors) of the Presidency do not enjoy special procedures when faced with a criminal inquiry. The justice system does not have direct powers to indict the President.

5. THE STANDING OF THE JUDICIARY WITHIN THE NIS

The judiciary has been a weak pillar for the NIS throughout transition and remains so at the time of writing this report. This entailed several important negative effects on the Romanian Integrity System such as: lack of authority for the judiciary, which further generated a decrease for the deterrent role of the criminal system, and a lack of control of the legislature, executive and administration. Among the most important reasons for this weak role of the judiciary in the past years is the lack of real independence of the judiciary, and most importantly of the prosecutorial element, a disregard of the judiciary by the policy makers, of its needs for regulatory and infrastructure reform. Also, the politicization of the judiciary discredited the need for integrity policies within the judiciary, which has grown to be perceived as among the most corrupt institutions.

The regulatory reforms operated in 2004 and 2005 have the potential of formally solving the problems of independence of the judiciary. However, important issues of a structural nature, now entirely under the management of the SCM, such as sufficient court staffing, professional capacity and integrity standards of magistrates remain to be solved in the future and will burden the capacity of the judiciary in the National Integrity System. The fact that reform in these fields was very late to

be initiated makes it very difficult for such a complex system as the judiciary to produce results in the short-run, especially with view to the close EU accession in 2007.

CONSTITUTIONAL COURT

1. INTRODUCTION

The Constitutional Court is the special authority in charge with screening the Legislative and Executive power for the constitutionality of the laws and ordinances they elaborate, i.e. the observance of the constitutional provisions. According to the **Constitution**[87], it controls the constitutionality of the laws and regulations of the Parliament before their promulgation, and decides upon the exceptions of constitutionality of laws and ordinances raised during trials. From this perspective, the Constitutional Court has an essential role within the NIS as a control court for the Legislature, and the Executive, as well as for the legitimacy and democratic functionality of essential institutions such as: political parties, the President, the referendum and the civic legislative initiative. Therefore, the Constitutional Court is not part of the powers within the state, yet it is an essential element of equilibrium and legality of the fundamental democratic institutions. The constitutionality control is regulated by the Constitution and by Law 47/1992.

2. INDEPENDENCE

The Romanian Constitutional Court is formed of 9 unmovable judges appointed for a fix 6-year term each. Out of the 9 judges, 3 are appointed by the President, 3 by the Chamber of Deputies, and 3 by the Senate among legal professionals with at least 18 years of experience in the field. The composition of the Constitutional Court experiences a turnout of 3 judges every three years. The members of the Constitutional Court enjoy the same level of immunity as the members of the Parliament. They cannot be held liable for the opinions and votes expressed during their deliberations. Also, they cannot be prosecuted or arrested without the approval from the Chambers of Parliament or the President.

The appointment mechanism is meant to provide the members of the Court with the largest political legitimacy, given by the 3 national institutions whose members are directly elected by the citizens. The Court's function to ensure the legality of the political framework assumes the balance of the stately authorities which would require the presence of the members of the judiciary, as well. Nevertheless, the turnout mechanism ensures a wider political representation of the Court's membership and thus a more equilibrate ideological range. This mechanism, along with the immovability status of the appointees should ensure rather an ideological equilibrium of judges of the court who unmistakably bear a political mark by their designators.

3. CONTROL OF THE NORMATIVE ACTS OF THE LEGISLATURE AND EXECUTIVE

The Constitutional Court carries two types of constitutionality control: an *ex ante* control with regards to draft laws and *ex post* control with regards to adopted laws and Government ordinances.

The *ex ante* control is based upon a notification of unconstitutionality from the President of the country, from the one of the presidents of two chambers of the Parliament, the Government, the High Court of Justice and Cassation, the Ombudsman, or by a group of at least 50 deputies or 25 senators. The unconstitutionality control may refer to either one or more provisions of the law or to the entire law. The Court's decision, adopted by a simple majority, must be observed by the Parliament, which is bound to take into consideration the position of the Court when finalizing the form of the draft law[88]. The Constitutional Court also controls the initiatives on amending the Constitution, on the basis of draft constitutional law, on adopting international treaties and conventions, on the basis of ratification draft laws, and on amending the Statutes of the two chambers of Parliament, on the basis of draft laws. Indirectly, the Constitutional Court has *ex ante*

control over the government issued legislation –ordinances- by means of the *ex ante* constitutionality control over the 'enabling laws'[89].

The Constitutional Court exerts the *ex post* constitutionality control over laws and ordinances. Laws are the most important acts of the Parliament through which the latter exerts its legislative power. Ordinances are regulatory acts of the Government, issued on the basis of an enabling law. The *ex post* constitutionality control takes place on the basis of an unconstitutionality claim in a court of law, in relationship to a certain case. If the Constitutional Court decides the unconstitutionality claim is valid, the decision becomes obligatory and the unconstitutional provisions become invalid in 45 days. The Ombudsman may also directly raise the unconstitutionality claim to the Constitutional Court, under similar procedure.

The Constitutional Court gave recently several decisions in matters that breached constitutional provisions regarding the immovability of magistrates and status of the heads of the two chambers of the Parliament[90]. This illustrates the independence and assertiveness of the Constitutional Court against the other two powers in the state.

4. OTHER FORMS OF CONTROL

The Constitutional Court oversees the election process of the Romanian President and validates the result. It gives the advisory validation on the request for suspending the mandate of the President in case of serious breach of Constitution[91]. In addition, the Constitutional Court decides on the contestations submitted by the presidents of the two Chambers of the Parliament against political parties based on reasons of unconstitutionality[92].

5. THE STANDING OF THE CONSTITUTIONAL COURT WITHIN THE NIS

The Constitutional Court has an important role in the concept of the NIS. Its role is to maintain the delicate equilibrium among powers and to restrict unconstitutional slippage. For example, the constitutionality control over acts of the Parliament and the Government has the role to restrict the activity of the two authorities to the principles of the Constitution. In addition, the Constitutional Court in preserving the democratic framework by overseeing and validating the election of the President and by deciding vis-à-vis cases of constitutionality of political parties.

THE CHAMBER OF ACCOUNTS

1. INTRODUCTION:

The current Romanian public auditing system is formed of two layers of control mechanisms: internal control and external control. The internal control is carried out by specialized control departments within public institutions[93] and the external control is conducted by the Romanian Court of Auditors – in Romania termed as the Chamber of Accounts (RCA). In the following lines we make a historical account of the Romanian Chamber of Accounts, as well as a critical assessment of the current legal and institutional framework, according to the evaluation criteria provided by the NIS methodology.

2. PREVIOUS DEVELOPMENTS OF THE ROMANIAN CHAMBER OF ACCOUNTS

According to the 1991 Romanian Constitution, *the RCA carries the control over the formation, administration and expenditure of the financial resources of the state and public sector*[94]. It also carries jurisdictional powers according to the law and submits its annual report to the Parliament. Its members are appointed by the Parliament and benefit from immunity and immovability.

The RCA was established under Law 94/1992 as *the supreme financial control and financial jurisdiction body*[95]. Its financial control spreads over the legality of financial operations and of the administration of the public assets (regularity control), as well as over their efficiency, economy and efficacy (opportunity control). The RCA was set up under the administrative control of the Parliament[96] and is structured in one central chamber of accounts and county chambers of accounts. According to the law, its members are appointed by the Parliament, at the recommendations of the Finance and Budget Commissions within the two chambers. They benefit from immunity and immovability during the 6 year tenure. The RCA members' immunity implies that all criminal procedures from custody, arrest, criminal inquiry to indictment need special validation from the two Chambers of the Parliament, as well as a request from the General Prosecutor.

The Subsequent Control Direction within the RCA[97] has the mandate to verify *ex post* the annual execution of all public accounts. Within the subsequent control powers, the RCA would take into account the legality, as well as the necessity, opportunity, efficiency, efficacy and economy of any financial decision and actual expenditure. Under the law, all reports on the public accounts of the court's financial inspectors are to be forwarded to a special court within the RCA, which would take the decision of either discharging the credit ordinators, or of furthering the case to the financial court to decide the administrative liability or to the criminal authorities (prosecution), in case of criminal evidence..

Two financial jurisdictions within the RCA establish the financial liability of the credit ordinators responsible in any way of incurring damage to the public budgets. The Jurisdictional Colleges judge cases in first instance, while the Jurisdictional Section at the central level would make the final appeal stage. The procedure is contradictory and involves both financial prosecutors who plead the case for the RCA and the credit ordinators assisted by lawyers

The RCA also enjoys financial prosecutors functioning by the Subsequent Control Section, the Jurisdictional Section, and the county chambers. Financial judges, prosecutors and inspectors benefit from the same level of immunity as the members of the RCA. The financial prosecutors investigate the cases of illegal use of public money and then send them to the financial courts, which rule on the payment of civil damages and fines for the financial offenses perpetrated by the public administrators, accountants etc. Where cases have a penal character, the financial prosecutors must

relegate them to the criminal prosecutors. The President of the RCA appoints the financial inspectors in charge of controlling the public accounts.

The RCA has independence with regards to its investigations, which, as a rule, can only be stopped by the Parliament and only when the RCA abuses its powers[98]. However, there is an important exception to this rule, which allows the Government to override the decisions of the RCA to reject during the *ex ante* control the financial engagements of credit ordinators[99].

Also, according to the law, the RCA elaborates its own budget, which is subsequently submitted for approval in the Parliament. The RCA's main responsibility is to draft a comprehensive report within 6 months from the receipt of all public accounts and to report to the Parliament its observations regarding their execution.

The members of the RCA, as well as its judges, prosecutors and financial inspectors are banned from being part of political parties and from carrying out political activities. Members of the RCA, judges and prosecutors are forbidden from holding commercial positions or from carrying commercial activities.

Accordingly, in its initial shape, the RCA's operational autonomy was significantly diminished by the Executive's power to override its *ex ante* decisions to deny to financial commitments when they are not according to the law. The conflation of the *ex ante* and *ex post* controls, as well as the weak implementation of both preventive and subsequent supervision over public assets and financial decisions based also on weak institutional capacity were weak points for this pillar. Given the characteristics of the period dominated by economic reforms and large scale privatizations, the lack of adequate performance prerogatives may partly explain the registered failures in the field. In addition, the practice of delaying the reporting of public accounts to the RCA for subsequent (*ex post*) control sometimes as long as 2 years made the audit function ineffective (see table at the end of the section). This was exacerbated by the lack of interest manifested in the Parliament as far as the reports coming from the RCA are concerned. All these combined weak points, irrespective of the relatively strong and independent configuration of the RCA, generated a weak pillar of *ex ante* and *ex post* financial control.

Following recommendations from the EU Commission[100] to drop the *ex ante* control of the RCA, Law 99/1999 abolished this function[101] and also abrogated article 25 which allowed the Government to rescind any denial decision of the RCA against the financial decisions of the credit ordinators[102]. Yet, it introduced provisions that weaken the capacity and autonomy of the RCA. Accordingly, the RCA was only entitled to carry legality (regularity) *ex post* control, the opportunity function being abolished. More, the RCA was competent to only conduct the *ex post* control regarding the budget of the two chambers of the Parliament at the specific request of the latter. In 2001, following additional requests from the EU Commission, the RCA received the task of overseeing the use of the SAPARD structural funds for agriculture[103].

Following amendments in 2002[104], the RCA regained its performance audit powers, including the public procurement procedures as well. It also received the competence to audit the usage of all European funds earmarked for Romania, as well as the privatization procedures and post privatization observation of contracts by the responsible public authorities. In 2003, the modifications to the Romanian Constitution included the restructuring of the RCA which is set to lose its jurisdictional powers upon modifications of its statutory law to put it in line with its European counterpart.

According to SIGMA reports on the years 2003 and 2004[105], in the period the RCA mostly focused on the regularity-type of control, as the opportunity one was underdeveloped. The reports mention that in 2002, the performance audit reached 1.2 %, while in 2004 it reached 15-18 %, and in 2005 it is expected to reached 50%, following a twinning project with its British counterpart. As to the timeliness of its reports in the Parliament, the SIGMA reports mention that the RCA ability to produce the annual reports has greatly increased since 2002, when it started to finish its reports with just one year delay[106]. The latest annual report produced by the RCA for the year 2003 was issued in December 2004. As far as the impact of the reports in the Parliament goes, the reports mention that it has been 'minimal'.

Recently, the RCA received a new structure in charge of auditing the spending of the European funds in Romania under the ISPA and SAPARD, as well as of the post-accession funds (herefrom the Audit Authority)[2]. The Audit Authority is managed by a president and a deputy president appointed by the plenum of the RCA. This new competence comes as a consequence of European Union demands for control of European funds in Romania, and also as a consequence of the irregularities uncover in the past years with regards to the use thereof.

3. THE STANDING OF THE PILLAR WITHIN THE NIS

Currently, the Romanian Chamber of Accounts is a well regulated pillar of integrity. It is independent from the point of view of its board, staff and budget, as well as from the point of view of its operational capacities. Its institutional capacity has been growing over the past years with significant professional and logistical support from international and European agencies. The RCA has steadily been moving from the regularity type of control (inadequate for the transition period through which Romania goes) to the opportunity type of control, which is the modern approach for a court of audit. However, the opportunity type of audit is not yet fully developed and this has had a strong negative impact on its capacity to control a wide range of financial decisions involving public contracts. The RCA's board and staff are subject to the same incompatibility, conflicts of interest and asset declarations as the rest of the Romania public officials. At its output side, the RCA's function is not yet fully considered in the Parliament, as its reports are not seriously taken into discussion and the Parliament does not always act upon the findings.

In conclusion, the RCA's function as an integrity pillar has been affected by a flawed initial view on the institution by the Parliament (as the name of the institution suggests – *Chamber of Accounts*, it was meant to conduct regularity control), by a low institutional capacity to process the reported information, by a reduced capacity of the credit ordinators to submit budget execution reports in time, and by a disregard of the Parliament to make use of the RCA findings. Currently, the RCA is going through a process of institutional capacity increase, both in terms of its professional capacity to audit performance, as well as in terms of its logistical support. Nevertheless, the RCA growing capacity must be complemented by an increased attention in the Parliament so that the Court's standing as a main integrity pillar may be truly accounted for.

Year of budget reporting[107]	Submission date to the Parliament by the RCA	Date of debate in the Parliament
1997	06.04.1998	09.03.2000
1998	28.06.2000	17.04.2002
1999	19.03.2001	17.04.2002
2000	17.01.2002	17.04.2002
2001	16.12.2002	26.06.2003
2002	18.02.2004	18.10.2004
2003	08.03.2005	-

THE ANTICORRUPTION PROSECUTION

1. Introduction

The anticorruption prosecution is legally part of the judicial system. Nevertheless, the position of a special prosecution in the fight against corruption is of major importance from the point of view of the need of specialization of the activity of combating corruption. The evolution of the specialized anticorruption prosecution is indicative of the evolution of the entire anticorruption policy in Romania. Its ups and downs, the convoluted, incomplete and constantly changing statutory framework have all determined a weak and ineffective anticorruption prosecution vis-à-vis the anticorruption needs Romania faced during the past years of transition.

2. Evolution

Until 2000, Romania did not have a special anticorruption prosecution; the general prosecution was in charge of the corruption dossiers. As a result of the international pressures to fight corruption, the Parliament passed Law 78/2000 on the prevention and fight against corruption, which established the Anticorruption Section within the General Prosecution by the High Court of Justice and Cassation[108]. This was considered a major step ahead in the fight against corruption. The Anticorruption Section was organized in services at the courts of appeal level, and bureaus at the level of tribunals. Its role was to carry out the criminal proceedings against the crimes of corruption regulated by Law 78/2000 and against crimes perpetrated by organized criminal groups.

However, the provisions of the law were very poorly devised, which confirms that it was a reactive decision based on the electoral year and on the international institutions, and not on a professional understanding of the necessity of such institution. First of all, the law did not clarify the personnel structure of the section and its material resources, which would seriously impact the section's effectiveness subsequently. Secondly, the larger problem of the role of the Minister of Justice in the appointment and dismissal of the Prosecutor General and his subordinates, as well as the structure of the prosecution offices negatively impacted the Section. For example, the chief of the Section (Ovidiu Budusan) was abusively dismissed[109] in 2001 after inquiring illegal party finances linked to the party in power. Also, the section did not benefit from adequate resources given the huge task it was given.

Following increasing international pressure calling for efficacy in the fight against corruption, the Government passed Urgency Ordinance 43/2002, which established the National Anticorruption Prosecution Office (hereinafter NAPO). This new anticorruption body was supposed to be an improved version of the previous Anticorruption Section. Therefore, NAPO was organized as a distinct prosecution office from the rest of the common prosecution, its material competence was restricted only to corruption crimes, and its personnel structure was expressly defined. However, the main problem of the anticorruption prosecution, namely its independence from the Ministry of Justice could not be tackled as it was part of the larger constitutional system. The general prosecutor of NAPO was appointed by the President, on the basis of a recommendation from the Minister of Justice for a fixed term of 6 years. A similar term was regulated for the rest of the prosecutors within NAPO. Nevertheless, the ordinance also provided for the possibility that they be dismissed by the Minister of Justice, based on the recommendation of the General Prosecutor of NAPO. The latter could also be dismissed by the President upon recommendation from the Minister of Justice[110].

Ordinance 43/2002 was subsequently modified in the hope to satisfy the requirements of EU accession process. In 2003, Law 161 gave financial autonomy to the NAPO by establishing its budget

separately from the general budget of the Public Ministry and increasing its personnel structure in order to respond to critiques referring to the imbalance in between its tasks and resources. The material competence of the NAPO was also changed in order to limit the large number of cases that were suffocating the anticorruption prosecution. Accordingly, only those corruption cases that would produce damage over €10,000 or if the value of the bribe exceeded €3,000 would enter into the material competence of the NAPO. The rest of crimes of corruption are referred to the common prosecution offices. A negative amendment was the provision according to which any decision of arrest or prosecution should be confirmed by the superior prosecutor. Therefore, the chain subordination of the prosecution in general to the Executive through the appointment system was completed by the chain subordination of the operational system. This is an aspect that has had the potential of influencing any criminal dossier by the prosecutorial hierarchy or even by the Executive, through the chain appointing and disciplinary system.

At the beginning of 2004, the Government amended the statutory law for a second time in a bid to alleviate criticism referring to a lack of effectiveness of the fight against corruption, and especially related to the impact of the anticorruption drive against high-level corruption[111]. Accordingly, NAPO benefited from an increase of its personnel capacity of about 25%, and from an expansion of its financial autonomy by the appointment of its chief prosecutor as primary credit ordinator[112]. In the second part of 2004, a new Urgency Ordinance modified again the framework of NAPO following internal and external criticism as to the institution's incapacity to fight high-level corruption. Its material remit was diminished to only crimes of corruption that generated a damage of over €10,000 or the value of the bribe toped €5,000. Nevertheless, as a consequence of the lack of attention from the Executive, this Urgency Ordinance remained in force for only about 3 weeks as it was abrogated by Law 601/2004 which approved Urgency Ordinance 24/2004.

In the same year, a new law on the status of magistrates – Law 303/2004 – changed the appointment and disciplinary system of magistrates, which entered under the responsibility of the Superior Council of Magistrates. However, the appointing system of the General Prosecutor, his deputies, and of the General Prosecutor of the NAPO remained in place[113]. Accordingly, the heads of the Prosecution are appointed by the President, upon a proposal from the SCM, which receives a recommendation from the Minster of Justice. This procedure is a closed one to the extent to which it is mainly the Minister of Justice who makes the call for a candidate, the SCM's choice being to either accept or reject it. Therefore, the SCM may not in reality 'propose' as the Constitution requires[114], but it rather confirms or rejects the solution of the Ministry of Justice.

The last package of reform of property and judiciary[115] passed in Parliament by new Government in power after elections in late 2004 made a complete transfer of appointing and dismissal powers for the heads of the General Prosecution and NAPO to the Executive. Accordingly, the General Prosecutor, his deputies, and the General Prosecutor of the NAPO and his deputies are being appointed by the President, upon proposals from the Minister of Justice. More, the dismissal of the same heads of the general prosecution is also put under the decision-powers of the Executive. Under this modification, the Minister of Justice may submit a proposal to the President to dismiss the General Prosecutor, his deputies or the General Prosecutor of the NAPO[116] under a number of grounds, including lack of efficiency[117] of the institution. In both situations (i.e. appointment and dismissal) the SCM's position is not mandatory to the Ministry of Justice. Although the motivation of this new system (which actually turns back the appointing mechanisms of the head of the prosecution to year 2000) is an improvement of the responsibility and efficiency of the General Prosecution and of NAPO vis-à-vis their mandate, it remains to be seen how much this mechanism would be able to balance the lost of independence of the prosecution.

Recently, a decision[118] of the Constitutional Court of Romania ruled that NAPO did not held material competence over the crimes of corruption perpetrated by MPs. The decision was based on a

provision of the Romanian Constitution which specifies that it is only the General Prosecution that may start criminal proceedings against MPs, according to the Constitutional provision in this regard. This decision highlights the poor regulatory framework under which the anticorruption prosecution operates. As a result, the Ministry of Justice was forced to promote an Urgency Ordinance[119] to provide the anticorruption prosecution with the competence of investigating MPs as well. Following this modification, the National Anticorruption Prosecution Office became the National Anticorruption Department (herefrom DNA). DNA became an independent structure within the General Prosecution with the main role of investigating and prosecuting crimes of corruption. Another important modification that came as a result of the strong EU demand for combating high-level corruption was the raise of the threshold damage value of the crime of corruption to €200,000, and that of the bribe to €10,000. A positive development was the introduction of plea bargaining provision which halves the penal sanctions provided the defendant provided he or she reveals the identity or facilitates the prosecution of other participants at the crimes.

Following modifications in the appointing system of the leadership of the national prosecution, the Minister of Justice proposed in August 2005 the appointment at the head of the DNA of a young prosecutor –Daniel Morar - after the resignation of the former chief-prosecutor Ioan Amarie. The new head of the national prosecution has the difficult mission of prosecuting several high profile corruption cases (that is, cases involving ministers, parliamentarians or other high-profile state officials) in a very short period of time of about 6 months in order to send the message that in Romania corruption is punished irrespective of its level. Fighting corruption remains among the very few domains where Romania must prove it's doing her job so that the safeguarding clause should not be invoked by the EU Commission.

3. The standing of the anticorruption prosecution within the NIS

The anticorruption prosecution has been a very weak pillar within the NIS. This is a consequence of the fact that until 2000 there was no specialized body to fight corruption. The general prosecution did not have the expertise and resources essential to conduct inquiries into this field. This was amplified by a very weak definition of corruption until 2000 and by a lack of independence of the entire judiciary from the Executive. After 2000, the establishment of the Anticorruption Section within the General Prosecution did not have an impact for reasons of poor regulatory framework with regards to resources and independence. After 2002, the establishment of NAPO was also affected by a lack of vision with regards to its remit and resources. The multiple amendments of its regulatory framework, as well as its lack of independence from the Executive impacted on NAPO's capacity to fight corruption effectively, and especially high level corruption. The Constitutional Court's decision has important implications vis-à-vis the future importance of NAPO in the fight against high level corruption.

In conclusion, the role of the anticorruption prosecution has been very confuse since its establishment either as a section of the General Prosecution, as a distinct prosecution office and finally as a section of the General Prosecution again. The constantly changing regulatory framework affected its capacity to fight corruption. In addition, the general lack of independence of the Judiciary from the Executive, an undecided political resolve to genuinely fight corruption, and a structural incoherence of the regulatory framework for NAPO contributed to a weak pillar of integrity after 2000. However, the establishment of a special anticorruption prosecution can be considered a good beginning. The wavering evolution of the anticorruption prosecution in between 2000 and 2005 should make a good lesson for the future. Moreover, it is only from this point on that the anticorruption prosecution may have a chance in having an effective impact based on the institutional build-up so far with regards to the new framework of the judiciary and other institutions involved. In the months to come the DNA must demonstrate its capacity of prosecuting several high-profile cases of corruption so that Romania prove effective combat against high level corruption, and thus to fend off the *safeguard clause.*

PUBLIC ADMINISTRATION

1. Introduction

The public administration system is formed of elected and appointed professionals both at the central and local levels. The persons carrying out the public service should be good professionals, should not have political allegiances or affiliations, should enter the service based on objective examination, should benefit from a transparent and objective system of career development, should perform the service without involving their personal interests, should not fear hierarchy reprisals when refusing to execute illegitimate orders or speaking out against improprieties within administration offices, should benefit from performance incentives and be liable for wrongdoings. In addition, civil servants should abide by professional codes, and should serve the public in a non-discriminatory manner, and should not aim at using the office for their personal or other illegitimate purposes. They ought to benefit from stability in their positions, and should not be subject to political changes.

In Romania, the public service is formed of both elected and appointed officials. The elected officials are the mayors of cities, towns, and communes, and local and district (*judet*) councilors. The appointed civil servants - a lot more numerous than the elected ones - are as following: Government secretaries and deputy secretaries, state counselors, prefects and deputy-prefects, directors and deputy-directors within ministries, special governmental agencies, or specialized services, municipal secretaries, heads of departments, experts, councilors, inspectors etc. In between elected and appointed officials there are important differences of legal regime, as they bear different sources of legitimacy: elected officials have a direct source of legitimacy, while the appointed officials draw their legitimacy from the public administration legal framework.

2. Previous developments of the public administration system

It is indicative of the weak and tardy capacity of policy-making and of the current country's administrative capacity that a real regulation of the public administration started only in 1999, almost 10 years after the fall of communism. While by all means not satisfactory or decisive, the reform put the bricks for a professional and integer civil service. It started in 1999 with the *Charter of Civil Servants*[120], continued in 2001 with the *Act on the Romanian Government* [121]and the *Act on Local Administration*[122], in 2003 with the *Anticorruption Bill*[123], in 2004 with the *Code of Conduct for Civil Servants*[124], with the *Act on the Prefects*[125] and with the *Charter of the Local Elected Officials*[126].

According to the 1991 Romanian Constitution, the public administration is formed of two layers: the central administration and the local administration. The central administration is formed of ministries, special agencies under the ministries, and autonomous agencies. The local public administration lies at the level of communes, cities and districts and is formed of autonomous institutions such as the mayor, the local councils, the district councils, as well as of prefectures – subordinated to the Government.

In 1991, **Law 69**[127] was the first act to establish the organization and functioning of the local administration. The law did provide a minimum set of incompatibilities (for the mayor) and conflict of interest provisions (for local councilors). However, these provisions were not comprehensive and did not provide sanctions for their breach. For example, mayors could hold managerial positions within private companies which would do business with the municipality. Also, local and district councilors could set up local public owned companies and, at the same time, hold managerial positions within private owned companies. In addition, despite the law provided for the protection and liability of the civil servants and local elected officials according to a subsequent *Charter of Civil Servants* and *Charter of Local Elected Officials*, they were only adopted in 1999 and 2004. In short, the law

was not able to ensure integrity, professionalism and protection at the local level of public administration.

In 1999 a first step towards a professional civil service was made through the adoption of the ***Charter of Civil Servants***. The law introduces a set of criteria for the organization and function of the civil service as following: the definition of the civil servants, their classification, their competencies, rights and duties, career and legal responsibility. The law also provides a set of important principles for the civil service: 1) the prompt and efficient provision of the public service, 2) selection of civil servants according to competency criteria, 3) equality of chances upon entrance into the civil service and promotion, 4) stability in function. The law sets up the National Agency for Civil Servants (NACS) with the role of building up a professional civil service. The NACS elaborates the policies for the civil service and furthers them to public authorities for adoption, creates evaluation criteria and the training system for civil servants, coordinates and monitors the implementation of regulations regarding civil servants and the civil service. The law establishes the salary system for civil servants, basic rights such as the right to personal opinion, the right to establish unions, the right to strike, the right to challenge the decision of the superiors in administrative courts. Among obligations, civil servants must not express their political opinions and allegiances, must protect the state secret and the professional secret, must not demand or receive gifts or other advantages within the remit of their profession. Civil servants are banned from holding any other positions either public or private, or from carrying out job-related activities for private companies.

The law suffered modifications in time; among the most important were brought about by Law 161/2003 – *The Anticorruption Package*. First of all, the law systematized the principles of civil service: 1) legality, impartiality, and objectivity, 2) transparency, 3) efficiency and efficacy, 4) responsibility, 5) citizen-wise orientation, 6) stability within the service, 7) hierarchical subordination[128]. An important amendment was that the National Agency for Civil Servants receives the procedural competence to bring a lawsuit against any authority that acts against the provisions regarding the civil service and the civil servants[129]. This amendment gives the NACS effective powers to implement the Charter and the rights and obligations of the civil servants. The new amendments introduced the interdiction for all civil servants from holding any political party affiliations. It also solved the confidentiality problem by limiting it to information of public interest, and imposed the annual declaration of assets, rather than the inadequate one based on entrance in and exit from service. However, the *Anticorruption Package* itself had problems with the definition of key concepts such as conflict of interest, declaration of asset, and mechanisms of control of asset discrepancies or of conflict of interest situations.

In 2001, the **Act on the organization and Function of the Romanian Government** introduces several categories of administration employees which however do not bear specific integrity regulations. For example, within the working-group of the Prime Minister, there are personal counselors, and within every ministry (within the ministerial cabinets) there are other special advisors who do not fall under the category of civil servants, and who therefore are not subject to any incompatibility provisions. The law has suffered modifications which nevertheless did not fix this major deficiency. For example, Law 23/2004 modifies the structure of the Government and introduces the Prime-Minister's Chancellery, which may employ personnel which does not fall under the category of civil servants and does not comply with the incompatibility requirements of Law 161/2003 either.

The new **Act on Local Administration** does not represent a bigger leap from Law 69/1991 on local administration in terms of coherence. It provides incompatibilities provisions (albeit non-comprehensive) only for the local counselors, mayors, city secretary, and the prefect. District counselors do not abide by a set of incompatibilities, despite the law provides for sanctions for

breach of incompatibilities. On the other hand, not all local officials are to be responsible for breaching incompatibility provisions. For example, local counselors and mayors do risk sanctions upon breaching incompatibility provisions, while the city secretaries and the prefects do not, as the law does not provide sanctions in such cases.

In 2003, the deficiencies of the Act on Local Administration are amended by **Law 161/2003**, which introduced comprehensive incompatibility provisions for local and district counselors, mayors, city secretaries and prefects, as well as the sanction of *de jure dismissal* from the office for breach of incompatibility provisions.

The **Code of Conduct for Civil Servants** adopted in 2004 represents an essential step ahead on the road to building a professional civil service. The Code establishes a set of principles that must govern the civil service such as: the supremacy of Constitution and of rule of law within the day-to-day activities, the prevalence of the public interest over the personal interest, impartiality, independence, moral integrity (implies avoidance of conflicts of interests) in the relationship with the public, freedom of thought and expression, openness and transparency etc. Another important positive aspect of the law is that it provides clear and specific definitions for new concepts in the legal culture Romanian such as: public interest, private interest and the conflict in between the two. The Code of Conduct gives a set of guidelines for the civil service that put the fundamentals of any professional public administration: duty of provision of the civil service to the benefit of the public, loyalty to the Constitution and the rule of law, freedom of opinion, limitations in the political activity, good quality relationship with the public, interdiction to accept gifts, services or any other benefits, avoidance of abuse of power, proper use of the public assets in accordance with the law, interdiction to participate in procurement, leasing or renting of public assets by using insider information or insider leverage power, etc. A final important aspect is the role of the National Agency for Civil Servants within the framework of both integrity and protection of civil servants: the NACS may be notified by any person with the claim that a civil servant breached the Code or that a civil servant is forced into breaching the Code. The NACS must hold confidential any complaint of breach of the Code filed by a civil servant. The NCAS has the power of conducting an investigation into the case and it may release a recommendation to the agency under scrutiny. All public agencies have the responsibility of displaying the Code within their premises in a visible location.

On the downside of the Code, the power of recommendation given to the NACS with regards to complaints on the breach of the Code may not be sufficient, especially with regards to the principle of stability in function of the civil servants and to the right to protection that civil servants must enjoy. Whereas the inquired agency may have an interest into following the recommendation of NACS in cases of breach of the Code by the civil servant, it may not have an equal interest into doing the same when it is the agency which breaches the Code. The Code does not regulate the situation wherein the inquired agency does not follow the recommendation of the NACS and thus places the harmed civil servant into the position of defending himself/herself against the potential abusing authority. One potential solution would be to give the NACS the same role and thus powers as in the case of the Superior Council of the Magistracy, without excluding the role of the disciplinary boards within any public administration agency. That is, whenever the NACS is notified with a disciplinary case, it must have the power to override the decision of the administration agency or to order the administration agency to act in a certain manner vis-à-vis the breach of the Code.

The **Act on the prefects** does not come with substantial added value within the Romanian public administration system. Apart from the fact that the law details the competencies of the prefect and the deputy-prefect and the relationship with the local councils and the mayors, the law does not provide a clear framework for the appointment of prefects and deputy prefects despite the fact that they are *high civil servants* – the highest rank among civil servants. Therefore, despite the fact that the Charter of Civil Servants discussed above establishes as main principle the selection of civil servants

according to competency criteria, the Act on Prefects does not stipulate anything about the appointment criteria for these high civil servants. As a consequence, one can assume that the appointment may not be on the basis of competence at all times, and that the political considerations may play an important role. This would further entail that prefects and deputy prefects may not be full fledged civil servants in this regard and that the requirements of a professional civil service in this regard are not met.

The last important act on this list of regulations of public administration is the **Charter of Local Elected Officials** which brings new elements to the framework of protection and integrity of local elected officials. Thus, the local elected officials benefit from immunity with regards to their political opinions[130] under a similar regime as MPs. In addition, measures of arrest, placing under custody or indictment of a local official must be communicated to both the local authority and to the prefect within 24 hours. On the other hand, the law imposes a stricter regime of declaration of interests for local officials so that it is fitted to the specificities of the local officials' remit. Thus, the declaration of interests must contain real estate that is property or lease of the local official or his/spouse and children, positions held by his/her spouse at companies or public agencies, a list of assets situated within the circumscription of the authority etc. Failure to submit the declaration of interests within 15 days from the official installation into the position incurs *ex officio* dismissal[131]. Local counselors may not decide in a matter wherein they have a personal interest. Any such decision shall be *ex officio* rescinded[132]. Nevertheless, the law does not provide any similar requirement for mayors, the president or deputy presidents of the county councils.

In conclusion, the reform within the public administration started in earnest as late as 1999 with the Charter of Civil Servants, followed by the act on the organization and function of the Romanian Government, the act on the local administration, the code of conduct for civil servants, the act on the local prefects and the charter of the local elected officials. However, most of these regulatory initiatives have not been conducive to a coherent and complete legal framework for the public administration from the beginning. Some of the deficiencies have been amended along the way, such as the permission of political party affiliation, or the confidentiality of all information from within the public administration. Others have not been yet fixed such as: the lack of professional (competency) criteria for the appointment of prefects and deputy prefects as high civil servants, the lack of special conflict of interest sanctions for decisions of mayors, presidents and deputy presidents of county councils, the lack of power of authority of the National Council for Civil Servants to order public administration agencies to take certain actions etc.

3. Stability in function

The notion of stability in function for civil servants is a fundamental principle for the civil service that implies a legitimate protection that any civil servant enjoys from unwarranted aggression, dismissal or demotion from his/her position. The principle was stipulated in the Charter for Civil Servants[133] in 1999, and is based on the mechanism of protection of civil servants from any physical or moral aggression and on the system of disciplinary sanctioning. The mechanism of protection ensures that the civil servants are protected against any type of aggression by means of the authority of the state to provide security or to deploy legitimate force[134]. The system of disciplinary sanctioning presupposes a mandatory inquiry procedure into the wrongdoings and a hearing of the investigated civil servants by a special disciplinary commission. Based on the inquiry and on the hearing, the disciplinary commission recommends the sanction to the head of the administrative agency[135]. The disciplinary commission is formed of an equal number of representatives of the management of the institution and representatives of the civil servants.

An important role in the safeguarding of the principle of stability in function is played by the National Agency for Civil Servants (NACS), which is in charge *inter alia* of the acts of the administration which breach the legal requirements of the Charter on the civil servants, including the

disciplinary proceedings. In such cases, the NACS can be notified by any civil servant who feels his/her professional rights are infringed. The NACS must conduct an inquiry into the complaint and write a report which should contain a recommendation to the head of the institution wherein the claimant civil servant works. The NACS must edit an annual report on the inquired cases, and must publicize those cases of major importance.

An important aspect with regards to the principle of stability in function is the mechanism of protection for whistleblowers. The Act on whistleblowers[136] provides that the act of signaling breaches of law in good faith constitutes an act of public interest. According to the act, the whistleblower has the benefit of good faith when he or she makes allegations about certain breaches of law and so the burden of proof lies on the special commission within every administrative agency which must conduct an inquiry and seek for evidence with regards to the allegations. The whistleblower can attack the decision of the commission at the administrative court, which has the possibility of repealing the disciplinary or administrative sanction applied to the whistleblower.

However, the principle of stability in function may be affected by the recommendatory power that both the disciplinary commissions and the NACS have against the head of the administrative agencies. This weakens the protection offered to civil servants by the specialized bodies created to this goal.

4. Integrity issues

The issues of integrity within the administration regard provisions of interdictions, incompatibilities, conflict of interest, and asset and interests declaration.

With regards to **interdictions**, the current legal regime concerns the ban of political activity or support thereof; ban of receipt of any kind of gifts or services, by civil servants or their relatives, friends or their former business associates or political colleagues; ban of purchase, lease or rent of public gods whenever the civil servant has inside information or directly participates into the transaction; ban of use of such information in other conditions than those offered by the law. Breach of the above provisions may constitute a disciplinary violation, or worse it may add up to crime. However, the law does not sanction the result of the operation *per se* by annulling the act and forcing the responsible person to return the benefits[137].

With regards to **incompatibilities**, there are provisions concerning civil servants, and local elected officials. Civil servants are incompatible with any other public or private positions. Civil servants may not give consultancy to or be employed by those companies whom the civil servant used to monitor or control according to his/her competencies, for a period of 3 years after leaving the civil service[138]. Civil servants are also incompatible with executive positions within political parties, yet they are allowed to be members of political parties[139]. High civil servants are incompatible with political party membership. However, there are no provisions with regards to the mechanisms of sanctioning those civil servants under incompatibility status.

Mayors and deputy mayors, presidents and vice-presidents of the county councils may not hold any other public or private positions, except for educational positions or positions within not-for-profit associations or foundation[140]. Local or county councilors may not be mayors or deputy mayors, members of the Parliament or of the Government, state secretaries, prefects and deputy prefects, civil servants or employees of the local administration; they may not hold executive positions within public owned or private companies that have the legal headquarter or branches within the administrative area of the local authority[141]. Local councilors or their first degree kin may not be *significant*[142] share-holders within companies set up the local or county councils[143]. Local councilors who bear executive positions within private or public companies may not sign contracts with the local authorities they are members of, or with local public companies set up by or under the control

of the local authorities; the same incompatibility provisions apply to the spouses or other first degree kin of the local councilors who hold similar positions[144]. The local elected official must renounce the conditions that create the incompatibility situation within 15 days from the validation of the mandate. In case the local officials do not renounce the incompatible positions, the prefect must issue an order of dismissal for the incompatible local elected official.

With regards to **conflict of interests**, civil servants and local elected officials must refrain from adopting decisions or from signing contracts whenever they are in a conflict of interest situation. Civil servants are in a conflict of interest situation whenever they make a decision for a party that is in a material relationship with the former, or sit on a commission with first degree relatives, or when their patrimonial interests or their first degree kin may influence their objectiveness. However, the law does not provide a sanction of annulment of the act in case of conflict of interests.

Mayors, deputy mayors, presidents and vice-presidents of the county councils are in a conflict of interest situation whenever they are in the position of adopting an act or signing a contract that produce a benefit for themselves or their first degree relatives[145]. The acts adopted under a conflict of interest situation by the latter are declared null and void. Local councilors may not attend council meetings wherein the former or their first to forth degree kin have a material interest. Decisions adopted in breach of this regulation may be attacked by any person with a legitimate interest and can be declared null and void in administrative court[146]. Obviously, there is a large discrepancy of the conflict of interest regime in between local councilors, on one side, and mayors, deputy mayors and presidents and vice-presidents of county councils on the other.

Civil servants and local elected officials must submit an **asset declaration** within 15 days from appointment or election. Civil servants must submit their asset declaration to the human resources department within the public agency, the local elected officials to the secretary of the local administration unit, and prefects and deputy-prefects to the general secretary of the county prefecture. The asset declaration must be submitted at the end of the mandate, and yearly updated, in cases of asset procurement or alienation[147]. Persons appointed for a period longer than 4 years must update their asset declaration every 4 years. In addition, persons who candidate for the positions of mayor or local or county councilor must submit their asset declaration at the same time with their candidature. The asset declaration must be publicized on the county councils' web pages within 5 days from submission. Failure to submit the asset declaration within the 15 day term from the appointment or election, or by the end of the year in the case of asset acquirement or alienation, or at the end of the mandate entails the *ex officio* inquiry into the assets of the person in breach of regulation[148]. In case of salient difference in wealth and based on *clear* evidence, a special commission starts an inquiry into the assets of the civil servant or local elected official under scrutiny[149]. However, the problems related to the lack of a coherent procedure to monitor asset declarations, conflict of interests and incompatibilities, as well as to investigate differences of wealth remain a major obstacle to a strong integrity within the pillar.

5. Accountability

In general, local elected officials and civil servants do follow the general regime of civil and criminal accountability. With regards to disciplinary liability, the law provides for special procedures in order to ensure a proper protection in accordance to the requirement of stability in function.

For example, the level of disciplinary sanctioning for local counselors determines who takes the decision. In the case of light sanctions such as reprimand, or expulsion from the council room, it is the chairman of the local council who takes the decision. In case of graver sanctions such as ban from attending the council meetings for a certain period or fine, it is the council that takes the decision. Mayors, deputy mayors, presidents and vice-presidents of the county councils follow a similar procedure. In the case of disciplinary sanctions such as reprimand and warning, it is the local

council which takes the decision with a simple majority; in the case of graver sanctions such as reduction of income for a certain period of time or dismissal, with the vote of a special majority (2/3) of the number of counselors. The latter sanctions can only be applied for breach of the Constitution or other regulations, or for damage to the assets of the locality or county or to the citizens of the locality or of the county. Civil servants are also accountable for the damage caused to the administrative agency during the exercise of their service.

Civil servants are disciplinarily accountable for various breaches such as: systematic delay in carrying out activities, negligence in performing duties, unmotivated absences from the office, attempts of solving requests outside of the legal framework, performance of political activities within the civil service, breach of provisions regarding interdictions, conflict of interests, and incompatibilities etc. Only the disciplinary sanction of reprimand may be decided by the head of the administration agency. The rest of sanctions (reduction of salary by a certain percentage, suspension of promotion for a certain period, demotion, and dismissal) can only be applied on the recommendation of the special disciplinary commissions within every agency. Civil servants can attack disciplinary decisions at the administrative court.

There are also certain provisions that introduce a special regime for civil servants and local elected officials in view of particular protection requirements. For example, local elected officials benefit from immunity for opinions expressed during their mandate.

6. Internal control

The internal control has the role of ensuring the quality, legality, legitimacy, and performance of services delivered by the public institution[150]. The internal control is divided into two components: internal management control and preventive financial control.

The internal control has the role of an audit of the public administration agency, and lies within the remit of the head of the agency. The main goal of the internal management control is to ensure the delivery of public service in an adequate manner, to prevent and combat fraud, mismanagement, deficiencies and waste, and to ensure the legality and regularity of operations. The head of the administration agencies has the duty of ensuring the performance of the public service according to economy, efficacy and efficiency criteria. The problem, however, with the internal management control is the fact that the law does not provide sanctions for failure to deliver the control in an adequate manner of failure to deliver the control at all.

The goal of the preventive (ex *ante*) financial control is to ensure the legality and regularity of the financial operations of the public administration agency. It is performed by special personnel within the public institutions at two levels: own preventive control and delegated preventive control. The own preventive control is performed by persons appointed by the head of the agency. Nevertheless, the law does not mention whether these controllers are civil servants and does not mention how the appointment system works. The persons in charge of self preventive financial control must be different from the persons in charge of performing the financial operation under control. They are in charge of controlling the legality and regularity of financial operations before they are performed and giving approvals or rejection for the latter. There are no provisions with regard to the liability of preventive financial controllers in case of failure to perform.

The delegated preventive financial control is performed by delegated financial controllers appointed by the Ministry of Finance within public administration agencies that include the service of main credit ordinators. They are civil servants according to the law and have to abide by certain incompatibility provisions. First, they are incompatible with their positions if they are relatives up to the 4th degree with the credits ordinators. They are also incompatible with any private or public

positions. Following the fact they are civil servants, they also comply with the liability regime imposed by the Charter on civil servants. Controllers are liable for the legality and regularity approvals of financial operations within the public administration agency.

If the own or delegated preventive financial controllers find the operation illegal or irregular, he/she must give a negative visa. The head of the institution may go ahead with the operation against the opinion of the preventive financial controller, by giving a signed authorization. The preventive financial controllers must inform the Court of Auditors and the Ministry of Finance of the decision.

Nevertheless, the fact that the own financial controllers usually have to control the head of the institution who appoints them is a major problem of the preventive financial control. In addition, the fact that the law is very unclear about the system of appointment and whether they are or not civil servants, and therefore, if they benefit from the protection of the Charter for civil servants remains a major deficiency with the potential of faltering the system of internal financial control.

7. The standing of the public administration within the NIS

The Romanian public administration has been a weak pillar of integrity within the NIS throughout transition for mainly one important reason: the lack of a clear framework for a professional civil service. Until 1999 this framework was roughly inexistent, and after 1999 its development lacked coherence. At all levels, the pillar's internal integrity was marked by weaknesses: stability in function of civil servants, inclusiveness of the civil service legislation with regards to all personnel within the public administration, competence criteria for access to service for all categories of civil servants, a clear framework for identifying conflicts of interest, asset monitoring, and incompatibility disclosure.

Currently, the inner pillar integrity is relatively strong:

- the stability in function of civil servants in ensured by the mechanism of disciplinary responsibility where civil servants have multiple levels of recourse: disciplinary commissions within any administration agency, the National Agency for Civil Servants, and the courts; the existence of a whistleblowing framework contributes to the stability and integrity of the civil service;
- however, the lack of a strong National Agency of Civil Servants, whose head of office is not a civil servant, and which does not have a mandatory jurisdiction over breaches of the civil service regulatory framework diminishes the public administration pillar integrity;
- the existence of a merit-based criteria for access into profession is an important positive aspect; however, the fact that prefects and deputy-prefects are appointed by the Government and respectively by the prime-minister based on other criteria than merit is a negative aspect, the more so as the prefect has as main duty to monitor the legality of the activity of the local councils and of the mayors;
- the regulation of conflict of interests is not uniformly designed among civil servants and local elected officials, and does not always comply with CoE Recommendation 10/2000;
- the lack of a coherent mechanism for monitoring and sanctioning conflicts of interests, incompatibilities or asset discrepancies is another negative element;
- the weak system of internal preventive control generated by the uncertain status of preventive financial controllers weakens the integrity of the public administration pillar.

LAW ENFORCEMENT

1. Introduction

In any country, the role of the police is to protect public order, public and private property rights, the physical integrity of citizens, and to conduct investigations and enforce the law and judicial decisions. In order to achieve these goals, the police officers must be protected from political interference, must be good professionals, should abide by conflict of interest and incompatibility rules, and be accountable for their acts. In addition, it is important that the judiciary police be independent from political interference and integer in its actions, as its role is to investigate crimes and produce evidence in support of the prosecution. A weak police equals a weak rule of law and a weak system of justice.

2. Previous developments of the institution of the police

The first law on the organization and functioning of the police was adopted in 1994 - Law 26 on the Romanian Police. Yet, the law was weak in terms of integrity in the sense that it offered weak provisions with regards to the protection from political influence, to the stability in function of the policemen, and to their integrity. The law provided that the heads of the police agencies would be appointed and dismissed by the government or the minister of the interior; however the law did not provide a clear framework for disciplinary dismissal, so the arbitrary and political considerations had a great potential of hampering the normal function of the police corps. The law provided for the regulation of the career and disciplinary responsibility of the policemen through a special charter of the policemen[151]. However, it was only in 2002 that the Charter on the policemen was adopted[152]. Therefore, essential elements for the integrity of policemen lacked for a long period of time, which may explain the poor perception on the police by the general population.

In 2002, another law on the organization and function of the police was adopted: Law 218. It provided for special undercover operations against cases of organize-crime and corruption, as well as for the protection of classified information of such operations. The law provided for a future regulation of the National Union of Policemen in the Charter of Policeman.

In the same year, the Charter of the Policemen was adopted – Law 360. It establishes the special civil servant status of the policemen, the professional based access to the profession by means of special schools and exams, the duties, incompatibilities and interdictions for policemen. Nevertheless, instead of providing the mechanisms for dismissal and demotion of policemen, the law sets the regulation through a future order of the ministry of the interior. As the mechanisms of dismissal and promotion are essential to the integrity and professionalism of the police, one would have expected that the latter would have been provided by the charter of the policemen. This is also in contrast to the Charter on civil servants, which does provide for the mechanisms of dismissal and promotion. The Charter for policemen establishes the National Union of the Policemen as a body with the role of protecting the interests of the policemen against abusive sanctioning and of representing their interests against other authorities like the minister of the interior or the General Inspectorate of Police.

The Code of Conduct for policemen was adopted in 2004[153] and it was followed in 2005 by the adoption of a second Code of Conduct[154] which significantly improved the previous one. It establishes the main principles that have to guide the profession, as well as the duties of the policemen during the exercise of their service. The Code establishes the main principles that should govern the policemen' activities: legality, equality, impartiality, transparency, moral integrity etc. It contains a special section dedicated to the attitude of policemen towards corruption. Policemen are

forbidden from encouraging or tolerating corruption in any ways, and must be proactive against acts of corruption within the unit by signaling them to the superiors.

In 2004, the Parliament passed a special law -364- on the judicial police. The judicial police have a major importance in investigating and producing evidence for crimes. They work under the supervision of prosecutors. Policemen are appointed in the position of judicial policemen by the Minister of Administration and of the Interior, with agreement from the General Prosecutor. Again, the law does not provide for a special (merit based) mechanism for appointment of the judicial policemen, as well as a mechanism for sanctioning and dismissal of policemen, as in the case of the Charter on policemen. This has a negative potential on the professional environment in which the police in general and the judicial police especially need to work in.

In 2005, Law 161 establishes the Anticorruption Unit within the Ministry of the Interior (General Anticorruption Direction) with the role of combating corruption within the police forces. The unit comes as a result of EU accession demands and aims at combating corruption among the police forces. The effectiveness of the new institution remains to be seen.

The judicial policemen within the DNA benefit from special provisions that award them a higher degree of independence from the Ministry of Administration and of the Interior. These special provisions separate the judicial 'anticorruption' policemen from the rest of the judicial policemen. The former may not receive tasks from their superiors (and so they can only receive tasks from the anticorruption prosecutors). Also, their rights and responsibilities are established by the chief of the DNA and no by the Minister of Administration and of the Interior.

In conclusion, the policies on the institution of the police were incoherent until 2002, and the major reforms came only too late to produce a strong police service by this moment. The charter of policemen and the code of conduct were adopted 8, and respectively, 10 years after the adoption of the first law on the police. Only after 2002 one can observe a coherent policy with regards to the regulation of the police forces. It is only with the adoption of the Charter on the police officers and with the Code of Conduct of the policemen that marked the transition to a professional corpus of policemen. In addition, the special law on the judicial police, the set up of the anticorruption unit within the Ministry of Administration and of the Interior and the special status of the anticorruption judicial policemen are steps ahead to ensuring a professional and integer corps of policemen. On the other hand, the unclear regime of disciplinary responsibility of policemen in general is a negative aspect that burdens the construction of a professional and effective police.

3. Current framework of the police integrity system

a. Career

The Charter declares the policemen a special category of civil servants[155], and establishes the access to profession by means of the special police schools as a rule, or based on other systems of education, as an exception, yet according to the special needs of the police corps. Graduates of the police schools must also pass an exam before being accepted into the police forces. In addition, the Charter provides that all management positions should be filled only based on exams. Also, the system of profession advancement is based on a similar mechanism as in the case of civil servants. The sanctioning of the police officers is based on a system similar to that of the civil servants, with special discipline commissions in charge of the investigation and the sentence.

Nevertheless, a problem lies with the General Commissioner of the police, who is in charge of the institution and is appointed by the Prime-Minister according to the recommendation from the Minister of the Interior, following consultation with the National Union of Policemen. The deputy commissioners are appointed by the minister of the interior, with the consultation from the National

Union of Policemen. Also, the county police commissioners are also appointed and dismissed by order of the Minister of the Interior, with recommendation from the General Commissioner of the police. These commissioners in head of the police structures are not subject to the Charter of Policemen and so are highly dependent upon the goodwill of their superiors. While the charter establishes professional mechanisms of appointing and dismissing or sanctioning policemen, the heads of the police lye in an unclear system that only increases the arbitrariness of their standing within their positions.

b. Conflicts of interest

The regime of conflicts of interest is not regulated in Charter of Policemen, yet it is contained in Law 161/2003 within the section of conflicts of interests dedicated to civil servants. Therefore, policemen are required to refrain themselves from taking decisions whenever they are in a patrimonial relation or family relationship of first degree with the person about whom the decision is being taken. As a consequence, the conflict of interest system suffers from the same limited jurisdiction, as in the case of civil servants, as it does not include family relationships up to the 4th degree, as CoE Recommendation 10/2000 suggests.

According to Law 161/2003, civil servants must submit their declaration of interests within 15 days from appointment

c. Incompatibilities

The regime of incompatibilities is also regulated by Law 161/2003, within the section dedicated to civil servants. Accordingly, policemen are incompatible with any other activities or positions within public or private institutions.

d. Interdictions

Interdictions are regulated by the Charter of Policemen. They are banned from accepting or soliciting gifts or favors in consideration of their activity, from carrying out tasks that are not within their remit, from printing or distributing political materials, from being members of political parties or from carrying out political activities, from expressing political preferences within the service, from carrying out other remunerated activities, except for those within the educational system or for the research-based ones.

e. Monitoring assets

Policemen must submit their asset declaration under the same terms as civil servants.

f. Code of conduct

The Code of Conduct for policemen was adopted in 2004, through Government Decision 438. It provides the principles of the police service: the supremacy of the Constitution and the rule of law within their activity, the predominance of the public interest over the personal interest, ensuring the equality of treatment of all citizens, professionalism, impartiality, moral integrity, freedom of speech and opinion, openness and transparency. The Code provides immunity from legal liability for those policemen who refuse to obey illegal orders from their superiors[156]. They must not tolerate acts of corruption and abuse of their powers. Failure to observe the provisions of the Code incurs the legal responsibility of the liable policemen.

g. Accountability

Policemen are criminally and civilly accountable according to the common provisions of the law. The disciplinary accountability of the policemen does not however follow the same system as in the case

of civil servants. The difference lies with the disciplinary commissions which do not have the power of proposing the sanction to the decident, but only to be consulted with regards to the sanction applied to the policemen. Therefore, the decision lies with the head officer, and not with the commissions. Also, the preliminary inquiry into the breaches of policemen is carried out at the order of the head of the institution by special officers designated by the same head of the institution[157]. Therefore, there is a conflict of interest in the fact that it is the head of the institution that designates the inquiry commission and takes the final decision at the same time. Policemen may appeal the disciplinary decisions of their superiors to the National Union of Policemen, and to the administrative court.

4. The standing of the police within the NIS

The police pillar of integrity was even later than the pillar of public administration to be regulated as a professional service. It was not earlier than 2002 when the pillar started to be regulated in earnest. Through the Charter of Policemen and the Code of Conduct of Police the framework for the organization and function is relatively adequate for ensuring an integer pillar of the Police. On the other hand, there are elements that may weaken the pillar in its relationship with other pillars such as the Government and create opportunities for lack of autonomy. The fact that members of the Government appoint and dismiss the chiefs of police without a professional mechanism based on examination and without a system of hearing in front of a disciplinary commission weakens the independence of the entire pillar in its relationship with the Executive, and it overall professionalism. In addition, within the pillar, the system of disciplinary sanctioning of police officers does not put enough importance on the disciplinary commissions, which only have a secondary, consultative role in the final decision. On the other hand, the recent regulation of the judicial police, of the special anticorruption unit within the Ministry of Administration and of the Interior, and the special regime of independence from the previous ministry that the judicial 'anticorruption' policemen enjoy are steps ahead towards the formation of a strong investigative arm of the police forces.

THE OMBUDSMAN

1. Previous evolutions of the Romanian Ombudsman

The first mention of the PA institution in Romania is made in the 1991 Constitution, which introduces the People's Attorney (PA)[158]. The institution's role was to defend people's freedoms and rights against the abuse of the public administration. The PA is appointed by the Parliament for 4 year tenure, and answers to the Parliament.

However, it was not until 1997 when *Law 35/1997 on the organization and functioning of People's Advocate* was passed. According to the law, the PA's role is to safeguard the rights and freedoms of citizens in relation to the public authorities. The institution has the following responsibilities:

- Receives, assigns, and decides upon claims on breach of rights and freedoms coming from citizens;
- Conducts inquiries into the received cases;
- Oversees the lawful resolution of the received claims;
- Requires that the inquired authorities stop the breach of rights and freedoms, endorse the injured right, and make up for the damages.

The PA will not take action on claims that fall into the responsibility of the prosecutor or courts; rather it will notify the qualified institutions to proceed on the case. Also, it is not competent with regards to decisions made by the Parliament, the two chambers of the Parliament, the President, the Government, and the Constitutional Court. These limitations may diminish the operational power of the PA with regards to an important category of abuses stemming from Government decisions.

Upon its duty of defender of rights and freedoms, the PA carries inquiries into the submitted cases, may demand documents or information from the inquired authorities, and makes recommendations to the responsible authorities, which may choose to follow or not follow suit. In case of non-compliance, the PA can address the issue to the superior officer, and, if the latter does not comply, as well, the case can be taken to court. The PA can act either on notification or *ex officio*. The PA may also notify the Parliament with regards to serious cases of corruption. This is an important competence of the PA, considering the serious state of corruption in Romania, which, unfortunately, has never been employed[159].

The Romanian PA is operationally independent. No other authority may demand inception or closure of an investigation, or may rescind its decisions. Only the Chamber of Senate may dismiss the PA, and only on the basis of breach of Constitution or other laws.

The initial weak legal framework of the PA in Romania was coupled with the lack of support for the PA to be able to start operating properly. While the PA was legally set up in late 1997, it was only in late 1998 that it received a physical location[160]. Apparently, this was due to a loophole in the founding law, which was amended in late 1998 to expressly require the Government and the capital's General Council to provide an appropriate location for the PA's headquarters[161].

In 2002, the legal framework was improved significantly by providing the PA with increased financial autonomy and competencies[162]. The PA designs it own budget, with the approval of the Ministry of Finance which becomes distinct part of the state budget. Also, the Constitutional Court must notify and request opinion at the PA in any case of unconstitutionality claim regarding a regulatory act

involving the rights and freedoms of the people[163]. In particular, the latter amendment is meant to open the PA's capacity to act *ex ante* against adoption of provisions which harm rights and freedom.

In late 2003, the amendments to the Romanian Constitution increased the stability of the PA by extending its tenure from 4 years to 5. Following the constitutional amendments, in 2004 the PA's institutional framework has been additionally improved. The appointment of the PA is within the powers of the two Chambers of the Parliament so to increase its authority. Apart from the power to advice the Constitutional Court on the unconstitutionality claims, the PA receives two very important leverages against abusive legislation vis-à-vis constitutional rights and freedoms: it may raise objections directly at the Constitutional Court against unconstitutional draft laws before being adopted, and it may raise the unconstitutionality claim directly[164] at the Constitutional Court against unconstitutional laws and Government ordinances, after being adopted.

2. The current framework of the Romanian PA

At the point of writing this study, the Romanian PA is a strong institution in terms of its political and operational independence, as well as from the point of view of its institutional development. The institution is structured in 4 main departments: human rights, equality of chances among women and men, religious groups and minorities; rights of children, family, young persons, pensioners, and disabled persons; army, justice, police and prisons; property, labor rights, social protection, and duties. These departments are headed by deputy ombudsmen and represent a good mirror of the PA's preoccupation. However, both the current structure of the PA, as well as the case flow since its establishment[165] connote a lack of interest regarding corruption, which has been provided in the initial text of Law 35/1997 as a target area for the institution[166].

3. The position of the PA within the NIS framework

According to the annual reports of the Romanian PA, the number of petitions submitted to the PA by citizens raised constantly since the establishment of the institution, coupled with a diminishing number of unfounded or non-competent claims. This denotes an increasing understanding of the role of the PA as an essential institution for defending freedoms and rights in Romania by the general public. The initial treatment the institution benefited from public authorities (expressed both in terms of the low readiness to provide the PA with the necessary infrastructure, as well as in terms of the poor response from the part of the inquired public authorities and institutions) showed both a weak PA, as well as a disregard of other authorities vis-à-vis its role within the larger public integrity system. In the past few years, the PA gained momentum both in terms of its capacity of solving petitions, and in terms of its authority vis-à-vis other public authorities. Its *ex ante* and *ex post* constitutionality controls are a good added value to its role within the national integrity system. However, this capacity remains limited as it does not cover all the normative administrative acts which may abuse rights and freedoms. This is relevant from the point of view of Romania's experience with abusive secondary legislation which illegally breach constitutional principles or change primary legislation. Finally, another limitation remains the current weak sanctioning framework for those authorities which do not comply with the investigative rights of the PA. Also, the PA has not addressed its complementary function with regards to signaling important cases of corruption, which is another weak point in the larger national integrity system framework.

CIVIL SOCIETY

1. Introduction

Civil society comprises all the organizations and groups that are outside the stately organizational system, yet have the objective of promoting specific interests and objectives that the state cannot promote or has not yet promoted. Civil society is very important in periods of transition because it may have the ability of pushing for essential requirements such as greater standards of democracy, rule of law and economic reforms. Whenever the state is weak in satisfying the legitimate interests of different societal groups, civil society may step in and establish the dialogue and even promote policies that are needed through advocacy. On the other hand, civil society has the role of monitoring the public authorities and blowing the whistle whenever they breach the legitimate interests provided in the Constitution or other laws. Therefore, it is very important that these groups be independent from the state authorities and enjoy total freedom of expression and development.

2. Freedom of civic organization

According to the Romanian Constitution, unions, employers associations, and professional associations are free to be established according to their own statutes and according to the law[167]. Also, the Constitution provides the right of citizens to create associations, political parties, unions, and employers associations. However, it also provides for limitations against organizations that struggle against political pluralism, the principle of rule of law, national sovereignty, territorial integrity or state independence[168].

Associations and foundations are regulated in Romania by Government Ordinance 26/2000. According to the ordinance, associations are incorporated not-for-profit entities established by at least 3 persons with the goal of achieving activities of general or communitarian character. Foundations are incorporated not-for-profit entities established by one or more persons who bring in an asset with the scope of carrying general or communitarian activities. The procedure for setting up associations and foundations includes the constitutive act and the statute, and three days from the submission of the two acts to the Registry of Associations and Foundations within the district courts. Accordingly, the freedom of setting up associations and foundations is not impeded by excessive bureaucracy or procedures.

Political parties can be set up by at least 25,000 members, from at least 18 counties and the capital city, yet not less than 700 members from each county[169]. This is a more demanding procedure than the one regulated by the former law which only required 10,000 members, from at least 15 counties, yet not less 300 from each county[170]. However, the current legal framework for setting up political parties may not be interpreted as impeding on the freedom of establishing parties.

Employers associations may be set up by at least 15 business legal entities or by at least 5 legal entities from the same economic sector whereby they hold at least 70% of trade[171]. The rest of the set up procedure is similar to that of associations. Therefore, the current legal framework for establishing employers associations is an open one, and does not impose serious impediments.

Trade unions may be set up by at least 15 members from the same trade or profession[172]. No one can be forced into becoming or not becoming a member of a trade union or into giving up or not giving up a trade union. The procedure for setting up unions is similar to that of associations and

foundations, and needs about 15 days for completion[173]. Thus, the legal framework for setting up trade unions is not affected by serious difficulties.

In conclusion, the freedom to set up civil society organizations does not suffer from excessive procedure or impediments.

3. Access to information

The right of free access to public interest information is provided within the 1991 Romanian Constitution[174]. However, it was not until 2001 when a law on free access to public information was adopted[175]. The law provides for the free access to public information for any private person or legal entity within 10 days from the submission of a written request, or 30 days if the response involves a difficult or large workload (the longer term must be notified within 10 days from the submission of the request to the applicant). The public authority must designate a special department within every institution responsible with public information. In addition, every public institution must *ex officio* display at its headquarters a list of information of public interest which should comprise *inter alia* the statutory regulations, the structure, the budget, a list of documents of public interest, the mechanism of complaining against the decisions of the institution. The applicant has access to complaining procedures both at the level of the inquired institution and in court through administrative litigation.

Therefore, the current legal framework for access to information is adequate for ensuring good access to public information for civil society organizations. Nevertheless, the fact that an act on freedom of information was not adopted until 2001 (irrespective of its provision in the 1991 Constitution) had a very negative impact on the role of civil society within the NIS.

4. Transparency of decision-making

The right to transparent decision-making has never been regulated in the Romanian Constitution. This may be one of the reasons for adopting a law on the transparency of decision-making only in 2003[176]. However, this law sets a number of principles that are extremely important for the role of civil society within the NIS: *ex ante* communication of all problems of public interest and draft laws that are to be debated by public authorities, consultation with all stakeholders in the process of elaborating draft laws, and the active participation of citizens and associations by means of public debates. The law's jurisdiction addresses all central and local administrative bodies (ministries, autonomous institutions, decentralized public services, county and local councils, mayor's offices) and all other public bodies that adopt normative acts.

According to the law, 30 days before adopting a normative act, the public authority must publish a notice announcing the it at its headquarters and in the media (local or central). The notice should contain an explanatory note, the draft law, and the deadline until citizens or civil organizations may send recommendations or proposals of amendments. The notice regarding a draft law with impact on the private sector should be sent *ex officio* to business associations. All proposals submitted by citizens and associations have only a recommendatory value; they must not be followed by the public authorities. However, they have to be pondered and the decision of rejection or approval must be motivated. In addition, the authority in charge of adopting the act must organize a public debate upon request from an association or other public authority. In case of breach of the above provisions for transparency of decision-making, the prejudiced persons or association may complain in administrative court.

Therefore, the current framework for transparency of decision-making is adequate for ensuring the control of civil society over normative acts. On the other hand, the late adoption of an act on

transparency of decision-making has also had a negative impact on the NIS, and favored those interest groups eager to capture public authorities' acts.

5. Right to petition

The right to petition public authorities has been provided by the 1991 Constitution. Accordingly citizens and organizations may address petitions to public authorities and the latter must answer back within the terms provided by the law[177]. Nevertheless, it was only in 2002 that the law on petitions was adopted[178]. It regulates the right of every natural person or organizations to send requests, complaints, notifications, or proposals to public authorities. The latter must reply within 30 days, irrespective of the negative or positive answer. Failure to do so may entails disciplinary sanctions. A positive aspect is that the public authority must motivate in law its decision[179] (either positive or negative), which allows the applicant the possibility to take the decisions to court.

As a result, the current legal framework for the right to petition is an adequate one for the civil society.

6. Freedom of public assembly

According to the Romanian Constitution, meetings and demonstrations are free to take place peacefully and without weapons[180]. The law on public meetings[181] sets the conditions according to which public meetings may take place. Accordingly, public meetings and demonstrations may not hinder the normal use of public routes and transportation, the functioning of public or private institutions, the healthcare system, educational or cultural institutions. They may not endanger public order, personal safety, physical integrity or life, as well as private or public goods. Apart from cultural, educational, sportive, memorial manifestations or official visits, all other manifestations or demonstrations must be declared to and authorized by the local administration. The local administration may ban the demonstration if it holds indicia about illegal activities such as those above. In addition, public meetings that militate for totalitarian, racist or terrorist ideas, or that aim at coup d'états or act against national security are also banned. The decision which bans certain requirements for public meetings or demonstrations must be communicated to the applicants together with the motivation within 48 hours from submission[182]. The decision to ban the public demonstration can be appealed in administrative court. The police must ensure that once a demonstration is approved, it carries out safely and orderly so that neither outsiders nor the demonstrators themselves may act aggressively. The law provides a precise and incremental procedure to quell aggressive demonstrators.

In conclusion, the current framework for holding public meetings establishes a proper balance in between Constitutional principles of freedom of public meetings and others related to public security, national values etc. It provides an adequate framework that does not impose unnecessary limits on the freedom of holding public meetings.

7. The standing of the civil society within the NIS

The role of civil society within the NIS suffered from a tardy initiative from the Legislature to regulate essential tools such as freedom of information, transparency of decision-making, and right to petition. Nevertheless, the existing framework of these tools, together with the non-obstructive procedure for setting up civic organizations or holding public meetings does secure an adequate framework for an independent and free civil society.

POLITICAL PARTY FINANCE

1. Introduction

Political party funding is an extremely important aspect of any democracy, and of any National Integrity System. A non-transparent and weak regulated party financing creates the environment for weak democracies, and weak national authorities, as the political structure does not respond to those who elected them but rather to those who provided the finances of their access to power. Moreover, a non-transparent and murky political funding may engender a vicinity of interests in between the political class and areas of the black economy or of the criminal networks. Such vicinity of interests once at power puts a great deal of stress on institutions of control and sanctioning so that they do not impede the interests of those who provided finances to the politicians in power.

On the other hand, a transparent and well regulated political party funding sets the premises for a stronger democracy and a more accountable political class. As long as the finances of politicians and of parties are public and known by the electors, the decisions of the latter will be more knowledgeable when casting their vote. This, in turn, creates more accountability for the political class, and thus a better working democracy and institutions of control and sanctioning. As politicians cannot draw their success from the financial support of some shady economic groups, they must seek their success in delivering good policies and institutions.

2. Previous developments with regards to political party funding

The issue of political party funding has been generally disregarded until 2003, when a specific law on political party financing was adopted[183]. Until that moment, it was only in 1996 that political funding was regulated[184] albeit only incidentally and negligently. While the law provided some limitations to the level of funding a party may receive from donations or membership fees, it did not provide requirements of publicity for the origin thereof, limits on spending, or control mechanisms for enforcement of the limitations of the level of political funding, as well as sanctions for non-observation of the existing requirements. Therefore, large segments of political funding accountability were left unchecked.

After 2003, when a new law on political party funding was adopted, some of the previous problems were solved. The new law structures better the private and public financing of a political party, and of electoral campaigns, as well as the control of expenditure. However, the new law does not bring new regulations with regards to the publicity of the political party and campaign finances.

3. Current aspects related to the integrity of political party funding

Currently, the political party and campaign financing is regulated by Law 43/2003. The law establishes rules for private and public financing, for electoral campaign financing, limits on spending, as well as public control over political spending.

With regards to political party funding, the law imposes limits for yearly membership fees up to 100 minimum salaries, and for yearly donations of up to 200 minimum salaries for natural persons, and up to 500 minimum salaries for legal persons. The total amount of donations a political party may accept yearly must not top 0,025% of the national budget, while in an electoral year the limit may rise to 0,050% of the national budget. The law requires that each donation be verified with regards to the donator and registered. In addition, all donators who contributed with over 10 minimum salaries, as

well as the total amount of the confidential donations must be published in the Official Gazette by the 31st of March of the next year. Political parties may not receive donations or free services from public institutions, unions or public owned companies. Political parties benefit from public subsidies, as well. Nevertheless, the law does not impose disclosure of the total amount of donations of each natural or legal person, and does not impose conflicts of interest standards with regards to donations from companies which have business relationships with the Government or other public institutions or who benefited from subsidies or other forms or public money support. The law does not impose future business links with companies that made donations during electoral campaigns and that benefit from contracts with the new power. The law does not impose interdictions for donations from companies with debts at the public budgets.

With regards to financing during electoral campaigns, the law provides that all financial contributions to political parties after the beginning of the electoral campaign should be communicated to the Court of Auditors[185]. Nevertheless, the law does not provide adequate sanctions for this provision: the sanction consists of a fine that is a lot lower than what the financial contributions may be. All political parties must hire a financial officer whose role is to keep track and register all of the financial contributions during electoral campaigns. Again, the law does not offer adequate sanctions for non-observation of this requirement since the only negative consequence is fine in between 30 and 300 million lei (~ €830 – €8.300).

Concerning the issue of limitations on spending during electoral campaigns, the law imposes strict margins for the whole political party, and for each candidate to elective positions. The Court of Auditors is in charge of controlling the observance of the requirements of the law. Annually, the Court must verify the observance the revenue and spending, as well as the revenue and spending during electoral campaigns and must publish in the Official Gazette a report on the electoral accounts of all parties within 15 days from the publishing of the official result of the campaign. In case the Court finds that accounts are not correct, it may require the liable party or candidate to return the subsidy received from the state budget. Nevertheless, the sanction seems too lenient and inadequate in view of the moral reverberations of the political candidature. One should make a distinction in between the fines for breach of the fiscal regulations on one hand, and sanctions for breach of political party funding on the other. Therefore, taking into account the political importance of the financial requirements with regards to electoral campaign funding, on should consider political sanctions aside from financial ones such as annulment of the mandate of the non-observant candidate or party.

Finally, the law does not provide clear regulations with regards to disclosure for the public. First of all, the law does not require disclosure of the exact amounts that each person donates or pays as fees to the party or candidate. Secondly, the law does not require the disclosure of the exact the amounts that companies donate to parties or politicians. Thirdly, the law does not impose parties to make public how much they receive and spend yearly, outside the electoral campaigns.

Therefore, the current law on political party and electoral campaign funding follows important principles in the field, but it leaves uncovered several other principles that are also important for ensuring an integer political party system.

4. The standing of the political party funding within the NIS

The party system in Romania records very low trust among the general public[186]. This is due *inter alia* to the fact that throughout the transition the finances of parties have not been transparent and well regulated. Until 1996 there was no regulation with regards to political party finances, and after 1996 the adopted regulations were not apt to ensure an accountable political party financing. Even now, the existing regulations do not offer enough requirements with regards to conflicts of interest,

transparency and sanctioning of breaches. Finally, the weak regulation of party finances may have its part in explaining the high degree of state capture in Romania and the low rhythm of political, institutional and economic reforms. Therefore, it impacted negatively on all public institutions in Romania, and especially on the most important one - the Parliament.

PUBLIC PROCUREMENT

1. Introduction

Public procurement represents in any country a vast opportunity for corruption and lack of integrity as vast amounts of public money must follow complex and intricate procedures in order to achieve a public good. The sheer complexity of the public procurement procedure has the potential of generating errors and mismanagement. However, when the procedure itself is faulty, inexact, unclear, when it does not ensure compliance with some basic principles of procurement such as transparency, open competition, equal treatment and others, the chances for lack of integrity grow seriously. In addition, lack of integrity within the public procurement system has important negative consequences on the public goods delivered by the public procurement contract, which may harm the would-be beneficiaries and alter competition on certain markets where public procurement represents an important bulk of the commercial transactions. Therefore, a clean public procurement system is important for both the general public as well as for the private sector and whenever one is harmed the other has to suffer too. As it is an important pillar of the entire integrity system, the public procurement should be efficiently checked by multiple systems: within the administration by the internal control and the *ex ante* financial control and through the right of administrative review, and outside the administration by the Legislature and Government when they devise and improve regulations, by special control agencies, by the Court of Auditors, and by means of judicial courts.

2. Previous developments in the field of public procurement

Public procurement in Romania, unlike other integrity pillars, started to be regulated early in the course of transition, as early as 1991[187], together with the new democratic Constitution. However, it only focused on procurement in public construction, and so it did not address the issue of acquisition of goods and services.

In 1993, a new Government Ordinance was passed to regulate public procurement – Ordinance 12/1993. The Ordinance did improve the framework for public procurement as it offered provisions with regards to different procedures for performing procurement, to publicity of the procurement initiatives, criteria for deciding the winner of the procurement, and means for attacking the awarding decision. On the other hand, the Ordinance did not offer precise criteria for choosing among the different procurement procedures, and included exemptions which limited the right of administrative and judicial review[188]. It did not establish the principles that should govern the public procurement and which are very important in such a complex field, and especially in court. No provision of conflict of interests or incompatibilities within the public procurement field was provided.

In 1998, another Ordinance -118- amended many of the previous deficiencies. It introduced the main principles of public procurement, it established clear criteria for use of different procurement procedures and clear criteria for awarding the contract for a certain bidder, as well as incompatibility provisions for decision-makers within the awarding commission[189]. However, it did maintain the exceptions from administrative and judicial review which restrained heavily the right to contest the administrative decisions[190].

The last regulation adopted in the field of procurement – Urgency Ordinance 60/2001 offers an adequate framework for public procurement in Romania following several attempts to regulate the field. It contained the main principles of public procurement, a clear definition of procedures of procurement and of the criteria to use them and to award the public procurement contract, it gave a set of clear exceptions from the rule of public procurement, a clear set of the authorities bound to

use public procurement, incompatibility provisions, clear administrative and judicial review of the public procurement decisions, and it waived the exceptions from review that the former regulations employed. All in all, the current public procurement legal framework is one conducive to integrity within the system.

Another important regulation in the field was passed in 2002[191] and targeted public procurement through electronic means. The electronic procurement was basically following the same procedures as the classical procurement procedures with the major difference that the decision of awarding the contract was based exclusively on the cost criteria as the performance criteria could not be measured by the computer. Despite the fact that the electronic criteria was praised for its objectivity in judging bids, it did nevertheless disregard important elements such as the quality of the offers, which negatively affected the whole system.

The regulation of public-private partnership was also passed in 2002[192]. It established the procedures for the awarding of the public-private contract based on the best performing offer. However, the regulation of public-private partnerships does not offer clear provisions with regards to the correspondence in between the final contract and the accepted offer, as it allows for the negotiation of the final contract[193].

In 2005 the Health Ministry adopted a special regulation of the public procurement within the acquisition of health products[194]. The special regulation provides extra stipulations with regards to the procedure applicable to the procurement of medicines and other health products. In addition to the procedure established in the classical procurement procedure, the new regulation established the separation of the commission that would decide on the adequate bidders and on the winning bid into two separate commissions according to their function. However, one of the annexes[195] of the Ordinance provided a framework contract for the provision of medical products which stipulates a confidentiality clause. This clause may alter the transparency requirements of the public procurement system within the healthcare area and may harm competition and the right to remedy in court.

In conclusion, the evolution of public procurement in Romania has been incremental, from the scarcity of regulations in early 1990s to the complexity and specialization of regulatory framework at this point in time. The public policy in the field has improved after 1999, with the complete regulation of the classical public procurement and electronic procurement. However, important deficiencies remain to be addressed with regards to the public-private partnerships, electronic procurement awarding criteria and the special regulations in the medical field.

3. Current framework of public procurement in Romania

The current framework for public procurement is made up of several elements such as: the classical system of procurement, the electronic system of public procurement, the public-private partnerships, and special regulations in particular fields such as procurement within healthcare. Whenever one looks at public procurement, one should be aware of several ground principles that guide the field: transparency of the entire procedure, from the moment of deciding the annual plan for public procurement, throughout the procedure of awarding the contract and of execution of the contract, equal treatment for all potential bidders, free competition, confidentiality of the commercial secret and of the intellectual property, right to administrative and judicial review, incompatibilities and conflicts of interest.

Transparency, competition, and equal treatment of public procurement:
All regulations at this point ensure a good transparency, competition and equal treatment of the procurement procedures. All procurement plans for the whole year of all primary credits ordinators must be publicized in the Official Gazette within 30 days from the adoption of their budgets, if they

top €750,000[196]. In the case of electronic public procurement, the threshold for publicizing the annual plan for electronic procurement is €100,000[197]. With regards to the public-private partnerships, the public authority must publish an announcement in the Official Gazette in all cases and wait 60 days for the receipt of offers. Finally, concerning the special provisions within the medical field, credit ordinators in this field must publish their annual plans for public procurement 30 days after the adoption of their budgets, if the total value of goods to be acquired tops €100,000[198].

In addition, there is another transparency requirement with regards to individual procurement bids, which have to be announced to potential bidders. Therefore, in the case of the classical procurement, the contracting authority must publish a special participation announcement in the Official Gazette for all procurement bids of over €40,000. In the case of electronic procurement, the contracting authority must publish all procurement bids on the electronic system, while in the case of the special procurement in the medical field the contracting authority would have to follow the procedure for classical procurement unless it chooses the electronic procurement system. All decisions to award the contract to a certain bidder, as well as contestations within the administrative system or with the judicial system must be communicated to all other bidders. Additionally, all bidders must be informed of the unique technical requirements of the offer, of the awarding criteria and may assist directly at the opening of the bids.

There is one exception with regards to the public-private partnerships where the contracting authority must negotiate the content of the contract with the winning bidder[199]. This has the potential of significantly altering the rationale of the whole procedure for awarding the public-private contract and so of producing harmful results.

Confidentiality requirements are important because if not used they may inflict damage on the other principles (transparency, fair competition, equal treatment); on the other hand, if used abusively, it may harm the same principles as it may turn the same procedure more opaque and uncompetitive. Accordingly, the contracting authority must not disclose information that may harm the commercial secret or the intellectual property. Such a stipulation is provided in the framework contract for the procurement of medical products where any of the parties (the contracting authority and the winning bidder) may request the classification of a part or of the entire procurement contract[200]. Obviously, this is a very harmful provision especially in the context of procurement of medicine in Romania and harms all procurement principles: transparency, fair competition, right to administrative and judicial redress. It is also absurd to conceive that the entire contract may bear commercial or intellectual property secrets.

The right to administrative and judicial review is ensured in all cases of procurement procedures.

Incompatibilities and conflicts of interest are also provided with regards to public procurement. Members of the evaluation commission are not allowed to be relatives up to the third degree inclusively with any of the bidders; members of the evaluation commission who had been employees or held executive positions within one of the bidding companies are also banned from being part of the evaluation commission; finally, members who own equity shares within the bidding companies may not be part of the evaluation commissions[201].

4. The standing of public procurement within the NIS

The public procurement has been a weak pillar of integrity until 2001 as it was weakly regulated until the adoption of the Urgency Ordinance 60/2001, which establishes a good framework for public procurement. However, there still are complementary regulations, which are deficient in this regard in the field of public-private partnerships, electronic procurement and specific procurement in the

medical area. All these deficiencies have produced visible negative results in the field of big construction contracts of public interest and medicine acquisitions.

MEDIA

1. Introduction

The mass-media is an essential pillar of integrity in a democratic country: whenever other essential pillars like the parliament, the executive or the judiciary fail to achieve their roles, the media often represents the last resort for ensuring accountability and integrity of the public sector. However, the media can play this role of the 4th power in the state as long as it is independent politically and economically and as long as journalists are free of any legal or other type of hindrances. Public institutions do not work well exclusively for the sake of a good regulatory framework. They need to be monitored by the society through the objective and free eye of the media. Whenever the media is not free or independent to scrutinize the public system of institutions and expose wrongdoings, one could certainly expect failures, corruption or serious slippages of democracy, irrespective of how well the public systems are designed.

In Romania, a standard statement that many consecrated journalists and politicians use is that the most important and certain asset that the country pulled out from within the 1989 bloody Revolution was the freedom of the media. In the following years after the fall of communism, the mushrooming of press outlets, of radios and TV stations was used to confirm this observation. Nevertheless, the new born and ingénue media was to also discover that democracy and capitalism themselves did not provide an easy ride in all conditions.

2. Freedom of media

The Romanian Constitution provides two basic legal institutions that are in very close relationship to the freedom of the media: the freedom of expression[202] and the right to information[203].

The freedom of expression relates to the output of the media (news, reports etc) and provides the following:

(1) *Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.*

(2) *Any censorship shall be prohibited.*

(3) *Freedom of the press also involves the free setting up of publications.*

(4) *No publication may be suppressed.*

(5) *The law may impose upon the mass media the obligation to make public their financing source.*

(6) *Freedom of expression shall not be prejudicial to the dignity, honor, privacy of person, and the right to one's own image.*

(7) *Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law.*

(8) *Civil liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities, radio or television station, under the terms laid down by law. Indictable offences of the press shall be established by law.*

The right to information relates to the receiver of the media (the public) and provides for the following:

(1) *A person's right of access to any information of public interest cannot be restricted.*

(2) *The public authorities, according to their competence, shall be bound to provide for correct information of the citizens in public affairs and matters of personal interest.*

(3) *The right to information shall not be prejudicial to the protection of the young or to national security.*

(4) *Public and private media shall be bound to provide correct information to the public opinion.*

(5) *Public radio and television services shall be autonomous. They must guarantee for any important social and political group the exercise of the right to be on the air. The organization of these services and the Parliamentary control over their activity shall be regulated by an organic law.*

According to these two principles within the Romanian Constitution, there are certain limitations to the freedom of the media related to certain inalienable rights such as the right to personal dignity, personal privacy, or certain requirements related to state or public security and morality. All these constitutional principles have been regulated by specific laws and other acts there we are going to analyze in the following lines.

One of the most important observations that one should be aware of when analyzing the media environment in Romania is that the country did not have a freedom of information act (FOIA) until 2001, when Law 544/2001 was adopted. As with other important steps towards transparency, this act was adopted following international pressures driven mainly by the perspective of NATO accession of the country[204]. This late move towards specifically regulating freedom of information was going to have a negative impact on the role of the media within the NIS during the first decade of transition, as only the Constitutional principle could easily be interpreted in bad faith by public officials through abusively using the limitations discussed above.

A second essential observation is related to the difficult regime of criminal responsibility of journalists when reporting about wrongdoings by public officials. According to the Romanian Criminal Code, the act of affirming any kind of wrongdoing about a person, which, if it were to be true, would be tantamount to either a crime, an administrative or disciplinary offense represents the crime of calumny (libel)[205]. The perpetrator of calumny could escape criminal liability provided he or she made proof of the public interest safeguarded by the assertions together with their truthfulness, which in actuality means producing evidence in defense of his or her allegations. Generally, this is very difficult to do by journalists themselves as it is very often the case with professionals within the prosecution. Therefore, this criminal regime which did not allow for only the demonstration of a public interest to be brought in the defense of the journalist was obviously making it very difficult for the media to act totally unrestrained in safeguarding the public interests, as long as it did not gather the evidence in support of its allegations.

It was only in 2004 that the regime of **libel** was changed so that the proof of truthfulness alternates with the proof of 'reasonable grounds' to support the allegations. Although the term 'reasonable grounds' is not defined, the court's jurisprudence established that an allegation may be based on documents or statements issued by the state authorities. Nevertheless, it is unfortunate that this incoherent term has not been more exactly regulated in the Penal Code or elsewhere in the Romanian criminal legislation. The fact that the Romanian courts do interpret the Romanian Criminal Code in the spirit of the European and other international human rights conventions does not mean that the criminal regime of libel with regards to the media may not be improved and expressly regulated. This is the more relevant as Romania does have a law on the media which has been inherited from the communist regime[206], and which has never been abrogated by the Parliament. One should notice that a confusing regulation, especially in the criminal field, is both dangerous and redundant. On the other hand, the new regulation does bring some improvements as to the sanction applied to libel perpetrators by lowering it from in between 3 months to 3 years in prison to 10 to 120 days in prison.

Another important criminal provision that has had a negative impact on the role of the media within the NIS is the regulation of **personal defamation**: "the damage incurred to a person's honor or reputation by means of words, gestures, or by other means". Accordingly, any critique to a public official, politician etc could be interpreted as defamation, as it had the potential to hurt one's damage or reputation. Since 2002[207], the punishment for this type of crime has been shifted from

imprisonment up to two years to penal fine. The new Criminal Code adopted in 2004 decriminalized defamation.

One last criminal provision with a strong deterrent effect on the freedom of the media was until 2002 **defamation of stately authority**. Defined as "the damage incurred to the honor of a public official", the defamation of stately authority could be sanctioned with imprisonment from 6 months to 5 years. Since 2002, the crime has been written off the Romanian Criminal Code.

A positive development with important consequences on the freedom of the media in Romania is represented by the ratification[208] in the Romanian Parliament of the **European Convention of Human Rights and Fundamental Freedoms** (and its additional protocols) – herefrom 'the Convention', adopted in Rome in 1950. The Convention is relevant for the freedom of the media in Romania from two points of view: one of substantial law and one of procedural law. First, it sets the principle of freedom of expression[209] and secondly and more importantly it provides the Court of Human Rights in Strasbourg with the jurisdiction of final review against judicial decisions ruled in member states' courts. This jurisdiction of the Court in Strasbourg has had an important impact on the Romanian courts' jurisprudence in cases of libel and defamation which started to be oriented after the Strasbourg Court's decisions.

An important piece of legislation for the freedom of the media was the **Law on the audio-visual**[210], which establishes the National Council of the Audio-Visual, the activity of licensing audio or radio channels, and the applicable sanctions. The law establishes the interdiction that no natural person or legal person may become majority shareholder to more than one radio or TV company, while they may not hold more than 20% in shares at another similar company[211]. This provision is meant to prevent monopolies or cartels in an area very sensible not only for the economic market *per se*, but also to the competition in the area of information. The law establishes the **National Council of the Audio-Visual** (herefrom 'the Council'), an autonomous institution in charge of issuing licenses for TV and radio channels and of sanctioning channels for not complying with the requirements of the law. These sanctions may range from fines, suspending the activity of the channel for one to three months or outright removal of the authorization license. The members of the Council are appointed for a four year term as following: 2 by the President, 3 by the Senate, 3 by the Chamber of Deputies, and 2 by the Government. They can also be dismissed directly by the same authority that appointed them. The Council presents its annual activity report to the Parliament and carries its activities under the authority of the Parliament. Nevertheless, the law did not provide for a special regulation that would contain specific provisions for the activity of awarding licenses and deciding sanctioning against rogue channels. The criterion[212] upon which the Council may decide sanctions against channels is very wide and interpretable and so it leaves a leverage of discretion to its members, who are political appointees (the appointment of the Council's membership by the President, the Government and the Parliament is the expression of a political option, although they are not formally allowed to be members of political parties).

The new law on the audio-visual adopted in 2002[213] corrects some of the failures of the first law. First of all, the law establishes that the Council would adopt specific decisions with regard to the procedure to award or withdraw audio-visual licenses. As a consequence, the Council adopted decisions in various fields within its competence, though quite a long time from the adoption of the law: *Decision No. 213/2005 on the procedure to issue the audio-visual licenses and authorizations for channels through radio waves, Decision No. 200/2005 on the procedure to issue the audio-visual licenses and authorizations for digital channels.* An important decision adopted by the Council is *Decision 254/2004 on publicity, sponsoring and TV-shopping.*

The new law changes the appointment procedure to put it under the control of the Parliament. Accordingly, the members of the Council are appointed by the Parliament, upon recommendation

from the special commissions within the two chambers and on the basis of the proposals coming from the President, the Government and the two Chambers of the Parliament. Once appointed, the Council's members enjoy immovability status, as they can only be dismissed on two grounds: incapacity to carry out the job for more than 6 months, and in case of final criminal sentence. The Council is in charge of filing the case to the
Parliament - the only authority in charge of dismissing the member of the Council. The members of the Council are forbidden from holding any other private or public positions, or from holding shares within companies that carry activities in fields related to the activity of the Council[214]. In case of breach of incompatibility provisions, the responsible member should either give up the conflictual position within 3 months or lose *de jure* membership of the Council.

Another important aspect for the independence of the media is the **regime of property and that of competition within the media sector**. Law 504/2002 improves the framework provided by the previous law by defining the concept of dominant audience position at the national, regional, and local level. This is important, as the Romanian Competition Council should take action based on this definition whenever a dominant position on the media market distorts competition. The law also imposes the exclusive nominal character of shares of companies within the media sector so that both regulators and the general audience may have access to the ownership identity[215]. A final important requirement is that media companies publish information related to the names of the main shareholders, of the administrators, editors, of the publications and programs they provide[216].

3. The public owned media

In 1994, the Romanian Public Radio and TV Companies were set up based on act of the Parliament 41/1994. Their role is to present independently and impartially the social, political and economic realities of the country, as well as promoting the Romanian culture, language, and the values of democracy. According to the law, the activity of the two Romanian public media companies is independent and autonomous. However, they must broadcast with priority and free of charge the communiqués and messages from the Parliament, the Romanian President, the Supreme Defense Council, and the Government[217]. Throughout the years, this provision has been used by the public media companies in order to boost the image of the politicians in power, and especially during periods of elections.

In charge of the two public companies are the board, the general director and the directory committee. The Board and the General Director are appointed for a four year-term by the vote of the majority of the Parliament, upon proposals from the two chambers of Parliament (8 positions), the Romanian President (1 position), the Government (1 position), minority groups within the Parliament (1 position), and the employees of the companies (2 positions). They may only be removed by a qualified majority of the Parliament. The Council approves the general design of programs of the companies, the regulations and the internal structure of the companies etc. According to the law, the journalists within the two companies are protected by special regulations adopted by special commissions within the two companies.

However for the Romanian public TV Company it is only in 1999 that the Statute of journalist is adopted. It provides for a set of rights and duties of the journalists. Accordingly, those journalists who disagree with the editorial policy of the public TV station may refuse to follow it and may decide to bring their complaints to the Commission of Ethics and Arbitrage within the company. The Commission of Ethics within the Public TV Company is formed of seven persons as following: one representative of the Board, one representative of the General Director, and 5 representatives of the employees, validated by the Board. Its decisions are taken on the basis of a qualified majority (with the vote of minimum 4 members, and with a minimum quorum of 5 members) are mandatory in all submitted issues. The Statute provides for the establishment of the Ombudsman Service within the

National TV Company with the role of monitoring the breaches of the Statute and of filing documentation to the Commission of Ethics with regards to any complaints it receives. It may also attempt to arbitrate the conflicts in between the company's departments, in between the company and journalists, or among journalists. The members of the Ombudsman Service are appointed by the Commission, following a competitive examination. They should have journalistic or legal background.

On the other hand, the National Radio Company has not adopted a statute of the journalists so far, 11 years after the adoption of Law 41/1994. Obviously, this has had a negative impact on the statute of journalists within the National Radio Company.

4. Self-organisation of the private media

A very important aspect regarding freedom of the media is that in Romania the post-communist Governments or Legislature did not try to directly regulate the media. On the downside, the former communist law on the media (Law 3/1974) was not abrogated until 2000[218]. The former law on the media contained obvious unconstitutional provisions such as: *the media must act for the transposition of the policies of Romanian Communist Party, of the high principles of socialist equity and ethics, into real life […]*[219].

In 1998, a group of Romanian media companies established the Romanian Media Club under the form of a non-governmental association. The aim of the Club is to promote the moral and civic standards of the Romanian media, to safeguard the interests and rights of journalists, editors and media companies vis-à-vis the state authorities and economic entities, to solve any breaches of the deontological code[220], and to improve the condition of the media and of journalists. The Statute of the Club established a Council of Honor, which *inter alia* is in charge of protecting journalists and the media environment from any violations from the state authorities and other bodies and of adopting an active role in safeguarding the principles laid down in the Statute. The Council of Honor adopts resolutions that are mandatory for all members.

5. Access to information

Until 2001, art. 31 of the Romanian Constitution was the only provision regulating the right to free access to public information. Since 2001, Law 544 on free access to public information introduced special provisions for the media. Accordingly, every public institution should answer to any public information request promptly or within 24 hours[221]. In addition, the law provides that information that covers wrongdoings by a public authority may not be classified. Therefore, the current legal framework is one that satisfies the requirements of free access to public information for the media.

6. The standing of the media within the NIS

The Romanian media has been a strong pillar of integrity. However, this is due to the fact that the private media acted throughout the transition according to its mission of monitoring the authorities and disclosing wrongdoings, rather than to the capacity of the public sector to provide a good framework for the functioning of the media. The capacity of the media sector for self-regulation has had an important impact on the independence of the media from the state and political authorities. On the other hand, the maintenance of libel, defamation, and offence against state authorities as criminal law limits against the freedom of expression marked a negative policy of state authorities vis-à-vis the media. Also, the initial regulation of the National Council of the Audio-Visual was deficient, while the Council itself was very late to start regulating the sector itself. A positive development has been the ratification by the Romanian Parliament of the European Convention of Human Rights, which had a positive impact on the rulings of the judiciary in cases of libel and defamation.

THE BUSINESS SECTOR

In Romania, the business sector has long suffered from red tape, corruption, and lack of competition. According to a study published in 2001 by PriceWaterHouseCoopers[222], the tax burden generated by opacity[223] on companies in Romania was 34%. That is, the average company paid in 2001 about 34% in addition of its corporate tax on informal costs. According to the World Bank surveys[224], in 2002 Romania economic and regulatory policy uncertainty, and corruption were perceived as major problems by 43% and, respectively, 34% of companies.

However, a recent report of the European Bank for Reconstruction and Development[225] showed that the companies' bribe tax in Romania has come down from 2.6% in 2002 to 0.8% in 2005. In addition, the business environment has improved to a major extent for a number of indicators in 2005[226]: starting a business, dealing with licenses, getting credit etc. The recent improvement in the business climate has been acknowledged by the European Commission in 2004 when it awarded Romania the status of competitive market economy[227].

This positive evolution of the Romanian business environment was generated by the significant economic reforms performed in the country since 1998 (the private sector in Romania draws to 80% at the moment of writing this report) and the significant improvement in the regulation of entry. For example, in 2003 was adopted Urgency Ordinance 27 (*Act on tacit approval*) which streamlines the procedure for issuing permits and approvals. Also, Law 52 on the transparency of decision-making gave companies an effective legal tool to force the administration to communicate and debate draft legislation. In 2004, the Parliament passed Law 359 on simplifying the registration of companies which created the mechanism of one-stop office. This new system allows for companies to obtain all authorizations needed for registration from one office (the Registry of Commerce), on the basis of bona fide declarations.

However, the Romanian business environment remains opaque in many regards even at the moment of writing this report. It is only during this year that the problem of transparency of public contracts was raised by a number of Romanian NGOs[228]. This issue was raised as a result of a series of high value public procurement contracts signed by the Government in 2004 without the observance of the bidding procedure and which came in the media and European Commission spotlights for their lack of transparency and accountability. However, the issue of transparency of public contracts is a larger issue that regards not only public procurement contracts, but also private-to-public partnerships, privatizations, and leasing contracts. Unfortunately, the civil society has not received an adequate support for this initiative from the part of the private sector.

The Romanian private sector has a poor record of civic engagement with the public authorities, whereas the foreign capital in Romania is a lot better represented vis-à-vis public administration. For example, during the fall of 2004, the Government invited for consultations on the draft Fiscal and Labor Codes only organizations representing the foreign businesses in Romania such as AMCHAM, Foreign Investors Council, Romanian –American Investment Fund etc. As a result, associations of Romanian businesses such as Association of Romanian Businessmen, the National Council for Small and Medium Private Enterprises, the General Union of Romanian Industrialists, and the National Union of Romanian Business Owners reacted strongly and demanded to be included in the debates. In addition, in the period prior to the adoption of the Labor Code, Advocacy Academy organized a public hearing with academics, which demanded special regulations for Small and Medium Enterprises in accordance with the European standards in the field. It was only one year later that the National Council for Small and Medium Private Enterprises came to support this demand. Also, according to Transparency International Romania evaluations, it is only in 2005 that small and

medium enterprises or employers' association started to use FOIA or SUNSHINE laws to enter the market or to secure their market position, or to plan their business activities.

The above examples show a lack of decisional transparency from the part of the Government but also a weak capacity of the Romanian business associations to be proactive in their advocacy initiatives. In conclusion, the capacity of the domestic business sector to ensure the demand for integrity standards within the public sector will determine the competitiveness and efficiency of the entire Romanian business sector against Community businesses after EU accession in 2007.

VIII. CONCLUSIONS ON THE PILLARS

The **Legislature** has been a very weak pillar of integrity throughout the transition. Almost all components of the pillar have proven to be weak both in terms of regulation and in practice. For example, the Legislature has been very weak first of all in its role of generating good and timely regulation to prevent and combat corruption. Secondly, it avoided to generate a good framework for incompatibilities, conflicts of interest and gifts for MPs, as well as on the electoral system. Finally, the immunity regime for MPs has been very generous until 2003, and represented a limitation to the capacity to promote integrity standards within their ranks.

The **Executive** (especially the Government) has been a weak pillar within the NIS. It has been a weak pillar from the point of view of the legal capacity of the Judiciary to check the members of the Executive from the point of view of their integrity. This has been evident with regards to the criminal responsibility of the members of the Executive, as well as from the point of view of the control of the conflict of interest and incompatibility situations. Another even more important weak point of the Executive pillar that has had a negative impact on the evolution of NIS in post-communist Romania is the weak capacity of the Government to generate anticorruption and integrity policies. The fact that most integrity systems in Romania have come into being very late, and from those in force, most of them are ineffective for many reasons gives the real account of the current weak integrity system.

The **Judiciary** has been a weak pillar for the NIS. This entailed several important negative effects on the Romanian integrity system such as: lack of authority for the judiciary, which further generated a decrease for the deterrent role of the criminal system, and a lack of control of the legislature, executive and administration. Among the most important reasons for this weak role of the judiciary in the past years is the lack of real independence of the judiciary, and most importantly of the prosecutorial component, a disregard of the judiciary by the policy makers, of its needs for regulatory and infrastructure reform. Also, the politicization of the judiciary discredited the need for integrity policies within the judiciary, which has grown to be perceived as among the most corrupt institutions. The regulatory reform operated in 2004 has the potential of formally solving the problems of independence of the judiciary. However, important issues such as the integrity of magistrates, now entirely under the management of the SCM, court staffing and infrastructure improvements remain unsolved and will burden in the near future the capacity of the judiciary in the national integrity system. The fact that reform in these fields was very late to be initiated makes it very difficult for such a complex system as the judiciary to produce results in the short-run. Matters like integrity and professionalism of magistrates, as well as court infrastructure need a longer period for implementation, and will still affect the capacity of the judiciary to reinforce the integrity system and to fight corruption for years to come.

The **Constitutional Court** has an important role in the concept of the NIS. Its role is to maintain the delicate equilibrium among powers and to restrict unconstitutional slippage. For example, the constitutionality control over acts of the Parliament and the Government has the role to restrict the activity of the two authorities to the principles of the Constitution. In addition, the Constitutional Court has an important role in preserving the democratic framework by overseeing and validating the election of the President and by deciding vis-à-vis cases of constitutionality of political parties. The lack of a specific provision for the principle of separation of powers prevented the Constitutional Court from playing an active role in protecting the independence of the Judiciary.

The **Anticorruption Prosecution** has been a weak pillar within the NIS. This is a consequence of the fact that until 2000 there was no specialized body to fight corruption. The general prosecution

did not have the expertise and resources essential to conduct inquiries into this field. This was amplified by a very weak definition of corruption until 2000 and by a lack of independence of the entire judiciary from the Executive. After 2000, the establishment of the Anticorruption Section within the General Prosecution did not have an impact for reasons of poor regulatory framework with regards to resources and independence. After 2002, the establishment of NAPO was also affected by a lack of vision with regards to its remit and resources. The multiple amendments of its regulatory framework, as well as its lack of independence from the Executive impacted on NAPO's capacity to fight corruption effectively, and especially high level corruption. In conclusion, the role of the anticorruption prosecution has been very confuse since its establishment either as a section of the General Prosecution or as a distinct prosecution office and this affected its capacity to fight corruption. In addition, the general lack of independence of the Judiciary from the Executive, an undecided political resolve to genuinely fight corruption, and a structural incoherence of the regulatory framework for NAPO contributed to a weak pillar of integrity after 2000. However, the establishment of a special anticorruption prosecution can be considered a good beginning. The wavering evolution of the anticorruption prosecution in between 2000 and 2005 should make a good lesson for the future. Moreover, it is only from this point on that the anticorruption prosecution may have a chance in having an effective impact based on the institutional build-up so far with regards to the new framework of the judiciary and other institutions involved.

The **Romanian Court of Auditors (Court of Accounts)** is a well regulated pillar of integrity. It is independent from the point of view of its board, staff and budget, as well as from the point of view of its operational capacities. Its institutional capacity has been growing over the past years with significant professional and logistics support from international and European agencies. The RCA has steadily been moving from the regularity type of control (inadequate for the transition period through which Romania goes) to the opportunity type of control, which is the modern approach for a court of audit. However, the opportunity type of audit is not yet fully developed and this has had a strong negative impact on its capacity to control a wide range of financial decisions involving public contracts. The RCA's board and staff are subject to the same incompatibility, conflicts of interest and asset declarations as the rest of the Romanian public officials. At its output side, the RCA's function is not yet fully considered in the Parliament, where its reports are not seriously taken into discussion and the Parliament does not act upon the findings. The RCA's function as an integrity pillar has been affected by a flawed initial view on the institution by the Parliament (as the name of the institution suggests – *Court of Accounts*, it was meant to conduct regularity control), by a low institutional capacity to process the reported information, by a reduced capacity of the credit ordinators to submit budget execution reports in time, and by a negligence of the Parliament to make use of the RCA findings. Currently, the RCA is going through a process of institutional capacity increase, both in terms of its professional capacity to audit performance, as well as in terms of its logistical support. Nevertheless, the RCA growing capacity must be complemented by an increased attention in the Parliament so that the Court's standing as an essential integrity pillar may be truly accounted for.

According to the annual reports of the **Ombudsman**, the number of petitions raised to the Ombudsman by citizens raised constantly since the establishment of the institution, coupled with a diminishing number of unfounded or non-competent claims. This denotes an increasing understanding of the role of the PA as an essential institution for defending freedoms and rights in Romania by the general public. The initial treatment the institution benefited from public authorities (expressed both in terms of the low readiness to provide the Ombudsman with the necessary infrastructure, as well as in terms of the poor response from the part of the inquired public authorities and institutions) showed both a weak Ombudsman, as well as a disregard of other authorities vis-à-vis its role within the larger public integrity system. In the past few years, the Ombudsman gained momentum both in terms of its capacity of solving petitions, and in terms of its authority vis-à-vis other public authorities. Its *ex ante* and *ex post* constitutionality controls are a good added value to its role within the national integrity system. However, this capacity remains limited

from this point of view as it does not cover all the normative administrative acts which may abuse rights and freedoms. This is relevant from the point of view of Romania's experience with abusive secondary legislation which illegally breaches constitutional principles or changes primary legislation. Finally, another limitation remains the current weak sanctioning framework for those authorities which do not comply with the investigative rights of the Ombudsman. Also, the Ombudsman did not address its complementary function with regards to signaling important cases of corruption and offering policy recommendations in this regard to the Government, Legislature, and other administrative agencies, which is another weak point in the larger national integrity system framework.

The Romanian **Public Administration** has been a weak pillar of integrity within the NIS throughout transition for two reasons for one important reason: the lack of a clear framework for a professional civil service. Until 1999 this framework was roughly inexistent, and after 1999 its development lacked coherence. At all levels, the pillar's internal integrity was marked by weaknesses: stability in function of civil servants, inclusiveness of the civil service legislation with regards to all personnel within the public administration, competence criteria for access to service for all categories of civil servants, a clear framework for identifying conflicts of interest, asset monitoring, and incompatibility disclosure. Currently, the inner pillar integrity is relatively strong. The stability in function of civil servants in ensured by the mechanism of disciplinary responsibility where civil servants have multiple levels of recourse: disciplinary commissions within any administrative agency, the National Agency for Civil Servants, and the courts; the existence of a whistleblowing framework contributes to the stability and integrity of the civil service; the existence of competence criteria for access into profession is an important positive aspect; however, the fact that prefects and deputy-prefects are appointed by the Government and respectively by the prime-minister based on other criteria than competence is a negative aspect, the more so as the prefect has as main duty to monitor the legality of the activity of the local councils and of the mayors. However, the lack of a strong National Agency of Civil Servants, whose head of office is not a civil servant, and which does not have a mandatory jurisdiction over breaches of the civil service regulatory framework diminishes the public administration pillar integrity; the regulation of conflict of interests is not uniformly designed among civil servants and local elected officials, and does not always comply with CoE Recommendations; the lack of a coherent mechanism for monitoring and sanctioning conflicts of interests, incompatibilities or asset discrepancies is another negative element; the weak system of internal preventive control generated by the uncertain status of preventive financial controllers weakens the integrity of the public administration pillar

The **Police** pillar of integrity was even later than the pillar of public administration to be regulated as a professional service. It was not earlier than 2002 when the pillar started to be regulated in earnest. Through the Charter of Policemen and the Code of Conduct of Police the framework for the organization and function is relatively adequate for ensuring an integer pillar of the Police. On the other hand, there are elements that may weaken the pillar in its relationship with other pillars such as the Government and create opportunities for lack of autonomy. The fact that members of the Government appoint and dismiss the chiefs of police without a professional mechanism based on examination and without a system of hearing in front of a disciplinary commission weakens the independence of the entire pillar in its relationship with the Executive. In addition, within the pillar, the system of disciplinary sanctioning of police officers does not put enough importance on the disciplinary commissions, which only have a secondary, consultative role in the final decision. Finally, the internal control still lacks the levers to disclose corruption within the ranks of the police. It is only with a strong and independent anticorruption unit within the Ministry of the Interior that a strong and effective internal control may be instituted.

The **party system** in Romania is perceived by the general public as one of the most corrupt. This is due *inter alia* to the fact that throughout the transition the **finances of parties** have not been

transparent and well regulated. Until 1996 there was no regulation with regards to political party finances, and after 1996 the adopted regulations were not fit to ensure an accountable political party financing. Even now, the existing regulations do not offer enough safeguards with regards to conflicts of interest, transparency and sanctioning of breaches. Finally, the weak regulation of party finances may have its part in explaining the high degree of state capture in Romania and the low rhythm of political, institutional and economic reforms. Therefore, it impacted negatively on all public institutions in Romania, and especially on the most important one - the Parliament.

Public procurement has been a weak pillar of integrity until 2001 as it was weakly regulated until the adoption of the Urgency Ordinance 60/2001, which establishes a good framework for public procurement. However, there still are complementary regulations, which are deficient in this regard in the field of **public contracting** which includes public-private partnerships, leasing, and privatizations which have produced negative results. In general, the public contracting framework is weak as it does not offer sufficient transparency and accountability safeguards.

The role of the **civil society** within the NIS suffered from a tardy initiative from the Legislature to regulate essential tools such as freedom of information, transparency of decision-making, and right to petition. Nevertheless, the existing framework of these tools, together with the non-obstructive procedure for setting up civic organizations or holding public meetings does secure an adequate framework for an independent and active civil society.

The Romanian **media** has been a strong pillar of integrity. However, this is due to the fact that the private media acted throughout the transition according to its mission of monitoring the authorities and disclosing wrongdoings, rather than to the capacity of the public sector to provide a good framework for the functioning of the media. The capacity of the media sector for self-regulation has had an important impact on the independence of the media from the state and political authorities. On the other hand, the presence of libel, defamation, and offense against state authorities as crimes limited so far the freedom of expression and marked a negative policy of state authorities vis-à-vis the media. Also, the initial regulation of the National Council of the Audio-Visual was deficient, while the Council itself was very late to start regulating the sector itself. A positive development has been the ratification by the Romanian Parliament of the European Convention of Human Rights, which had a positive impact on the rulings of the judiciary in cases of libel and defamation.

The Romanian **private sector** has had a low capacity of self-organization and of promoting its legitimate interests against non-transparent or incoherent regulatory initiatives. While the foreign capital in Romania made an efficient use of the transparency tools available in the Romanian legislation, the Romanian businesses do not have the organizational capacity and the expertise to use the transparency instruments to have an input into the policy-making process.

IX. PRIORITIES AND RECOMMENDATIONS.

LEGISLATURE

- When drafting anticorruption legislation, the Legislature should tap into the growing corpus of expertise in the field, available both in Romania and internationally, so that failures and incoherence be avoided in the future;

- In terms of the power to control the Executive, the Parliament should make better use of its monitoring and inquiring mechanisms in order to bring serious cases of corruption to the public agenda, and debate their negative impact;

- The Parliament should also improve its oversight powers over the execution of the public budgets, and make better use of the findings of the Romanian Court of Accounts;

- The Parliament should improve the legislation on incompatibilities and conflicts of interest, and eliminate the current regime that can be considered discriminatory when compared to other categories of dignitaries;

- The Parliament should ensure full transparency of the activity and voting of all MPs either in plenum, or in parliamentary commissions;

- Finally, the election system should be improved by changing the current closed party list system to a a mixed system that allows voters more control over the selection of individual candidates.

EXECUTIVE

- Create a system of monitoring and control of incompatibilities, conflict of interests, and assets declarations, independent of the Executive and Legislature;

- Enlarge the special criminal responsibility of the members of the Executive so that it can become an effective instrument to deter high-level corruption.

JUDICIARY

Independence of magistrates

1) Further strengthen the role of the Superior Council of Magistracy by making its membership permanent and thus fully responsible to general regulations regarding conflict of interests and incompatibilities;

Integrity and professionalism of magistrates

1) Adopt and implement the deontological code for magistrates and court clerks;

2) Effectively enforce the disciplinary, conflict of interests, incompatibility and asset control provisions on magistrates;

3) Safeguard the implementation of whistleblower provisions within the judiciary; create a mechanism for monitoring the implementation of the legal provisions protecting whistleblowers;

4) Ensure a proper level of training for both prosecutors and judges with regards to the specificities of corruption cases (e.g. financial aspects);

5) Ensure an adequate level of caseload for both prosecutors and judges, in order to limit errors and negligence;

Court infrastructure

1) Fully implement the electronic system of case records and case distribution;

2) Improve the physical infrastructure of courts;

Regulatory aspects

1) Adopt special provisions to reduce the duration for judicial proceedings with regards to cases of corruption

ANTICORRUPTION PROSECUTION

- The anticorruption prosecution should preserve its special character of a necessarily distinct type of prosecution with special needs and attention from the policy-makers;

- The anticorruption prosecution, as well as the larger judicial system, should be secured from influence of the Executive in any regard;

- A performance audit instrument should be created to assess the needs and output of the central anticorruption prosecution office according to its remit and the current regulatory framework ; this instrument should be used at adapting the current framework in order to increase the efficiency and impact of the institution;

- Inter-institutional cooperation should be improved especially with the Office for the Prevention of Money Laundering and with the future agency for monitoring conflict of interests.

COURT OF ACCOUNTS

- The Court of Accounts should strengthen its performance based audit to full capacity and apply it as widely as the common regularity control;

- The RCA should receive the powers to sanction those credit ordinators who do not submit their budget execution reports in due time;

- Law 94/1992 should be amended to specifically identify the Parliamentary Commission in charge of receiving and discussing the reports of the RCA before putting them forth to the Parliament, as well as of requiring special extraordinary audits; it also should clearly provide a greater transparency and public record of the discussed reports and of the decisions taken by either the commission within the Parliament or the Parliament itself based on the RCA reports;

- The Standing Orders (*Regulamente*) regulating the functioning of the two chambers of the Parliament should be amended so that the Chambers have the mandatory duty to act upon the findings of the RCA regarding illegal or inappropriate financial decisions of credit ordinators, to notify the institutions in charge and to oversee the inquires, as well as to make public the result of the investigations. The Parliament should also debate the RCA report as soon as possible so that it makes use of its findings in a timely manner.

OMBUDSMAN

- The People's Advocate should include corruption among its priorities in order to fully exercise its powers within the national integrity system;

- Law 35/1997 should be amended to provide the PA with the power to sanction public authorities which do not fully comply with its investigative powers.

PUBLIC ADMINISTRATION

- Give the National Agency for Civil Servants mandatory powers with regards to the solutions it adopts in the inquired cases;
- Create professional criteria for appointing prefects and deputy-prefects;
- Adapt the conflict of interests regulatory framework according to Regulation (2000)10 of the Council of Europe;
- Design an agency with the remit of monitoring, investigating and sanctioning conflicts of interests;
- Amend the system of internal control, especially the preventive financial control so that it is more independent from the head of agencies (credit ordinators); expressly grant civil servants status to the preventive financial controllers.

POLICE

- Create a professional system of appointing the chiefs of the police;
- Increase the powers of the disciplinary commissions within the police to the level of the disciplinary commissions within the civil service system so that they have the power to propose the sanction to the heads of police offices;
- Enforce the Anticorruption Unit within the Ministry of the Interior with full fledged capacity to investigate corruption at all levels within the police forces.

POLITICAL PARTY FUNDING

- The law on free access to information should include political parties among the public institutions subject to the law, and its finances should be characterized as public information accessible by any Romanian citizen;
- The law should consider adequate sanctions to those who breach its requirements, including political sanctions where the political gains of the breaches far outstrip the financial sanctions;
- Finally, the law should take into account increased openness into the exact contributions of identified persons or companies, and into the exact amounts spent by the party.

PUBLIC CONTRACTING

- Address the issue of *ex post* negotiation with regards to the public-private partnerships;
- Adapt the cost criteria within electronic procurement only to those services, goods and works that are suitable for these criteria;
- Amend the special regulations of public contracting so that the confidentiality principle does not harm the transparency principle and the right to court review;
- Introduce provisions with regards to blacklisting companies that used corruption in their operations (related to the criminal law accountability of legal entities)

- Introduce provisions with regards to white listing companies with proved track of public contracting integrity (related to the observance of business principles standards in the field of public contracting)

- Introduce a system of monitoring the assets and life style of procurement officers.

CIVIL SOCIETY

- The future amendments to the Constitution should introduce the right to good administration, as provided by art. 41 in the European Charter of Fundamental Rights.

BUSINESS SECTOR

- The Romanian and foreign business sector should bring their efforts together in promoting integrity in the area of transparency of policy-making and public-to-private contracting
- The Romanian and foreign business sector should increase efforts in adopting and implementing business principles standards in view of their potential competitive advantage at the point of Romania's accession to the European common market.

Appendix 1 – Results of the questionnaire

ANSWERS TO METHODOLOGY QUESTIONS

Executive

- Can citizens sue Government for infringement of their civil rights?

SOCIO: (YES)
This topic was seldom developed on by the interviewees. Some respondents from the executive pillar mentioned some of the trials the Government has been sued, referring especially on cases regarding the asset recovery. One mentioned that in many cases, "more than media would show", it was the Government that won the cases, even after all the appeals, and even at the European Court of Human Rights. Respondents from other pillars mentioned in some examples cases when the citizens won on issues about their rights. Note that, although there are legal opportunities to sue the Government, citizen would rather abstain from such acts, due to the still high authoritarian culture.

LEGAL: (YES)
By means of the administrative litigation procedure[229], the Judiciary can review administrative acts adopted by the Executive and other authorities, which damage recognized rights or interests. The Romanian Constitution regulates this as *the right of an aggrieved person by a public authority*[230]. Lack of resolution of a legitimate request in due time, unjustified refusals, and judicial errors are also subject to the administrative litigation procedure. The aggrieved persons (either natural or legal) may request the annulment of the abusive act, acknowledgment of their rights or interests, as well as payment for damages[231]. One cannot use this procedure to challenge the following[232]:

- Acts regarding the relationship between the Parliament, on the one hand, and the President or the Government, on the other;
- Military commandment acts;
- Administrative acts, which need a special procedure in, order to be modified or invalidated. The special procedure is to be provided by a special law;
- Management acts of the state with regard to its own patrimony;
- Administrative acts on hierarchical control.

The law recognizes the right of a natural or legal person to challenge directly in the administrative courts unconstitutional provisions of Government ordinances[233]. Also, the Ombudsman may notify the administrative litigation court with regard to abusive acts of the executive, whenever a case is brought forth and needs court review.

- Are there procedures for the monitoring of assets, including disclosure provisions, for the chief executive, Ministers and other high level officials?

SOCIO: (YES, partially)
Most interviewees from this pillar mentioned about the current legal provisions and about rules of conduct in the Government apparatus. None of them mentioned about fraudulent acts authored by the chief executive, ministers or other high officials. On the other hand, it is of importance to mention that none wanted to go further into this topic. Other pillar (i.e. mass media, civil society) interviewees, on the contrary, accused ironically the officials on having too many undisclosed assets, about being involved in businesses that were publicly known to be dubious (accusations were about attempts to monopolize the pharmaceutical services, privatizations, real estate ownership and so on), or to facilitate political partners to develop their businesses. These were only personal views and

cannot be taken into account unless proven data is provided. Nevertheless, most of the interviewees or the participants in focus groups (from all the pillars) mentioned that the provisions about asset monitoring were rather weak, and did not take into account more than the next kin, or other kind of relatives of the officials. The civil society pillar respondents, along with those from the mass media pillar and some from the Governmental agencies mentioned "the networks" and "the barons" that were not included in formal asset monitoring.

LEGAL: (YES, partially: problems with implementation procedure, and enforcement agency)
The act regulating asset declaration and control - Law 115/1996 imposes the mandatory declarations of all real estate items, cars and other motor-based vehicles, jewelry, art and historical collections in value over € 5,000, goods over €1,000 and real estate taken out of one's patrimony every year, stock, investment and passives over €5,000, gifts, services and other benefits received from natural or legal persons in value over €300, as well as yearly global revenue. The obligation goes for all members of the Executive, and includes the common possessions owned together with the spouse and dependent children. The declaration must be submitted 15 days from taking the office, upon leaving the office, and yearly, in case of property modifications. All asset declarations are public and can be viewed on the institution's website. The control procedure can only be initiated if two concurrent conditions are met: 1) there's a salient wealth disproportion in between the declaration upon investiture and the subsequent declaration and 2) there is clear evidence of illegal accruement of wealth. Only the Minister of Justice, the General Prosecutor and the Chief of the National Anticorruption Prosecution may demand inquiry into the wealth of ministers. A special control commission is in charge of controlling notifications of asset discrepancies. The control commission is formed of two judges from the Supreme Court and one prosecutor from the highest prosecution office. In the case the control commission finds illegal asset accrual, it submits the case to the Supreme Court, which has the competence to rule on confiscation. The President's wealth can only be inquired after leaving the office, and during the tenure only upon his own request or by decision of the Parliament. The person found guilty of illegal accrual must leave the office. On the other hand, the whole procedure for initiating the mechanism of wealth control is burdened by the difficult requirement of clear evidence for illegal asset acquiring, as well as by the limitations on the persons who may require the asset control. In addition, there's no system of random monitoring of assets, which weakens the feasibility of the system of asset monitoring and control.

- Are there conflict of interest rules?

SOCIO: (YES, partially)
The respondents from this pillar mentioned the legal provisions and the rules of conduct regarding conflicts of interest that govern the pillar's institutions and organizations. However, interviewees from the pillar, or focus groups participants developed the topic a bit further, and stated that there are officials in the government pillar that used their status in a more abusive way than the legal framework would allow. None mentioned names or concrete cases, but there were affirmations about high officials' involvement in business that were beneficiaries of governmental contracts.
As for other pillar respondents or participants, things were presented more intensively in regards to the conflict of interest type of frauds. There were ironical statements or cynical accusations regarding members of the Government.

LEGAL: (YES, partially: problems with weak regulation of enforcement)
Law 161/2003 on measures to ensure transparency in official public positions, in the private sector, and on prevention and punishment of corruption provides the first set of conflict of interest regulations. The law defines the conflict of interest as the situation whereby an official or civil servant has a personal interest of a lucrative nature, which would impinge upon the neutral accomplishment of his or her legal duties. The law requires that the President and the members of the Government abstain from releasing administrative resolutions, concluding contracts or taking decisions while in an official position if

such acts would bring themselves, their spouse, or their first degree relatives pecuniary advantages. However, adoption, approval, or release of normative acts constitutes explicit exceptions from the norm. Breach of the conflict of interest provisions equate with administrative offence and are declared null and void. According to the law, anybody can report a breach of the conflict of interest regulations by one of the persons above, also, any person aggrieved by an act adopted with breach of the conflict of interest provisions, may challenge it in court. Yet it is only the Prime-Minister who can demand inquiry into such cases. The body in charge of the inquiry is the Prime-minister Control Office, which submits the findings to the Prime-minister. The latter must take the 'appropriate decision'. If there is evidence of material benefits following the conflict of interest situation, the case must be referred to the public prosecution or to the special commissions for wealth control. The Prime Minister's decision or, respectively, the definitive resolution of the court has to be published in the Official Gazette, Part I.

However, the control mechanism of conflict of interests has some important failures. First of all, it is highly questionable as to why the exception vis-à-vis the release of normative acts exists (or why does it exist in this form). Seemingly, the exception tries to avoid the situation when a normative act of public interest cannot be emitted for reasons of incompatibility of the person in charge. However, the provision doesn't tackle the situation when the person in charge takes advantage of this exception and adopts a normative act that favors personal interests.

All officials must submit a statement of interests upon entering the office, which should include the following: 1) positions within non-governmental organizations, foundations, and political parties, 2) remunerated professional activities, and finally 3) shares or stock at any companies or partnerships. The President and presidential advisors submit their declarations to the head of the Presidential Chancellery, ministers and government secretaries to the General Secretary of the Cabinet. There is no sanction related to the refusal to submit the declaration of interests. In addition, there is no mechanism or institution which monitors the compliance with the requirements of the law or sanctions the breaches of the conflict of interest regulations[234].

- Are there rules and registers concerning gifts and hospitality? If so, are these registers kept up to date? By whom? Have they legal powers to enforce disclosure? Have they staff to investigate allegations? What powers of sanction are in place against officials? Have they ever been invoked?

SOCIO: (YES)
The respondents did not mention that gifts and hospitability should be a problem; on the contrary, even respondents from other pillars said that gifts and hospitality are kept under "an acceptable level". The overall opinion on this issue is that there are registers about these; none of the respondents could go further into detail or answering the subsequent questions.

LEGAL: (YES, partially: incoherence and parallelism in legislation, weak enforcement)
The rules regarding gifts and hospitality have been subject of great debate and multiple modifications. Currently, according to *Law 251/2004 on gifts received within office*, ministers and the President must declare all gifts and hospitality received during office activities to a special commission in charge of registering and evaluating them. Should the gifts exceed €200, the receiver should either pay their value or surrender them to the authority which then sells them through public bids. There is no similar procedure for hospitality services. In addition, there are other regulations that require declaration of gifts and hospitability. Law 115/1996 on asset monitoring requires that all dignitaries must declare all gifts and hospitality services which top the value of €300. Therefore, besides the fact that the procedure is not unified, thus it is interpretable, it does not offer a coherent control procedure for the correct evaluation of gifts and hospitality services. There are no sanctions for those institutions which do not have a registry of gifts or which do not keep them up-to-date, and no mechanism for monitoring, investigation allegations, or applying sanctions.

- Are members of the executive obliged by law to give reasons for their decisions?

SOCIO: (YES, partial answers)
When interviewing or questioning the rationale behind governmental decisions, most of the responses were about either the reasons that some individuals would have, or the rationality about the EU accession *acquis*. When explaining about the executive decisions, the representatives of this pillar mostly argued about the needs and the projected benefits that were "carefully analyzed" when proceeding. Most of the decisions were justified, the Executive pillar respondents stressed, by the national situation of Romania and towards the needs of the reform. Other pillar representatives declined the rationality and the transparency of the Executive decisions, at least in some cases. Examples like some Governmental contracts, policies that were designed without previous consultations and so on were given. However, all the respondents (considering only those that knew the answers) mentioned that there are rules that would oblige the executive to give reasons by their decisions, and mentioned other pillars that would check this to be real (Court of Accounts, the Parliament, Civil Society etc). No one mentioned the exact name of the mentioned laws.

LEGAL: (YES, partially)
According to the law on drafting normative acts (Law 24/2000), all Governmental normative acts (ordinances) must be endorsed by the line ministries and by the Legislative Council, before being adopted. In addition, all Governmental ordinances must include an explanatory note, which must contain the regulatory and factual necessity, as well as the legal and factual implications of the new act. However, there's no sanction for the non-observance of the motivation requirements which makes the law little enforceable.

- Do Ministers or equivalent high level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?

SOCIO: (NO, partial answers)
Some of the answers to the previous questions would fit to this question, too. There were mentions about decisions made and taken about contract awards that were less transparent than expected. Public scandals in media were also on this topic. The respondents from other pillars mention these particular cases (of suspect tenders that were mismanaged) or about the assets that some high officials would gain after these. However, no proven data were submitted. Some conclusions on the interviews would show that governmental decisions are justified only in interests of political speech, rather than rationalizing the pillar's activity. Corruption at this level, and not only, is circumscribed to a still traditional way of governance, tributary to power-holding.

LEGAL: (YES)
Ministers, according to their powers as primary credit ordinators, must monitor and endorse for legality and opportunity any contract signed by the ministry they run. Failure to sign the contracts equals invalidity of the contract, while illegal contracts incur the legal responsibility of the minister.

- Are there administrative checks and balances on decisions of individual members of the executive?

SOCIO: (YES, partially)
As above, the respondents from the Executive pillar mentioned the rules and the internal control that function within this pillar's organizations. Therefore, one should assume that there are checks and balances on these decisions. As for other pillars, representatives from the watchdog agencies, as

well as from the Civil Service, Supreme Audit or the Legislature stated that the governmental decision making process is to be checked by other organisms. Opposite opinions came from the Civil Society or Mass Media pillar respondents.

LEGAL: (YES)
The internal control within any public institution must scrutinize for legality, opportunity and performance and then endorse any financial decision of the head of the institution, including for the ministers.

Legislature

- Is the legislature required to approve the budget?

SOCIO: (YES)
All the respondents, from all the pillars, discussed about the budget approval by the Parliament. It is of no doubt that the budget is discussed and approved in the Legislature. Some negative comments came when it was about discussing the accountability of other political group parliamentarians. The mentioned were supposed to become "more responsible". However, there were no direct accusations, and none said anything about frauds, but lack of professionalism. There is a "professional solidarity" for the pillar representatives, even when criticizing the opposed representatives: "we are busy", "we have a lot to deal with and sometimes we are overcome", "we understand each other very well, all the differences resume to ideology and details, not basic or very important stuff" and so on.

LEGAL: (YES)
The Romanian national public budget is formed of the state budget, the social protection budgets, and the local budgets of communes, cities and districts. The state and social protection budgets are adopted by the Parliament, under common sessions, upon proposals from the Government. The draft budgets are debated in the Parliament, upon relevant reports from the two special budget commissions from the two Chambers of the Parliament. Once the Parliament passed the state budget and the social protection budgets, it still enjoys a supervision power over their execution beyond the control employed through the Court of Auditors. The Parliament and its members can at any point raise questions, interpellations or motions with the Ministry of Finance or with any other ministry on how the public money is used by the Executive. It can also strike down the Government on reasons of public budgets expenditure.

- Are there significant categories of public expenditure that do not require legislative approval? Which?

SOCIO: (NO, partially)
There were no mentions about that from the respondents of this pillar. Some other pillars' representatives affirmed that some budget changes pass through the legislature approval too quickly and this may become suspicious.

LEGAL: (NO)
All national expenditures must be approved in the budget law.

- Are there conflict of interest rules for parliamentarians?

SOCIO: (YES, partially)

Everybody stated about the existence and the necessity of the rules against conflict of interests. The respondents from the pillar did not raise or comment any particular case; however their allusive manner of speaking indicated an expectation that the public or the interviewer is aware of such cases. It is of interests to mention that the allusions were made in relation to the local barons, and also such comments pointed to local (government) networks and the no-named parliamentarians. Most of the pillar respondents declared that, at the county level, some networks function upon support of some central power representatives.

LEGAL: (NO)

It was not earlier than 2003 that conflicts of interest were regulated in Romania by Law 161/2003. Nevertheless, despite the law provided for conflicts of interest for a wide range of dignitaries and civil servants, MPs were exempted from this list. The situation hasn't changed until today. The law did provide for disclosure of interests for MPs by means of a declaration of interests, which should comprise the following: positions within associations, foundations, or political parties, paid professional activities, shareholder within companies of any nature. However, what it did not provide was the interdiction to make decisions in case of conflicts of interest vis-à-vis the above positions, and sanctions for such decisions.

- Are there rules concerning gifts and hospitality? If so, are these registers kept up to date? By whom? Have they legal powers to enforce disclosure? Have they staff to investigate allegations? What powers of sanction are in place against parliamentarians? Have they ever been invoked?

SOCIO: (YES)
There are rules and all the respondents mentioned them as functioning. Most of the interviewees stated that gifts and hospitality are well controlled, and that "there are other problems to be concerned with". Some of the Mass Media pillar respondents accused the Legislature of being beneficiaries of many privileges (trips abroad, facilities to be used on their interests: cars, communication, flats rented in hotels etc) that are paid from the state-budget.

LEGAL: (YES, partially)
See the section with the same name within the 'Executive' pillar.

- Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?

SOCIO: (YES)
There were no statements about the electoral fraud, even though there was a scandal in the media about the null votes that were counted for being valid. Mostly, the respondents abstained, and they mentioned that "the truth will come out soon".

LEGAL (YES)
In Romania, there are two types of electoral authority: one permanent – the Permanent Electoral Authority, and one temporary during the elections period – central and local electoral bureaus. The Permanent Electoral Authority has the role of managing the logistics of elections in between electoral cycles. It is independent from any other public authority, and has financial autonomy. The electoral bureaus have only a temporary existence during the electoral campaigns and have the role of

organizing and supervising the activities of elections. The Central Electoral Bureau is formed of judges from the Supreme Court of Justice and representatives of the political parties. The county and local electoral bureaus are formed of judges from the county courts and representatives of political parties. The presence of magistrates in the electoral bureaus, as well as the presence of a large array of political parties is conducive to a independent electoral authority.

Political Party Funding

- Are there rules on political party funding?

SOCIO: (YES partially)
Most of the respondents, disregarding the pillars they belonged to mentioned that there are laws and rules, and even intra-party set of rules that "govern" the funding of these organizations. However, most of the respondents showed skepticism on applicability of these rules. The party-members we interviewed mentioned that, actually, many donors "buy" their places in the parliament or, if not the parliamentary position, the donors insure their places in the power networks they belonged to. Some examples, however no proven data was given, were given about donors at the counties' level that would insure their relative independence of doing business by donating money to more than one political party. Businessman we interviewed also confirmed that "there are cases of those that pay to the politicians and the party organizations". Another interview with a party member mentioned that a place in the Parliament would cost around half a billion ROL (around thirty thousands USD), at minimum.

LEGAL: (YES, partially: there are limitations on the transparency of accounts for the large public)
Yes, there are rules (Law 43/2003 on political party funding) regarding limits for membership fees, donations, expenditure, as well as transparency and control of accounts. The law does not offer however sufficient provisions for transparency vis-à-vis publicity of donations, as well as expenditure.

- Are substantial donations and their sources made public?

SOCIO: (NO, partial answers)
Most of the respondents said that they did not know about such reports, and that the only public information about such topics came from the media investigations, or some NGO's projects. No conclusive data was, therefore, given.

LEGAL (NO)
The law does not provide clear regulations with regards to disclosure for the public. First of all, the law does not require disclosure of the exact amounts that each person donates or pays as fees to the party or candidate. Secondly, the law does not require the expose of the amounts that companies donate to parties or politicians. Thirdly, the law does not impose parties to make public how much they receive and spend yearly, outside the electoral campaigns. Therefore, the public do not have access to the persons who support financially parties.

- Are there rules on political party expenditures?

SOCIO: (YES)
Most of the respondents mentioned about the existing regulated restriction on political party expenditures, although no details were given. The party members that answered this question mentioned also the informal rules, given the donors' expectations, as well as the never ending, they say, under-financing that would lead to a rational choice behavior of spending money. However, no more details were given on this topic.

LEGAL: (YES)
Yes, there are rules for political party expenditure. Concerning the issue of limitations on spending during electoral campaigns, the law imposes strict margins for the whole political party, and for each candidate to elective positions. The Court of Auditors is in charge of controlling the observance of the requirements of the law. Annually, the Court must verify the observance the revenue and spending, as well as the revenue and spending during electoral campaigns and must publish in the Official Gazette a report on the electoral accounts of all parties within 15 days from the publishing of the official result of the campaign. In case the Court finds that accounts are not correct, it may require the liable party or candidate to return the subsidy received from the state budget. Nevertheless, the sanction seems too lenient and inadequate in view of the moral reverberations of the political candidature. One should make a distinction in between the fines for breach of the fiscal regulations on one hand, and sanctions for breach of political party funding on the other. Therefore, taking into account the political importance of the financial requirements with regards to electoral campaign funding, on should consider political sanctions aside from financial ones such as annulment of the mandate of the non-observant candidate or party.

- Are political party accounts published?

Legal: NO
No, political party accounts are not published. They are only communicated to the Court of Auditors, which does not have the task of publicizing them. (Law 43/2003 on political party funding)

- Are accounts checked by an independent institution?

Legal: YES
Yes, accounts are checked by the Romanian Court of Auditors. (Law 43/2003 on political party funding)

- Does that institution start investigations on its own initiative?

Legal: YES
The Romanian Court of Auditors may start investigations upon its own initiative.

Supreme Audit Institution

- Is the national auditor general independent? I.e. is the appointment of the general auditor required to be based on professional criteria/merit?

SOCIO: (YES)
Most respondents have no negative mentions about the independence of the Supreme Auditor; on the contrary, the focus-groups related a stable position of this institution. The stated opinions were clear about the personnel in these cases: it is independent from arbitrary selection criteria.

LEGAL: (YES)
According to the statutory law (94/1992), its members are appointed by the Parliament, upon recommendations from the finance and budget commissions within the two chambers. The president of the Romanian Court of Auditors is elected by its members among themselves. They benefit from immunity and immovability during the 6 years tenure. The RCA members' immunity implies that all criminal procedures from custody, arrest, criminal inquiry to indictment need special validation from the two Chambers of the Parliament, as well as a request from the General Prosecutor. In their turn,

the members of the RCA recommend the President the appointment of financial judges and prosecutors. The President of the RCA appoints the financial inspectors in charge of controlling the accounts. Financial judges, prosecutors and inspectors benefit from the same level of immunity as the members of the RCA.

- Is the appointee protected from removal without relevant justification?

SOCIO: (NO, probably)
All the respondents did not know of such events.

LEGAL: (YES)
The Romanian Court of Auditors' members benefits from the same immunity as the MPs.

- Are all public expenditures audited annually?

SOCIO: (YES)
The majority of the respondents affirmed the existence of such audit reports, although few mentioned the quality of them. The respondents from the pillar mentioned the professionalism involved in editing them. Those from other pillars seemed to be less interested in this issue, or even trying to minimize its importance. "It is of the lack of effects", they mentioned, that a report would have on the public life, since the justice system wouldn't react efficiently on the accusations, if any.

LEGAL: (YES, partial: institutional capacity)
The Romanian Court of Auditors can audit all public and European funds. However, there are institutional capacity limitations with regards to the opportunity and performance type of control.

- Is reporting up to date?

SOCIO: (YES, probably)
No conclusive data from the interviews were given.

LEGAL: (YES)
Lately, reporting from the entities using public funds, as well as the report of the Court in Parliament is performed timely.

- Are reports submitted to a Public Accounts Committee and/or debated by the legislature?

SOCIO: (YES)
About the debate by the legislature, as mentioned before, the reports are taken for discussion at the Parliament session on yearly basis. As above, one should take into account the fact that the reports are perceived with reservations, as the respondents from other pillars reported, due to its efficiency that is debatable.

LEGAL: (YES)
The report of the Romanian Court of Auditors is submitted to and debated in the Parliament in the year subsequent to the monitored fiscal year.

- Are all public expenditures declared in the official budget?

SOCIO: (YES?)
None of the respondents, even those from the pillar could give a strong statement on this.

LEGAL: (YES)
According to the Constitution and subsequent legislation, all expenditures must be declared and approved by law.

Judiciary

- Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister's or other Ministers and their officials)?

SOCIO: (YES, partially)
Mentions were present when this issue arose at the focus groups from respondents belonging to various pillars, including the Judiciary. Some exemplifying statements, about courts that reviewed actions of the executive were given, although most of the respondents from other pillars than this one showed skepticism about the completion of these reviews. However, the general opinion was that they have to review, although there were no mentions about specific laws about this.

LEGAL: (YES)
The Judiciary controls the Executive by means of:
1. Administrative litigation;
2. Legal responsibility of the ministers.
By means of the administrative litigation procedure, the Judiciary can review administrative acts adopted by the Executive and other authorities, which damage recognized rights or interests. The Romanian Constitution regulates this as the *right of an aggrieved person by a public authority*. Lack of resolution of a legitimate request in due time, unjustified delays and refusals, are subject to the administrative litigation procedure. The aggrieved persons (either natural or legal) may request the annulment of the abusive act, acknowledgment of their rights or interests, as well as remedy for damages. One cannot use this procedure to challenge the following:
acts regarding the relationship between the Parliament, on the one hand, and the President or the Government, on the other, military commandment acts; and other special
administrative acts, which legally require a special procedure in, order to be modified or invalidated, management acts of the state with regard to its own patrimony, and administrative acts on hierarchical control. The latter couple of administrative acts that are not within the jurisdiction of the administrative litigation raise questions about the limitations of the administrative litigation. The law recognizes the right of a natural or legal person to challenge directly in the administrative courts unconstitutional provisions of Government ordinances. Also, the Ombudsman may notify the administrative litigation court with regard to abusive acts of the executive, whenever a case is brought forth and needs court review.

The Judiciary reviews the criminal actions of the members of the Executive, yet under a very restrictive procedure. The Constitution provides that only the Chamber of Deputies, the Senate or the President can demand the beginning of criminal investigation against the members of the Government for crimes committed during their tenure. In addition, the same institutions must address a request to the Ministry of Justice to open legal proceedings against the inquired minister. Only then the case is taken to the Supreme Court of Justice and Cassation. The procedure for the criminal responsibility of ministers is quite intricate and conditioned upon the approval of a member of the Executive (the Minister of Justice). This means that the Judiciary is restricted in its authority by the decisions of the Executive to further submit the case to the Judicial Power. More, the decision to start criminal proceedings against an existent member of the Government has a political flavour since both the chambers of Parliament and the President are political appointees and determine the Government composition. Consequently, it is quite difficult for the latter to request criminal inquiries against their own kind as this would engender political damage to the decision makers. Since January

2005, the new Government scrapped the previous procedure for former ministers, as it was not justifiable. Thus, former ministers account for their criminal acts during executive tenure according to the common criminal procedures. This is a normal solution, as former ministers do not need a special procedure nor they need immunity.

- Are judges/investigative magistrates independent? I.e. are appointments required to be based on merit? Are the appointees protected from removal without relevant justification?

SOCIO: (YES, partially)
Many questions like these arose in the public sphere lately, or in 2004. Most of all, the independence of the justice system was declared questionable by all the respondents. The power networks were mentioned with regularity by the respondents from various other pillars, as well as the dependence on the central power organizations. Not only that they would directly influence the decision making process within the Justice system, but that magistrates, as many respondents (also from this pillar as from others) said, are still dependent on the administrative level as well as on the political power wilders. Cases of litigations that are arguably prolonged, as well as conflicts that cannot be resolved by trials, but compromises were mentioned, even though names were not given.
The only "defenders" of the justice system were the younger respondents from this pillar. They declared that independence is almost obtained, that justice is to be trusted in Romania, and that the cases of political or other type influences are becoming rare. There were mentions about political figures that faced trial and got sanctioned accordingly to the law. Also, some examples were given about people belonging to the economic elite of Romania. However, the cases seemed to be less important, and the sanctions seemed to be relatively small. Concluding the focus-groups, many affirmed that magistrates are independent; however, there are administrative constraints and pressures that create the doubts about actual independence.

LEGAL: (YES)
According to the Constitution and the statutory laws (law 303/2004 on the charter of magistrates and law 304/2004 on the organisation and function of the judiciary), magistrates are independent as their appointment is under the control of the Superior Council of the Magistracy (the body in charge of ensuring the independence and integrity of magistrates). However, according to the last proposed modifications of the mentioned laws, the heads of the prosecution (which is part of the magisterial order) are to be appointed by will of the Ministry of Justice which is differing from the principle of independent appointing system.

- Are recruitment and career development based on merit?

SOCIO: (YES, partially)
The respondents belonging to this pillar stressed the idea of the career development inside the system that is based on merits. Some other pillars' respondents questioned the capacity of some magistrates to face the challenges of their profession, as well as the capacity of the formal education system to produce rapidly and efficiently the generations of young professionals. Moreover, some statements were dubiously related to bribery regarding the admission to some of the magistrate institution.

LEGAL: (YES)
The regulatory reform operated in 2004 has the potential of formally solving the problems of independence of the judiciary. Both recruitment and career evolution of magistrates lies entirely into the grasp of the judiciary's management institution – the Superior Council of Magistracy.

6. Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

SOCIO: (N/A)
There were no conclusive answers on this.

7. Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

SOCIO: (NO, partially)
The questions on this had no conclusive data, except for the respondents from the civil society, those from foreign organizations, and from mass-media, that mentioned various anticorruption campaigns organized by NGO's in partnerships with media and Foreign agencies.

LEGAL: (YES, partially)
The general legal education system does not provide systematic education for issues of integrity. However, the specific educational system for magistrates within the National Institute for Magistracy does offer a good framework for integrity issues.

- Are there laws establishing criminal and administrative sanctions for bribery?

SOCIO: (YES)
"Petty corruption" is one of the most discussed in the public space, and so it was for the focus groups and in some interviewed. Therefore, most respondents, from all the pillars, declared that, even though there are laws that establish criminal and administrative sanctions for bribery, this practice is widespread. Some questioned the ability to prove corruption crimes; others stressed the idea that the bribe goes further, to the prosecution or the Police, so that the cases "get fixed".

LEGAL: (YES)
The Romanian Criminal Law (Law 78/2000 and Law 301/2004) does establish clear criminal sanctions for bribery and other corruption-related crimes. The current criminal system is in line with the European provisions vis-à-vis acts of corruption regulated in the Council of Europe Criminal and Civil Conventions against corruption.

- Are there rules requiring political independence of the civil service?

SOCIO: (YES)
All the respondents claimed to know of this kind of rules and they described various scenarios of dependence among civil service employees. Mainly, the main issue is given by the bureaucratic hierarchy of the civil servants that would eventually impose a vertical obedient-power holder set of relationships among the pillar's organizations. Some pillar's respondents represent themselves as being "part of the system" that, eventually, would be hierarchically subordinated to the central power.

LEGAL: (YES)
Civil servants are banned from being part of the executive bodies of political parties and from supporting or carrying out political activities of any kind (the Charter of Civil Servants and the Code of Conduct for Civil Servants).

- Are recruitment/career development rules based on merit?

SOCIO: (YES, partially)

The respondents from this pillar said that all the civil servants are employed based on examinations and careful evaluation. The same, they claimed, happens for career development. On the other hand, other pillars' representatives responded in the opposite way: many civil servants are employed in the system either because the job offer is not very attractive, so there is no need to make a careful selection of the candidates, or, some said, there is bribery if one would really want to get a job in the system. Rules about career development are empowered by various rules of functioning of the organizations/ institutions.
LEGAL: (YES, partially: lack of competence criteria for the appointment of prefects)
The Charter for Civil Servants does require competence criteria for access into profession and the career of civil servants. However, the fact that prefects and deputy-prefects are appointed by the Government and respectively by the prime-minister based on other criteria than competence is a negative aspect, the more so as the prefect has as main duty to monitor the legality of the activity of the local councils and of the mayors.

- Are there specific rules to prevent nepotism? Cronyism? (note: rules discriminating positively in favor of marginalized or minority groups are not included in this description)

SOCIO: (YES, partially/ implicitly)
The respondents from focus groups or interviews referred to this topic to a lesser degree, since meritocracy has already been discussed. However, no further development of the topic has been made. Cronyism and "…nepotism exist as much as the lack of professionalism would persist" (as a civil servant, with a high hierarchical position said).

LEGAL: (YES, partially)
Civil servants and local elected officials must refrain from adopting decisions or from signing a contract whenever they are in a conflict of interest situation. The latter are in a conflict of interest situation whenever they have to make a decision for a party that is in a material relationship with themselves, or sit on a commission with first degree relatives, or when their patrimonial interests or their first degree kin may influence their objectiveness. In the case of civil servants, there are only sanctions against the civil servants who adopt administrative acts in a conflict of interest situation, and not against the act itself (annulment, as in the case of other categories of officials). In addition, the law (161/2003) bans hierarchical direct rapports of relatives of first degree.

- Are there rules (including registries) concerning acceptance of gifts and hospitality? If so, are these registers kept up to date? By whom? Have they legal powers to enforce disclosure? Have they staff to investigate allegations? What powers of sanction are in place against parliamentarians? Have they ever been invoked?

SOCIO: (YES, partially)
There are rules and all the respondents mentioned them as functioning. Most of the interviewees stated that gifts and hospitality are well controlled; however, the issue of bribery is always reminded to the topic.

LEGAL: (Yes, partially)
See above the same, at 'Executive'.

- Are there restrictions on post public service employment?

SOCIO: (NO)
No interviewed person, disregarding the pillar, mentioned some restrictions on post public service employment.

LEGAL: (YES)
Civil servants may not give consultancy to or be employed by those companies whom the civil servant monitored or controlled according to his/her competencies, for a period of 3 years after leaving the civil service (Law 161/2003).

- Are procedures and criteria for administrative decisions published (e.g. for granting permits, licences, bank loans, building plots, tax assessments, etc)?

SOCIO: (YES, partially)
The respondents from this pillar confirmed the existence of such regulations on publishing, and none of them could confirm that this really happens. The respondents from other pillars where heterogeneously answering. Responses of those from the Executive Pillar, or from the Watchdogs Agencies were very positive oriented about the transparency of the administrative decision makers. Other respondents, such as business, civil society or mass media, on the contrary, had complaints about how decisions are being published.

LEGAL: (YES)
Yes, the procedures and criteria for administrative decisions are published, according to the law on free access to information (Law 544/2001).

- Are there complaint mechanisms for public servants and whistleblower protection measures?

SOCIO: (YES, partially)
Most respondents from this pillar avoided a straight answer about complaining mechanisms, and they constantly referred to the organisation's "committee of discipline and ethics" or similar organisms. Only few of them knew of the "Whistleblower protection act". Respondents from the business sector were very suspicious on this topic, "they are all the same", one said. And the respondents from the mass media, along with those from the civil society pillar described the situation when a civil servant would rather become more obedient than complaining about other colleagues or hierarchically superior civil servants' acts that might be fraudulent.

LEGAL: (YES)
Yes, there are complaint mechanisms for civil servants and whistleblower protection measures. Civil servants may attack the disciplinary decisions adopted against them at the National Agency for Civil Servants (administrative review) or at the administrative court (administrative litigation) – the Charter of Civil Servants and the Code of Conduct for Civil Servants. With regards to whistleblower protection, Law 571/2004 protects whistleblowers against abusive retaliations from the part of administrative hierarchy.

- Are there means for complaints by members of the public?

SOCIO: (YES, partially)
All the respondents agreed on the fact that the citizens can complain and have mechanisms on them. However, all the respondents had doubts about the efficiency of these mechanisms. Even those from this pillar mentioned that "things are perfectible" and the "system should learn to accept changes".
No other conclusive answers were given.

LEGAL: (YES)
Yes, the clients of public administration can attack administrative decisions, inaction or delays at the hierarchical superior of the civil servants in charge, in administrative court, at the Ombudsman, or to the National Agency for Civil Servants.

Police and Prosecutors

- Is the commissioner of police independent? I.e. are appointments required to be based on merit? Is the appointee protected from removal without relevant justification?

SOCIO: (YES, partially)
Few responses came for this topic. Most of the respondents we interviewed from this class of actors mentioned the meritocracy that generally exists within the Police. None would comment on the hierarchical top-positions.

LEGAL: (YES, partially: political appointments in the case of chiefs of police)
The general commissioner of police, as well as his/her deputies and county counterparts' dismissal are very much in the discretionary powers of the Executive. Appointments for police officers are in general based on merit. In the case of chiefs of police, appointments are not based on a professional system of examinations. The system of removal in the case of police officers is based on a system of inquiries, but the disciplinary commission have only a consultative role, and not a decisional role as in the case of civil servants.

- Are public prosecutors independent?

SOCIO: (YES, partially)
The respondents from all the pillars discussed about the independence of the prosecutors in positive terms. Although, media representatives, NGO and business respondents mentioned that some prosecutors are afraid to conduct investigations in some cases, due to the risks they would expose to. Some hypothetical scenarios were also presented by the politicians, although no concrete examples were given.

LEGAL (YES, partially)
In 2004, a new law on the status of magistrates – Law 303/2004 – changed the appointment and disciplinary system of magistrates, which entered under the responsibility of the Superior Council of Magistrates. However, the appointing system of the General Prosecutor, his deputies, and of the General Prosecutor of the NAPO remains in place. Accordingly, the heads of the Prosecution are appointed by the President, upon a proposal from the SCM, which receives a recommendation from the Minister of Justice. This procedure is a closed one to the extent to which it is mainly the Minister of Justice who makes the call for a candidate, the SCM's choice being to either accept or reject it. Therefore, the SCM may not in reality 'propose' as the Constitution requires, but it rather confirms or rejects the solution of the Ministry of Justice. The current draft law for amendment of Law 303/2004 is actually proposing a shift of the appointing powers entirely to the Executive. Accordingly, the General Prosecutor, his deputies, and the General Prosecutor of the PNA are being appointed by the President, upon proposals from the Minister of Justice. More, the dismissal of the same heads of the general prosecution is also put under the decision-powers of the Executive. Under this proposal, the Minister of Justice may submit a proposal to the President to dismiss the General Prosecutor, his deputies or the General Prosecutor of the NAPO under a number of grounds, including lack of efficiency of the institution. In both situations (i.e. appointment and dismissal) the SCM's position is not mandatory to the Ministry of Justice.

- Are there special units for investigating and prosecuting corruption crimes?

SOCIO: (YES)

All the respondents mentioned more than one agency or prosecution office specialised in anti-corruption. The National Anticorruption Prosecution Office was the most discussed among them. Except for the representatives from the pillars belonging to the state organisation (e.g. Executive, Civil service, Supreme Auditors, Judiciary, some of the parliamentarians), all the other respondents complained about the lack of the efficiency of the NAPO, given the fact that "the bigger sharks" were not investigated at the time the interviews and focus-groups were organised (fall-winter 2004, winter 2005). Some media representatives and businessmen even mentioned ideas that there were more money expended on the establishment of NAPO than those recovered by its' anti-corruption activity.

LEGAL: (YES)
Romania has a special prosecution office in charge of investigating and prosecuting acts of corruption – the National Anticorruption Prosecution (PNA). There are also special investigation units within the Ministry of Administration and Interior, and within the Ministry of Justice.

2) Is there an independent mechanism to handle complaints of corruption against the police?

SOCIO: (YES, partially)
Although all the respondents did not go into detail, they mentioned that citizens can file complaints of corruption against the police directly to the NAPO, or to other organizations, although they mentioned them only as opinions or beliefs, no concrete examples were given. However, most opinions were that citizens, at large, would not go to file complaints against the police, unless a serious abuse was given. This would apply, in their opinion, especially in the rural area or in the smaller towns/ cities, where the Police can retaliate more easily. The respondents from the Police mentioned that there are mechanisms of control, but they did not go into details.

LEGAL: (YES)
Citizens can report corruption within the police to the anticorruption prosecution.

3) Does civil society have a role in such a mechanism?

SOCIO: (YES)
The representatives from the Executive pillar, as well as those from the Watchdog pillar, the Legislature, the Civil Service, the Civil Society and the Media mentioned that various NGO's helped citizens with such complaints, including some against the Police. No respondent from the Police knew of such cases. However, some organisations from the civil society sector have centres of consulting and advising the citizens.

LEGAL: (YES)
Civil society organisations may assist citizens *pro bono* against the abuses from the police.

13. In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

SOCIO: (YES, partially)
Most of the respondents remembered a recent (fall 2004) prosecution inquiry about some police officers' corruption in Bucharest that was publicly presented. However, most respondents, except for those in the civil service and the government, showed skepticism about the success of this kind of inquires. The representatives form the judiciary strongly affirmed that such events take place and that the Police are checked regularly about the delinquency that might appear among the officers. There are internal control mechanisms, as well as the prosecution offices (specialized in anti-corruption or not) that function for prevention.

14. Are there any cases of corruption within the prosecuting agencies?

SOCIO: no conclusive data

15. Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery? Is private-to private corruption punishable by law?

SOCIO: no conclusive data about legislative instruments.

LEGAL: (YES: good legislative instruments)
Apart from the substantial law which provides for a good array of crimes against corruption (in line with the European legislation), there are also good procedural provisions. Investigators (police and prosecutors) may avail of under-cover officers, flagrante delicto, tapping into private communications, programs for protection of witnesses and victims of crimes. However, the Romanian criminal legislation does not allow integrity tests, i.e. testing the capacity of officials, police officers, magistrates etc to resist to criminal temptations.

16. Is the law applied?

SOCIO (YES, partially)
As mentioned before, many representatives from the NS pillars showed scepticism about the way the laws are applied, and about the instruments that are still hindered by the common practice.

17. How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

SOCIO: N/A

Public procurement

Answers for these questions came indirectly from the interviews with most of the respondents, and from some of the focus groups.

- Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

SOCIO: (YES, partially)
Most of the respondents stated that there are strong rules about competitiveness of the bidding for all major public procurements. However, these rules are not guaranteed to be respected by many decision makers, as some examples (given by mass media) of repetitive success of some companies that is in correlation with some bidding committee constitution were given in different situations.
Since no proven data were provided, we will limit to just express that there are doubts about the applicability of these rules. Most respondents, however, referred to cases like this as "marginal", "provincial (where they happen more often)".

LEGAL: (YES)
Most public procurement mechanisms follow competitive criteria. It is only for public procurement in the value under €2,000 that competitive criteria are not specifically required.

- Are the rules laid down in documents publicly accessible?

SOCIO: (YES ?)
Most of the respondents did not have an informed opinion on this; they supposed that these rules are made known publicly in official publications.

LEGAL: (YES)
The current framework for public procurement ensures good transparency procedures. All procurement plans for the whole year of all primary credits ordinators must be publicized in the Official Gazette within 30 days from the adoption of their budgets, if they top €750,000. In the case of electronic public procurement, the threshold for publicizing the annual plan for electronic procurement is €100,000. With regards to the public-private partnerships, the public authority must publish an announcement in the Official Gazette in all cases and wait 60 days for the receipt of offers. Finally, concerning the special provisions within the medical field, credit ordinators in this field must publish their annual plans for public procurement 30 days after the adoption of their budgets, if the total value of goods to be acquired tops €100,000. There is another transparency requirement with regards to individual procurement bids, which have to be announced to potential bidders. Therefore, in the case of the classical procurement, the contracting authority must publish a special participation announcement in the Official Gazette for all procurement bids of over €40,000. In the case of electronic procurement, the contracting authority must publish all procurement bids on the electronic system, while in the case of the special procurement in the medical field the contracting authority would have to follow the procedure for classical procurement unless it chooses the electronic procurement system. All decisions to award the contract to a certain bidder, as well as contestations within the administrative system or with the judicial system must be communicated to all other bidders. Additionally, all bidders must be informed of the unique technical requirements of the offer, of the awarding criteria, of the review mechanisms and may assist directly at the opening of the bids.

- Are there strict formal requirements that limit the extent of sole sourcing?

SOCIO: (YES?)
Most answers were positive, although with the reservation made by the respondents themselves that the opinions are not well informed. As above, they stress the idea that these rules can be disobeyed.

LEGAL: (YES)
Sole sourcing is only possible practically in the case of procurement under the value of €2,000, or where contracts have already been awarded through competitive criteria and there is need complementary purchase of the similar kind as the initial one.

- Are all major public procurements widely advertised to the private sector?

SOCIO: (NO?)
Most of the businessmen we interviewed complained about the opacity of many administrative organizations. It was a major topic in focus groups where the participants were also civil servants. The latter answered that there are publications of the respective administrations that contain announcement about

LEGAL: (YES)
Yes, all major public procurements (of over €750,000 in total per one year) must be announced in advance in the Official Gazette, 30 days after the adoption of the annual budget of the respective

contracting agency. In addition, the contracting agency must publish a participation announcement in the Official Gazette for any individual contract of over €2,000.

- Are procurement decisions made public?

SOCIO: (YES)
The responses we received were mostly positive. However, many respondents from the business sector, civil society, media and so on expressed that this is not a guarantee of integrity by itself, since supposed abuses took places also with public awareness.

LEGAL: (YES)
Yes, the final awarding decision of the contracting agency must be announced to the rest of the unsuccessful bidders within 2 days, and also published in the Official Gazette within 30 days from the date of contract award (in cases of purchases over €2,000).

- Is there a procedure to request review of procurement decisions?

SOCIO: (YES?)
No conclusive data on this.

LEGAL: (YES)
Procurement decisions may be inquired for clarifications or may be attacked at the authority which organises the procurement bid. The award decision may in turn be attacked in administrative litigation.

- Can an unfavourable decision be reviewed in a court of law?

SOCIO: (YES)
The question had positive answers from the respondents belonging to the administrative, governmental pillars, as well as from other pillars' respondents. However, many of the latter categories expressed their opinion about the lack of usefulness of suing decision makers, due to the risks of retaliations, if the situations were very local, or "the prolonging of a process that is not necessarily giving advantages for the initiators" (Businessman) Although, there are many cases, with examples about trials on such topics.

LEGAL: (YES)
The right to administrative and judicial review is ensured in all cases of procurement procedures.

- Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

SOCIO: (NO)
None of the respondent expressed opinions on this.

LEGAL: (NO)
No, there is no specific requirement for blacklisting companies proved to have bribed in a procurement process. This would also be impossible to accomplish as the criminal liability of legal persons has just recently been implemented (as of April 2005).

- Are there rules and procedures to prevent nepotism/conflict of interest in public procurement? Are assets, incomes and life styles of public procurement officers monitored?

SOCIO: (YES)
The answer is similar for this as for the first question. It requires more than rules, businessmen, mass-media representatives or civil society claimed, to make the risk of nepotism or other kind of conflict of interests as low as possible. The representatives from the administrative sector claimed that this is not an issue anymore in public procurement biddings, since all evaluation committees have heterogeneous compositions and the decision makers are more than one person. Moreover, the basic standards for any candidate application are to comply to these rules of avoiding any conflict of interest possible.

LEGAL: (YES, partially)
Members of the evaluation commission are not allowed to be relatives up to the third degree inclusively with any of the bidders; members of the evaluation commission who had been employees or held executive positions within one of the bidding companies are also banned from being part of the evaluation commission; finally, members who own equity shares within the bidding companies may not be part of the evaluation commissions. On the other hand, assets, incomes and life styles of procurement officers are not monitored.

Ombudsman

- Is there an ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about maladministration)? Is the ombudsman independent? I.e. are appointments required to be based on merit? Is the appointee protected from removal without relevant justification? Has an ombudsman been removed without relevant justification in the last five years?

SOCIO: (YES)
All the respondents knew of this institution that works in Romania. However, a large majority presented negative perceptions on the Ombudsman activity, because it seems not to be effective to many other pillars. All the mentions about the Ombudsman were about its lack of visibility, its seemingly lack of performance and its futile nature in defending any person. However, the insiders' opinion about it was totally different, their arguments being based on figures and statistics.
Other mentions were about the "academic rather than practical" approach of the Ombudsman institution. It is a question, therefore, if the personnel there is educated to function as an Ombudsman institution should, or to become a researcher team, in an academic framework. About the independence of the institutions most did not question it, except some respondents that stated an unofficial relation of the chief of this institution with the Presidency. On the other hand, these affirmations cannot be confirmed and were not emphasized by other respondents. The ombudsman appointees are supposedly on the positions based on merit, and few respondents had doubt about this.
The respondents from all the pillars mentioned that the ombudsman is protected, but none could exemplify a specific set of rules that guarantee that. Nobody said that the ombudsman has ever been abusively removed.

LEGAL: (YES)
The Ombudsman institution exists in Romania since 1997 (Law 35/1997). The Parliament elects the PA for 5-year tenure, and it is also the Parliament that can take the decision of his or her removal, on the basis of Constitutional breach or other illegalities. In addition, it is also only the Parliament whom the PA has to provide annual reports on its activity. The Ombudsman appoints four deputies, who have to be subsequently validated by the special Commission for Appointments, Validation and Immunities of the two chambers of the Parliament. The Ombudsman and his or her deputies avail of the same immunity rights as the MPs. That is, they cannot be held liable for their opinions, and cannot be seized, arrested, searched or prosecuted without the Parliament's approval.

- Can petitioners complain anonymously if they fear possible reprisals?

SOCIO: (YES?)
When asked that, no informed opinion was given, but all the respondents suggested that this should not be a problem. The respondents from the Ombudsman office said that anonymous complaints are not taken into account for further analysis.

LEGAL: (NO)
According to the law, anonymous complaints will not be taken into consideration, under any circumstances.

- Are reports of the ombudsman published?

SOCIO: (YES, partially)
Respondents from this pillar presented their reports as being publicly known. They also made references to the sources of this information.
Respondents from other pillars, if those that knew more about this (such representatives of the Watchdog agencies, or of the Executive or of the NGO area) answered that, even it there were such reports, they would not consult them, due to the low impact that this institution has to the whole impact.

LEGAL (YES)
Yes, the Ombudsman's reports are published on the institution's website.

- Does the government act on the Ombudsman's recommendations?

SOCIO: (NO)
All the statements we received in the interviews were about the lack of the Ombudsman's activity, lack of its visibility and its "zero impact" feature (as a minister stated). Given these, there were no statements about a possible influence of the Ombudsman's recommendations to the Government.

LEGAL: (YES, partially)
According to the annual reports of the Romanian PA, the number of petitions raised to the PA by citizens raised constantly since the establishment of the institution, coupled with a diminishing number of unfounded or non-competent claims. The initial treatment the institution benefited from public authorities (expressed both in terms of the low readiness to provide the PA with the necessary infrastructure, as well as in terms of the poor response from the part of the inquired public authorities and institutions) showed both a weak PA, as well as a disregard of other authorities vis-à-vis its role within the larger public integrity system. In the past few years, the PA gained momentum both in terms of its capacity of solving petitions, and in terms of its authority vis-à-vis other public authorities. Its *ex ante* and *ex post* constitutionality controls are a good added value to its role within the national integrity system.

Investigative/watchdog agencies (e.g. Anti-Corruption Bureau)

- Are there special investigative or watchdog agencies?

SOCIO: (YES)
In Romania there are many watchdog agencies, some of them even overlapping the activities of each other (as a mass media representative presented). Most of the people we interviewed thought about

the Governmental Authority of Control, and only those involved in other institutions knew and referred to other agencies. We met opposite opinions on many of the aspects of such authorities, even from the insiders. Most of its features resemble the features of the executive and the administrative pillar.
There were some assumptions (businessmen, foreign agencies, civil society) that some of these agencies were made to create more power to the Government, since most of their functions were doubled by pre-existent institutions. Some people from this pillar presented their institution as merely copies of the Brussels regulatory programs of the EU institutions.

LEGAL: (YES)
The anticorruption prosecution is legally part of the judicial system. Nevertheless, the position of a special prosecution in the fight against corruption is of major importance from the point of view of the need of specialization of the activity of combating corruption. In addition, there are many other investigative/watchdog agency who are subordinated to the Government in the areas of intelligence gathering (General Direction of Protection and Anticorruption within the Ministry of Justice, the General Anticorruption Unit within the Ministry of the Interior), in the area of control (Government Control Office) etc.

- Are they independent?

SOCIO: (YES, partially)
The main question to be raised is about the independence of these institutions. It is a simple answer to give, since most of them are Governmental institutions, even some of them had the rank of ministries, departments or governmental agencies. Therefore, most of the analysis should resemble the one made for the Executive pillar.

LEGAL: (NO)
This pillar is formed of both independent institutions and subordinated institutions, with a clear predominance of subordinated agencies. Among the independent institutions are the special Anticorruption Prosecution (pending upon modifications for the Law on the organisation of the judiciary – Law 34/2004), the Special Anticorruption Service within the Ministry of Administration and of the Interior (whose employees are policemen and thus enter under the Charter of Policemen with a system of competence based appointment – Law 161/2005), the judiciary police which conducts criminal investigations, which are appointed based on competence criteria etc. Among the subordinated agencies is the special intelligence service within the Ministry of Administration and of the Interior (with anticorruption mandate), the special intelligence service within the Ministry of Justice (with anticorruption mandate), the internal control departments within the ministries etc.

- Are appointments required to be based on merit? Are appointments generally based on merit?

SOCIO: (YES)
The respondents from this pillar claimed to be independently, based on merit, employed in these agencies. Respondents from other pillars had no comments and no informed opinion on this issue. As for the heads of these agencies appointments, it should be taken into account that some agencies activated as ministries, therefore the appointments were made under different set of rules, also.

LEGAL: (NO)
With Regards to the chief prosecutor of the National Anticorruption Prosecution, the appointment procedure does not specifically require competency criteria; it rather puts the stress on seniority. With regards to the appointments at the head of the other mentioned control agencies, there are not specific provisions regarding competency criteria.

- Are the appointees protected from removal without relevant justification?

SOCIO: (NO)
The pillar is quite heterogeneously constituted. For some agencies, the appointees are basically protected by the rules of the agency activity, while for others, the positions are politically dependent.

LEGAL: (YES)
There are specific conditions under which the General Prosecutor of the Anticorruption Prosecution and the heads of the anticorruption agencies (bearing civil servant status) may be dismissed.

- Are their reports published (other than when criminal charges are pending)?

SOCIO: (YES)
When asked about this, some respondents for the pillar answered "depending on who's winning the elections". Other pillars' respondents did not have comments on this.

- Do they report publicly to the legislature on the general scope of their work?

SOCIO: (YES)
Depending on the institution, some have public report at the Parliament, but most of those interviewed were employees of governmental agencies, directly subordinated to the Government. NAPO has a public report on the website.

LEGAL: (YES)
Currently, the National Anticorruption Prosecution must not present a report to any other institutions, including the Superior Court of Magistracy, the Ministry of Justice and the Parliament (yet it does publish the yearly reports on the institution's website). However, according to the last modifications of the law on the organisation and function of the judiciary (Law 304/2004), the National Anticorruption Prosecution will have to present a report to all the above authorities. The special intelligence agencies with anticorruption activity within the ministries of justice and of the interior do have to report annually or upon request to the Parliament.

- Can people complain to the agency without fear of recrimination?

SOCIO: (YES)
There are positive answers from most respondents. However, one should take into account the scepticism that other pillars' respondents had when asked about citizens' complaints and how are they managed by the watchdog agencies. Mostly, all of the remainders were towards the Justice system, that should offer judgement on the cases.

LEGAL: (YES)
Any person may complain to the National Anticorruption Prosecution about an act of corruption. However, the complaint should be based on evidence and should be related to an authentic crime, otherwise the complainer may be liable of slander.

Media

- Is there a law guaranteeing freedom of speech and of the press?

SOCIO: (YES)

All of the respondents said that the freedom of speech is guaranteed by the Constitution and other laws.

LEGAL: (YES, some comments)
The Romanian Constitution safeguards the freedom of speech and the freedom of information.
The freedom of speech includes the ban on censorship and the interdiction of eliminating media outlets.

- Is there censorship of the media?

SOCIO: (NO, partially)
Starting with the case of freedom of speech, media pillar's respondents stated several times about libel accusations, about censorship and the narrow-spread of their ownership. Many scandals of large daily newspapers that were censored by the owning companies came out in the past half a year. And about the state owned televisions or radio stations, there were public scandals and reactions given the censorship of some of the decision makers. These publicly known events were discussed during the focus groups, although many argued that there were some other elements (lack of professionalism of some reporters, editors, blackmailing the bosses etc) that are hidden from the public. However, the authority figures in the media organisations tend to impose a general point-of view for their employees. Other pillar's representatives mentioned that censorship does not exist by itself, but as a consequence of the organisational culture within the pillar.

LEGAL: (NO, partially: the regime of libel)
An essential observation is related to the difficult regime of criminal responsibility of journalists when reporting about wrongdoings by public officials. According to the Romanian Criminal Code, the act of affirming any kind of wrongdoing about a person, which, if it were to be true, would be tantamount to either a crime, an administrative or disciplinary offence represents the crime of calumny (libel). The perpetrator of calumny could escape criminal liability provided he or she made proof of the public interest safeguarded by the assertions together with their truthfulness, which in actuality means producing evidence in defence of his or her allegations. Generally, this is very difficult to do by journalists themselves as it is very often the case with professionals within the prosecution. Therefore, this criminal regime which did not allow for only the demonstration of a public interest to be brought in the defence of the journalist was obviously making it very difficult for the media to act totally unrestrained in safeguarding the public interests, as long as it did not gather the evidence in support of its allegations. Another important criminal provision that had a negative impact on the role of the media within the NIS is the regulation of personal defamation. A positive development with important consequences on the freedom of the media in Romania is represented by the ratification in the Romanian Parliament of the European Convention of Human Rights and Fundamental Freedoms (and its additional protocols) – herefrom 'the Convention', adopted in Rome in 1950. The Convention is relevant for the freedom of the media in Romania from two points of view: one of substantial law and one of procedural law. First, it sets the principle of freedom of expression and secondly and more importantly it provides the Court of Human Rights in Strasbourg with the jurisdiction of final review against judicial decisions ruled in member states' courts. This jurisdiction of the Court in Strasbourg has had an important impact on the Romanian courts' jurisprudence in cases of libel and defamation which started to be oriented after the Strasbourg Court's decisions.

- Is there a spread of media ownership?

SOCIO: (YES, partially)
The respondents from various pillars mentioned that the ownership of the media organisations is not widespread when t comes to the central/ national TV stations, Radio stations or newspapers. The

media representatives argued about some liberties they have inside their organisations, however, there are tendencies to polarize the opinions, given the employers current situations. No example was given exactly, and the accusations were rather soft. However, most respondents stressed the idea that the media ownership s not widespread

LEGAL: (YES)
Another important aspect for the independence of the media is the regime of property and that of competition within the media sector. Law 504/2002 improves the framework provided by the previous law by defining the concept of dominant audience position at the national, regional, and local level. This is important, as the Romanian Competition Council should take action based on this definition whenever as dominant position on the media market distorts competition. The law also imposes the exclusive nominal character of shares of companies within the media sector so that both regulators and the general audience may have access to the ownership identity. A final important requirement is that media companies publish information related to the names of the main shareholders, of the administrators, editors, of the publications and programs they provide.

- Do any publicly-owned media regularly cover the views of government critics?

SOCIO: (YES)
The situation of the publicly owned-media has largely been discussed in the public sphere lately. Most accusations were about the sub-ordination that the national TV station showed directly or not to the Government. There are strong statements in the focus groups, as well as in some interviews, that the National TV Station was used as a propaganda organism for the Government. On the other hand, there were reports from media monitoring agencies about the views of government critics that have been regularly shown.

- Have journalists investigating cases of corruption been physically harmed in the last five years?

SOCIO: (YES)
There are different modalities of interacting with the investigative journalists. While at the central level no one physically harassed or harmed them, there were some statements about such events in the recent past at the local level. These statements came from representatives of the mass-media pillar, civil society pillar, some watchdog agencies employees. However, no proven data and no concrete examples were given.

- Do the media carry articles on corruption?

SOCIO: (YES)
All the respondents gave affirmative answers to this question. There were no doubts about carrying articles on corruption in the media. Media monitoring agencies, also, have reports on this.

- Do media licensing authorities use transparent, independent and competitive criteria and procedures?

SOCIO: (YES)
When this question was put, most of the media representatives said yes. Respondents from other pillars either abstained from any comments, given the fact that they could not give an informed opinion, or they gave also affirmative answers. However, an ex-director of such authority told stories about the pressures that his employees had from both the authorities and the clients themselves. The respondent did not hesitate to mention the cases when there were attempts to blackmail or to propose bribe in order to give licenses or diminishing enquiring about private television stations,

regular publications and so on. However, this was an isolated opinion and the respondent did not go into details.

LEGAL: (YES)
According to the law on the audio-visual (504/2002), media outlets need licensing from the National Council of the Audio-Visual. The system of licences awarding is based on competitive selection of bidders for band slots.

- Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?

SOCIO: (YES)
Many pillar's representatives complained about the libel laws. They perceived it as an undemocratic restriction and said that many investigations were obstructed. Civil society representatives, businessmen and other pillar' respondents were also arguing about this. No examples of obstructions were given, but an interesting mechanism was described: most journalists and media companies have already developed self-protective means.

LEGAL: (YES)
See above 'censorship'.

Civil Society

- Does the public have access to information and documents from public authorities?

SOCIO: (YES, partially)
Most pillars' representatives that we questioned knew and used Freedom of Information Act in order to access the information they required for various activities. Many organisations have projects of monitoring the applicability of this law (passed few years ago), its functionality and so on. Moreover, there are associations and organisations from this pillar that organize trainings fro citizens, for the civil servants also, about the given law and the necessity to assure the free access to information of public interest. Consequently, except for the classified information (those regarding the state security, contracts privacy and so on), most information are publicly accessible. On the other hand, the respondents said that many civil servants, authority employees and so on still do not apply the law in an appropriate way, delaying to answer the requests, or giving partial information.

LEGAL: (YES, partially: with limitations from unclear regulation of exceptions)
The right of free access to public interest information is provided within the Romanian Constitution. Romania enjoys a Law on the free access to information which provides for the free access to public information for any private person or legal entity within 10 days from the submission of a written request, or 30 days if the response involves a difficult or large workload (the longer term must be notified within 10 days from the submission of the request to the applicant). The public authority must designate a special department within every institution responsible with public information. In addition, every public institution must *ex officio* display at its headquarters a list of information of public interest which should comprise inter alia the statutory regulations, the structure, the budget, a list of documents of public interest, the mechanism of complaining against the decisions of the institution. The applicant has access to complaining procedures both at the level of the inquired institution and in court through administrative litigation. However, the same law provides a set of general limitations to the free access of public information such as commercial secrets, secret of office and classified information. These general limitations favour abusive interpretations at the expense of access to information.

- Do the public authorities generally co-operate with civil society groups?

SOCIO: (YES, partially)
The civil society representatives had positive and negative answers. They mentioned various projects of their organisations that developed in partnerships with the authorities. On the other hand, there are cases, the respondents stated, when the authorities were not giving the feed-back of a partnership. The respondents from the Executive pillar, some parliamentarians, some respondents from the watchdog agencies or civil servants mentioned successful collaborations that they had with various NGO's or other kinds of associations. There were positive answers of public debates requests that the NGO's have made, also.

LEGAL: (YES)
The legal framework for cooperation with civil society groups is comprised in the act on transparency of decision-making. According to the act, public authorities must announce a draft act, must call for recommendations and must debate the draft before adopting it.

- Are there citizen's groups or business groups campaigning against corruption?

SOCIO: (YES)
Some central NGO's had campaigns against corruption. There are public and media campaigns against bribery, there are public presentations made in various sites (schools, theatres, festivals). Many associations have specialized people in advocacy, in order to design Governmental anti-corruption policies. In focus groups, businessmen representatives complained about the red-tape, as well as the corruption implicitly associated to the administration. However, none of the business pillar respondents mentioned about an anti-corruption campaign initiated by this pillar.

- Are there citizen's groups monitoring the government's performance in areas of service delivery, etc?

SOCIO: (YES, partially)
There are various organizations specialised in monitoring the government's performance in areas of service delivery. However, this pillar's respondents complained about the lack of effect that some of these activities have, since the reports in monitoring are rarely taken into account by the authorities. The Executive pillar's respondents mentioned collaborations in "improving the performances", although no example was given. Other pillar's representatives did not mention any of such monitoring activities that they knew of.

- Do citizen's groups regularly make submissions to the legislature on proposed legislation?

SOCIO:
No effective answers were given.

Local Government

3. Is there a legal requirement that meetings of city/ town councils be open to the press and public?

SOCIO: (YES)
Respondents from Bucharest Prefecture answered positively on this question. Most of the Executive pillar's respondents stressed the openness that the local government institutions have, mentioning departments of those organisations that are specially designed to interact with the public.

LEGAL: (YES)
The law requires that city councils be open in general. However, the councils may decide on those situations when some meetings are declared closed for the public (Law 215/2001 on the local administration).

- Are there clear criteria restricting the circumstances where city/town councils can exclude the press and public?

SOCIO: (NO)
When asked about that, most of the respondents said that media and the public can participate to such meetings, although the openness of the local councils is debatable. No respondent could give a clear answer on this question.

LEGAL: (YES, partially: unspecific regulatory framework)
The law specifies only those meeting topics (local budget, private and public domains of the city/town/commune, inter-city and international cooperation, the urban development etc) that cannot be closed to the public (Law 215/2001).

Progress with Government Strategy

- Has the government announced an anti-corruption strategy and a timetable for implementation?

SOCIO: (YES, partially)
Respondents from the Executive pillar, from the Legislature, from the Watchdog agencies or from the Civil servants mentioned the National Anti-Corruption Strategy that has been adopted years ago and it is in the current situation at its second stage. The Strategy has been announced in early 2001. At the current stage, a new National Anti-Corruption Strategy has already been announced and it started based on an audit report made for the first stage. It has three main objectives:

a) Prevention, transparency and education
b) Combating corruption
c) National (domestic) co-operation and international co-ordination

About the first stage of this strategy, the respondents from the executive pillar, from the civil servants or from the legislature mentioned successes of the implementations, while those from the media and the civil society mentioned that there were some accomplishments, but one should have expected more. At the current stage, the Strategy has already started its second phase.

LEGAL (YES):
Romania has had so far two main anticorruption strategies: the 2001-2004 Anticorruption Program and Plan against corruption (Government Decision 1065/2001), and the 2002 and 2003 expedient measures; the 2005-2007 Strategy and Plan against corruption. Both strategies, as well as the expediting measures contained specific deadlines, some of which were seriously delayed while some other were not accomplished.

- How much of the strategy has been implemented?

The respondents representing state authority mentioned many accomplishments: laws that have been adopted in an anti-corruption package, the establishment of National Anti-Corruption Prosecutor, many cases of corruption accusations and trials, and so on.

Other pillars' respondents argued that this was only a beginning in fighting corruption strategy. They mentioned delays and accomplishments that had no impact.

LEGAL (YES, partially)
Most measures envisioned by the first strategy (2001-2004) have been accomplished. However, three problems can be identified with regards to the first strategy: important delays in implementing several measures (such as in the judiciary, administration), unaccomplished objectives (electronic platforms throughout the judiciary, the unique office for public procurement, anticorruption bureau within the police etc), and weak implementation of the accomplished objectives (independent public administration, fight against corruption etc)

- Is the government meeting its own timetable?

SOCIO: (NO)
The representatives from other pillars argued that the timetable of the Government has always been changing. NGO's and businessmen also argued that the timetable is not respected, especially about the anti-corruption strategy (most of those respondents had strong opinions that the Government representatives have integrity problems).
The representatives from the Executive pillar, as well as respondents from other pillars representing state authority did not give a clear answer.

LEGAL: (YES, partially)
The first anticorruption strategy registered important delays such as the reform laws within the judiciary, the adoption of codes of conduct within the administration, police etc, the regulation of conflict of interests etc). The second anticorruption strategy has just begun being implemented, therefore there's no conclusive data to judge on.

Appendix 2 - *HOW TO INTERPRET THE INDICATORS OF NIS PERFORMANCE?*

While measuring objective data was rather difficult, due to the resources of this research, the design of the approach included interview or focus-group guides that surveyed opinions on both NIS issues and integrity concept at large. The interviewees and the participants at the focus groups were decision makers or people at the middle-top level in the organizations belonging to the pillar. The interviews were designed on semi-structure questions lists. It started with open questions based on oral history about the interviewee and the organization he/ she works at, the pillars that his/ her activity involves interaction with and internal and external activities regarding integrity, as well as general opinions on corruption and its dimensions. Then, the interesting (for our topic) examples that were mentioned were developed in details.

The second stage of the interview was designed upon NIS TOR questions, and also on objective data regarding the activity f that organization, regarding the relationship that the employer institution would have with other institutions/ organizations from the same or other pillar. A small questionnaire was applied afterwards, where the interviewee was asked to mark in his opinion performances of the pillars. Therefore, various guides were applied, depending on the subject's activity and availability. For the focus groups, the subjects were also put to describe there activities within the institutions/ organizations they belonged to, and some statements on how these institutions interact at the level of the same pillar or other pillars, as NIS paradigm was presented.

Then, the interviewees were put interact within the group using the same paradigm, and to describe scenarios that they know and imagine about the "real" NIS in Romania, as well as about the hypothetical/ ideal-type NIS. They built hierarchies depending of their perception of the System: most important pillars, most active ones, most integer ones, most powerful and vice-versa.

In the end, a projective game was used, using pictures with animals, and the interviewees were asked to project identities of the pillars to the pictures and to justify the option. These associations were then justified and compared depending on the pillar they belonged to be in. Also, a small questionnaire was applied in the end of the group process.

Then, we analyzed the typologies of answers, the frequencies and the intensity of the concepts used by the interviewees, in order to describe the general opinions and the most intense ones on the topics in the interviews. Some of them were weighted on the belonging variables. Criticizing opinions were defined, for instance, by "declared" oppositions from some interviewees. To exemplify, some reporters would by default be skeptical about governmental pillar, while the representatives of the civil sector would be more skeptical to mass-media. It is difficult to measure this bias; however, the indicators we built afterwards were designed to translate these biases onto numbers.

The formulas are mentioned below.[3]

[3]Thus, we could use some types of answers in order to design indicators and indexes:
A: An index of the vertical strength of the pillar towards integrity (IvP). It is a composite formula between two indicators that were, also, built on other two indicators each. Consequently:
A1.**The objective performance indicator (IfP)** was based on answers regarding facts, objective data. For building it, we used
A1a) An indicator of positive facts about the performance towards integrity (IcpP)
A1b) An indicator of constraints that were mentioned as real data/ facts. (IcsP)
A2. **The subjective performance indicator (ISP)** was based in answers regarding personal, subjective opinions on performances of the pillar. For building it, we used:
A2a) An indicator of positive opinions about integrity performance (IpP)

With these indicators and indexes, taken into account that the data came from interpreting interviews and focus-groups, one could observe a hierarchy of pillars (Table 1), as gross data interpretations, and, also, can observe various combinations. For instance, in Table 2, it can be easily observed the "strength" of each pillar towards NIS, and, evidently, towards other pillars. The red figures show the pillar that would be less influenced towards integrity by the pillar named in the column. The green figures would show the most powerful influence that the "column" pillar would have on another pillar. Consequently, the principal diagonal (the grey area) contains the so-called internal control indicators (intra-pillar integrity capacity). The numbers were made on a combination between a pillar's IoR divided to each pillar's IfP (Integrity control capacity towards other pillars or intra-pillar). The areas in orange show aberrant data, that slips away from the overall indicator distribution. This would apparently show either a high performance for the given pillar (namely, the Ombudsman) or, more likely, a lack of interaction or activity between the given pillar and the others or some of them.
The table 3 includes "measures" the way a pillar is controlled by others, tuned up by the indicator's IrC of each pillar/ divided by the pillar's IFP. This could be read as a measure of the way a pillar becomes more integer through it's interaction with others or (when the values are positive), on the other hand, that the interaction influences or influences negatively the integrity of the given pillar.
able 1 NIS Perfomance

A2b) An indicator of negative opinions about integrity performance (IpC)
B: **An index of the horizontal strength of the pillar towards integrity (IOP)**. It is, as above, a composite formula between two indicators that were, also, built on other two indicators each. Consequently:
B1.**The objective indicator on inter-pillar capacity (IOR)** was based on answers regarding facts, objective data. For building it, we used
B1a) An indicator of positive facts about the performance towards integrity inter-pillar interactions (IcpR)
B1b) An indicator of constraints of the inter-pillar interactions that were mentioned as real data/ facts. (IcsR)
B2. **The subjective performance indicator on "integrity" interaction/ communication (IrC)** was based in answers regarding personal, subjective opinions on performances of the pillar. For building it, we used:
B2a) An indicator on perception indicator (self evaluation) (IpR)
B2b) An indicator of inter-pillar integrity "communication" feed-back evaluation (IfR)

	Executive	Legislative	Judiciary	Auditor General	Watchdog Agencies	Ombudsman	Civil Service	Mass Media	Business Sector	Civil Society
IcpP	2.30	3.30	3.30	2.10	2.10	0.10	2.40	4.40	4.70	4.40
IcsP	3.10	2.10	3.10	4.60	1.10	0.01	2.80	0.32	2.10	0.22
IFP	-0.08	0.12	0.02	-0.25	0.10	0.01	-0.04	0.32	0.26	0.42
IpP	3.50	4.50	2.50	1.90	2.50	2.10	3.50	4.90	4.90	4.90
Ipc	3.80	4.30	4.30	4.10	3.20	2.00	3.80	2.50	2.00	2.50
ISP	-0.30	0.02	-0.18	-0.22	-0.07	0.01	-0.30	0.24	0.29	0.24
IVP	26.70	60.00	-1.11	11.36	-14.28	9.00	32.50	9.17	8.97	17.42
IcpR	2.40	4.40	4.70	1.90	2.10	0.12	2.40	2.80	2.10	2.80
IcsR	2.60	2.60	3.60	4.50	2.70	1.00	2.60	2.10	2.09	2.10
IOR	-0.10	0.90	0.55	-1.30	-0.03	-0.44	-0.11	0.35	0.05	0.35
IpR	4.10	4.40	4.70	1.10	4.05	2.10	5.10	4.89	4.89	4.89
IfR	2.30	1.30	4.30	2.30	2.30	1.00	3.30	4.00	4.00	4.00
IrC	0.90	1.55	0.20	-0.60	0.88	0.55	0.90	0.45	0.45	0.45
IOP	-11.11	58.64	27.50	21.70	-34.29	-80.00	-8.71	78.65	11.23	78.65

Table 2

How a pillar influences the integrity of other pillars (the influence maker is on the columns, and the influenced are on the rows. The grey diagonal shows internal control)

	Executive	**Legislative**	**Judiciary**	**Auditor General**	**Watchdog Agencies**	**Ombudsman**	**Civil Service**	**Mass Media**	**Business Sector**	**Civil Society**
Executive	**-0.30**	-11.25	-6.88	16.25	0.38	5.50	**1.38**	-4.38	-0.63	-4.38
Legislative	-0.83	**0.02**	**4.58**	-10.83	-0.25	-3.67	-0.92	2.92	0.42	2.92
Judiciary	-5.00	**45.00**	**-0.18**	**-65.00**	-1.50	**-22.00**	-5.50	17.50	2.50	17.50
Auditor General	0.40	-3.60	-2.20	**-0.22**	0.12	1.76	0.44	-1.40	-0.20	-1.40
Watchdog Agencies	-1.00	9.00	5.50	-13.00	**-0.07**	-4.40	-1.10	3.50	0.50	3.50
Ombudsman	**-11.11**	100.00	61.11	-144.44	**-3.33**	**0.01**	**-12.22**	**38.89**	**5.56**	**38.89**
Civil Service	**2.50**	**-22.50**	**-13.75**	**32.50**	**0.75**	**11.00**	**-0.30**	**-8.75**	**-1.25**	**-8.75**
Mass Media	-0.31	2.83	1.73	-4.09	-0.09	-1.38	-0.35	**0.24**	0.16	1.10
Business Sector	-0.38	3.46	2.12	-5.00	-0.12	-1.69	-0.42	1.35	**0.29**	1.35
Civil Society	-0.24	2.15	1.32	-3.11	-0.07	-1.05	-0.26	0.84	0.12	**0.24**

Table 3. How a pillar is influenced by others (on the column we have the pillars that are influenced and on the rows, we have the pillars that influence) The grey diagonal shows how the pillar reacts on internal control

	Executive	Legislative	Judiciary	Auditor General	Watchdog Agencies	Ombudsman	Civil Service	Mass Media	Business Sector	Civil Society
Executive	**-11.25**	7.50	45.00	-3.60	9.00	100.00	-22.50	2.83	3.46	2.15
Legislative	-19.38	**12.92**	77.50	-6.20	15.50	172.22	-38.75	4.87	5.96	3.71
Judiciary	-2.50	1.67	**10.00**	-0.80	2.00	22.22	-5.00	0.63	0.77	0.48
Auditor General	7.50	-5.00	-30.00	**2.40**	-6.00	-66.67	15.00	-1.89	-2.31	-1.44
Watchdog Agencies	-10.94	7.29	43.75	-3.50	**8.75**	97.22	-21.88	2.75	3.37	2.09
Ombudsman	-6.88	4.58	27.50	-2.20	5.50	**61.11**	-13.75	1.73	2.12	1.32
Civil Service	-11.25	7.50	45.00	-3.60	9.00	100.00	**-22.50**	2.83	3.46	2.15
Mass Media	-5.63	3.75	22.50	-1.80	4.50	50.00	-11.25	**1.42**	1.73	1.08
Business Sector	-5.63	3.75	22.50	-1.80	4.50	50.00	-11.25	1.42	**1.73**	1.08
Civil Society	-5.63	3.75	22.50	-1.80	4.50	50.00	-11.25	1.42	1.73	**1.08**

Interpretations:

The Executive pillar:
It is rather strong in sustaining integrity; however, it has a lack of performance in interacting towards integrity to other pillars. Its most influential activity is on the Civil Service pillar and its least influential activity is on the Ombudsman pillar. The internal control is rather neutral with a small negative outcome towards integrity of the pillar. The most influential towards integrity for the Executive pillar is the Auditor General while the least influential is the Legislative pillar. About the internal control, there is a small reluctance at the intra-pillar level.

The legislative pillar:

It is the strongest pillar in terms of vertical and horizontal performance when it comes to sustain integrity. The internal control is with a very small positive value. Its most influential activity is to the Ombudsman, although an extreme number and, towards the justice system. Its smallest influence is on the Civil Service pillar. However, the state capture paradigm is somewhat proved with the data from the Table 3:

- it is mostly influenced by the executive and the civil service

On the other hand, the internal control, as it seems, is rather positively accepted.

Judiciary

Rather weak in its vertical performance of sustaining NIS, it has positive outcomes when interacting horizontally. The internal control is rather negative, but very close to zero. The most influential activity is to the Ombudsman pillar, but an aberrant value, and towards the Legislative pillar. It is mainly and strongly influenced towards integrity by the legislature, and it receives positively the internal control mechanisms. Its least important influence is towards the Auditor General pillar.

Auditor General

Also, it is one of the strongest pillars in sustaining NIS, both vertically and horizontally. Its internal control is negative. It is least effective relating to the Judiciary pillar and the Ombudsman (again, with extreme values) and most effective for the Civil Service pillar. The internal control is received positively. The pillar that has the smallest influence towards integrity for it is the Legislature and the highest influence (still with a vale below zero) is the Justice System.

The Watchdog Agencies

A pillar with weak values, all negative when it comes to sustain integrity. Its vertical and horizontal values are low. The internal control has also a negative value (but close to zero). It has a positive influence towards integrity to the Civil Service pillar, and its least influence is towards the Ombudsman. It is mostly influenced by the Legislature, and the smallest influences come form the Auditor General pillar. The internal control for this pillar receives a positive feedback.

The Ombudsman

Most of the indicators went farther than the distribution of the values. Consequently, due to its peculiarity of being rather neutral, most of its values are extremely higher. It is, supposedly, with a positive value for the vertical performance towards NIS. On the other hand, its horizontal value is extremely lower. The internal control is rather positive, and the highest influence it would have regards the Civil Service pillar. The smallest influence is to the Justice System. The internal control is

positively received. It is mostly influenced by the Legislative pillar, and it has the smallest influence towards NIS from the Auditor General.

The Civil Service

Vertically, it is a strong pillar to sustain NIS, but it is horizontally weak. The internal control acts negatively towards integrity. The pillar that is mostly influenced towards integrity by the Civil Service pillar is the Executive, while the pillar that is the least influence is the Ombudsman. The internal control has a strong negative feed-back from the pillar. It is mostly influenced by the Auditor general and the smallest influence on it is from the Legislative pillar.

Mass Media

It has a positive value of its vertical performance on sustaining NIS, and a very high, also positive, value for its horizontal performance. It has positive influences on the Judiciary and the Ombudsman (with the same aberrant value). The internal control is positive and rather strong. It is mostly influenced towards integrity by both Executive and Legislative pillars and the least influence on it belongs to the Auditor General. The internal control has a positive feedback.

The Business Sector

It has a positive value of its vertical performance on sustaining NIS, and a positive value for its horizontal performance. It has positive influences on the Ombudsman. The internal control is positive and rather strong. It is mostly influenced towards integrity by the Legislative pillars and the least influence on it belongs to the Auditor General. The internal control has a positive feedback.

The Civil Society

As above, for the Mass Media pillar, the data are quite similar. It has a positive value of its vertical performance on sustaining NIS, and a very high, also positive, value for its horizontal performance. It has positive influences on the Judiciary and the Ombudsman (with the same aberrant value). The internal control is positive and rather strong. It is mostly influenced towards integrity by both Executive and Legislative pillars and the least influence on it belongs to the Auditor General. The internal control has a positive feedback.

Appendix 3 – Checks and balance grid

CONTROLLER / CONTROLLED	LEGISLATURE	EXECUTIVE	JUDICIARY	COURT OF ACCOUNTS	OMBUDSMAN	NATIONAL ANTICORRUPTION PROSECUTION	ASSET CONTROL	CIVIL SERVICE	LOCAL GOVERNMENT	MEDIA	CIVIL SOCIETY	PRIVATE SECTOR	INTERNATIONAL INSTITUTIONS
LEGISLATURE	>Public declaration of asset, interests, and liabilities. (L.115/1996) >Conflicts of interest (not regulated for MPs) and incompatibilities (L. 161/2003) >Public declaration of gifts and hospitality services (L. 115/1996) >Internal transparency: procedure for the adoption of bills (the two statutes of the Chamber of Deputies and of the Senate) >Regime of immunities (Constitution and the two statutes of the Chamber of Deputies and of the Senate)	>The power of the Ministry of Justice to demand inquiry into the wealths of MPs (L. 115/1996)	>The criminal responsibility of the MPs under the immunity regime (the Costitution and the two statutes of the Chamber of Deputies and of the Senate) >The civil reponsability of MPs regarding the unjustified wealth acquiring (L. 115/1996)	>External (on demand from the two chambers) control over the formation and expenditure of the Parliament's budget (L. 94/1992)	NO CONTROL	>Criminal investigation of the MPs under immunity condition (Constitution and the two statutes of the Chamber of Deputies and of the Senate)	>Cercetarea diferentelor de avere nejustificate (L. 115/1996)	NO CONTROL	NO CONTROL	>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001)	>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001) >The right to petition (Constitution and O. 27/2002)	>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001)	>Prevalence of ratified international conventions over the internal legislation (Constitution, European Convention on Extradiction (1957), European Convention on laundering, discovery and seizure of proceeds of crime (1990), the Convention on GRECO (1998), the Penal Convention against Corruption (1999), the Civil Convention against Corruption (1999).

EXECUTIVE	>Transparency of decision-making regarding the bills adopted by the Government, and the control by the Parliament > The control of the Parliament over the Government and its members thorugh motions and interpellations (Constitution) >The criminal responsability of the members of the Goverment (Constution and L. 115/1999)	>Public declaration of asset, interests, and liabilities. (L.115/1996) >Conflicts of interest and incompatibilities (L. 161/2003) >Public declaration of gifts and hospitality services (L. 115/1996) >Internal control on the community funds through the Inspection Department of the Prime Minister (H.G. 1348/ 2004) >Internal audit (L. 672/2002)	>Administrative litigation (L. 29/1990) >Asset control for unjustified wealth (L. 115/1996) >The criminal responsability of the members of Government (L. 115/1999)	>Control of the formation and expenditure of the public and European funds (L. 94/1992)	NO CONTROL	>The criminal investigation of crimes and prosecution of corruption committed by the members of the Government (OUG 43/2002, L. 115/1999)	>Inquiry into the assets of the members of the Government (L. 115/1996)	NO CONTROL	NO CONTROL	>Transparency of decision-making and the free access to public information (L. 52/2003 and L. 544/2003)	>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001) >The right to petition (Constitution and O. 27/2002) >Transparency of deciosion-making (L. 52/2003)	>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001) >The right to petition (Constitution and O. 27/2002) >Transparency of deciosion-making (L. 52/2003)	>Prevalence of ratified international conventions over the internal legislation > Rapoartele internationale privind situatia economica, sociala, democratica din Ro

JUDICIARY	>Decides on the budget and court organisation (L 317/2004)	>Designs the budget of courts and appoints the general prosecutor and the anticorruption prosecutor, as well as their deputies. (L. 317/2004)	>Incompatibilities, conflict of interest regulations (L. 161/2003 and L. 303/2004) >The criminal reponsability of magoistrates (L. 317/2004) >Asset declarations by magistrates (L. 115/1996)	>Control of the formation and expenditure of the budgets of the judiciary system. (L. 94/1992)	NO CONTROL	>The criminal investigation of crimes and prosecution of corruption committed by magistrates (OUG 43/2002)	>Inquiry into the assets of the magistrates (L. 115/1996)	NO CONTROL	NO CONTROL	>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001)	>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001)	NO CONTROL	>International judicial coperation on extradition and rogatory commissions.

COURT OF AUDITORS	>Audits the annual public accounts report prezented to the Parliament (Constitution, L. 94/1992) >Approves the criminal investigation and prosecution of the members of the Court of Auditors. (L. 94/1992(	NO CONTROL	>The criminal responsibility of the members of the Court of Auditors (L. 94/1992 (	>Incompatibilities, conflict of interest regulations (L. 161/2003) >Asset declarations by magistrates (L. 115/1996) >The disciplinary reponsability of the members of the Court of Auditors (L. 94/1992)	>It may control the Court of Accounts for abuse. (L. 35/1997)	>The criminal investigation and prosecution of the members of the Court of Auditors for crimes of corruption. (OUG 43/2002)	>Inquiry into the assets of the members of the Court of Auditors (L. 115/1996)	>Administrative litigation (L. 94/1992)	>Administrative litigation (L. 94/1992)	>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001)	>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001)	NO CONTROL	NO CONTROL

OMBUDSMAN	**>Audits the annual or extraordinary reports of the Ombudsman (L. 35/1997) >The Senate approves the custody, arrest or tement measures of the Ombudsman. (L. 35/1997)**	**NO CONTROL**	**>The criminal reponsability of the Ombudsman under immunity regime (L. 35/1997)**	**>Control over the budgetary accounts of the Ombudsman. (L. 94/1992)**	**>Incompatibilities, conflict of interest regulations (L. 161/2003) >Asset declarations by magistrates (L. 115/1996) >The disciplinary reponsability of the Ombudsman (L. 94/1992)**	**>Urmarirea penala a membrilor AP pentru infractiuni de coruptie (OUG 43/2002 privind PNA)**	**>Inquiry into the assets of the members of the Court of Auditors (L. 115/1996)**	**NO CONTROL**	**NO CONTROL**	**>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001)**	**>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001)**	**>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001)**	**NO CONTROL**

NATIONAL ANTICORRUPTION PROSECUTION	NO CONTROL	>Under the administrative authority of the minister of justice, and under the subordination of the general prosecutor; the general prosecitor and his/her deputies are being appointed at the recommendation of the minister of justice (L. 317/2004)	>Judicial review.	>Control of the courts' budgets (L. 94/1992)	NO CONTROL	>Incompatibilities, conflict of interest regulations (L. 161/2003, l. 303/2004) >Asset declarations by prosecutors (L. 115/1996) >The disciplinary reponsability of prosecutors (L. 94/1992)	>Inquiry into the assets of proseCutors (L. 115/1996)	NO CONTROL	NO CONTROL	>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001)	>The right to free acces to public information and the freedom of speech (Constitution and L. 544/2001)	NO CONTROL	>Internalizarea acquisului european: Conventia Penala asupra Coruptiei (1999), Conventia privind stabilirea GRECO (1998), Conventia Civila privind Coruptia (1999).

CIVIL SERVICE	NO CONTROL	>The Government or ministers appoint the high civil servants. (L. 188/1999) Guvernul sau ministrii numesc in functie inaltii functionari publici (L. 188/1999) >Exercita dreptul de sanctionare disciplinara impotriva inaltilor functionari publici. (L. 188/1999)	>Administrative litigation (L. 94/1992)	>Control of the budgetary exection(L. 94/1992)	>Authority of control over the administrative acts that breach human freedoms and rights . (L. 35/1997)	>Criminal investigation and prosecution of civil servants (OUG 43/2002 privind PNA)	>Asset control (L. 115/1996)	>Civil and diciplinary accountability of civil servants (L. 188/1999).	>Political independence of civil servants (L. 188/1999)	>Right of access to public information and freedom of speech Constitution) >Act on the free access to public information (L. 544/2001)	>Act on the free access to public information (L. 544/2001) >Transparency of decision-making (L. 52/2003) >Right to petition (Constitution and O. 27/2002 on petitions)	>Act on the free access to public information (L. 544/2001) >Transparency of decision-making (L. 52/2003) >Right to petition (Constitution and O. 27/2002 on petitions)	

LOCAL ADMINISTRATION	>The Minister of Public Administration may be called in the Parliament to give reasons for different actions of the prefects. (The Constitution)	>The Government appoints and removes the prefects. The Prime-Minister appoints and removes the deputy-prefects. (L. 215/2001 on local public administration))	>Control of legality over the administrative acts by means of administrative litigation (L. 94/1992) >Dissolution of the local council as a result of 3 definitive rulings by courts against decisions of the local council (L. 215/2001) >The criminal responsability of local elected officials, prefects and deputy prefects.	>Control of the budgetary exection (L. 94/1992)	>Authority of control over the administrative acts that breach human freedoms and rights (L. 35/1997)	>Criminal investigation and prosecution of mayors, deputy-mayors, prefects and deputy prefects for crimes of corruption (OUG 43/2002 privind PNA)	>Investigates the assets of mayors, deputy-mayors, local councillors, prefects, and deputy prefects. (L. 115/1996)		>Incompatibility and conflict of interest regulations (L. 161/2003) >Asset declarations (L. 115/1996)	>Right of access to public information and freedom of speech Constitution) >Act on the free access to public information (L. 544/2001)	>Act on the free access to public information (L. 544/2001) >Transparency of decision-making (L. 52/2003) >Right to petition (Constitution and O. 27/2002 on petitions)	>Act on the free access to public information (L. 544/2001) >Transparency of decision-making (L. 52/2003) >Right to petition (Constitution and O. 27/2002 on petitions)	

MEDIA	>Libel has been recently decriminalized				>Protection of Conbstitutional rights: right of access to public information, freedom of thought, freedom of speech.					>Code of conduct for journalists (self-regulation)		>The right of ownership to impose a certain editorial line on the newspapers.	
CIVIL SOCIETY											>No self-regulation; lack of professional standards		
SECTORUL PRIVAT	>Regulation of the private sector. (Constitution)	>Regulation of the private sector. (Constitutia) >Controls the legallity of the private secto's activities by means of agencies opf control: Fiscal Agency, the Agency for Consumer Protection, Sanitary Inspection etc.		>Control the expenditure of European money through private sector companies. (L. 94/1992)				>Legality control over the activity of private companies.	>Regulates taxes and levies, issues licenses etc (L. 215/2001)	>Right of free acces to information (Constitutia)		>Competition, free initiative, protection of property rights.	>International conventions.

INTERNATIONAL INSTITUTIONS	**>International ratified conventions have prevalence over the Romanian legislation.**			**>OLAF receives the results of inquires on the sue of European funds in Romania.**									

Appendix 4 – Endnotes

1 The safeguard clause is a special provision in the treaties of accession with Bulgaria and Romania (Article 39 of the Accession Protocol with Romanias) which allows the EU Parliament to defer the actual accession by one year if any of the two countries fail to meet certain conditions established in the Accession Treaty.
2 The 1997 Corruption Perception Index is the first year when Romania's corruption was measured by Transparency International's tool.
3 The CPI score relates to perceptions of the degree of corruption as seen by business people, academics and risk analysts, and ranges between 10 (highly clean) and 0 (highly corrupt).
[4] See Public Opinion Barometers, 1999-2005.
5 See 1998 and 1999 Regular Reports on Romania's Progress towards Accession.
6 *Diagnostic Surveys of Corruption in Romania,* the World Bank, Bucharest, March 2001, http://www1.worldbank.org/publicsector/anticorrupt/RomEnglish.pdf (accessed July, 2005).
7 *Corruption Indexes: Regional Corruption Monitoring in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania, and Yugoslavia*, The Southeast European Legal Development Initiative, 2002 http://www.seldi.net/SELDI_fin_e2.PDF
[8] World Bank, 2001.
9 See above, note 3.

11 *Priorities of the accession process to the EU for the period December 2003- December 2004*, Romanian Government, November 2003.
12 Such as the Romanian Court of Auditors, the Constitutional Court or the Ombudsman.
13 One deputy represents 70.000 citizens, while one senator represents 160.000 citizens.
14 For example, Law 115/1996 on assets control.
15 Law 78/2000 on the prevention and sanction of corrupt acts.
16 The anticorruption legislation will be analyzed in the 'Legislation' section.
17 The quality of the legislation passed is not of interest at this point. However, one can look up comments with regards to the quality of legislation within the sections dedicated to the relevant institutions, such as the Judiciary, the Romanian Court of Auditors, the Public Administration, the Police, the Financial Guard etc.
18 Law 94/1992 on the organization and function of the Romanian Court of Auditors.
19 Law 29/1992 on administrative litigation.
20 Law 47/1992 on the organization and function of the Constitutional Court.
21 Law 92/1992 on the organization and function of the judiciary.
22 See the 'civil society' section.
23 The Government also draws its authority from the Presidential legitimacy.
24 Art. 95 of the Romanian Constitution.
25 Art. 96 of the Romanian Constitution.
26 Art. 138 of the Romanian Constitution.
27 See the 'Court of Auditors' section within the NIS.
28 Art. 71 of the Romanian Constitution.
29 As in the actual text of the law, art. 82 (2).
30 Through Urgency Ordinance 77/2003.
31 See the section regarding asset declaration within the 'Executive pillar'.
32 Law 68/1992.
33 See *Monitoring the EU Accession Process: Corruption and Anti-corruption Policy in Romania*, OPEN SOCIETY INSTITUTE 2002, P. 492
[34] At the moment of writing this report, the Romanian President generated a strong debate in the political class and the media by proposing the adoption of the nominal voting system as opposed to the list-based one of the moment.
35 Law 554/2004.
36 Art. 1 lines 4 and 5 of Law 554/2004.
37 Art. 131 of the Romanian Constitution.
38 Analyzed within the administration pillar of integrity.
39 Art. 108 line 2 of the 1991 Romanian Constitution.
40 Art. 108 line 3 of the 1991 Romanian Constitution.
41 Law 115/1999 on ministerial responsibility.

42 Art. 34 of Law 92/1992 on judicial organization (republished, 1997).
43 Asserted by the Romanian Constitution at
44 There were no
45 See the *judiciary* section of the report.
46 Art. 133 of Law 304/2004.
47 Urgency Ordinance 3/2005.
48 Art. 95 of the Romanian Constitution.
49 For example, the commission in charge of controlling the assets of 'dignitaries' (whom are not defined) is formed *inter alia* of two judges from the 'Supreme Tribunal' and one deputy from the 'Great National Assembly'. Both institutions ceased to exist after the fall of communism.
50 For example, the President and his/her staff, mayors, deputy-mayors, MPs, judges, prosecutors, civil servants were not subject to the regulation.
51 Art. 22 of Law 115/1996.
52 The current regulatory framework resulted after modifications by Law 247/2005 reintroduces the power of the Minister of Justice to nominate the General Prosecutor, the Anticorruption Department prosecutor, as well as their deputies.
53 Art. 7 of Law 115/1996.
54 Art. 37 of Law 115/1996.
55 Urgency Ordinance 14/2005.
56 The current draft criminal code proposes the decriminalization of libel and slander.
57 Art. 4.
58 Urgency Ordinance 24/2004.
59 Public owned companies derived from the former state owned companies during communism and which are not subject for privatization due to their strategic importance to the national economy or security.
60 Article 84 (3).
61 Article 84 of the Romanian Constitution.
62 Art. 124, line 3 of the Constitution and art. 3 of Law 92/1992 on the organization of the judiciary.
63 According to art. 88 of Law 92/1992, republished (1997).
64 Traineeships were alternative mechanisms of getting into magisterial positions.
65 Art. 69, line 2.
66 Cases involving prosecutors like Budusan, Lele and Panait wherein the latter finished either by being demoted or by committing suicide (as in the case of Panait) are relevant as to the potential consequences magistrates could face when investigating or judging sensitive cases.
67 Art. 32 and 37 of Law 92/1992 on the organisation of the judiciary.
68 Law 303/2004 on the status of magistrates, Law 304/2004 on the organisation of the judiciary, and Law 317/2004 on the organisation and function of the Superior Council of the Magistracy.
69 Article 1, Law 317/2004.
70 Art. 107 of Law 161/2003.
71 The current framework has been officially acknowledged by the EU when the Commission accepted to close the Justice and Home Affairs Chapter in December 2004.
72 Law 304/2004 on the organization and functioning of the judiciary system. .
73 The *Strategy on the reform of the Judiciary* was adopted in March 2005 through Government Decision 232/2005.
74 Law 247/2005 on the reform of property and justice.
75 *Study on the Perception of Magistrates regarding the Independence of the Judiciary in Romania,* Transparency International – Romania, Bucharest, September 2005.
76 Art. 108 of Law 161/2003.
77 Law 303/2004 on the status of magistrates.
78 Art. 74 of Law 303/2004 on the status of magistrates.
79 The new Constitution (art. 125, line 6) guarantees the judicial control over the administrative acts of public authorities, by means of administrative litigation procedure.
80 Art. 52 of the Romanian Constitution.
81 Law 29/1990 on the administrative litigation.
82 Law 554/2004 on administrative litigation.
83 Art. 1 line 7 of Law 554/2004 on administrative litigation.
84 Art. 109 line 2 of the Romanian Constitution.
85 Government Urgency Ordinance 3/2005.

86 Art. 96 of the Constitution
87 Art. 144, line a) and c).
88 Art. 20 of Law 47/1992 on the organization and functioning of the Constitutional Court.
89 'Enabling laws' are laws issued by the Parliament which give the Government legislating powers in certain areas specifically regulated by the Constitution in art. 115.
90 Constitutional Court decisions 375, 601 and 602 in 2005.
91 Art. 95 of the Romanian Constitution.
92 These reasons are: pleading against political pluralism, the principles of rule of law or against the sovereignty, integrity and independence of Romania.
93 The internal control mechanism is approached under the public administration pillar, as, according to the Romanian legislation, it is part and parcel of the public administration system.
94 Article 139, 1991 Romanian Constitution.
95 Article 1 of Law 94/1992 on the organization and functioning of the Romanian Court of Accounts.
96 Its board members are being appointed by the Parliament; the RCA answers to the Parliament through the annual report on the control of the accounts.
97 In its initial form, the RCA also carried preventive control with the The Preventive Control Direction in charge of the *ex ante* control of the legal commitments of the financial ordinators[97], the actual payments from public budgets, any revisions of the public budgets, and renting or leasing public assets. According to the law, all financial decisions needed validity visas for preventive control from the RCA.
98 Article 2 (2) of Law 94/1992.
99 Article 25 of Law 94/1992.
100 See *1998 and 1999 Regular Reports on Romania's Progress towards accession*, *Financial Control* section.
101 Article xii of Law 99/1999 on measures to accelerate the economic reform.
102 This law was followed by a Government Ordinance 119 in August 1999 which transfers the internal financial control to the Ministry of Finance.
103 Urgency Ordinance 101/2001.
104 Through Law 77/2002 on the amendment of Law 94/1992 on the organization and function of the Romanian Court of Accounts.
105 *Public Sector External Audit*, 2003 and 2004, SIGMA.
106 The 2003 SIGMA report on the Public Sector External Audit mentions that the 2001 annual report on budget execution was issued in December 2002.
107 According to the Senate Public Information Bureau note No. 696/2005.
108 At that time, the title was the High Court of Justice.
109 The abusive nature of the dismissal was a consequence of the court's decision to reinstate the dismissed prosecutor in his former position.
110 Art. 8 of Urgency Ordinance 43/2002.
111 Through Urgency Ordinance 24/2004.
112 Until this amendment, it was the General Prosecutor who decided upon the expenditure necessities and categories of NAPO.
113 Art. 53 of Law 303/2004 on the status of magistrates.
114 Art. 134 of the Romanian Constitution.
115 Law 247/2005 on the reform of the judiciary and property rights.
116 Art. 77 line 4 of the proposed modifying law.
117 At the moment of writing this report there is no official (and objective) system of auditing the 'efficiency' of the NAPO (DNA after October 2005); nor does Law 247/2005 provide for a system of appraisal.
118 Constitutional Court Decision 235/2005.
119 Government Urgency Ordinance 134/2005.
120 Law 188/1999.
121 Law 90/2001.
122 Law 215/2001.
123 Law 161/2003.
124 Law 7/2004.
125 Law 340/2004.
126 Law 393/2004.
127 Law 69/1991 on the local public administration.
128 Art. 4 of Law 188/1999

129 Art. 21 line 3.
130 Art. 21 of Law 393/2004 on the status of local elected officials.
131 Art. 82 of Law 393/2004 on the status of local elected officials.
132 Art. 81 of Law 393/2004 on the status of local elected officials.
133 Art. 4 line d) of Law 188/1999.
134 Art. 40 line 2 of Law 188/1999.
135 Art. 66 line 2 of Law 188/1999.
136 Law 571/2004.
137 With the exception of gifts, which have to be declared.
138 Art. 94 line 3 of Law 161/2003.
139 Art. 98 of Law 161/2003.
140 Art. 87 of Law 161/2003.
141 Art. 88 of Law 161/2003.
142 The term 'significant' denominates a share-holder who owns at least 10% of the company's stock, according to the law.
143 Art. 89 of Law 161/2003.
144 Art. 90 of Law 161/2003.
145 Art. 76 of Law 161/2003.
146 Art. 47 of Law 215/2000.
147 Art. 6 of Law 116/1996.
148 Art. 6 line 4 of Law 116/1996.
149 See 'Executive' section.
150 Government Ordinance 119/1999.
151 Art. 32 of Law 26/1994.
152 Law 360/2002.
153 Government Decision 438/2004.
154 Government Decision 991/2005.
155 Art. 1 of Law 360/2002 on the Charter of Policemen.
156 Art. 13 of Government Decision 438/2004.
157 Art. 59 line 3 of the Charter of the Policemen.
158 Article 55 of the Romanian Constitution.
159 According to the yearly reports by the Romanian PA.
160 1997-1998 Report of the Romanian PA.
161 Law 125/1998.
162 Law 181/2002 on the amendment of Law 35/1997.
163 The unconstitutionality claim is a claim raised during a trial, which asserts the lack of constitutionality of certain legal provisions which condition the solution of the case. Upon the raising of this claim, the case is automatically suspended, and the claim is submitted to the Constitutionality Court for solution.
164 Without the requirement of an unconstitutionality claim in front of a court of law.
165 See yearly reports by the PA.
166 Art. 25 (2) of Law 35/1997.
167 Art. 9 of the Romanian Constitution.
168 Art. 40 of the Romanian Constitution.
169 Art. 19 line 3 of Law 14/2003 on political parties.
170 Art. 17 line b of Law 27/1996 on political parties.
171 Art. 3 of Law 356/2001 on employers associations.
172 Art. 2 line 2 of Law 54/2003 on trade unions.
173 Art. 15 of Law 54/2003 on trade unions.
174 Art. 31 of the Romanian Constitution.
175 La 544/2001 on free access to public information.
176 Law 52/2003.
177 Art. 47 of the 1991 Constitution (art. 51 after the 2003 amendments).
178 Government Ordinance 27/2002.
179 Art. 13 of Government Ordinance 27/2003.
180 Art. 39 of the Romanian Constitution.
181 Law 60/2001.

182 Art. 11 of Law 60/2001.
183 Law 43/2003 on political party and electoral campaign financing.
184 Law 27/2003 on political parties.
185 Art. 14 of Law 43/2003.
186 Public Opinion Barometer, May 2004.
187 Government Decision 291/1991.
188 The Ordinance excepted from the right of administrative and judicial review the decision of selecting a certain procedure of procurement, limiting certain competitors from entering into the request of offers procedure, and rejecting al competitors in block etc (art. 20 line 2).
189 Art. 55 of Government Ordinance 118/1999.
190 Art. 86 of Government Ordinance 118/1999.
191 Government Emergency Ordinance 20/2002.
192 Government Ordinance 16/2002.
193 Art. 9 of the Government Ordinance 16/2002.
194 Health Ministry Order 109/2005.
195 Annex 13, art. 8 of the Health Ministry Order 109/2005.
196 Art. 16 line 3 of Government Urgency Ordinance 60/2001.
197 Art. 15 line 2 of Government Ordinance 20/2002.
198 Art. 4 line b of Ministry of Health Order 109/2005.
199 Art. 9 of Government Ordinance 16/2002.
200 Annex 13, art. 8 of the Health Ministry Order 109/2005.
201 Art. 53 of Government Urgency Ordinance 60/2001.
202 Art. 30 of the Romanian Constitution.
203 Art. 31 of the Romanian Constitution.
204 See the special section dedicated to FOIA in Romania.
205 Art. 205 of the Criminal Code.
206 Law 3/1974.
207 Through Government Urgency Ordinance 58/2002.
208 Law 30/1994.
209 Art. 10 of the Convention.
210 Law 48/1992.
211 Art. 6 of Law 48/1992.
212 Art. 1 and 2 of Law 48/1992.
213 Law 504/2002.
214 Art. 12 of Law 504/2002.
215 Art. 43 line 6 of Law 504/2002.
216 Art. 48 of Law 504/2002.
217 Art. 9 of Law 41/1994.
218 Through Urgency Ordinance 53/2000.
219 Art. 1 line 2 of Law 3/1974.
220 The Deontological Code of journalists.
221 Art. 8 line 5 of Law 544/2001.
222 *The Opacity Index*, PriceWaterHouseCoopers, January 2001.
223 The Opacity Index defines opacity as "lack of clear, accurate, formal, easily discernible, and widely accepted practices", and includes the extent of corruption in government bureaucracy, capacity of commercial laws to secure translations, coherence of economic policies, consistency of accounting standards, and clarity of business regulations.
224
225 *Transition Report 2005*, published by EBRD.
226 *World Business Environment Survey,* World Bank Institute, *2005*.
227 *2004 Regular Report on Romania's Progress Towards Accession,* European Commission, 2004.
228 *Open Letter on full access to public contracts*, signed by Romanian Academic Society, Romania Think Tank, Civic Alliance, Media Monitoring Agency, Center for Independent Journalism, Freedom House Romania, Apador CH, Group for Social Dialog, "Timisoara" Society, Pro Democracy Association, Association for Promotion and Protection of Freedom of Speech, Advocacy Academy, Group for Applied Economics, Transparency International Romania, Institute for Public Policies, October 2005.

229 The Constitution (art. 125, line 6) guarantees the judicial control over the administrative acts of public authorities, by means of administrative litigation procedure.
230 Art. 52 of the Romanian Constitution.
231 Law 554/2004 on administrative litigation.
232 Art. 2 of Law 29/1990 on administrative litigation.
233 Art. 1 line 7 of Law 554/2004 on administrative litigation.
234 At the moment of writing this report, the Parliament is discussing a draft law that is called to solve the problems of the monitoring and control mechanism of conflicts of interest, incompatibilities, and assets declarations.