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Second Evaluation Round

Compliance Report on Romania

Adopted by GRECO
at its 35th Plenary Meeting
(Strasbourg, 3-7 December 2007)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Romania at its 25th Plenary Meeting (14 October 2005). This report (Greco Eval II Rep (2005) 1E) was made public by GRECO, following authorisation by the authorities of Romania, on 19 October 2005.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Romania submitted their Situation Report (RS-Report) on the measures taken to implement the recommendations on 3 June 2007.
3. At its 26th Plenary Meeting (5-9 December 2005), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Azerbaijan and Luxembourg (later replaced by Austria) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were M. Inam Karimov on behalf of Azerbaijan and M. Christian MANQUET on behalf of Austria. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The present report was subject to a first reading during the 34th Plenary Meeting (Strasbourg, 15-19 October). In view of various objections and additional explanations from the Romanian delegation, GRECO agreed to adjourn the adoption of the report and to re-examine it during a second reading at its 35th plenary meeting. The authorities of Romania were asked to transmit to the Secretariat additional information by 9 November 2007. The requested information was provided on 13 November and taken into account for the drafting of the revised version of the RC report.
5. The objective of the RC-Report is to assess the measures taken by the authorities of Romania, to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

6. It was recalled that GRECO in its evaluation report addressed fifteen recommendations to Romania. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to harmonise the relevant provisions relating to interim measures and confiscation, including value seizure and confiscation, by finalising, as soon as possible, the envisaged amendments on the Criminal code and Code of criminal procedure.*
8. The authorities of Romania report that the Criminal Procedure Code (CPC) was amended by the Law no. 356/2006. One of the amendments is related to the interim measures; seizure can now be ordered to ensure the execution of a possible future confiscation. Thus, according to art. 163 para (2) CPC, provisional measures can be taken during the penal trial (and not just before the trial by the prosecutor or by the court and consist in "freezing through a seizure measure, the movable and immovable goods, in order to apply the special confiscation, to recover the damage resulted from the offence and to guarantee the execution of the fine penalty".
9. It was also reported that Law no. 278/2006 has amended the Criminal Code (CC) in order to further harmonise it with the Criminal Law Convention on Corruption and the Convention on laundering, search, seizure and confiscation of the proceeds from crime (ETS 141). Thus, Art. 118 CC, which represents the general legal framework on confiscation, was complemented with

provisions that were previously included in special laws only, regulating certain categories of crimes (countering corruption, combating money laundering, combating organised crime). Art. 118 would cover at present the confiscation of instruments (objects used to commit an offence), the confiscation of the proceeds of crime, the confiscation of indirect proceeds and the confiscation of the counter-value (if the objects subject to confiscation are not found, monies and goods for a corresponding value shall be confiscated), the confiscation of the benefit - or indirect proceeds - (goods and monies obtained from the exploitation or use of goods subject to confiscation). The Romanian authorities take the view that the persisting inconsistencies (e.g. "movable and immovable goods" under Art. 163 CPC, "money, assets and any other goods" under art. 19 of the Law 78/2000 on preventing, discovering and sanctioning corruption deeds, "objects" under Art. 118 CC) are more apparent than real and would have no significance in practice (the various concepts would be synonyms, they would apply to both movable and immovable / tangible and intangible assets, the concept of object under Section 118 CC would refer to the criminal law concept of the object of the offence and would thus be inclusive of any type of assets etc.).

10. Furthermore, art. 20 of the Law no. 78/2000 on preventing, discovering and sanctioning corruption acts provides that in the course of proceedings related to corruption cases, the seizure is mandatory. Value confiscation for corruption offences is not provided as such but under art. 19 of the same law, the convict can be forced to pay an amount of money equivalent to the proceeds.
11. GRECO takes note of the recent changes to the Romanian legal framework for temporary and final measures meant to target the proceeds of crime. The fact that temporary measures can now be applied to secure a future confiscation is a significant improvement. In the Second Evaluation Round Report, GRECO had expressed concern that the legal framework was inconsistent¹. It would appear that the recent changes have greatly improved the situation and the Romanian authorities are confident that there are no real differences in terminology. . GRECO welcomes the legal changes introduced and the clarification and assurances given by the Romanian authorities as to the consistency of the provisions.
12. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

13. *GRECO recommended to introduce the possibility to confiscate the proceeds of corruption every time it is sanctioned by an administrative penalty.*
14. The authorities of Romania recalled that, until recently, confiscation was applicable only in relation to criminal offences. They also indicated that Law no. 278/4.07.2006 on amending and completing the Criminal Code has modified the general legal framework on confiscation in such a way that art. 118 para. 1 lit. c) and d) do not refer anymore to confiscation solely in relation with the perpetration of a criminal offence, as it was the case in the past. They explained that by

¹ As it was mentioned in Footnote 9 of the Evaluation Report: "Article 118 PC (on confiscation), Articles 254 to 257 PC (on confiscation of money, securities and any other asset constituting the subject of the offence and, where the latter cannot be recovered, their equivalent value) and Article 163 CCP (interim measures), as well as the corresponding provisions of the anti-corruption laws (Article 19 of Law No. 78/2000, Article 22 of GEO No. 43/2002 and Article 13 of Law No. 39/2003, which refer to Article 118 PC, although the wording differs), neither explicitly refer to the concepts of "instruments", "proceeds" or "assets of an equivalent value to such proceeds" as defined in the CoE Conventions on money laundering (ETS 141) and corruption (ETS 173) nor cover the same subjects."

avoiding to use the concept of “offence” (and, instead, by using the word “deed”, the new relevant provisions of art. 118 para. 1 lit d) and e) enable the confiscation of:

- “the objects which were given in order to determine the committing of **a deed** or for rewarding the perpetrator” (art. 118 lit. d)”
 - “the objects obtained through the committing of **the deed** provided by the criminal law, if they are not returned to the injured person and to the extent to which they do not serve to the injured person’s compensation” can be confiscated (art. 118 lit. e).
15. According to the Romanian authorities, it would now be possible to apply those measures also in relation with petty corruption/bribery cases, which are usually subject to the imposition of administrative sanctions (reprimand, warning, fine) as they do not meet the criteria of a social danger inherent to the concept of criminal offence. Furthermore, confiscation is mandatory and administrative sanctions are also to be included into the criminal record.
16. GRECO takes note of this legal amendment. GRECO understands that from now on, even in case of petty corruption, it is art. 118 (and its mandatory confiscation regime) that would apply in principle, instead of the administrative sanctions under Art. 91 (reprimand, written warning, fine ranging from the equivalent of € 2,69 to € 269) applicable to offences which do not represent a threat for society. This would, indeed, ensure that corruption is always sanctioned by confiscation of the proceeds. However, Romania might need to take additional measures to make it clear that even petty corruption represents a threat for society which needs to be taken seriously (i.e. to make sure that art. 118 is applied as opposed to art. 91).
17. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

18. *GRECO recommended to strengthen the capacities of prosecution services and courts to deal efficiently with corruption cases within a reasonable time, in particular through specialisation and training.*
19. The authorities of Romania report that between October 2005 and May 2007, the National Institute for Magistracy (NIM) organised several training sessions to address the issue of dealing efficiently with corruption cases within a reasonable time: a) under the PHARE project “*Enhancing the institutional capacity of the National Anticorruption Department*” (currently the National Anticorruption Directorate - NAD), from October 2005 to the beginning of 2007 10 seminars on combating corruption were organised and attended by 128 judges; b) two Romanian junior magistrates attended in July 2006 a summer school for 23 participants on “Regional and international cooperation in fighting corruption and organised crime” organised under the aegis of the Stability Pact Anticorruption Initiative and Stability Pact Initiative for the Fight Organised Crime; c) NIM and the Ministry of Justice have drafted a continuous training programme covering the 2nd semester of 2006 and the year 2007, and dealing with economic and financial crimes² and

² The training programme in the field of economic and financial crimes comprises 22 seminars for 550 judges and prosecutors from all levels of jurisdiction. Its is mainly meant for judges (out of the 25 participants/seminar, 20 - 22 are judges and 3 - 5 prosecutors) and focuses on: *corruption related offences, offences against financial interests of the European Communities, offences related to trading companies, offences against the patrimony, forgery offences, money laundering offences, offences related to customs, illegal issuing of payment orders, witness protection, illegal reimbursement of VAT* etc. In 2006, 3 seminars were organised and attended by 48 judges and 11 prosecutors. In 2007, 6 seminars were organised and attended by 20 judges, 72 prosecutors and 2 experts from the National Penitentiary Authority.

judicial cooperation in civil and criminal matters³. NIM also established in 2006 a training programme on the management of courts and prosecutorial services⁴. As a result, 4 seminars were organised in the period January-July 2007 (it involved 39 judges and 34 prosecutors with managerial responsibilities).

20. The Romanian authorities also provided in an annex a comprehensive list of training activities on anti-money laundering and anti-terrorist financing issues organised between November 2003 and December 2005 (mostly for personnel from law enforcement agencies and the Customs, and for prosecutors attached to the high Court of Cassation and Justice) and in 2006 (for law enforcement personnel).
21. Finally, the Romanian authorities report that the Public Prosecutor's Office is currently taking measures to resolve staffing problems by redistributing prosecutors' positions to ensure a fairer distribution of the caseload and by filling the vacant senior and non-senior positions within the structures of the Public Prosecutor's Office. They also indicate that in principle, judges who attend specialist training on corruption-related issues are then appointed to take part in panels judging such offences. Statistics provided to GRECO show that the number of corruption cases dealt with by the courts is quite low compared to the number of cases investigated⁵.
22. GRECO takes note of the information provided. On the one side, some targeted training has been provided to personnel dedicated to the fight against corruption. On the other side, the various training initiatives reported covered a much wider area than that aimed at by recommendation iii and some of them already existed at the time of the on-site visit. In addition, it is often referred to categories of beneficiaries other than those mentioned as a particular source of concern in the evaluation report (first instance prosecutors and judges).
23. This being said, GRECO welcomes the efforts made to offer at least some training opportunities on anti-corruption matters and in a number of disciplines which are crucial from the perspective of dealing adequately with corruption cases (money laundering in particular). However, more could have been done in that area. GRECO also takes note with interest of the current efforts to distribute more equitably the workload among prosecutors, to fill the vacant positions of prosecutors and to provide also for training opportunities in the field of management of courts and prosecutorial services. The exact content and impact of those measures needs to be further assessed, though. GRECO would also have welcome further initiatives to increase the resources and specialisation (which is - besides training - a specific element of the recommendation) of prosecutors and judges. This is all the more important since for the time being it would seem from the statistics available that the judicial authorities have difficulties to cope with the workload generated by corruption-related cases submitted to them.

³ *The training programme on judicial cooperation in civil and criminal matters*: under this programme, 5 seminars were organised in 2006 (78 judges, 32 prosecutors and 16 experts from the Ministry of Justice attended), and 2 in 2007 (47 judges participated). The training programme focuses on: *judicial recognition of foreign judgments; extradition; rogatory commissions; European arrest warrant; transfer of procedures; transfer of convicts; pre-trial arrest in extradition cases; judicial cooperation within the EU in civil and commercial matters* etc. 3 seminars attended by 62 judges and 25 prosecutors were organized within this programme in the reference period.

⁴ The training focuses on: *time management, communication, financial management, budgetary instruments, leadership principles, conflict management, conflict negotiations* etc.

⁵ Between July and September 2007:

- the regular prosecutor's offices investigated 902 corruption allegations involving 649 persons; in the same period, courts rendered 6 final conviction judgments and 11 non-final conviction judgments;
- NAD and its territorial units investigated 267 cases; in the same period, courts rendered 6 non final conviction judgments against 7 offenders; one final conviction decision was rendered against 1 offender.

24. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

25. *GRECO recommended to establish effective co-operation among the National Anti-Corruption Prosecution Office, the Prosecutor's Office at the High Court of Cassation and Justice and the competent police departments in cases combining corruption, money laundering and/or organised crime.*
26. The authorities of Romania report a series of changes since the evaluation. In fact, the National Anticorruption Prosecutor's Office (NAPO), initially set up as an independent prosecutor's office, was transformed through Government Emergency Ordinance no. 134/2005⁶ (approved through Law no. 54/2006⁷) into the (new) National Anticorruption Directorate (NAD), a structure with legal personality within the Prosecutor's Office attached to the High Court of Cassation and Justice (PoHCCJ). At the same time, the Directorate for the investigation of Organised Crime and Terrorist Offences – DIOCTO - that was also established within PoHCCJ in 2004, was reorganised in 2006, following the model of NAD.
27. Government Emergency Ordinance 131/2006 modified DIOCTO's competence, in order to introduce a clear delimitation with NAD. After reorganising the two directorates and after the appointment of NAD's chief prosecutor in October 2005 and of the General Prosecutor in October 2006, further measures to address cooperation in practice between these prosecutor's offices were taken (the prosecutors concerned are required to verify their competence, before carrying out any act of criminal investigation, and if he/she is not competent, to send, immediately, the case to the competent prosecutor; strict observance of the procedural provisions is required if an offence under NAD's competence and an offence under DIOCTO's competence are connected etc.).
28. The General Anticorruption Directorate (GAD) within the Ministry of Interior and Administrative Reform (MIAR) was set up through law no. 161/30.05.2005 (to deal with corruption cases within the Ministry); in June 2005, GAD and NAD concluded a cooperation protocol according to which GAD police officers have to notify NAD immediately about the occurrence of any offence falling under NAD's competence; also, the prosecutor to whom the case was assigned may delegate a police officer from GAD to carry out the investigative acts that he/she (the prosecutor) orders. In 2006, NAD received 228 notifications from police bodies, regarding offences falling under NAD's competence (this is 108 more than in 2005). Out of these, 150 notifications were received from GAD.
29. The National Office for Preventing and Countering Money Laundering (NOPCML) organised periodical meetings⁸ with representatives of the main institutions involved in preventing and countering money laundering and terrorist financing: POHCCJ – Department of Investigating Offences of Organised Crime and Terrorism (DIOOCT), NAD, the National Bank of Romania, Financial Guard, National Agency of Fiscal Administration (NAFA), Ministry of the Interior and Administrative Reform – General Department of Countering Organised Crime, in order to analyse the activity of these institutions in the 1st semester of 2006 and to strengthen cooperation. Further

⁶ Published in the Official Journal no. 899 from October 7, 2005.

⁷ Published in the Official Journal no. 226 from March 13, 2006.

⁸ During the period of 10-12 January 2006, NOPCML organised meetings with the main institutions involved in the field (POHCCJ, NAD, NBR, Financial Guard, NAFA,) in order to coordinate the activities for 2006, to increase the quality and impact of files emanating from the prosecutors' offices, and to foster inter-institutional cooperation.

meetings took place in 2007 which concluded that there is a need to develop joint training activities for financial analysts, prosecutors, police and banking employees, and to improve feedback from the prosecutorial bodies to the NOPCML.

30. Furthermore, it is foreseen that POHCCJ and GAD conclude a protocol with a view to strengthen the cooperation between the two institutions and to enhance the efficiency in cases when the institutional cooperation is required, especially in cases of petty and medium corruption.
31. GRECO takes note of the institutional changes introduced at the level of the prosecutor general's office and the Ministry of Interior and Administrative Reform (MIAR). The National Anticorruption Prosecutor's Office (NAPO) was transformed despite the findings of the evaluation report which stated that *NAPO is a young institution which should be encouraged in its work*. It is encouraging to see that measures have already been taken to clarify the respective fields of competence of the new prosecution services. GRECO also takes note of the project to draft a cooperation protocol between the prosecution services and the new body responsible within MIAR to investigate internal corruption cases. The National Office for Preventing and Countering Money Laundering (NOPCML) has also initiated measures to foster cooperation between itself and the other agencies.
32. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

Recommendation v.

33. *GRECO recommended to review, as necessary, the legislation unduly restricting the right of individuals to have access to official documents and to provide appropriate training to public officials on the implementation of the rules on freedom of information.*
34. The authorities of Romania reported that Law no. 544/2001 on the freedom of access to information of public interest was modified by Law no. 371/2006 and Law no. 380/2006. Law no. 371/2006 introduced a new, broader⁹ definition of the concept of "public institution" which is now as follows: „authority or public institution shall mean any public institution that uses or manages public financial resources, any autonomous *regie* [entity managing an activity of public interest], national company, any company under control of a central or local public authority and where the state or a territorial unit is the main shareholder". Law no. 380/2006 was meant to strengthen transparency in the field of public procurement by introducing a new art. 11¹ stipulating that "Any authority which is a party to an agreement, as defined by the law, has the obligation to make available to any natural or legal person interested, according to art. 7, the public procurement contracts". The Romanian authorities stress that in principle, access to information is in principle widely ensured; the sole restrictions would basically be those justified by the need to protect information concerning criminal investigations, intellectual property rights and fair competition. Possible problems would thus mostly be of a practical nature.
35. The 2006 report of the Agency for Governmental Strategies (AGS), which has the duty to monitor the implementation of Law no. 544/2001 and other legal provisions, shows that the total number of requests from citizens is decreasing but still remaining at a high level - 384,640 in 2006, 710,000 in 2005, 815,000 in 2004. It is anticipated that they could increase again as a result of the citizens' greater awareness of their rights. It was noticed that from year to year, less

⁹ The earlier definition was as follows: "A public authority or institution shall mean any public authority or institution, as well as any autonomous *regies* that uses public financial resources and that carries out its activity in Romania, according to the Constitution".

confusions between access to information of public interest and petitions motivated by private interests are made and the requests are more pertinent, reaching general interest areas, which is the main purpose of the law. Overall, as regards the implementation in 2006 of Law no. 544/2001 on the freedom of access to information of public interest and Law no. 52/2003 on transparency in decision making in the public administration, improvements are noticeable but there are still various areas regarded as “weak points”.

36. The Romanian authorities also report that professional training activities on transparency were organised for more than 250 persons (4 seminars for the personnel from central and local public institutions on the implementation of Law no. 544/2001 and Law no. 52/2003, 2 seminars for personnel from the central administration and prefects’ offices concerning the drafting of annual reports on access to information and decisional transparency).
37. GRECO takes note of the amendments introduced to Law no. 371/2006 (broadening the definition of “public institution”) and to Law no. 380/2006 (declassifying public procurement contracts). GRECO understands that the access to information held by a broader range of public entities or entities assimilated to public entities (due to the nature of their activity or controlling majority) is now in principle subject to a more consistent legal framework. It would seem that the legal situation has now been clarified and the Romanian authorities are confident that the remaining exceptions apply to a very limited number of areas only. The legislative changes were complemented by training to some public officials, in line with the recommendation. GRECO welcomes these initiatives and takes the view that they fulfil the expectations of the recommendation. Bearing in mind the information referred to in the Second Round Evaluation Report on Romania¹⁰, GRECO would welcome it if Romania could provide further training to officials in the area of access to information so as to ensure that it is not unduly restricted in practice by erroneous interpretations of the legal texts.
38. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Recommendation vi.

39. *GRECO recommended to ensure that all public officials within the wider public sector are subject to appropriate rules, particularly in the field of recruitment and promotion.*
40. The Romanian authorities indicate that the law on the statute of civil servants (Law no. 188/1999) was amended in 2006 by law no. 251/2006. In particular the conditions have been established for the recruitment of high-ranking civil servants (i.e. secretary-general of the Government and deputy secretary-general of the Government; secretary-general and deputy secretary-general in ministries and other specialist bodies of the central public administration; prefect; deputy prefect; governmental inspector). This category of officials represents a total of only some 177 persons (situation in November 2007).
41. The recruitment of these high-ranking civil servants is now done by a national competition. The recruitment shall be done by a permanent independent commission¹¹, composed of 7 members,

¹⁰ As it was mentioned in the report (para. 46) “Differences of opinion (...) remain as regards the implementation of these Laws, on whether or not specific categories of sensitive information can be communicated, by virtue, for instance, of legislation on the protection of State secrets, archives and personal data, as well as at local authority level, as regards information on the restoration of property rights, issuing of certificates, etc.

¹¹ The Romanian authorities indicated that measures have been taken to ensure the political independence, impartiality and professionalism of the members of the contest commission. Their regime of incompatibilities and conflicts of interest have also been clarified and detailed. The commission consists of 7 members, appointed by the prime-minister’s decision. The

appointed through a decision of the Prime Minister. The commission members are appointed for a term of 10 years and a half, and the rotation principle is applicable. The persons passing the national exam mentioned above shall be appointed to corresponding positions of high-ranking civil servants. The structure, the criteria for designing the members, the prerogatives and the organisational and functional regulations for the commission were established by a government decision no 341/2007 published in the Official Journal in April 2007 (the members of the Commission have not been appointed yet).

42. The appraisal of the individual results of high-ranking civil servants is to be done annually and the general appraisal (professional skills, capacity to exercise the function etc.) every 2 years¹². They have to attend professional training every year.
43. GRECO takes note of the changes that were introduced to subordinate the category of high-ranking civil servants to the general civil servants statute, and thereby to make their recruitment and career system more transparent and based on objective criteria. This is to be welcome. This being said, the number of posts concerned by the reform appears to be very limited and does not fundamentally change the current proportion of officials regulated by the general civil service recruitment and career system (as indicated in the Second Round Evaluation Report, some 10% of all public officials only are subject to the law of 1999 amended in 2003). Overall, the changes introduced appear insufficient and further measures are needed to ensure that all employees of the public sector are subject to rules similar to those of law no.188/1999.
44. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

45. *GRECO recommended to complement the existing codes of conduct, where necessary (eg regarding reactions to gifts and reporting of corruption) and to ensure that all public officials receive appropriate training.*
46. The authorities of Romania recall that the Law no. 7/2004 on the Code of Conduct for public servants already prohibits the acceptance of presents, services and advantages: "civil servants shall not ask for or accept presents, services, favours, invitations or any other advantages for themselves, their families, parents, friends or people they have business or political relations with, which might influence their impartiality in exerting their public duties or which might stand for rewards related to their position". As it was already indicated in the evaluation report (para. 49) however, *codes [of conduct] are intended not to lay down legal regulations on a given matter but to guide conduct, and are specifically drafted in less specifically legal language.*
47. The Romanian authorities also referred to a series of training activities connected with the above Code, notably in the framework of the 2003 PHARE project "Transparency and ethics in public administration" which was implemented between October 2005 and October 2006 (e.g. a group of 36 public servants was trained to become ethics counsellors; an awareness campaign and training session took place that involved 360 public servants from local authorities as well as

commission members have a 10 years and a half mandate and are appointed based on the rotation principle. The persons passing the national exam mentioned above shall be appointed to corresponding positions of high-ranking civil servants. The structure, the criteria for the designation of the members, the prerogatives and the organisational and functional regulation for the commission shall be established through a Government Decision, upon the proposal of the National Agency for Public Servants (NAPS).

¹² The annual and the general appraisal are done by an appraisal committee whose members are appointed by the prime minister, upon the proposal of the minister of interior and administrative reform.

2400 citizens, 2 press conferences, 16 television broadcastings, 16 press articles and 3 radio broadcastings were produced, 5000 brochures and 2000 posters were published and a manual on the "Implementation of the Code of Conduct" was distributed to 1000 public servants).

48. By a Government Decision N° 991/2005, the Code of Conduct and Deontology of the policeman was approved (it was issued in consideration of Council of Europe Recommendation N°R(2001)10 on the European Code of police ethics), and various promotion and publication initiatives were taken: publishing on the website of the Ministry of Administration and Interior, posting at the all police stations and distribution of brochures to all employees of the Ministry; release of a practical guide for applying the provisions of the Code (the guide contains rules on how policemen must behave and what to do when they are confronted with corruption).
49. By Order no. 6582/2005, the Code of Conduct for public servants from the Customs was approved; it contains principles on the issue of gifts and reporting of corruption¹³.
50. Finally, the Romanian authorities referred to the Law no. 571/2004¹⁴ on the protection of personnel from public authorities who report infringements (law on whistleblowers).
51. GRECO takes note of the information provided. Some developments have taken place since the on-site visit in February 2005. The project on "Transparency and ethics in public administration" is a major initiative even if it is not totally clear to what extent it has taken into account recommendation vii. It addressed a larger public, including a group of about 1000 officials. New codes of conduct for police officers and customs officers have been adopted and GRECO observes that the latter seems to address the concern that led to recommendation vii. All these measures go in the right direction. This being said, GRECO notes that there are still various codes of ethics (20 or so according to the Evaluation Report) that would not adequately cover conflicts of interest, the detection and reporting of corruption, reactions to gifts etc. Further measures will therefore be needed to streamline and harmonise the ethical standards and to clearly regulate the afore-mentioned matters. GRECO would also welcome it, if a broader range of officials would be offered training in this field.
52. Consequently, GRECO concludes that recommendation vii has been partly implemented.

Recommendations viii. and ix.

53. *GRECO recommended to extend the scope of the existing rules on conflicts of interest and incompatibilities, and make them applicable to all public officials exercising an activity involving prerogatives of public authority, and to introduce an appropriate system for supervising the application of these rules, including in the field of abusive migration by public officials to the private sector. (viii)*
54. *GRECO recommended to introduce an effective system for supervising declarations of assets and interests. (ix)*

¹³ Art. 16: "the public servant is obliged to: lit b) not to let him/her self influenced in making a decision by gifts from natural or legal person, letter c) to reject and to inform his/her superior by any act of corruption or illegal actions"

Art. 17: "It is forbidden for a public servant from the Customs: lit b) to solicit, to receive or to accept gifts, loans or other benefits, that is for him/herself, the family, parents, friends or persons with which he/she had business or political relationship and which might affect his/her impartiality in exerting his/her duty or which might be considered as a reward".

¹⁴ Published in the Official Journal no. 1214 from December, 2004

55. The authorities of Romania report that the law 144/2007 setting up the National Integrity Agency (NIA) was adopted on 9 May 2007 and published in the Official Journal no. 359/25.05.2007. Since several amendments were needed to make the new body operational and effective in the shortest possible time, the law was complemented and amended by Government Emergency Ordinance 49/2007.
56. Firstly, the new law extended the obligation to disclose assets and interests (in accordance with Law no. 115/1996 *for the declaration and control of the assets of the dignitaries, magistrates, persons with leading and control positions and the public servants*, as subsequently amended): a) the list of categories of persons was extended to include at present also: members of the executive and monitoring boards of state owned companies or companies of public interest, the entire personnel of institutions involved in privatisations (previously only the heads of these institutions were subject to the obligation); b) persons running for an elected office are now under the obligation to disclose also their interests, in addition to their assets (the obligation applies to personal assets, assets held in common, and assets held jointly with family members).
57. Secondly, by a law no 144/2007 the National Integrity Agency (hereinafter NIA) was established, as it was announced in the Second Round Evaluation Report, as an autonomous administrative authority with legal personality and national competence, responsible for the verification of assets, conflicts of interests and incompatibilities. There is no limitation period for the verification of assets acquired during the exercise of a public function, and certain sanctions (deprivation of the right to hold a public office) are also applicable to persons no longer in office. The NIA is meant to employ 200 staff, the verification procedure can start *ex officio* or upon notification from any legal or natural person; the inspectors have the right to request information and documents from public and private persons and to commission expert reports (refusing to provide the information is punishable by a fine); the regime of sanctions includes confiscation of assets (in case of unjustified obvious discrepancies between the official income and the real income), disciplinary sanctions, deprivation of the right to hold a public function, fines as well as criminal sanctions. The recruitments for the NIA have not started yet (it is expected that the institution will begin to work with 25 staff seconded from various public bodies), but the institution's budget (3,8 million RON – about € 1,26 million) was adopted by emergency ordinance 78/2007.
58. Finally, the Romanian authorities report that a specific (criminal) offence of “conflict of interests” was introduced in July 2006 by an amendment to the Criminal Code. The mechanism applies to public employees who – in the course of their activities and as a result of an act or participating in a decision making process, obtain a direct or indirect material advantage for themselves or another person with whom there are (or there have been in the last 5 years) commercial or working relations. The offence is punishable by imprisonment for a term of 6 months to 5 years.
59. GRECO takes note of the above information which was provided in relation to recommendation viii as well as to recommendation ix. GRECO recalls that Recommendation viii is meant to address four types of issues (see para. 50 of the Evaluation Report) : 1) the fact that art. 70 of the Law N° 161/2003 restricts the concept of conflict of interest to financial interest (and does not address incompatibilities of functions); 2) many categories of public officials, such as advisers, dignitaries' private staff, physicians, teachers and the employees of public enterprises and private companies holding franchises and/or empowered to issue licences on behalf of the State, are not subject to satisfactory rules in the field of conflicts of interest, incompatibilities and ancillary

- activities; 3) there was insufficient control¹⁵ or no¹⁶ authority responsible for supervising legislation on conflicts of interest and incompatibilities; 4) legislative provisions prohibit improper moves by civil servants (but not all other public employees¹⁷) to the private sector (*pantouflage*), although these provisions do not lay down any mechanisms or systems for effectively supervising such moves.
60. On the scope and concept of conflicts of interests, it would appear that it was not affected by the reform and remains limited to financial interests. In fact, the Evaluation Report made a distinction between the prevention of conflicts of interests and incompatibilities of functions (addressed under recommendation viii and the underlying reasoning contained in paragraph 50.), as well as the declaration of assets and financial interests (addressed under recommendation ix and the underlying reasoning contained in paragraph 52).
61. The same applies to the issue of lack of supervision over movements between the public and private sector, as the Romanian authorities do not report any new measures concerning abusive migration by public officials to the private sector.
62. On the issue of insufficient coverage in the field of conflicts of interest, incompatibilities and ancillary activities, and on the issue of insufficient or inexistent control mechanisms in those fields, GRECO understands that the scope *ratione personae* of the rules has been extended to some degree to include a larger number of senior officials or officials who are exposed to corruption risks. The improvements also included the control exercised in respect of candidates running for an elected position. It would appear that some of the categories mentioned in the Evaluation Report remain uncovered (advisers, dignitaries' private staff, physicians, teachers). In the absence of further explanations, it remains difficult to determine whether all appropriate categories of officials are now subject to adequate provisions concerning the control of interests and whether the new category of "members of private companies holding franchises and/or empowered to issue licences on behalf of the State" are adequately covered. No information at all was provided on possible improvements concerning the matter of incompatibilities as such. In principle, the new Section 253 of the Criminal Code which now criminalises conflicts of interests, refers to a "public employee", which seems to cover any category of public official, but then, this raises the issue of consistency with the administrative provisions.
63. In relation to part of recommendation viii and to recommendation ix, GRECO takes note of the creation of the National Integrity Agency, which appears to be an ambitious approach to deal with the control of assets and economic interests of public officials. The NIA seems to have all the ingredients needed and GRECO very much hopes that the NIA will be in a position to fulfil its function in a determined and credible manner. That said, in order to fully assess the effectiveness of the NIA in practice, it will be necessary to wait for the Agency to produce its first concrete results.
64. GRECO concludes that recommendation viii and ix have been partly implemented.

¹⁵ While senior officials cannot join the Governing Boards of political parties, Prefects, as "appointed dignitaries", continue as party leaders at the local level, which is authorised under Article 85 of Law No. 161/2003; they are also responsible for verifying the situation of local elected representatives where incompatibilities are concerned.

¹⁶ a draft Government Decision provided for the setting up of a National Integrity Agency with powers of supervision in the field of conflicts of interest and declarations of assets and interests

¹⁷ There are also incompatibilities for magistrates, who - for instance - cannot work thereafter as private attorneys at law.

Recommendation x.

65. *GRECO recommended to consolidate and harmonise the rules on gifts and to provide appropriate training for public officials, drawing on practical examples.*
66. The authorities of Romania did not provide information on new developments that would have occurred as a result of this recommendation. Instead, they refer again to the regime of prohibition of gifts in place by virtue of the Law no. 7/2004 on the Code of Conduct for public servants, the Law 477/2004 on the statute of contractual personnel working in public authorities and institutions, and law no. 188/1999. These texts were already in place at the time of the evaluation and mentioned in the report. They also referred to the Ethical Code of fiscal inspectors (approved by the Minister of Economy and Finances through order no. 1753/9.12.2003), which requires also that staff should not solicit, receive or accept gifts, loans or any other services, relating to their work.
67. On the issue of training, the Romanian authorities refer to lists of general training activities and other information appended to their situation report without further details or explanations. One list contains (undated) professional training programmes which would have dealt with the code of conduct for civil servants, integrity and anticorruption issues. Another document provides an overview of the training activities organised in the period of 2005-2006 for staff from the Anti-Corruption General Directorate (some dealing with general police training, others with topics more specific to the field of work of the Directorate such as police ethics, investigating corruption cases, international criminality etc.). The relevance of the last document could not be assessed.
68. GRECO takes note of the information provided. It recalls that the reasoning behind recommendation ix, as it appears in the Second Round Evaluation Report (para. 53), was the wide variety of inconsistent regulations on gifts as well as the lack of training and guidance on how to react to (the common practice of) gifts. In the light of the information provided, GRECO cannot conclude that these concerns have been addressed in an effective manner. Similarly, hardly any sizeable facts have been provided which would allow GRECO to conclude that appropriate training has been provided.
69. GRECO concludes that recommendation x has not been implemented.

Recommendation xi.

70. *GRECO recommended to add the offence of money laundering to the list of criminal offences justifying the professional disqualification for convicted persons.*
71. The authorities of Romania indicate that the Trade Companies Law was amended by the government emergency ordinance no. 82/2007 (published on 29 June 2007) and the offence of money laundering was added to the list¹⁸ of criminal offences justifying disqualifications for convicted persons. The amendment is limited to the founders of companies. As a result, persons with a criminal record are not necessarily prevented from holding a managerial position as there can be situations where the founders and the managers are different persons. The Romanian authorities also stress that under the law No 241/2005 for the prevention and fight against tax

¹⁸ According to art. 6 para. 1 from the law on trade companies, "the persons who, according to the law, are incapacitated or have been sentenced for fraudulent management, breach of trust, forgery, use of forgeries, cheating, embezzlement, perjury, bribery or other criminal offences prescribed by art. 143-145 from the law on insolvency and by the present law, cannot hold the position of founders."

evasion (art. 13), any conviction for an offence provided for in the law is to be communicated by the court to the National Trade Registry Office which then has to make the appropriate entries in the trade registry. This would have a preventive effect also for anti-money laundering purposes since tax evasion is a predicate offence for money laundering.

72. GRECO takes note of the important amendment to the Trade Companies Law. GRECO regrets that persons with a criminal background are still not excluded in all cases from holding a managerial position; without a consistent exclusion, the regime meant to prevent criminals from infiltrating the business sector (for money laundering purposes in particular) is not likely to be as effective as it should or could be. GRECO welcomes the amendment that was passed but invites the Romanian authorities to fine-tune the work already accomplished. As far as the impact of art. 13 of law No 241/2005 is concerned, GRECO finds the link to the objectives pursued by recommendation xi too limited in scope in order to be of major significance in this context.
73. GRECO concludes that recommendation xi has been partly implemented.

Recommendation xii.

74. *GRECO recommended to reinforce checks on the information required by law and the companies' real purposes, during and after registration.*
75. The authorities of Romania report that the President of the National Agency for Fiscal Administration – NAFA - issued a new order (No. 575/2006) which resulted in the establishing of a list of “inactive” and “reactivated”¹⁹ companies; this list was published in the official Journal of Romania no. 850/17.10.2006. The list is updated on a regular basis.
76. Furthermore, the National Anticorruption Directorate (NAD), the National Office for the Prevention and Combating of Money Laundering (NOPCML) and DIOCTO concluded cooperation protocols with the National Office for Trade Register (NOTR) and based on these protocols, the former have now access to the trade register database. The information is used for their investigations, not to do checks on the validity of information or the companies' real purposes.
77. The Romanian authorities also provide statistics on a) the number of sanctions (ban on activities) notified by virtue of Law no. 359/2004 (*on simplifying the formalities for incorporating natural persons, family associations and legal persons in the trade register, tax registration thereof, as well as for authorizing the operation of legal persons, as subsequently amended and supplemented*): between September 2004 and January 2007, 4062 notifications were issued throughout the country (for the city of Bucharest alone, the number is 2082); b) the number of verifications and sanctions applied against companies by the Financial Guard: 36,661 companies were verified during the fourth quarter of 2005 (these have led to 34,725 control acts); for the whole year of 2006, 148,584 companies were subject to such verifications (143,437 control acts); 240 companies were suspended in the 4th quarter of 2005 and 3056 companies in 2006. The figures for 2007 are comparable and for the period January-September 2007, in 526 cases the economic agents could not be identified at the registered headquarters, which rendered the verification of the activity impossible. In those cases, the penal investigation bodies were notified.

¹⁹ Tax payers who have adopted measures to avoid fiscal inspections, the identification of their activity and exact fiscal domicile are declared “inactive” by the authorities (by an order of the President of NAFA); as a consequence, the entity is not allowed to perform its activities any further (authorisations, licenses, agreements etc. are suspended) until the tax payer has taken measures to clarify and remedy the situation, in which case NAFA can pronounce the “reactivation”.

78. GRECO takes note of the information provided. The statistical figures submitted are indicative of a certain level of control activity by the authorities and especially the Financial Guard. Although the controls are basically meant to ensure that entities operate with the proper authorisations and comply with the regulations, GRECO notes that a significant number of cases lead to criminal proceedings and it would appear that ultimately the companies' real purposes are controlled by the judicial authorities. It remains unclear whether these measures have an impact on the number of fictitious companies and lead to corrective action at the level of the registry of companies (reinforcement of checks on the information required by law and the companies' real purposes). GRECO encourages the Romanian authorities to pursue their control, updating and other efforts also at the level of the trade Register.

79. GRECO concludes that recommendation xii has been partly implemented.

Recommendation xiii.

80. *GRECO recommended to actively pursue the current legislative developments aimed at introducing an adequate regime of liability of legal persons for criminal offences committed on their behalf and to establish adequate sanctions or measures for such offences in conformity with the Criminal Law Convention on Corruption.*

81. The authorities of Romania reported that with the adoption of Law no. 278/2006 amending the Criminal Code²⁰, the criminal liability of legal persons was introduced for the first time in Romania. It is applicable to all legal persons, except the State and public authorities carrying out an activity that is not of private interest. The main sanction is a fine ranging from approx. EUR 714 to 571,428 (other additional sanctions are foreseen: dissolution; suspension of the activity from 3 months to 1 year or suspension from 3 months to 3 years of one of the activities related to the offence committed; ban on the participation to public procurement procedures for a period from 1 to 3 years etc.). Law no. 356/2006 amending the Criminal Procedure Code²¹ introduced implementing procedural rules (territorially competent jurisdiction, preventive/protective measures until the final sentence is rendered etc.).

82. GRECO takes note of this legislative innovation. It also notes that corporate criminal liability is applicable in relation to all criminal offences, including corruption. The range of sanctions, especially as regards the fine, seems adequate in the present circumstances (but the economic growth and increased globalisation might require to review the upper limit of the fine in due course).

83. GRECO concludes that recommendation xiii has been implemented satisfactorily.

Recommendation xiv.

84. *GRECO recommended that the institutions involved in preventing and detecting corruption offences committed on behalf of legal persons (eg Commercial Register, Tax Administration, police, customs, auditing bodies) should step up their co-operation in order to ensure permanent exchange of relevant information on legal persons and also reinforce their co-ordination with the judicial authorities.*

²⁰ Published in the Official Journal no. 601 of July 12, 2006

²¹ Published in the Official Journal no. 677 of August 7, 2006

85. The authorities of Romania stress that after the on-site visit of February 2005, the level of cooperation between, on the one hand, institutions involved in preventing and detecting corruption offences including those committed on behalf of legal persons and on the other hand the judicial authorities, would have increased significantly as a result of various initiatives such as: a) 2 cooperation protocols concluded between February 2005 and April 2007 between NAD and the General Anticorruption Directorate (responsible for dealing with corruption within MIAR) as well as the Fight against Fraud Department – DLAF (a structure within the Prime Minister’s Chancellery, responsible for dealing with irregularities and frauds against the financial interests of the European Communities); b) the cooperation protocol of 2003 involving the National Office of Trade Register - NOTR (which ensures since July 2006 on-line access to the trade register database for about 50 users - prosecutors and police officers - from the three operational sections of NAD); the Romanian FIU and the (new) Directorate for the investigation of Organised Crime and Terrorist Offences – DIOCTO - within the Prosecutor’s Office also concluded with NOTR cooperation protocols that provide for access to the registry; c) Act 1538/2003 on the Financial Guard (FG) was amended in 2006 in order to allow FG commissioners, upon the prosecutors request, to carry out inquiries in the economic, financial and customs area and to draw up official reports which can be used as evidence in judicial proceedings; d) the National Customs Authority concluded cooperation protocols with the financial intelligence unit, the Romanian Police’s General Inspectorate, the Border Police’s General Inspectorate and the Chamber of Commerce and Industry of Romania.
86. GRECO takes note of these changes and is confident that the various agreements concluded will contribute to a closer cooperation between the various Romanian authorities.
87. GRECO concludes that recommendation xiv has been implemented satisfactorily.

Recommendation xv.

88. *GRECO recommended to introduce training courses for tax inspectors in the field of detecting corruption offences.*
89. The authorities of Romania reported that within the Phare Program 2002, a technical assistance project RO02-IB/JH-08.02 was successfully implemented during the period 2003-2005; the beneficiaries of this project were the main authorities competent in the field of combating money laundering, including the National Fiscal Administration Agency, the Financial Guard, the National Customs Authority. During the project, 20 training sessions were organised on topics such as: enhancing didactical capacities, European and international legislation in the field of prevention and combating money laundering and terrorism financing, responsibilities of the reporting entities, working procedures for magistrates, terrorist financing.
90. They also described the competences and duties of the Financial Guard following the adoption of the Government Emergency Ordinance no. 91/2003 on the organisation of the Financial Guard, approved by Law no. 132/2004 (on-site and operative controls concerning the prevention, detection and fight against any acts and deeds which can lead to tax evasion or fiscal fraud etc.). Between February 20 and 24, 2007 the staff participated in a seminar on ethics and legislation, organised by the United States Embassy in Romania. Also, between 8 and 15 July 2007, the Public Finances and Customs School organised a seminar on the “Fight against corruption in public institutions”, which was attended by personnel of the Financial Guard.

91. GRECO takes note of the information provided. Most initiatives mentioned are of little relevance (and/or were already in place at the time of the on-site visit) from the point of view of recommendation xv. It is also unclear to what extent the only initiative which could have been considered as a direct result of the recommendation – a one-week seminar organised in July 2007 - answers the concerns of the report: it involved staff of the Financial Guard but not the tax inspectors of the National Fiscal Administration Agency, the focus of the training event was on issues which are quite different from the detection of possible corruption offences during tax inspections. Overall, the efforts accomplished here are insufficient to conclude that the recommendation has been implemented, even partially.
92. GRECO concludes that recommendation xv has not been implemented.

III. CONCLUSIONS

93. In view of the above, GRECO concludes that Romania has implemented satisfactorily or dealt in a satisfactory manner with 40% of the recommendations contained in the Second Round Evaluation Report. Recommendations i, ii, xiii and xiv have been implemented satisfactorily. Recommendations iv and v have been dealt with in a satisfactory manner. Recommendations iii, vii, viii, ix, xi and xii have been partly implemented and recommendations vi, x, and xv have not been implemented.
94. The country has made noticeable efforts as regards the confiscation of proceeds of corruption in a larger number of situations, the introduction of criminal liability of legal persons, improving the public's access to official documents, and strengthening inter-agency exchange of information on legal persons. Only little progress was registered in respect of the majority of recommendations, and no progress at all as regards those dealing with the need to introduce appropriate rules for the hiring and career of public officials in general, to harmonise the rules and principles on the refusal of gifts, to train tax inspectors in the field of detecting possible corruption offences. GRECO urges Romania to vigorously pursue anti-corruption policies clearly aimed at the full implementation of the recommendations.
95. GRECO invites the Head of the Romanian delegation to submit additional information regarding the implementation of recommendations iii, vi to xii and xv by 30 June 2009.
96. Finally, GRECO invites the authorities of Romania to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.