

19 May 2016

**Evaluation of the Impact of the
National Anticorruption Strategy 2012-2015 in
Romania**

**Preliminary summary of findings and
recommendations**

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Key strengths

- High intensity of enforcement activity has turned criminal repression by the National Anti-corruption Directorate and administrative controls by the National Integrity Agency into potential restraints on corruption on all levels.
- Training, risk assessment and other preventive measures by the General Anti-corruption Directorate represent a prominent best practice example to be replicated elsewhere in the Romanian public sector
- Implementing mechanisms such as cooperation platforms with stakeholders and thematic evaluation missions coordinated by the Ministry of Justice are innovative tools that should be disseminated as best practice internationally.

Key weaknesses

- Preventive measures have not been implemented in a systematic way across the public sector and many heads of public agencies lack motivation to introduce anti-corruption measures.
- Low level of political will among the parliamentary majority and locally elected officials to uphold integrity.
- No conclusive evidence of fundamental improvement in public procurement in Romania.

About the evaluation

The purpose of the external evaluation is to support the Ministry of Justice in Romania, analyse the impact of the National Anticorruption Strategy 2012-2015 (NAS), identify best practices, loopholes, difficulties during the four years of implementation, and provide strategic recommendations for the new strategy. The evaluation was carried out by the experts Valts Kalniņš (Centre for Public Policy PROVIDUS, Latvia), Mari-Liis Sööt (Ministry of Justice, Estonia), and Olga Savran (Anti-Corruption Division, OECD).

The methodology of the review consists of four parts:

- desk-review of existing reports, strategies, studies, evaluations and other related information
- interviews with stakeholders during the first on-site mission on 13-15 April 2016

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- mini survey among Romanian anti-corruption experts (53 fully completed questionnaires were received)¹
- validation of the initial findings with stakeholders during the second on-site mission on 19 May 2016
- preparation and submission of the final report .

The level of achievement of objectives of the NAS

The vast majority (90%) of anti-corruption experts who took part in the survey think that the NAS had a positive impact on the level of corruption in Romania, while more than half (53%) believe that it had too many objectives. Half of the respondents believe that combating corruption through administrative and criminal measures had the most positive effect on the level of corruption, while prevention of corruption in public institutions and sectoral plans did not meet their desired ends.

The NAS included general targets for Romania to achieve the EU average scores the Corruption Perceptions Index and the Nations in Transit report. The country's standing has improved on both indicators but still remains below the target. The impact of the NAS as reflected in corruption perception has been positive but less than aimed for. More time and sustained efforts are needed to consolidate the achievements found further in this evaluation and continue improving the general perception of corruption. Other than these general targets, the performance indicators of the NAS and its action plan mostly register outputs without focusing on outcomes and the wider impact.

Achievement of general and specific objectives: preventing corruption in public institutions

Preventive measures have not been implemented in a systematic way across the public sector. The outstanding practice of the General Anti-corruption Directorate of the Ministry of Interior coexists with the lack of streamlining of risk assessment and preventive practices in many institutions.

The institutional transparency and availability of public data have increased, with gaps in local governments. Nevertheless legal provisions, which govern transparency, need to be implemented more effectively and evenly across the whole of the public sector (particularly in the local public administration).

With regard to transparency of party funding, we refer to GRECO evaluations, which find that Romania has implemented 8 recommendations satisfactorily and 5 recommendations partly. Particularly GRECO has expressed concern that the sanctions applicable in accordance with the Law on the financing of activities of the political parties and election campaigns (as amended in

¹ 12 respondents from ministries and 12 from other public institutions, 8 from private companies, 5 from business associations and 11 from NGOs, the rest did not specify their affiliation.

May 2015) are not sufficiently effective, proportionate and dissuasive. Potentially huge corrupt gains can be made by providing and attracting illicit funding for parties and political campaigns. On the face of it, the approved sanctions do not seem to fully take into account the need for penalties to create costs that outweigh the potential gains. However, since the amendments are relatively recent, it will require a few years of implementation practice to see their real impact on transparency of party financing as well as limitations.

Repressive actions aside, the NAS has achieved little impact in terms preventing integrity breaches by members of parliament. With regard to parliamentarians, the NAS has been implemented in a bottom-up manner and has suffered from the obvious limitation that the executive cannot bind members of parliament to adopt any decisions.

No conclusive evidence is found that measures implemented thus far have fundamentally changed particularist practices in public procurement in Romania. Given the fact that the potentially effective monitoring system PREVENT was first conceived already in 2013, its eventual embedding in legal provisions could be taken as a much needed sign of political endorsement for integrity reforms in the procurement area.

A lot remains to be done to motivate companies to introduce internal anti-bribery and anti-corruption measures. Certain steps to strengthen business awareness have been made but more of this is needed. Plus the enforcement of liability of legal entities for failure to supervise may have been insufficient in relation to corruption cases.

Despite known examples of good practice, it remains an open question how widely the local public administration has addressed some of the deeper underlying factors conducive to corruption and wasteful operation, which were included in the action plan of the NAS (for example, the reduction of corruption risks through simplifying the administrative procedures for issuing certificates and authorizations). This is important because burdensome administrative procedures sometimes can create such incentives for corruption that a whole complex of anti-corruption measures will only have a limited effect. Findings regarding the formality of the elaboration of codes of ethics, weakness of persons responsible for ethics counseling, absence of mechanisms for the proper handling of gifts, etc. suggest the lack motivation of many units of the local public administration to invest resources in anti-corruption activities.

The assessment of the integrity and transparency of the judiciary (also covered by the NAS) would require a separate evaluation. Therefore we merely note the encouraging remarks of other international assessments.

Achievement of general and specific objectives: increasing the level of anticorruption education

The extent of training for employees of public authorities differs widely across different authorities and only in a few parts of the public sector the impact of such training can be seen. Regarding such indicators as the degree of knowledge, self-evaluation seems ill-suited for

central monitoring because the vested interest for particular institutions to inflate the findings is too high.

Despite a number of relevant awareness-raising activities, a near-consensus exists among stakeholders regarding the insufficiency of education and awareness raising activities for the broader public. In part this seems to be a direct result of the limited resources of the NAS. On the other hand, certain awareness-raising methods such as public debates, special broadcasts, article series, and use of social media are not necessarily highly resource-demanding and can be carried out even under tighter budgetary constraints.

Achievement of general and specific objectives: combating corruption

The intensity of enforcement activity in high- and medium-level corruption cases has increased strongly while the proportion of very lengthy investigations and court proceedings among the cases of the National Anti-corruption Directorate has somewhat decreased. Criminal repression in Romania is a potential restraint on corruption on all levels (sometimes even with the chilling side effect of public officials avoiding any decisions because of fear of possible repression). However, according to the National Anti-corruption Directorate more than a half of sentences are conditional. Confiscation decisions regarding proceeds of corruption often do not result in actual recovery of money for the state.

Extensive enforcement activity has targeted cases of unjustified assets, conflicts of interest and incompatibilities among all levels of public officials. Despite certain resistance, even members of parliament have had to leave their positions due to violations of incompatibilities. However, the long-term effects of these activities are not visible yet. The desired evidence of the ultimate impact would be a reduction in the number of cases in the presence of strong administrative and criminal enforcement capability.

Evidence is controversial regarding the impact of corruption on the use of EU funds in Romania. The available information does not allow for concrete conclusions under this evaluation. Self-evaluation reports of ministries provide very little data regarding misbehaviors of the officials, public servants, contractual personnel with attributions in the field of protection the EU financial interests.

We did not find evidence of overall effective administrative practices to counter corruption and unethical conduct in the public service with particular exceptions, for example, in the Ministry of Interior Affairs. During interviews, stakeholders shared critical observations, for example, the number of civil servants who have been disciplined for integrity incidents is allegedly lower than the number prosecuted, which, on the face of it, is an indication of insufficient application of disciplinary liability. Internal control and audit were said, for the most part, to be of little effect for preventing corrupt activities and not used much as management tools. In parts of the public administration civil servants arguably do not feel able to resist pressures from the top level to carry out unethical tasks.

Romania has made important legislative steps to strengthen the recovery of proceeds of crime, the amounts of seized assets and ordered confiscations have increased radically during the implementation period of the NAS but the level of enforcement of the confiscations remain unclear.

The implementation process of the NAS

Most people who responded to the survey (68%) think that the strategy was sufficiently coordinated and managed. The implementation of the NAS benefited from the fact that there was a clearly designated coordinating body (the Ministry of Justice) and institutional mechanism (cooperation platforms) for tapping into the expertise of various stakeholders as well as building trust and enhancing joint efforts. However, the number of staff at the Technical Secretariat of the Ministry has been insufficient for ensuring comprehensive monitoring and analysis.

The anti-corruption experts were asked in the survey to describe in a few words the biggest loophole in implementing the strategy. Lack of financial resources was mentioned most often as the main disadvantage, followed by weak managerial involvement in implementing sectoral plans and formalism. The implementation of the NAS depended on the incidental allocations from foreign aid or EU funds while applications for funds highly depend on the initiative of the implementing institutions. The funding of many activities was limited to the approved budget of the relevant institutions and created the false impression as if the implementation of the NAS did not represent additional costs to the national budgets. In reality this left the actual funding largely up to ad hoc decisions by responsible institutions or other relevant decision makers. The budgetary funding for the implementation of the NAS understandably concentrated with the dedicated anti-corruption agencies (their resources even increased during the implementation period). Still the needs of other institutions in the anti-corruption area were neglected and this attested to the low priority of anti-corruption.

The self-assessment mechanism whereby public institutions were requested to submit biannual self-evaluations has provided a large amount of mainly quantitative data regarding their activities under the NAS. However, due to several reasons the reliability of the data is questionable, interpretation is difficult and due publicity was not ensured.

On the other hand, the thematic missions to public institutions where officials of other institutions and non-governmental partners assessed the implementation of anti-corruption measures have been a pioneering tool and this Romanian experience is worth disseminating as best practice internationally. In particular the thematic mission allowed the evaluators to gain such detailed insight into particular institutions that most national monitoring mechanisms used in different countries fail to achieve.

Another monitoring tool was the evaluation of the efficiency of the institutional reaction to integrity incidents (identified breaches, etc.). Institutions were requested to present measures that they adopted to address factors, which facilitated the incident. Some of the reports on

institutional reactions provide valuable overview of preventive measures taken while other contain only some dry facts of repression, e.g. suspension or dismissal. The reports also served as important reminders to public authorities that integrity incidents are failures whose repetition risk should be limited by adequate management actions.

Suggested next steps

We recommend selecting a few priorities for the next NAS. When choosing priorities, justified critique typically arises of what has been left out. However, the strategy is not made of rubber, neither is the budget, thus either one will be able to do almost everything and accomplish almost nothing, and do only a little and accomplish more. We envisage that **public procurement and other contracting** should contour the skeleton of the next strategy. The muscles will be **transparency**. Take care of the body by **feeding with carrots** and using sticks, where appropriate and necessary. This means that above all and in all processes, transparency should be the key aspiration, while on the other hand procurement could constitute the key issue in all sectors, be it health care, defence, education or any other. Rather than stressing punishments, inspire compliance with carrots by providing better opportunities for those agencies that have in practice made changes in their organisations and sectors. That would be a key turn from punishment to encouragement and motivation, which will in the end help internalise norms.

Public procurement and other contracting – make it a real priority

We recommend making contracting process throughout the public service as transparent as possible, including analysing the whole process from the point of view of transparency. Make people who draft and decide conditions for the bids declare their conflicts of interests in all public entities; implement the monitoring of conflicts of interests in public procurement (PREVENT); make all questions asked during the procurement process available and accessible online in the Electronic Public Procurement System (SICAP) to anyone in open data format; make all offers public; disclose to the public all expenses in public database with an easy-to-use analytical tool; guarantee the timeliness of payments by public contractors; provide constant conflict of interest related training to all officials responsible for procurement in central and local government and state-owned enterprises; prioritise sectors of monitoring (risk-based monitoring) and provide training to those responsible for monitoring procurement in the Ministry of Public Finance. Introduce the “black list” of companies and their managers that have trespassed procurement laws – a measure already prescribed in the previous anti-corruption strategy.

Other priorities should include **state-owned enterprises** because this is an area with particularly high risks of siphoning off public assets and **local public administration** because the internalization of anti-corruption compliance seems particularly uneven on this level.

Make transparency a rule in practice

Regarding the public's possibilities to acquire information, we recommend monitoring the implementation of freedom of information requirements on the local level and involve local people in local budgeting. Although transparency rules and access to information are in place on paper, there is a need to map all processes where opacity could cause corruption, e.g. in granting licenses and permits. Training to local officials and municipally owned enterprises, systemic evaluation of proactive publication requirements of local data (local legislation, data on salaries, budget, etc), analysis of actual implementation of information requests, awareness campaign about citizens' rights to obtain information from local governments could be used to increase transparency on the local level.

Increase media transparency by, among other things, imposing disclosure of detailed information about media ownership and end beneficiaries, banning entities of offshore economic zones from establishing media companies, de-politicizing the National Audiovisual Council.

Find the timid corners and put the light on opaque processes

Attention needs to be paid to vulnerable and non-transparent decision making processes. Where decision making is not transparent, it should be changed, e.g. in hospital recruitment of doctors, money allocation to medical institutions, procurement of medical equipment and medicines. A good start is made with the already existing risk analysis but fundamental changes are yet to follow. Encourage the use of e-solutions (e-certificates, e-registering for doctors, e-prescriptions, e-counselling by doctors, e-school, including e-testing) for limiting the opportunities of corruption. Initiatives such as the Coalition of Clean Universities and their assessment of universities should be encouraged.

Cut formalism, feed carrots

Various incentives should be used in order to motivate organizations and their managers to integrate the anti-corruption policies in their operations, for example, the allocation of extra funds based on the presence of anti-corruption measures or issuing of a certificate of "good governance" for the institution or local government. The current modest interest by employees of most public institutions in participating in anti-corruption trainings could be boosted by linking the number of people who have attended trainings to the "carrot-feeding". Similarly, provide business incentives to the companies that have anti-corruption policies in place. These include granting public advantages, public recognition, and favourable payment conditions.

Make awareness-raising visible and don't forget businesspeople

From the communication point of view, it is crucial for the Ministry of Justice and other authorities to publicly demonstrate and introduce awareness raising initiatives. This should not solidly mean "no to bribes" slogans or similar campaigns, but could include conferences,

systematic local initiatives (in some countries the best way to reach local communities is through mixed events of concerts and speeches), special central and regional radio broadcasts, Facebook communities for anti-corruption news and discussions, mobile games and apps for youngsters, regional workshops with businesspeople, school events and any other means of raising awareness and drawing attention. Focus awareness-raising on most important groups (e.g. youngsters as message deliverers to their parents and businesspeople as message deliverers to their employees). Advocate specific curricula among the high schools and mandatory education system in order to substantiate the concepts of transparency and democracy. Include risks of foreign bribery as per the OECD convention in the trainings of businesses.

Members of parliament should show their personal example

Implement GRECO recommendations on parliamentarians, i.e. adopt codes of conduct for parliamentarians accompanied by guidelines and trainings, and clarify rules on conflicts of interest and acceptance of gifts (GRECO 4th round evaluation report). Moreover it is essential to raise the social condemnation of corruption in order to strengthen the public pressure on parliamentarians to uphold integrity. Consider narrowing of immunities.

Keep your sword sharp

Ensure the stability of key anti-corruption institutions: the National Anti-corruption Directorate (DNA) and the National Integrity Agency. In order to retain the level of investigation and trust towards the DNA, staff the institution and allocate extra funds in the framework of the new strategy. On the other hand, the DNA should explain its mandate and role to the public so that complaints of perceived injustice outside its competence would not be reported to it.

Focus on confiscation (enforcement of confiscation of illicit assets still does not seem to be sufficiently consolidated). Community work (those convicted of corruption could serve their sentence in social establishments like hospitals, nurseries, schools etc), compensations, dismissals and occupational bans could be enforced consistently for those convicted of corruption.

Make sure that pre-court and court proceedings will not drag behind and extend lengthily, monitor time lines and other performance indicators for court proceedings. Integrity of judges (as this has direct effect on law-abidingness for the rest of society) and uniformity of court rulings (make greater use of guidelines of sentencing) should prevail in the focus of the anti-corruption strategy.

Train, analyze, fund

Provide systemic training and advice to public and private stakeholders. Prepare training modules for public officials combining e-module and face-to-face discussions, use value games. Prioritize people responsible for procurement. Provide compulsory (on-line) training with

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interactive testing in web-environment to all managers of public institutions. In such way, they would get better acquainted with anti-corruption measures for organizations: ethics and value-based measures, administrative measures, and control measures.

Collect best practices and put them on the web. Give regular feedback on sectoral measures to the stakeholders. Keep on with your novel peer review and monitoring missions because they constitute a great and highly beneficial part of awareness-raising and counselling. Add a mechanism for following up the implementation of recommendations from the missions.

Consider strengthening centralized monitoring of essential indicators with lesser reliance on self-evaluation of institutions. Build your anti-corruption policy on data analysis and include various targets with measurable performance indicators in your policy assessment. Our general recommendation is to think in each area, what you would like to be different in 10 years compared to today, formulate it as an indicator and work on this.

Extract additional budget for implementing the anti-corruption policy.