



***The 9th SPAI  
STEERING GROUP MEETING***

**ROMANIA**  
**- PROGRESS REPORT -**



## PROGRESS REPORT

### I. SUMMARY OF REPORTS FROM THE PREVIOUS STEERING GROUP MEETING

This section should include brief references to the announcements made at the previous meeting (e.g. drafts of law, new projects, strategies)

- Romania ratified the UN Convention against corruption in September 2004 by Law no. 365/15.09.2004.
- The GRECO Plenary concluded in June 2004 that Romania had satisfactorily implemented 12.5 out of 13 of its recommendations from the March 2002 First Round Evaluation Report.
- In January 2005, the Romanian Ministry of Justice organized the tender on conducting the independent audit of the results and the impact of the National Anti-Corruption Strategy 2001 – 2004. Freedom House Washington won the tender and the audit report was delivered to the Ministry of Justice in March 10, 2005<sup>1</sup>.
- The National Anticorruption Strategy for 2005-2007 (NAS 2005 - 2007) was adopted by GD no. 231/2005<sup>2</sup> (OJ no. 272/April 1, 2005). NAS 2005 – 2007 was drafted with the substantial involvement of the civil society and took into account the recommendations of the relevant assessments made in 2004: the Regular Report for Romania, the Freedom House independent audit, and the National Report on Corruption issued by the Romanian Chapter of Transparency International. The new Strategy is structured on three main areas and subsequently on ten objectives which include clear measures with strict deadlines for accomplishment, indicators, budgetary provisions, as well as institutions responsible for ensuring the fulfilment of the measures. They include both legislative measures and monitoring of the implementation of the existing regulations, with a particular stress on increasing the capacity of certain bodies with key attributions in the fight against corruption.
- To overview the implementation of the Strategy and to ensure the coordination between the institutions with competences in the area, the Council for the coordination of the implementation of NAS 2005-2007 was set-up by GD no 233/2005<sup>3</sup> (OJ no. 273/April 1, 2005). The Council was created under the authority of the Prime Minister and the coordination of the Minister of Justice, through the reorganization of the National Council for Crime Prevention. The representation in the Council is done at the highest level, thus proving the political commitment in the fight against corruption. The Council had already three reunions, on April 26, June 21 and September 16, 2005.
- NAS 2005 - 2007 is constantly implemented. Sectoral anticorruption strategies and action plans were adopted for the vulnerable areas to corruption (such as customs, police etc.) and control plans were issued and implemented.
- The Government amended GEO 43/2002 on September 22nd, 2005 and approved the reorganization of NAPO as the National Anticorruption Department (NAD). NAD remains an autonomous structure, with legal personality, which is organized within the Prosecutors' Office attached to the High Court of Cassation and Justice (PO-HCCJ). However, NAD operates with

<sup>1</sup> **Main findings of the audit referred to:** the need to increase the overall coordination in the area of fight against corruption; the need to ensure the independence of the individual prosecutors; the need to increase the efficiency and accountability of NAPO; the insufficient coordination between control bodies and NAPO – suggests the conclusion of cooperation protocols and the adoption of control plans in the sectors vulnerable to corruption; the creation or designation of an institution to overview and establish an efficient mechanism to control the wealth declaration, declarations of interests, and the incompatibilities regime; the inflation of institutions with competences in the fight against corruption - recommends the rationalization and better coordination in the area; the appreciation of the new templates of the wealth declarations and declarations of interests; the insufficient checks and balances for the discretionary powers of the public administration in relation with natural and legal persons, especially within the business environment (pointing inter alia, to inspections, rescheduling of or exemption from tax payments).

<sup>2</sup> Annex 1, for a short presentation of NAS 2005 - 2007, please refer to Annex 2

<sup>3</sup> Annex 3



the same internal structure and on the same premises as NAPO. This reorganization ensures financial and functional autonomy, as well as unrestricted competence for NAD (NAPO) in combating high level corruption, including investigations against MPs. This measure also addresses the issues raised in Decision no. 328/2005 of the Constitutional Court which established that MPs may be investigated only by prosecutors within PO-HCCJ. This led to a fracture in combating high level corruption, two institutions being competent to investigate such cases: PO-HCCJ for cases involving MPs and NAPO for the other high level corruption cases. At the same time, the decision of the Constitutional Court could easily led to files splitting where the investigations concerned both offences committed by MPs and offences within the competence of NAPO, thus generating delays in the investigations. A new management team was appointed at NAD, following an open recruitment procedure.

## 2. PROGRESS MADE FROM THE LAST STEERING GROUP MEETING IN ACHIEVING THE SPAI OBJECTIVES

The information in this section should be presented under the SPAI pillars:

### - Adoption and implementation of European and other international instruments

**The ratification of UN Convention against corruption** (by Law no. 365/2004) was followed by the adoption of certain regulations for its implementation:

1. Law 521/2004 for amending of Law no. 78/2000 on preventing, discovering and sanctioning corruption deeds<sup>4</sup>. The law consolidates the anticorruption legislation and includes adequate sanctions for the following offences: the abuse in office against personal interest (article 246 Criminal Code); the abuse in office by limiting certain rights (article 247 Criminal Code); the abuse in office against public interest (article 248 Criminal Code). This regulation ensures the efficiency of the justice act by making unnecessary the proving of bribe, but only the existence of the abuse, correlated with the personal advantage.
2. Law 571/ 2004<sup>5</sup> on the protection of the personnel within public authorities, institutions and other budgetary units who notify law infringements regulates the institution of the whistleblower protection. The law aims to encourage a civic attitude of the employees in public sector, to ensure the protection of good faith reporting persons for any deed that constitutes infringement of law, professional deontology or good administration and transparency principles.
3. Law no. 477/2004 approves the Code of conduct for contractual personnel<sup>6</sup>. This regulation establishes clear conduct rules for the contractual personnel of public authorities and institutions, supplementing the legal provisions on public functions according to the *acquis communautaire* and to the right to good governance, provided by the article 41 of the European charter of human rights.
4. The Government approved the draft law amending the Criminal Code on September 6<sup>th</sup>, 2005. The draft provides for the criminal liability of the legal persons. The draft law was sent to the Parliament for adoption.
5. The procedural means necessary to apply into practice the norms on criminal liability of the legal persons are provided by the draft law amending the Criminal Procedure Code. The draft law was approved by the Government on September 29<sup>th</sup>, 2005 and sent to Parliament for adoption.

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<sup>4</sup> Annex 4

<sup>5</sup> Annex 5

<sup>6</sup> Annex 6



- **Promotion of good governance and reliable public administrations**

**Immunities**

- The immunity of former ministers was eliminated by Law no. 90/2005 approving of GEO no. 3/2005<sup>7</sup>.
- The immunity of public notaries was eliminated by Law no. 178/2005 approving GEO no. 25/2005.
- The immunity of bailiffs was eliminated by a draft law amending Law no. 182/2000 on bailiffs. The draft law is currently under parliamentary debates.

**Declarations of wealth and interests**

- New templates for declarations of wealth and interests were adopted<sup>8</sup>. They are the strictest in Europe and require detailed information on wealth and income of all officials (including ministers and parliamentarians), civil servants, judges and prosecutors, as well as of their family members. The templates are published on the website of the employing institution.
- The Ministry of Justice (MoJ) is currently drafting the law on the National Agency for Integrity, a competent body to verify and control the compliance to the legal provisions on wealth declarations, declarations of interests, incompatibilities regime. In order to find the best and most balanced solution, a comparative research on how this issue is regulated across Europe is underway. The draft law was presented in first reading to the Government.
- The amendments to the Criminal Code introduced the criminal liability for the conflict of interests.

**Public Procurement**

- The Strategy on the reform of the public procurement system and the corresponding implementing action plan were approved by the Government in August 2005<sup>9</sup>.
- The National Authority for the Regulation and Monitoring the Public Procurement (NARMPP) was set-up by GEO no. 74/2005.

**Granting of non-reimbursable financing contracts**

- The Government approved and sent to the Parliament for adoption the draft law on granting of non-reimbursable contracts from public funds, on September 6th, 2005. Transparency International offered extensive advice on the draft law prepared by MoJ and discussed with the NGOs. The draft law ensures a competitive and transparent system of granting contracts with non-reimbursable financing for programmes at all level of administration and eliminates potential preferential treatment. The granting of such contracts shall be done exclusively on the basis of a public selection of the projects. The procedural provisions are similar with the public procurement system, thus contributing to the harmonization of mechanisms through which public money are being spent by private entities.

**Transparency of decision making**

- In January 2003, Romania enacted the "Sunshine law" (Law No. 52/2003<sup>10</sup> on Transparency in Decision-Making by Public Administrators), which aims to increase the responsibility of the administration toward the citizens by requiring public institutions to submit draft decisions and legislation for public debate, thus setting up a mechanism for increased citizen and civil society participation in decision-making processes<sup>11</sup>.

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<sup>7</sup> Annex 7

<sup>8</sup> By Law no. 158/2005 for the approval of GEO no. 14/2005, Annex 7

<sup>9</sup> Government Decision no. 901/2005 published in the Official Journal no. 758 of August 19th, 2005.

<sup>10</sup> Annex 8

<sup>11</sup> For information on the implementation in 2004 of Law no. 52/2003, please refer to the chapter *Promotion of an active civil society*.



### Free access to information

- The unrestricted access of each person to public interest information is ensured by Law no. 544/2001<sup>12</sup>. The law strictly regulates the organization of the access to information:
  - establishing of specialized information compartments within public authorities and institutions;
  - the obligation to communicate ex officio certain categories of information;
  - the categories of information for public access and the excepted information;
  - the procedure to be followed for information requesting;
  - the sanctions for the nonobservance of law<sup>13</sup>.
- **Strengthening of legislation and promotion of the rule of law**

### Ensuring the independence of the working prosecutors

- The 2005 amendments to the laws on the reform of the judiciary<sup>14</sup> ensure the independence of the working prosecutors, while establishing the principle of accountability for the leading positions by:
  - establishing objective criteria for assigning cases to prosecutors and prohibiting the reassignment of cases by chief prosecutors except in limited circumstances listed in the law; introducing the prosecutors' right to appeal before the Superior Council of Magistracy (SCM) against the reassignment ordered by the chief prosecutors;
  - introducing the right of the prosecutors to appeal before the court against the chief prosecutors' decisions invalidating their procedural acts;
  - introducing the prosecutors' right to appeal before the SCM against any interference with the investigations and the decision making process by the hierarchical prosecutors.

### Random distribution

- The random distribution of cases in courts is functional countrywide by IT means and it is closely monitored by the SCM (two reports by the SCM were issued so far). A permanent helpline for technical assistance is functioning within the Ministry of Justice.

### Integrity testing

- The Government adopted GEO no. 124/2005<sup>15</sup>, on September 6th, 2005, allowing for integrity testing to be carried out in the public administration. According to the new provisions, if concrete grounds show that a public servant committed or is going to commit a corruption offence, the competent prosecutor may authorize the use of the undercover investigators or investigators with real identity in order to discover the deeds, identify the authors and obtain evidence. The authorization is initially issued for maximum 30 days, may be prolonged for successive periods of maximum 30 days and the total duration may not exceed 4 months. A similar legal procedure was used for 5 years in fighting drug trafficking and use.

- **Promotion of transparency and integrity in business operations**

### State subsidies

- The practice of rescheduling of or exemption from payment of debts to the state was abolished by Law no. 244/2005<sup>16</sup>. This ensures the equal treatment of all tax payers creates the conditions for a competitive business environment and increases the degree of voluntary compliance to budgetary obligations.

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<sup>12</sup> Annex 9

<sup>13</sup> For information on the implementation in 2004 of Law no. 544/2001, please refer to the chapter *Promotion of an active civil society*

<sup>14</sup> Law no. 247/2005 on the reform in the field of property and justice

<sup>15</sup> Annex 10

<sup>16</sup> For the approval of GEO no. 26/2005.



### State publicity

- Transparency in the use of public funds for advertisement was ensured by Law no. 237/2005<sup>17</sup>, which covers the loopholes that were used to subordinate media through allocation of public funds for advertisement in a non-transparent procedure.
- All public authorities are compelled to display information on advertisement contracts exceeding 2,000 Euro (including on the following website: [www.publicitatepublica.ro](http://www.publicitatepublica.ro)).

### Tax evasion

- Criminal sanctions for tax evasion were introduced by Law no. 241/2005<sup>18</sup>, which entered into force on September 1<sup>st</sup>, 2005.
- The Financial Guard (FG) conducted controls in the field of importation, manufacturing and trading of oil products, alcohol, alcohol products and cigarettes, between September 2004 and September 2005. As a result, 1,857 reports on tax evasion deeds, incurring a total damage to the state budget of 598,334,000 RON (17,012,794 EUR) were submitted to the criminal investigation bodies.
- National Agency for Fiscal Administration (NAFA) initiated the insolvency procedures, in the first semester of 2005, with regard to 913 companies with debts towards the state, amounting to over 1,380 million RON (390 million EUR). Bank accounts of over 5,000 million RON (1,415 million EUR) were frozen and the interim measure of seizure was taken for almost 1,200 million RON (340 million EUR).
- Following the high number of transactions discovered on the “black market”<sup>19</sup>, NAFA decided<sup>20</sup> to publish the list of the “phantom companies” in the Official Journal of Romania and on NAFA website and to forbid inactive companies to issue invoices, standard forms for delivery of goods or providing of services or any other fiscal documents.

### Bankruptcy

- On September 6, the Government approved the draft law on insolvency which will replace the current legislation on bankruptcy. The draft was sent to Parliament for adoption. The draft was prepared by the Ministry of Justice and benefited from assistance from PHARE Project (2002). The new provisions ensure the efficiency of the judicial reorganization and establish a simplified insolvency procedure, by eliminating or by reducing the duration of certain procedural stages. The draft responds to the critics coming from the business environment regarding the bureaucracy for companies wanting to exit the market, which created the premises for undue conduct in order to obtain preferential treatment. The aim of the draft law is to make more efficient the entire insolvency procedure.

### Money laundering

- Law no. 656/2002 on preventing and countering money laundering was aligned<sup>21</sup> to the *European directives on money laundering regarding the obligation of notification of the reporting entities and the financing of terrorism*, as well the FATF recommendations. The provisions are in accordance with those of European Parliament and European Council Directive no. 2001/97/EC of December 4<sup>th</sup>, 2001, amending Council Directive no.91/308/EEC *on the utilization of the financial system in the purpose of money laundering*.
- Controls to casinos were jointly carried out by the FG, National Office for Money Laundering Prevention and Sanctioning and the General Inspectorate of the Romanian Police.

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<sup>17</sup> For approving GEO no. 40/2005, amending GEO no. 60/2001 on public procurement

<sup>18</sup> Published in the Official Journal no. 672 of July 27<sup>th</sup>, 2005.

<sup>19</sup> Extensive controls in the alcohol sector, during the period April - June 2005, showed that the state budget incurred a damage of 1.100 billion ROL, approx. 32 millions Euro (130 criminal complaints followed these controls).

<sup>20</sup> By Order no. 375/2005 of the president of NAFA.

<sup>21</sup> By Law no. 230/2005, published in the Official Journal no. 618 of July 15<sup>th</sup>, 2005 and the Government Emergency Ordinance no. 135/2005, published in the Official Journal no. 897 of October 7<sup>th</sup>, 2005.



- **Promotion of an active civil society**
- The report issued by the Agency for Governmental Strategies with regard to the implementation in 2004 of Law no. 52/2003 on ensuring transparency in decision making concluded that this regulation stimulated the active participation of citizens and NGOs to the decision making process and the development of the practice of public debate in drafting regulations (in 2004, over 321.000 persons participated to public debates, being formulated 19000 recommendations, out of which, 8.820 were taken into consideration at the final decision making)<sup>22</sup>.
- The report issued by the Agency for Governmental Strategies with regard to the implementation in 2004 of Law no. 544/2001 on free access to information of public interest underlined the following positive aspects:
  - significant increase of the requests for information, with a trend of positive solving in the favor of citizen (98, 7%);
  - the refusal for most of cases was motivated;
  - significant increase of the number of administrative complaints, demonstrating that the civic spirit has increased proportionately with the increase of awareness on the legal rights secured by Law 544/2001.
  - the rate of complaints filled is rather low – 6154 – compared to the total number of requests of information - 815528.
- In the process of elaboration of the National Anticorruption Strategy for 2005 - 2007, the civil society had a substantial role. A series of 32 meetings were organized between September 2004 and the end of March 2005 to discuss the National Anticorruption Strategy 2005-2007 and were attended, beside representatives of public institutions, by civil society (e.g. Transparency International, the Institute for Public Policies, Pro Democratia Association, ABA/CEELI, Center for Legal Resources, OSF, The Romanian Association for Magistrates, the National Union of the Public Notaries, Concept Foundation, the Center for Independent Journalism, the Romanian Academic Society, the League for the Defense of Human Rights, etc), the business environment (the Association of the Romanian Businessmen, the Alliance for the Development of Romania, the Association of the Romanian Stakeholders, the Business Community – ARIES, Strategic Alliance of Business Associations, Romanian Association of Exporters and Importers, etc) and international donors.

### **3. ANTICORRUPTION INITIATIVES PLANNED FOR THE NEXT 6 MONTHS**

This section should include information on future activities and initiatives that are to be conducted or initiated in the next 6 months (steps in adopting relevant legislation, institutional developments, events, new projects, studies)

- Evaluating the progress in the implementation of the NAS 2005 – 2007 and anticorruption legislation, and updating NAS 2005-2007 if the evaluations find it necessary.
- Adoption of the draft laws amending Criminal Code and Criminal Procedure Code, which provide for criminal liability of legal persons.
- Adoption of the new law on insolvency
- Adoption of the new law on granting of non-reimbursable financing contracts.
- Drafting and adoption of the law amending the existing regulation on financing political parties and electoral campaigns.

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<sup>22</sup> For the non-observance of the provisions of Law no. 52/2003, 169 actions were registered within the courts, out of which 65 (39%) were favorably solved, 46 (27%) were rejected and 57 (34%) are ongoing.



- The adoption of the law on the National Agency for Integrity, a competent body to verify and control the compliance to the legal provisions on wealth declarations, declarations of interests, incompatibilities regime.
- Developing information and awareness campaigns.
- Continuing the reform of the Directorate General for Protection and Anti-Corruption such that this institution should be turned into a modern and accountable internal investigation unit, by redefining its competencies and eliminating the overlapping, demilitarization and instituting efficient control mechanisms for its activity.

#### 4. SPECIFIC REQUESTS TO THE SPAI REGIONAL SECRETARIAT LIAISON OFFICE

In this section the Steering Group members are encouraged to describe specific issues and activities that could benefit of the SPAI RSLO assistance.

- Organizing a seminar for tax inspectors on methods for detecting corruption offences;
- Organizing a seminar on the best practices in Europe in the field of criminal liability of legal persons.
- Organizing a regional conference on inter-institutional cooperation in the area of corruption, as well as on cooperation between anticorruption agencies in the region.

#### 5. ANNEXES

This section should include full text of relevant documents quoted in the report (laws, draft laws, studies, projects description, strategies, statistics, and surveys). The annexes within this section should be made available to the SPAI RSLO in electronic format.

**Annex 1** – GD no. 231/2005 for the approval of the National Anticorruption Strategy for 2005-2007 and the action plan for the implementation of the National Anticorruption Strategy for 2005-2007

**Annex 2** – Short presentation of the National Anticorruption Strategy for 2005-2007

**Annex 3** - GD no 233/2005 for the establishment of the Council for the coordination of the implementation of NAS 2005-2007

**Annex 4**- Law 521/2004 for amending of Law no. 78/2000 on preventing, discovering and sanctioning corruption deeds

**Annex 5**- Law 571/ 2004 on the protection of the personnel within public authorities, institutions and other budgetary units who notify law infringements

**Annex 6**- Law no. 477/2004 on the Code of conduct for contractual personnel

**Annex 7**- GEO no. 3/2005 for amending and completing Law no. 115/1999 on the ministerial responsibility

**Annex 8** - GEO no. 14/2005 for amending the templates for the declarations of assets and interests

**Annex 9** - Law no. 52/2003 on ensuring transparency in decision making

**Annex 10** – Law no. 544/2001 on free access to information of public interest

**Annex 11** - GEO no. 124/2005 for amending and supplementing Law no. 78/2000 for corruption prevention, discovering and sanctioning