Annex 1

NATIONAL ANTI-CORRUPTION STRATEGY

2005-2007
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A. BACKGROUND

1. PREMISES


The mission of the present strategy is to prevent and counter corruption by refining and rigorously implementing the legal framework, through legislative coherence and stability, and by institutional strengthening of the entities with important tasks in the field.

The present strategy defines the corruption as:

a. systematic deviation from the principles of impartiality and equity, that should be the basis of the functioning of the public administration, which state that the public assets are universally, equitably and equally distributed and

b. their substitution with practices that generate the allocation to certain individuals or groups of a disproportionate part of the public assets compared to their contribution.

The corruption deeds are those actions that hinder this universal and equitable distribution with a view to favour certain persons or groups. Law no. 78/2000 establishes as central element the use of public position as source of revenues, material advantages, or for personal influence, for himself or for other. This approach is similar to the definition of corruption proposed by the Global Program against corruption developed by United Nations: “the essence of the phenomenon of corruption consists in the abuse of power committed for the obtaining of personal profit, directly or indirectly, for himself or for other, in public or private sector”.

The independent audit of the National Anti-corruption Strategy 2001-2004, elaborated in the period January-March 2005 by Freedom House Washington Inc. shows that “The last four years brought about the development of an impressive arsenal of legal instruments of transparency, accountability and anticorruption in Romania. Some of them seem to have recorded positive effects”. But in the same time, the following major obstacles against an efficient fight against corruption were identified:

- The reduced implementation of the anti-corruption legislation;
- The reduced use of administrative instruments in countering corruption;
- Insufficient coordination between structures with control and criminal investigation attributions in the field of corruption;
- The lack of real independence of the prosecutors;
- The legislative and institutional inflation in the field.
Also, both the above-mentioned audit and the National Report on Corruption of the Romanian chapter of Transparency International note that improvements of the anticorruption legislation are needed, indicating the necessity to adopt certain legislative clarifications, in what regards, for example, the conflicts of interests, the mechanisms to verify the declarations of wealth and interests and the incompatibilities regime\(^1\).

2. PRINCIPLES

Each action contained in the present Strategy will follow these subsequent principles, the respect of which is essential for achieving a modern judicial system:

- The principle of **rule of law**, according to which it is consecrated the supremacy of the law, all citizens being equal before it and which is based on the respect of the human rights and requires the separation of state powers;
- The principle of **good governance**, according to which the Government must establish clear, effective actions, based on well established and quality objectives and have the capacity and flexibility to respond rapidly to the social needs;
- The principle of **responsibility**, which imposes the obligation for the Government to formulate public policies, to be responsible for their implementation and efficiency, to accept and be accountable for the fulfilment of this obligation;
- The principle of **prevention** of corruption acts, according to which the anticipated identification and timely elimination of the premises for the appearance of corruption acts are imperative and of priority;
- The principle of efficiency in **countering** corruption, based on the continuous assessment of NAPO’s activity in what regards the concrete results and institutional management;
- The principle of **cooperation and coherence**, according to which the institutions involved in preventing and countering corruption must cooperate closely, ensuring a coherent conception of the objectives to be fulfilled, and the measures to be taken;
- The principle of **transparency, consultation of the civil society and social dialogue**, which imposes, on one hand, the transparency of the decision-making process, and on the other hand, the consultation of the civil society;
- The principle of **public-private partnership**, which recognises the importance of involving the civil society in the concrete activities of implementation of the measures of corruption prevention.

\(^1\) According to the independent audit on the results generated by the NAS 2001-2004 elaborated by Freedom House and the National Report on corruption – the edition of 2005, elaborated by the Romanian Association for Transparency
B. PRIORITY AREAS AND OBJECTIVES

The reports on corruption in Romania, issued during the last years by the World Bank, Transparency International or Freedom House, emphasize that the best practices are not yet institutionalized at the level of every day functioning of the administrative state apparatus, judiciary, police or customs. This fact requires the permanent consideration of two simultaneous approaches, both important for the efforts against corruption. The first one regards the building of normality by instituting standards and establishing best practices at the level of administration and other key sectors, like education, sanitary system, law enforcement and justice. This approach addresses the whole spectrum of activities regarding the prevention of corruption, creating a society which praises integrity and functions on the basis of recognized integrity standards. The other approach regards the suppression of deviant behaviors from these standards and rules and includes the activities of countering corruption, as well as the completion of the institutional frame to allow an efficient countering of the phenomenon. These two are priority areas within the present strategy. Finally, the accomplishment of the activities within these two domains requires the enhancement of internal and international cooperation in the field of preventing and countering corruption, thus constituting a third area of activity.
**PRIORITY AREA I: PREVENTION, TRANSPARENCY, EDUCATION**

**Objective 1. Increasing the transparency and integrity in the public administration**

One of the most important causes of the spreading of the corruption phenomenon is the lack of transparency of the administrative system. Consequently, it seems to be necessary, on one hand, to complete the legislative framework on transparency in public administration, and, on the other hand, to continue the implementation of the existing provisions for developing transparency standards in the public sector. In this context, there are envisaged legislative amendments, described in the action plan, in the following fields: granting of non-reimbursable financing contracts from public funds, financing political parties, allocating public funds for publicity, the public procurement regime, the status of public servants, the inspection regime at the economical agents. In what regards the access to information of public interest an respectively, the participation of the citizens in the decision making process, it may be observed on one hand, the partial implementation of the legislative provisions and, on the other hand, the delays in reviewing the regulations which limit the access to information, in order to clearly define the information exempted from the public access. In this field, it will be continued the monitoring of the implementation of these normative acts.

An important focus within this objective will be on the inclusion of the norms from the deontological codes in the professional specialised training programmes of the personnel from the public sectors considered vulnerable.

In view to ensure the coordination of the fight against corruption and the coherence of the public policies in the field, the action plan includes referrals to the sectoral anticorruption strategies and action plans (e.g. the customs sector, the police, and the control institutions). The sectoral strategies will include clear responsibilities for all the entities with competencies in fighting corruption in the respective areas (for example, the National Customs Authority, Ministry of Administration and Interior, Ministry of Public Finances). In view to increase the quality of the control acts and of the evidence, the structures of administrative control in cooperation with NAPO will elaborate control plans in the vulnerable sectors.
Objective 2. Preventing corruption in the business environment

This objective regards the creation of a business environment where the competition between state and private enterprises, on one hand, and on the other hand, among the private enterprises, should be equitable and in compliance with the same kind of rules, and the state should function as an impartial and effective arbiter for ensuring the respect of the regulations in force by all economic agents. The analysis of the impact of NAS 2001-2004 by the independent audit reveals that there still are areas vulnerable to corruption regarding the business environment, reflected by ambiguities of the legislative provisions on bankruptcy and by the procedure of granting exemptions and rescheduling payments. An important role in preventing corruption in this area is to be played by the revision, with priority, of the fiscal evasion provisions and by the harmonisation of legislation on money laundering with the acquis communautaire and the FATF recommendations.

Objective 3. Information campaigns and educative measures

This objective aims at increasing the level of understanding of corruption mechanisms and at stimulating a civic anticorruption attitude, both for adult taxpayer citizens and young people. The implementation of the performance and integrity standards within the public administration is possible only with the support of the citizen, who should play the role of a consumer of public services, aware of his rights and obligations and practical means to fulfill them, in other words, a civically competent citizen. Therefore, a fundamental component of corruption prevention consists in informing and raising awareness among the citizens on the legal obligations of the institutions and the public servants, as well as on the legal and civic means to fight corruption, which each citizen has at disposal.

Noting that in the period 2001-2004 there were not too many efforts in informing the various categories of citizens regarding the causes, the mechanisms and the consequences of corruption, the independent audit on NAS I recommends the developing of some awareness campaigns, with the involvement of the NGOs.

Following the commitments taken towards the European Union, the Romanian authorities will continue the organization of the awareness campaigns on the devastating effects of large scale corruption. The topics will aim among others, decisional transparency, the codes of ethics of the public servants, the understanding by the public opinion of the administrative supplementary costs represented by corruption, conflicts of interests and incompatibilities. Another approach of this segment will consist in the introduction, in the curriculum of the high schools, of some classes or modules of anticorruption civic education.
Priority Area II: COMBATING CORRUPTION

Objective 4. Increasing the integrity and resistance to corruption of the judiciary system

The integrity of the judiciary is crucial for the success of the anticorruption efforts. At the same time the judiciary was identified as an area whose dysfunctions may have a major impact on the efficiency of the anticorruption fight. Romania made progresses on strengthening the independence of the judiciary towards the politics. Nevertheless, measures are still required to lead to high performance and integrity standards for magistrates. The adoption and dissemination of the updated deontological code are important measures in view to increase the integrity and resistance to corruption of the judiciary, together with the filling in by the magistrates of the provisions regarding the wealth and interests declarations.

For prosecutors, the independent audit on the impact of NAS 2001-2004, underlines the vulnerabilities of the position of the prosecutor in relation with the hierarchically superior prosecutor, identifying the premises of certain systemic problems. The action plan includes clear measures for the application of the continuity principle during the criminal pursuit: establishing objective criteria for the initial assignment of cases to public prosecutors, restricting the possibilities for cases to be reassigned or taken over hierarchically, to situations expressly and exhaustively provided for in the law, introducing the court control on all the acts of invalidation adopted by the hierarchically superior public prosecutors upon request from the public prosecutors who perform the investigations.

In order to increase the operativity and efficiency in the activity of criminal pursuit, the effective and direct control of the prosecutor upon the investigation activities made by the judicial police will be consolidated. In the same time, procedures to ensure the prompt notification of the prosecutor involved in organized crime or corruption cases, by the intelligence and investigations structures through the transmission of any information or evidence on committing acts of corruption or organized crime. In this context, it must be mentioned that until the end of the year it will be established the Intelligence Community in order to coordinate all the structures with competencies in collecting information.

The independent audit of NAS I observes that there are SCM members who detain administrative positions within the courts and prosecutor’s offices, which, in the opinion of the auditor, defines an incompatibility. Other independent evaluations

2 The new detailed forms for wealth declarations and declaration of interests were approved by GEO no. 14/3 March 2005
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refer to the non-permanent character of the SCM members as a negative aspect of the SCM functioning and recommends that these positions should be permanent. Another observed dysfunction signalled by NGOs is the current experience age imposed for the magistrates who accede to leading positions the solution being reducing the number of seniority needed to be promoted to or nominated for management positions. The action plan includes measures, consisting in the introduction of some legal provisions which would provide for incompatibilities between the quality of member of the Superior Council of Magistracy and the management positions at courts and prosecutor’s offices. In the same time, the action plan introduces measures on the transparency of the magistrates’ evaluation process and with regard to the elaboration and publication by the Superior Council of Magistracy of an annual report on its own activity.

Regarding the instruments for strengthening the integrity of the judiciary, starting with 2005, all institutions in the country are beneficiaries of an IT and software system specialized in performing random assignment of cases to the judgment panels. A report of the Ministry of Justice from February 2005\(^4\) emphasizes that there were difficulties in the effective implementation of this system, which were improved by the 1\(^{st}\) of March 2005. Currently, the random distribution of cases is implemented within all the courts. For the procedural incidents, unsolved by the automated systems (e.g. the incompatibilities), to ensure the random distribution, it is applied the SCM decision no. 71 from 9\(^{th}\) of March 2005. This decision provides also for the continuity of the judgment panels and of the judges within the panels.

The action plan proposes short term administrative and legislative measures to reform the Directorate General for Protection and Anticorruption in the sense that this currently militarized service be turned into a modern and accountable internal investigation unit at the level of the Ministry of Justice. To this end, the action plan includes measures on redefining the competencies and the elimination of the overlapping, the demilitarization of the Directorate General for Protection and Anti-Corruption, as well as instituting effective control mechanisms of its activity. On medium term, it will be evaluated the necessity of maintaining this service within the Ministry of Justice.

**Objective 5. Reducing the number of structures that have tasks in the fight against corruption**

An important commitment of Romania requires the adoption of measures to considerably reduce the number of authorities competent in corruption prevention and investigation until the end of 2005, so as to avoid the overlapping of competencies.

\(^4\) Report presented to the Superior Council of Magistracy
The analyses conducted by the Minister of Justice, as well as the external reports, reveal that the anticorruption activity suffers from the overlapping of competencies of different structures, but particularly from fragmentation. The coordination is even more difficult, since this field involves investigation activities and the transfer of confidential data. The measures within the action plan include:

- Elaborating an analysis to redefine and clearly delimit the tasks of authorities and public institutions that currently hold competences in the field of combating and/or preventing corruption;
- Revising the legislative framework, based on the conclusion of the above-mentioned evaluations, in order to redefine and clearly delimit the competencies, rationalising the activities and reducing the number of the institutions and authorities in view to limit the present institutional fragmentation.

Objective 6. Strengthening the institutional capacity of the NAPO

The commitments of Romania refer to the necessity of ensuring the strict application of the anti-corruption legislation in force and the effective independence of NAPO. The independent audit on the NAS 2001-2004 underlines the necessity to reorganise the NAPO to allow an effective coordination with the other structures having competencies in fighting corruption, as well as the necessity to improve the human resources policies of NAPO.

The measures proposed in the action plan refer to:

- Enhancing the independence of NAPO and reorganising NAPO;
- Periodical analysis of the NAPO activity and of the General Prosecutors of NAPO and of the Prosecutor’s Office attached to High Court of Justice and Cassation, including on their managerial performances and the concrete results, and revising the appointment and dismissal procedure of the General Prosecutors of NAPO and ensuring his independence and responsibility for the performances of the NAPO;
- Establishing clear procedures of collaboration between NAPO and all the other anti-corruption structures;
- Recruiting public prosecutors for NAPO, following their professional performances based on certain objective criteria;
- Ensuring human and financial resources, according to the evaluations;
- Professional specialised training of the personnel;
- Improving the IT segment of the NAPO as to allow the development of the NAPO data base;
- Drawing up and presenting by NAPO of an annual report on the results on combating high-level corruption.
Objective 7. Increasing the celerity of criminal prosecution and criminal trials

Romania has committed to ensure that corruption cases are dealt with in a swift and transparent manner. The proposed measure in the action plan aims to reduce the length of the procedures with regard to all the criminal cases, fully respecting the rights of the indicted and the other parties involved in the criminal case.

It is also proposed the revision of the Criminal Procedure Code and the other incidental normative acts to ensure the institutional continuity and the operability of the criminal pursuit of the cases which regard both corruption and organised crime.

Objective 8. Combating corruption through administrative means

One of the main recommendations of the independent audit on the NAS 2001-2004 refers to the extension of the definition of the conflicts of interests. The audit recommends the designation of a single and independent entity to verify the wealth, conflicts of interests’ declarations and the incompatibilities. Also, Romania committed towards EU, in particular, to adopt measures to make possible the verification of whether or not wealth declarations have been submitted and to revise the regime of sanctions as to ensure its deterrent effect.

The measures proposed in the action plan also provide for the designation of an agency with competencies in the above-mentioned fields and the annual assessment of its activity.

In 2004 it was created an instrument of protection of whistleblowers within the public institutions and authorities by Law no. 571/2004. The action plan includes, within the competencies of the new entity the monitoring of the implementation of Law no. 571/2004. The confidence of the whistleblowers in the application of this law is fundamental for the fight against corruption within the public administration.

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5 Idem 2
Priority Area III: INTERNAL CO-OPERATION AND INTERNATIONAL COORDINATION

Objective 9: Coordinating and monitoring the implementation of the Strategy and of the Action Plan

In what concerns the internal cooperation, it is aiming to establishing certain clear proceedings of cooperation between all structures competent in fighting against corruption.

The coordination of the efforts in fighting corruption, the monitoring of the implementation of NAS 2005-2007 and the strict application of the anti-corruption legislation, including the sectoral strategies and action plans, will be made by a single inter-institutional authority: the Council for the coordination of the implementation of NAS 2005-2007. The Council is created under the authority of the Prime-Minister and in the coordination of the Minister of Justice, the Ministry of Justice also ensuring the Secretariat. The Council will meet every three months or whenever necessary. The inter-institutional nature and the obligation to invite at the reunions the representatives of the NGOs and journalists will ensure the practical independence of the Council.

Objective 10: Fully implementing all the anti-corruption instruments of the EU, UN, CoE and OECD

Until 2007, according to the commitments assumed, Romania must fully align to the European legislation and best practices.

The proposed measures include among others, the implementation of the recommendations made by the GRECO in the second round of evaluation and the MONEYVAL recommendations, the obligations assumed by Merida Convention, removing the immunity of public notaries and bailiffs, implementing the criminal liability of legal persons, also for the bribery in private sector. Also, a priority remains the cooperation and coordination, at regional level, of the prevention and combating activities within the Stability Pact Anticorruption Initiative

C. METHODS OF ASSESSING THE FULFILMENT OF THE OBJECTIVES
The monitoring of the implementation of the National Anticorruption Strategy 2005-2007 will be performed by the Council for the coordination of the implementation of NAS 2005-2007, organized under the authority of the Prime-Minister and coordinated by the Minister of Justice. The assessment of the progress recorded in the implementation of the NAS 2005-2007 will be performed annually, in November, according to the deadlines and indicators included by the action plan for the implementation of the National Anticorruption Strategy 2005-2007.

The National Anticorruption Strategy will be updated if this necessity results from the annual assessments.

The monitoring by the above proposed mechanisms and measures will be completed with the conclusions of the monitoring performed by the European Commission of the Romanian commitments following the accession negotiations, relevant for the fight against corruption. In this context, the Romanian Government is committed to informing the European Commission, twice a year, on the progresses recorded in the implementation of the present Strategy.