Romania:
Building integrity in defence

An analysis of institutional risk factors

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Preface

At the request of the Norwegian Ministry of Defence, the Agency for Public Management and eGovernment (Difi) has prepared this assessment of institutional risk factors relating to corruption in the defence sector in Romania. The report was prepared within the framework of the NATO Building Integrity (BI) Programme.

The current report was written as part of a study covering 9 countries in South-Eastern Europe, 8 of them as a Norwegian contribution to the NATO BI Programme and 1 on a bilateral basis. Difi has prepared a separate methodological document for the study. The latter document provides an in-depth description of the content of international anti-corruption norms and includes a list of close to 300 questions that were used to identify the extent to which the 9 countries in the study had, in fact, institutionalised the norms. The document also provides a rationale for why each of the norms is considered to be important for reducing the risk of corruption.

A national expert in each of the countries involved has collected data in accordance with Difi's methodological document. Three principal types of data sources were used:

- Official documents/statutory texts.
- Interviews with relevant decision-makers and other local experts, as well as representatives of international organisations.
- Analyses and studies already available.

The national experts presented the results of the data collection in a separate report for each country, each one comprising 75-200 pages. The documentation they contained provided a direct response to Difi's approximately 300 questions. A representative for Transparency International UK/Defence and Security Programme (TI/DSP) provided comments to the reports. They were further discussed at three meetings where all of the local experts participated together with representatives from TI, NATO, the Norwegian Ministry of Defence and Difi. At one of the meetings an expert on the topic of corruption/good governance in the EU's expansion processes contributed.

Based on the reports from the national experts, Difi has prepared, with considerable assistance from the EU expert on corruption/good governance, an abbreviated and more concise Difi Report for each country, including recommendations for the Ministry concerned. These reports were then submitted to the Ministry in question for any comments or proposed corrections. The received answers have largely been included in the final reports. However, all evaluations, conclusions and recommendations contained in the reports are the sole responsibility of Difi.

Oslo, October 2015

Ingelin Killengreen
Director General

Abbreviations and acronyms

ACB	Anticorruption Bodies
CHU	the Court of Accounts
CHUPIA	the Central Harmonisation Unit for Public Internal Audit
CODA	the Procurement Council
ESPP	the Electronic System of Public Procurement
FOIA	the Freedom of Information Act
GEO	the Government Emergency Ordinance
GRECO	the Group of States against Corruption
GSG	the General Secretariat of the Government
HRM	human resource management
IAC	Internal Public Audit Committee
IIA	the Internal Auditors Institute
MoND	the White Paper on Defence is drafted by the Ministry of National Defence
MoPF	the Ministry of Public Finance
NACS	the National Agency for Civil Servants
NAD	the National Anticorruption Directorate
NARMPP	the National Authority for Regulating and Monitoring Public Procurement
NCSC	the National Council for Solving Complaints
NDS	the National Defence Strategy
NIA	National Integrity Agency
OJEU	the Official Journal of the EU
ORNISS	the National Registry Office for Classified Information
PIFC	public internal financial control
PPBES	the Planning, Programming, Budgeting and Evaluation System
SCM	the Superior Council of Magistracy
SCND	the Supreme Council of the National Defence
SIE	Foreign Intelligence Service
SRI	the Romanian Information Services
USL	the Social Liberal Union
VCM	the EU Verification and Cooperation Mechanism

Contents

1 Executive Summary

In regards to parliamentary oversight over defence bodies the parliament's involvement in the budget preparation, approval, monitoring and control is rather limited and formulaic, even though it can directly request information from intelligence services without the intermediation of the government. The parliament has on paper the sufficient information and power to oversee the defence sector effectively and identify possible weaknesses, however, due to a lack of specialised staff, limited ability to amend the budget and a low political interest in defence, the parliament is not very active in controlling the executive or the armed forces.

Judicial control over the intelligence services is guaranteed. The High Court of Cassation and Justice and the Prosecutor at that Court shall assess the requests of the intelligence services against the jurisprudence of the European Court of Human Rights prior to their authorisation, especially if these requests imply constitutional or human rights restrictions. Subsequently the Court and Prosecutor have to ensure that authorised restrictions on fundamental rights are carried out within the established limits. Finally, they have to be informed on the outcome of the authorised activities. No serious concerns regarding the control of the intelligence services have been raised in the recent past by the media, civil society or international organisations.

The legal framework bestows important powers on the Ombudsman to influence public affairs, and the current budgetary allocations allow the Ombudsman to function properly in an independent manner. The Ombudsman is appointed by the parliamentary majority and since the creation of the institution, the parliament has appointed low-profile individuals who have made no real impact on the administrative system. Civil society generally disregards the People's Advocate.

In the case of external audit institutions the legal basis is strong, however, the audit, managerial control and performance auditing mostly focus on procedural aspects regarding the allocation and spending of public funds. Only a very limited number of performance-driven audits scrutinise the results obtained and the efficiency of the interventions financed through public funds. There have been several debates over the usefulness of the audit reports on EU financed projects. The main audit challenge is to move away from the current procedural approach towards more performance-driven auditing that would bring about more added value to policymaking.

The conflict of interest legal framework is complex and extensive, a fact which often leads to non-compliance, but since the creation of the National Integrity Agency (NIA), non-compliance with the incompatibility and conflict of interest regime has decreased. The NIA is well regarded, especially at the European level. The institution's reports show an important number of investigations, fines, cases of incompatibilities and cases referred to the judiciary whenever there were serious suspicions of corruption.

The implementation of the Freedom of Information Act (FOIA) created some problems for the Romanian authorities. Civil society organisations have constantly been raising concerns regarding the actual implementation of FOIA. Drafting FOIA and supporting its implementation was mainly the job of the civil society. The administrative authorities including the MoD have however progressed by increasingly implementing FOIA requirements in practice.

In summary, the alignment of the national public internal financial control (PIFC) system with internationally accepted standards and good practice from the European Union has been quite successful. According to the 2011 Report on Internal Control, the MoD uses internationally recognised auditing standards. Likewise, the 2012 Compendium of the Public Internal Control Systems in EU Member States points out that the MoD, as other Romanian public institutions, has implemented the components of public internal control, managerial control, managerial accountability and management and internal control standards.

National legislation on public procurement is quite unstable. The law was successively amended to comply with EU norms and to remedy shortcomings in the system. Technical carelessness when repealing provisions and enacting new ones has been detrimental to the transparency of the system. Consequently it is now extremely difficult to know and understand the legislation in force, a factor limiting a wide participation of bidders in public procurement processes, so favouring a supply oligopoly.

In regards to human recourses management politicisation is a big challenge for the Romanian civil service. The European Commission and other international organisations have requested clear commitments from the Romanian Government to deal with the weak capacity of the administration and associated problems. The central institution responsible for professionalising the civil service, the National Agency for Civil Servants, has not been successful in enforcing the competition requirements mandated under the civil service legal framework. However, this over-politicisation seems to affect the MoD to a lesser extent than other central public authorities.

There is an overarching National Anticorruption Strategy approved in 2012. In practice, the Strategy is very well developed, but its implementation started only recently. It is too early to assess any intermediary results. However, due to the lack of political support and ownership, the actual impact of the strategy may eventually be very limited.

The two Anticorruption Bodies (ACBs); the Anticorruption Directorate (NAD and the National Integrity Agency (NIA), have been instrumental in pushing anticorruption efforts and have developed into real regional institutional models for organising anticorruption activities and enjoy the support of civil society organisations. EU pressure has been a strong critical success factor for pushing reforms in the judiciary and supporting the two ACBs. The anticorruption agenda is not yet fully internalised by the Romanian administration and the effectiveness of any ACB is highly dependent on the performance and dedication of the head of the institution.

2 Introduction

The performance of NATO member countries as reliable allies within the organisation depends on a number of factors, including the actual functioning of the overall governance and administrative system. Evaluating these capacities requires scrutinising the main institutional settings and working arrangements that make up their public governance systems and their resilience to corruption. This report carries out such an analysis of Romania.

The starting point is the observation that a holistic approach to security sector reform is increasingly called for.[1] Pro-integrity reforms internal to the defence sector should be set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Romanian MoD, not the armed forces. It treats the Ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across the national system of public governance impacting on the MoD as on any other ministry.

To a large extent the report concentrates on checks and balances in the public sector; *i.e*., mechanisms set in place to reduce mistakes or improper behaviour. Checks and balances imply sharing responsibilities and information so that no one person or institution has absolute control over decisions. Whereas power concentration may be a major, perhaps *the* major corruption risk factor, a system of countervailing powers and transparency promotes democratic checks on corruption/anti-integrity behaviour.

We look at the integrity-promoting (or integrity-inhibiting) properties of the following main checks and balances:

a. Parliamentary oversight;
b. Anti-corruption policies;
c. Specialised anti-corruption bodies;
d. Arrangements for handling conflicts of interests;
e. Arrangements for transparency/freedom of access to information;
f. Arrangements for external and internal audit, inspection arrangements;
g. Ombudsman institutions;

In addition to examining the checks and balances, this gap analysis focuses on two high-risk areas susceptible to corruption/unethical behaviour:

h. Public procurement (or alternatively: disposal of defence assets);
i. Human resource management (HRM).

Both areas are of particular importance in the defence sector. Defence sector institutions are responsible for large and complex *procurements* that may

[1] See for instance OECD (2007) *The OECD DAC Handbook on Security System Reform (SSR) Supporting Security and Justice*.

facilitate corruption. In most countries, the MoD is one of the largest ministries in terms of number of staff and is responsible for a large number of employees outside the Ministry. *Human resources* are central to the quality of performance of defence sector bodies.

The report mainly concentrates on the same areas as those listed in NATO's Building Integrity Programme launched in November 2007, whose key aim is to develop "practical tools to help nations build integrity, transparency and accountability and reduce the risk of corruption in the defence and security sector".

The report identifies a number of areas in need of reform in order to strengthen the protection of integrity in public life and to reduce vulnerability to corruption. The report is action oriented: it proposes a number of recommendations for reform action to be adopted by the government.

2.1 Update on the 2014 Romanian Context

Romania made significant progress in establishing a legal framework for fighting corruption and increasing integrity in its path towards EU membership. Important legislation was adopted and key institutions were established during the accession period. However, after the country joined the European Union in 2007 the pace of reform slowed and reforms were overturned in some areas

Corruption remains a major issue as has been recurrently underlined by the Verification and Cooperation Mechanism (VCM), a tool the European Union imposed on Romania and Bulgaria to assess reform progress after accession, especially in the judiciary. Some results have been achieved recently in fighting high-level corruption. Senior officials have been convicted on the grounds of corruption.

Romania underwent a serious constitutional crisis in 2012, triggered by a second attempt to impeach President Basescu. Vital institutions such as the Constitutional Court and the Ombudsman were fiercely attacked by the majority in parliament, a fact which left numerous EU officials baffled as to the stability of democracy in Romania. It took strong EU pressure and the firm public stance of EU officials followed by a critical, sharp VCM report for the situation to stabilise. In 2014 a new president was elected on a platform including, inter alia, democratic regeneration and anti-corruption.

3 Parliamentary Oversight over Defence Bodies

The Constitution states that the parliament shall regulate the structure and organisation of the national defence system, the organisation of the armed forces, the organisations and functioning of the Supreme Council of the National Defence (SCND), the legal status of military personnel and the declaration of the state of siege and emergency, and shall also make provision for the defence of the population, economy and territory. It also approves two strategic documents – the National Defence Strategy and the Defence White Paper – which frame the national policies on security and defence areas. The SCND is the highest-level decision-making body in defence and national security areas. The President is the supreme commander of the Armed Forces and Chairman of the SNCD.

The National Defence Strategy (NDS) is issued by the President within six months of assuming office and is approved by the parliament, in a joint session of the two chambers (Chamber of Deputies and Senate). NDS is in force for five years, encompasses the national interests and security objectives, assesses the international security environment (risks, threats and vulnerabilities) and establishes the courses of action and means of ensuring the national security. It contains provisions for accomplishing national and collective defence and security long term objectives. The White Paper on Defence is drafted by the Ministry of National Defence (MoND) based on the NDS and the government's programme, adopted by the government and is approved by the parliament. It is in force for four years and includes the defence policy's objectives, courses of action, the broad missions and requirements for the armed forces and annual resources allocation. The MoND is accountable to the parliament, the government and the SNCD for the implementation of the provisions related to defence in the Constitution, in laws in force, decisions of the government and of the SNCD, as well as in the international treaties ratified by Romania.

On the occasion of the parliamentary debate on the annual budget law, the MoND estimates the military capabilities needed, and provides information on the general military structure and the required budgetary allocations for specific activities. Defence planning documents derive from the NDS.

On paper, the parliament has sufficient information and power to oversee the defence sector effectively and identify possible weaknesses. Key defence documents are submitted to parliament for debate prior to their approval. MPs can request oral and written clarifications on virtually any important aspect through questions, interpellations and hearings. However, due to a lack of specialised staff and a low political interest in this area, parliament can hardly be said to be particularly active.

Parliamentary supervision of the defence sector is exercised through the following committees: a) Defence, Public Order and National Security Committee of the Chamber of Deputies; b) Defence, Public Order and National Security Committee of the Senate. These two committees oversee the MoD and

the Armed Forces, the Ministry of Interior, the police and gendarmerie, border guards, the penal system, and intelligence activity in government departments such as defence, justice and interior. In addition, there are two additional committees: c) the Standing Committee for Control of the Foreign Intelligence Service; and d) the Standing Committee for Control of the Intelligence Service.

Budget documents are available to MPs, including information on all budget items. The parliament debates whether the resources allocated for defence are appropriate and in accordance with the national interests. The MoD shall provide any item of information requested by MPs. In defence procurement, the MoD shall submit to parliament all technical details of a tender to be debated in the defence committees in the case of particularly important purchases involving high expenditure. The budget execution is monitored by the defence committees, but their monitoring capacity is low because of the absence of an informed public debate and the insufficient knowledge and experience of MPs. The transparency of the defence budgets has been categorised as low by international rankings.

The parliament has limited powers to amend the budget. Amendments shall not change the total deficit or surplus proposed by the executive. Thus parliament can rearrange budgeting priorities only by re-allocating funds. The parliament must indicate the funds to be axed or the new sources of financing for any desired budget increase.

Parliamentary defence committees receive the MoD monthly programme of activities in advance. This together with frequent fact-finding or exploratory visits to the MoD help identify problems in the fields of procurement, defence asset disposals, and arms transfer more easily and efficiently. Between 2008 and 2012, the Defence, Public Order and National Security Committee of the Chamber of Deputies performed over 50 such parliamentary control – specific activities.[2] It met 22 times in 2013 and 28 times in 2014. A total of 480 reports, summaries and minutes are available on the parliamentary committee website.

The SCND is convened by the president or one-third of its membership and is chaired by the President. According to the Constitution the SCND is an autonomous authority in charge of the organisation and coordination of national defence and security. Its meetings are confidential and its decisions are adopted by consensus. Law 415/2002 determines that the SCND is monitored by parliament through the examination and scrutiny of SCND reports, which must be submitted on an annual basis or "at any time deemed necessary", at the request of the relevant parliamentary standing committees. Those reports are debated by a joint session of the two Chambers[3]. In practice, this parliamentary "examination and verification" exercise is rather perfunctory and superficial.

An alternative type of parliamentary control over the SCND has developed in practice, which could be more appropriately termed parliamentary control of

[2] http://www.canacheu.ro/wp-content/uploads/2012/11/Prezentare-bilant-RaportDeActivitate-comisia-de-aparare-CosticaCanacheu.pdf.pdf
[3] Article 2 of Law 415 and article 65, para. 2(g) of the 1991 revised Constitution.

individual members of the SCND as opposed to the control of the institution of SCND as a body. According to the law, the SCND is primarily composed of members of the government and heads of the intelligence services. Both the members of the government and the heads of the intelligence services are placed under parliamentary control by virtue of their respective official positions. Therefore they can be monitored and questioned by the relevant standing committees, including their activity within the SCND. A SCND meeting held on 28 February 2005 illustrates this point. This meeting was summoned by the President to explore the modification of the National Security Strategy to allow Romania to participate together with other allied states in pre-emptive military actions. As this issue is no less controversial in Romania than it is at the international level, the opposition reacted without delay by criticising the President's proposal and using the means of parliamentary control at their disposal. As the opposition had the chairmanship of the Foreign Affairs Standing Committee in the Senate, this committee called the Minister of Foreign Affairs to a hearing to explain what had happened at the SCND meeting and what his position was on the issue during the debate. Thus, the parliament used a normal constitutional procedure to exert its control over the Minister of Foreign Affairs in his capacity as a member of the government, but also in his capacity as a member of the SCND, the end result being a form of control over the SCND.

Nevertheless, there is no rigorous parliamentary control over the SCND, even though this conclusion might be tempered by the features of the constitutional and political framework in force. However, some good practices do exist: the Planning, Programming, Budgeting and Evaluation System (PPBES) has been implemented as of January 2000 by the MoD. One of its goals is to enhance the transparency of the defence sector. The main defence-planning document is published on the MoD website.[4] Moreover, prior parliamentary approval is necessary in order to undertake peace support operations and coalition-type operations that are not deployed on the basis of a treaty ratified by parliament. For collective defence, humanitarian assistance or operations deployed on the basis of a treaty, the President takes the decision, subsequently requesting the authorisation of the parliament within 5 days. If the parliament disagrees, the President shall immediately revoke the decree and the mobilisation measures.

Specific parliamentary means of controlling the government are parliamentary questions (oral or written), interpellations, parliamentary inquiries, and the motion of censure. Information published on the website of the Defence Committee at the Chamber of Deputies shows intense activity by that committee. It met 35 times in 2011, and 24 times in 2012. In the two years, 248 reports, summaries and minutes are available on the website. 76 legal acts were debated in 2011 and in 46 in 2012. The most frequent topics addressed were: approving Memorandums of Understanding with different states in the defence sector; defence institutions budget amendment proposals by the government; and pensions and retirees. Altogether 11 EU normative acts have been subjected to subsidiarity control. A hearing is the most used instrument for parliamentary

[4] http://www.ipu.org/PDF/publications/decaf-e.pdf

control through committees, whose members can call for hearings on any topic, such as regular hearings of the Minister of Defence and the General Staff on the execution of the National Security Strategy and all measures on military reform; hearings of the commanders and analysis of reports on shortcomings that have emerged in parliamentary debates or have been signalled by the media; hearings of higher officers who wish to report attempts at politicisation and so forth.

In accordance with Law 7/2006 of 11 January 2006 on the statute of the parliamentarian civil service, the recruitment of parliament civil servants is merit-based and carried out through open competition. Even in the absence of more than one candidate for one position, the lone candidate has to undergo a mandatory examination process. Similarly, promotion is based on open competition or on an individual examination, provided that a number of pre-conditions are met. These civil servants support the activity of committees, including the defence committees.

As stated, most parliamentary committees suffer from a lack of professional staff and a small number of research staff. A standing committee with 23 members (the current number in the Chamber of Deputies Defence Committee) is supported by about five parliamentary advisers and experts, who have to cover all the activities of the committee and the chairman – from secretarial work to drafting laws and reports on specific issues, as well as preparing research papers or speech-writing. Parliament relies almost exclusively on information provided by the government and the military, the very institutions it has to control. Not having enough experts and staff to rely on, not all MPs have sufficient knowledge and expertise to oversee the defence and security sector in an effective way. As a result, parliamentary defence committees are weak. They should be strengthened, especially with regard to their ability to carry out independent investigations and their expertise in defence matters.

Debates in the Romanian media occurred in 2010-2011 on the acquisition of military aircraft to ensure interoperability and compatibility with NATO equipment. Parliamentary oversight was also mentioned in the European media in the context of the MoD initiative to raise funds for this acquisition. The government implied that this could be achieved by either selling other surplus military equipment (choice preferred by the government but blocked by the parliament), or by requesting alternative, cheaper offers (the Romanian Senate's Defence Commission organised hearings with the competitors in the bid).[5]

In summary, on paper the parliament has sufficient information and power to oversee the defence sector effectively and identify possible weaknesses. However, due to a lack of specialised staff, limited ability to amend the budget and a low political interest in defence, the parliament is not very active in controlling the executive or the armed forces.

[5] "Romania Struggles to Field (Almost) New Fighters", in defenseindustrydaily.com, September 30, 2012.

Parliament's involvement in the budget preparation, approval, monitoring and control is rather limited and formulaic, even though it can directly request information from intelligence services without the intermediation of the government. Generally, parliamentary committees lack professional staff and analytical capabilities. The budget is approved in the parliament but due to the limited technical capacities of the parliamentary commissions, the monitoring and control of the budget execution process is inefficient. The parliament has limited powers to amend the budget. Amendments shall not change the total deficit or surplus proposed by the executive. Thus, the parliament can rearrange budgeting priorities only by re-allocating funds. It must indicate the funds to be cut or the new sources of financing for any desired budget increase.

3.1 Control of the Intelligence Services

The parliamentary committee responsible for overseeing the intelligence services is the Joint Standing Committee of the Chamber of Deputies while the Senate oversees the SRI (Romanian Information Services). Additionally, the SCND provides policy guidance and oversight of the intelligence services. The Council, which also regulates intergovernmental intelligence exchanges, is headed by the president and includes the prime minister, the ministers of defence, public order, and national security, the intelligence service chiefs and the president's security advisor. Upon proposal of the president, the parliament appoints the directors of the SRI and the SIE (Foreign Intelligence Service). It also scrutinises and debates the reports submitted by these two officials. Parliament can request any specific reports from the SRI and the SIE. These arrangements exclude the government from directly dealing with the intelligence services, as they are under supervision by the parliament and the president. Law 80/1995 on the military and general employment regulates the way in which intelligence services' staff are recruited and their conditions of service.

Judicial control over the intelligence services is guaranteed. The High Court of Cassation and Justice and the Prosecutor at that Court shall assess the requests of the intelligence services against the jurisprudence of the European Court of Human Rights prior to their authorisation, especially if these requests imply constitutional or human rights restrictions. Subsequently the Court and Prosecutor have to ensure that authorised restrictions on fundamental rights are carried out within the established limits. Finally, they have to be informed on the outcome of the authorised activities. No serious concerns regarding the control of the intelligence services have been raised in the recent past by the media, civil society or international organisations.

4 Independent Bodies Reporting to Parliament

4.1 The Ombudsman Institution (People's Advocate)

The People's Advocate (Ombudsman) is one of the new institutional structures created by the 1991 Constitution. Its constitutional mandate is the defence of individuals' rights and freedoms in their relationship with public authorities. The institution was formally established by Law 35/1997. It was initially a relatively low profile institution, disparaged by many domestic and international observers until the summer of 2012, when the political dismissal of the incumbent Ombudsman as a result of manoeuvring from the government raised serious concerns in the EU, which sent strong public political messages of discontent with the Romanian government. The new majority in the parliament had forced the dismissal of the People's Advocate because he had challenged a Government Emergency Ordinance in front of the Constitutional Court. This was perceived as a direct, unacceptable attack upon the independence of the Ombudsman. The abusive replacement of the People's Advocate in 2012 was one of the reasons prompting the international community to intervene in the Romanian constitutional crisis of that year, which originated from the quarrelling between the president and the government.

On 14 April 2014, a former Prime Minister and current MP of the liberal party was appointed as Ombudsman. The opposition, including the liberal party, boycotted that appointment claiming the absence of political consensus. In addition, civil society representatives criticised the politicisation and lack of transparency of this appointment. Finally further controversy emerged in the wake of the publication of the new Ombudsman's declaration of assets and interests: his debts largely exceed his possible income as Ombudsman.

Any Romanian citizen having the same qualifications as those required for holding the position of judge at the Constitutional Court can be appointed as the People's Advocate. The People's Advocate is appointed for a five-year term by the Chamber of Deputies and the Senate, in joint session. The mandate of the People's Advocate may be renewed only once. The candidate obtaining the largest number of votes of the deputies and senators attending the session is appointed as the People's Advocate. The position of People's Advocate is similar, in terms of legal status and compensation package, to that of a minister while Deputies of the People's Advocate are assimilated as state secretaries. Managerial and technical staff is considered parliamentarian civil servants.

The People's Advocate's mandate ends before the expiry of his term in cases of resignation, removal, incompatibility with other public or private offices, incapacity to fulfil his duties for more than ninety (90) days, if certified by a specialised medical exam. The removal from office of the People's Advocate as a result of violation of the Constitution and laws is decided by the Chamber of Deputies and the Senate in joint session. A majority vote of the attending senators and deputies is required upon proposal of the Standing Bureau of either chamber of parliament, based on a joint report of their legal committees. The

four Deputies of the People's Advocate are appointed by the Standing Bureau of either chamber of parliament upon proposal of the People's Advocate, after seeking the opinion of their legal committees. The qualifications for the position of Deputy of the People's Advocate are laid down by the Regulation on the Organisation and Functioning of the People's Advocate Institution.

The People's Advocate is assisted by four Deputies, who have specialisations in four fields. The organisational structure of the institution reflects these specialisation fields, as set out by the Law, namely: a) Human rights, equality of chances between men and women, religious cults and national minorities; b) Rights of children, family, youth, pensioners, individuals with disabilities; c) Army, justice, police, and prison administration; d) Property, labour, social security, and duties and taxes.

The Ombudsman has 14 territorial offices. In 2014, the total number of staff was 87. The staff is currently composed of: one coordinating director, 20 counsellors, 45 experts, six referees, one chief of cabinet and six employees as technical and administrative staff. In 2011, the total number of staff was 99, covering both central and territorial offices. The coordinator-director deals with economic and administrative issues. There is a Consultative Council that operates within the institution that includes the People's Advocate, his assistants and counsellors, the general secretary, as well as other individuals appointed by the People's Advocate. The Council meets once a month, or when necessary at the request of the People's Advocate.

The Ombudsman's budget is around €225.000 a year. The legal framework and the current budgetary allocations allow the Ombudsman to function properly in an independent manner. The Ombudsman is appointed by the parliamentary majority and since the creation of the institution the parliament has appointed low-profile individuals who have not made a real impact on the administrative system. Civil society generally regards the People's Advocate with disdain. According to its official website the institutions functions in accordance with the Paris Principles.

The Ombudsman held 18 051 hearings in 2013: 2 039 at the central office and 16 012 at territorial offices. It received 9 282 claims, 5 437 being addressed to the central office and 3 845 to the territorial offices. The central office and the territorial offices registered 7 765 telephone calls: 2 009 phone calls at the central office and 5 731 at the territorial offices. The Ombudsman opened 101 investigations in 2013, out of which 13 were opened by the central office and 88 by the territorial offices.

The current legal framework bestows important powers on the Ombudsman to influence public affairs. In addition to settling petitions and complaints through recommendations, the Ombudsman can advise the constitutional court on issues of unconstitutionality before laws are promulgated. Likewise it may notify administrative irregularities to the administrative court and promote appeals in the interest of the law (for unification of legal doctrine) before the High Court of Cassation and Justice. The Ombudsman has to submit regular annual reports to both parliamentary chambers or on specific issues upon request, which may

contain recommendations to amend legislation or adopt other measures to protect the rights and freedoms of citizens. If in his inquiries the Ombudsman finds facts indicating corruption or violations of laws he has to report them to the parliament, the government or the courts. Finally, the Ombudsman may be consulted on different laws and ordinances that concern the citizens' rights and freedoms. Romania has a separate body to deal specifically with anti-discrimination issues: the National Council for Anti-Discrimination, which is different from the Ombudsman.

Romania applied for accreditation to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and thus to be part of human rights organisations of the United Nations system. The Ombudsman has started to implement the National Preventive Mechanism under the UN Optional Protocol to the Convention against Torture, as stated by the HG 48/2014. The National Preventive Mechanism against Torture will be coordinated by a new Deputy Ombudsman specialising in the prevention of torture in detention. At present, the Ombudsman is in the process of selecting the specialists (medical doctors, social workers, psychologists, sociologists) and the representatives of the NGOs that will be part of the visiting teams who will re-evaluate detention facilities in Romania and elaborate secondary legislation for this activity. The People's Advocate publishes every year a report on the National Preventive Mechanism against Torture in Detention, which is available on its official website.

The Ombudsman has responsibility for issues related to the defence sector. It has a special deputy, who deals with issues concerning the army, justice, police, and the prison system. The Ombudsman resolved 15 defence-related claims in 2013, down from the 24 registered in 2011 and 83 in 2010.

The Ombudsman's reports are well structured and include most of the necessary quantitative information.

In summary, the legal framework bestows important powers on the Ombudsman to influence public affairs, and the current budgetary allocations allow the Ombudsman to function properly in an independent manner. The Ombudsman is appointed by the parliamentary majority and since the creation of the institution the parliament has appointed low-profile individuals who have made no real impact on the administrative system. Civil society generally disregards the People's Advocate.

4.2 The External Audit Institution (Court of Accounts-CoA)

External audit is the responsibility of the Court of Accounts, a body with constitutional standing whose independence is guaranteed by the Constitution. The legal framework for external audit is aligned with international standards. The institutional independence of the CoA is formally ensured by the

Constitution[6] and by its 1991 Law, as amended in 2009,[7] on the organisation and operation of the CoA. The CoA audits the creation, management and use of state and public sector financial resources. The audit function of the CoA is exercised by means of public external audit procedures set out in audit standards drafted in accordance with generally accepted international audit standards. The Constitution provides that the CoA is a fundamental rule-of-law institution enjoying financial, operational and organisational independence in accordance with international audit standards. The CoA promotes the values of legality, independence, objectivity, professionalism, accountability, integrity, transparency, impartiality, political neutrality and effectiveness.

The institutional independence of the CoA is indispensable for it to control the establishment, management and use of the financial resources of the state and public sector. In fact, however, the independence of the senior members of the CoA is debatable. The proposals to appoint the 18 counsellors of the accounts, which make up the Plenary of the Court, originate from the political parties represented in parliament. These are mainly guided by political expediency in appointing them rather than by concern about the candidates' professional merit. The 18 counsellors are appointed for a 9-year term, not renewable. They are formally proposed by the parliamentary budget committees of either parliamentary chamber. The parliament also appoints the president and vice-presidents of the Court. The remaining personnel is selected and appointed by the Court's plenary.

The CoA can freely decide its work plan. It also has investigative powers. The CoA can audit all public funds, resources and operations, including EU funds, regardless of whether they are reflected in the national budget, and regardless of which organisation receives or manages the public funds. The CoA can also conduct performance audits of the consolidated general budget management, as well as of any public funds. The CoA has 12 departments; 42 regional chambers of accounts; other structures reporting to the president of the CoA (internal public audit service, protocol and external relations service, communication service, image and public relations); and a General Secretariat and the Audit Authority.

The staff is 1 595-strong, including 1 181 public auditors. The remaining are civil servants or contractual staff. The CoA meets the applicable requirements for the staff recruiting policy. Staff recruitment for external public auditor positions is by public competition. The General Secretariat holds competitions for vacant positions at the CoA for all staff categories. The CoA staff are on a special pay grade, at a higher level than regular civil servants. However, the implementation of the recently approved unitary pay system for the civil service may have an impact on their salary package.

The Human Resources Department prepares the Multiannual (3 years) Professional Training Plan, including specific, differentiated actions targeting

[6] Article 140.
[7] Law no. 94 of 8 September 1992 (re-issued) on the organisation and operation of the Romanian Court of Accounts, published in the Official Bulletin no. 282 of 29 April, 2009.

newcomers (induction), the existing staff or other staff categories. The training plan relies on proposals from central and territorial structures, taking into account the financial constraints and the relevant European or international trends, and is subject to the plenum's analysis and approval. The annual professional training plans provide the measures set out in the human development section of the CoA Development Strategy. The Professional Training Plan ensures training to the entire staff.

According to the 2010–2014 Strategy,[8] the Court was provided with IT equipment using funds from the state budget as well as EU funds (from various EU PHARE programmes) or loans from the World Bank. There are currently 88 servers, about 900 desktops and 1 200 laptops, a video conference system, printers, scanners, projectors, etc. Budget, premises and equipment are considered to be adequate.

The Court is improving its financial audit processes to consistently comply with international standards and has recently started building capacity on performance audit. To conduct performance audits on the utilisation of public resources (Article 16), the Court has created a special division. This unit is staffed by 25 specialists. The unit has mainly carried out preparatory work and some pilot activities. A performance audit manual has been elaborated. The Court has benefited from technical assistance to develop performance audit capacity, including study visits abroad.

The CoA regularly audits the MoD and the armed forces in terms of the development and administration of public assets and properties, and the legality of expenditure and revenue realisation. The last report of the CoA found some irregularities regarding the aviation company "*Romavia RA*", which is subordinate to the MoD. Those irregularities concerned the accuracy and fairness of the data included in its financial statements: assessment of management and internal control (performance indicators to monitor the effectiveness and objectives were not established, the risk register had not been updated etc.); the poor economic and financial management of goals, objectives and tasks set out in the strategic documents; the lack of principles of economy, efficiency and effectiveness in the administration of public and private state property etc. The Annual Report recommended the MoD: a) to clarify the legal status in relation to legislative changes according to which *Romavia RA* does not hold a strategic position in making special flights that would justify the autonomy of the organisation and its subsidies for the preparation and execution of special flights; b) to clarify the investment "*Hangar aircraft maintenance technical facilities*" given that the failure of financial resources for further investment or conservation may cause irreversible damage to work already performed; and c) downsizing the staff to match the reduced workload caused by the lack of orders and fees as a result of no aircraft being owned or rented. The media and civil society have not raised serious concerns about external and internal audit regarding the MoD.

[8] Strategy 2010–2014, Court of Accounts, available at: http://www.curteadeconturi.ro/sites/ccr/ro/Documente%20publice/Strategii/STRATEGIA%20IT%20RCC%202010-2014v2.pdf

The yearly audit report is referred to the parliament by the President of the Court. Additional special reports can focus on particular areas of inquiry and are discussed by the relevant committee in parliament. Interaction of the CoA with parliamentary committees varies according to the interests of currently serving CoA members. There is no debate in the plenary on special reports, but the parliament can follow up issues by setting up committees of inquiry. The Court has a unit for external relations that follows the parliamentary agenda and co-ordinates inputs into parliamentary discussions. The Court appears to have strengthened its public relations functions and broadened the use of press conferences to draw attention to its reports.

The main annual report is discussed at parliamentary budget committees. It is the only report of the Court that is subject to a formal discussion in the plenary consisting of a joint sitting of both chambers of parliament. Unlike in other countries that follow the auditor general model, the Court does not report to a specialised committee on public accounts nor do the budget committees in either chamber have permanent sub-committees to discuss audit findings.

The parliament's reactions to the audit reports are rather problematic. Its involvement in analysing, debating and following-up the audit findings is sub-optimal. It should consider the setting up of a permanent committee to scrutinise audit findings. Such a parliamentary commission would be useful for conducting hearings on audit findings and to track down the government's response.

In summary, despite the fact that the legal basis is strong, the audit, managerial control and performance auditing mostly focus on procedural aspects regarding the allocation and spending of public funds. Only a very limited number of performance-driven audits scrutinise the results obtained and the efficiency of the interventions financed through public funds. There have been several debates over the usefulness of the audit reports on EU financed projects. The main audit challenge is to move away from the current procedural approach towards more performance-driven auditing that would bring about more added value to policymaking.

4.3 Prevention of Conflicts of Interest

An extensive and complex legal framework regulates conflicts of interest. It has developed in several stages, starting in 2003, and was modified in 2005, 2007 and 2010. Since 2010, the National Integrity Agency (NIA) has been appointed as the special body to administer the conflicts of interest policy.

Several pieces of legislation make up the legal framework: 1) Law 115/1996 covering the declaration, control and assets' evaluation of public officials, magistrates, and persons holding management and control positions; 2) Law 144, of 21 May 2007, on the establishment, organisation and functioning of the National Integrity Agency; 3) Decision 175 of 20 February 2008 on the establishment of the Register templates for asset declarations and the Register

for interest declarations; and 4) Law 176 of 1 September 2010 on the integrity of public officials and dignitaries. This latter amends and completes Law 144/2007 and other normative acts.

The international community, especially the EU, played a crucial role in the development of anti-corruption legislation. Romania had introduced a requirement for officials to declare their wealth as from 1996. But the declarations were not public, and no control mechanisms were introduced. During the EU accession process, the European Union urged the Romanian authorities to introduce a mechanism for controlling the assets of senior officials. The Law was amended, and the declarations became public in 2003. In its 2003 report on Romania's accession, the European Commission considered the new legislation "weak and, for politicians in particular, the definition of conflict of interest is limited". New amendments were added in April 2004. In its 2004 report, the EC considered that "Romanian anti-corruption legislation is well developed and is broadly in line with relevant EU *acquis*". However, the good principles introduced in the new Laws still lacked proper implementation mechanisms. After the EU accession in 2007, Romania was still monitored under the Cooperation and Verification Mechanism (CVM) and had to prove the continuation of reforms in the justice sector. Thus, a law was passed in 2007 to create the National Integrity Agency (Law 144/2007), an institution specialised in the verification of assets, conflicts of interest and incompatibilities and the compliance regime.

A large number of public officials and authorities are obliged to declare their assets. It includes the executive, the executive and the judiciary. It ranges from the president to all public employees. It also includes trade unions and elected persons in local self-governments. The assets statements shall be done in writing under oath, and include the rights and obligations of the declaring person, and those of the declaring person's spouse and dependent children. A declaration of interests is also mandatory.

The assets statement shall include immovable and movable assets and properties with an individual value exceeding €3 000 per object or €5 000 altogether for all objects, financial assets exceeding €5 000 in total, loans above €5 000, gifts and gratuities exceeding €5 000, and the personal annual income of the declarant and his family members. The declaration of interests shall include participation rights and shares in all kinds of companies, foundations or associations; membership of the management, administration and control bodies of the above-mentioned entities and other professional associations or unions; membership of management or control bodies of political parties; and professional contracts on consultancy or legal assistance obtained while in public office. Failure to comply with the rules of declaration of assets or interests is subject to disciplinary sanctions, with an administrative fine of 200 lei (some €45) per day of delay.

Declarations are submitted to the official who is legally in charge of their collection in each institution Certified copies are subsequently forwarded to the NIA for analysis and verification. NIA integrity inspectors verify the information from the declarations and may access any office or require persons

or other legal entities to provide supplementary information that was not made initially available. There is an online database supporting the NIA inspectors. Recently, an EU-funded integrated monitoring matrix for centralising all data and information in the case of a completed file was implemented. It allows for an efficient follow-up of cases pending before courts (terms, decisions, and timeframes). It also allows for the internal monitoring of every inspector workflow and can produce real-time reports and complex statistical summaries.

Wealth statements and declarations of interests are public and publicly available online. After the Law was challenged before the Constitutional Court, the judges decreed that personal data should be concealed in the public form of the declarations. Thus, the original declaration submitted to the NIA, including personal data (e.g. the equivalent of social security number) is complete, but the public form does not include this information. However, apart from this personal data, the entire content of the declaration is public.

The nature of prohibited incompatibilities differs depending on the position and rank of the concerned public official. They range from a prohibition on holding property in certain companies or belonging to management bodies in companies, foundations or political parties to holding commercial relationships with companies contracting with the public administration. They also include the obligation to withdraw from decision-making processes where a public official or his relatives may have a personal interest.

Concerning withdrawal from decision-making processes the situation is problematic. If the conflict of interest is uncovered at an early stage prior to any subsequent related action, the official is removed from the decision-making position with respect to that particular issue (mainly in procurement-related cases). However, if the conflict of interests observed after a decision has been taken (the majority of situations), no clear legal consequences or sanctions are set. This is a loophole in the Law. While it is formally forbidden for public officials to participate and vote on a contract or another activity in which they could have material gains, the sanction is not explicit. The NIA tried to create some legal precedents so as to nullify contracts breaching this rule, but the relevant cases are still pending in the courts. Other proposals to amend legislation and impose a sanction of 10% of the total value of the contract signed in a conflict of interest situation are currently being debated.

Mayors, deputies, vice-presidents and presidents of a county council are forbidden to hold any other paid or unpaid job in Romania or abroad with the exception of teaching appointments or membership in an NGO. For prefects and deputy-prefects teaching appointments or those relating to scientific research, literature and arts are permitted. Civil servants may be members of political parties, but they are forbidden to have a management position in the parties, or express political opinions while in their civil service capacity. High-ranking civil servants (general secretaries, prefects, deputy prefects, and government inspectors) cannot be members of a political party, under sanction of being removed from office. In practice, however, accession into this group is often done through shadow deals among political parties.

The NIA is well regarded, mostly at the European level. The institution's reports show an important number of investigations, fines, cases of incompatibilities and cases referred to the judiciary whenever there were serious suspicions of corruption. Starting in January 2014, e-forms for assets and interests disclosures have been introduced, increasing the effectiveness of the process by facilitating data analysis and making the disclosure process more standardised and transparent. Between 2008 and October 2014 some 4.7 million of assets and interest declarations have been processed by the NIA, which imposed 5 500 administrative fines and referred 400 cases to the prosecutor.

Intentionally submitting untrue assets statements or declarations of interests constitutes the penal offence of making false statements and is punishable under the Criminal Code. Civil servants found in a situation of incompatibility or conflict of interest can be punished by dismissal or other administrative or criminal penalties, in accordance with the civil service legislation. If the situation can be dealt with under the Penal Code it will be referred by the NIA to the prosecutors. If not, an administrative fine may be imposed of between €10 and €450.

MoD officials must comply with the legislation regarding integrity in public office according to their personnel status. Civil servants (a minority at the MoD) are under the general rule. Military personnel (a large majority) must respect the specific regulation, which is contained in internal regulation C7339/2010. It establishes which categories of staff are obliged to fill in the assets declaration and declaration of interests. The assets declaration and the declaration of interest are to be submitted before 15 June to the NIA. If the NIA identifies deficiencies, it can ask for clarifications which must be submitted within 30 days. Furthermore, if the declarations are not submitted before 1 August, the person will be fined a minimum of 50 lei (€11) and a maximum of 2000 lei (€447) and the NIA can start its own investigation. According to the data provided by the MoD, the total number of staff that filled in their declaration of interests was about 10 120l. Of these, 66 filled them in after the legal term of 30 days and 19 staff members did not fill them in at all.

The practice on concurrent external appointments in the MoD and the armed forces is complex. Law 80/1995 does not specifically forbid MoD staff from working in the private sector, but doing so requires authorisation by the minister of defence. That authorisation may be given if the private job will not interfere with the staff's public obligations. Nevertheless, certain MoD Departments do not to allow staff to work in the private sector, especially those staff working in sensitive departments such as procurement. Overall, the number of applications to work in the private sector in very low, as it hovers around 0.1% to 0.2% of the total staff.

Once the NIA was created, the media's attention drifted towards the cases the agency was dealing with. The issue of declaration of assets and interests is less controversial now, but the agency attracts denigration from political parties and some media outlets controlled by politicians. EU representatives in Bucharest and US Ambassadors have publicly defended the agency on several occasions. Scandals about conflicts of interests are quite often reported by the media. The

NIA has an established practice of starting ex officio investigations in such cases. In 2012 the EU asked the Prime-Minister to desist appointing two would-be ministers whom the NIA found to be in conflict of interests. The PM pronounced misgivings on the fairness of the NIA, but eventually replaced his initial candidates with other ones.

The European Commission has often commended the efficiency of the NIA in enforcing conflict of interest legislation. The agency has autonomy to address high-level cases, such as those involving members of the government and parliament. Two members of the former parliament lost their seats when the NIA investigated conflicts of interest in their cases. The NIS is the sole institution with responsibilities for the identification and sanctioning of conflicts of interest situations. Any interested party can report a possible case of conflicts of interest to the NIA, and the integrity inspectors will initialise the relevant investigation and analysis. While *ex-officio* investigations were predominant at the beginning, currently the trend has been reversed: the NIA generally acts on the basis of petitions, complaints or requests from a third party (80% to 20% ratio between the two as per internal assessment of the NIA). There is no minister in charge of the conflicts of interest policy, a policy which is already well developed. For the time being there is no public demand for more regulation. There were previous attempts to reduce the severity of the legislation. However, mostly due to international and NGO support, the NIA has retained its main mandate on conflicts of interest.

In summary the conflict of interest legal framework is complex and extensive, a fact which often leads to non-compliance, but since the creation of the NIA, non-compliance with the incompatibility and conflict of interest regime has decreased. The NIA is well regarded, especially at the European level. The institution's reports show an important number of investigations, fines, cases of incompatibilities and cases referred to the judiciary whenever there were serious suspicions of corruption.

4.4 Transparency, Free Access to Information and Confidentiality

The concept of freedom of access to information was initially introduced by the 1991 Constitution, which confers on the individual the right of access to any information of public interest. However, until Law 544/2001 on free access to information of public interest was introduced, this right was not taken seriously. Freedom of access to information was strongly supported and actually imposed by civil society. In 2001, a coalition of NGOs proposed a draft Freedom of Information Act (FOIA). A member of the Liberal Party, then in opposition, took over the idea and introduced a draft FOIA law in parliament. The government of Ion Iliescu (who had returned to power in 2000) proposed its own draft. A strange competition occurred between the two drafts, which was arbitrated by the NGOs. A satisfactory law occurred from this arbitration, which was passed rapidly by the parliament. It is now Law 544/2001. As in many other reform areas, the international community supported the efforts for

the full implementation of FOIA and ensuring access to information, but the strongest pressure came from the domestic civil society.

According to Law 544/2001, the citizens' free access to public information shall be denied only for the following reasons: a) information in the field of national defence, public order and security, if, in compliance with the law, it belongs to the category of classified information; b) information about consultations of the authorities regarding Romania's political and economic interests, if, in compliance with the law, it belongs to the category of classified information; c) information about financial or commercial activities if, according to the law, its release is detrimental to the principle of fair competition; d) personal information under the terms of the law; e) information on the procedures during criminal or disciplinary investigations, if the result of the investigation is jeopardised, confidential sources are disclosed or the person's life, integrity and health may be endangered after or during the investigation; f) information on legal proceedings, if its release is detrimental to a fair trial or to the legitimate interest of the parties to the trial; g) information which, if released, would prejudice protective measures for young people.

There have been frequent situations, mainly in the first years after the law was passed, where public authorities added to the number of exceptions to avoid giving the information requested. The Romanian public administration was unprepared to apply a liberal law. Requests for access to information were frequently refused. State-owned enterprises usually refused to provide information, claiming that the law did not apply to them (the law was later modified to explicitly include them). Another major reason for rejection was the "commercial secret" exception. The term was very broadly understood as including any and all economic information. In most cases, the courts disallowed such exceptions and institutions were forced to make the information public.

After the FOIA was adopted in 2001, Romania was on its path to join NATO. In this context, a new law on state secrets was enacted, which designed an information protection system containing several layers of access to classified information. A special institution, the National Registry Office for Classified Information (ORNISS) was created to assess and grant access to classified information. In the first draft of this law, the MoD and some parliamentarians extended the definitions and the rule to cover almost all information produced by the state. There was a clear and sharp conflict between the FOIA and the new law. A strong reaction was necessary from the NGOs to water down the state secrets law to accommodate it with the FOIA.

Currently there is no particular line ministry responsible for the FOIA policy. When the law was passed in 2001, this responsibility was given to the Ministry of Information. Despite its name, this institution dealt more with PR for the government than with public information. It had neither the appropriate expertise nor the political ownership over FOIA. The Ministry of Information was later dismantled and the FOIA related tasks were transferred to a unit within the General Secretariat of the Government (GSG). The GSG is an administrative body focused on preparing government meetings and overseeing

dozens of agencies. The attention paid to FOIA decreased even further. Several NGOs which monitored the implementation of the law complained of the lack of interest and resources to push for its implementation. In conclusion, Romania passed a liberal law but paid little attention to its implementation which remained almost totally dependent on the willingness of individual managers of different public institutions. Currently there is no specialised institution to centrally manage the FOIA policy. All public authorities and institutions are required to have an information and public relations office or at least to appoint a person with responsibilities in this area. Each institution publishes a FOIA report every year.

There is no provision that requires that a reason must be given for a request to access to information. Public institutions should provide the requested information within 10 days. The timeline could be extended up to 30 days for more complex requests. There are no fees for providing information, except the cost of copying. There were some cases recorded where institutions asked for high copying prices in order to discourage FOIA requests, but those cases have been rare.

Within the MoD, there is a specialised department for FOIA, the Department for Information and Public Relations. The department, consisting of eight people at central level and one designated person for each military unit, is in charge of dealing with the requests for public interest information according to Law no. 544. The methodological coordination is carried out at central level, but every structure is autonomous in responding to the requests for information. Four staff training programmes are organised each year on the topic of information requests in cases of public interest according to Law 544. FOIA Staff do not take part in any other training programme.

Like any other public institution, the MoD publishes a yearly report on the implementation of Law 544/2001 – FOIA. A total number of 4727 FOIA requests were received by the MoD in 2012. During the first semester of 2014, 3 682 FOIA requests were received, out of which 427 received a late response while 151 were not addressed. There is no special judicial procedure on access to information. The courts tend to be supportive of the free access to information principle, but the number of cases that go to court is low.

The MoD meets the obligation set out in the law with respect to *ex-officio* information. According to the 2012 FOIA report, there were 130 institutions within the defence sector that published *ex-officio* public information. Dissemination channels include board postings at the headquarters of the institution, regular publications (13 cases) and websites (11 cases). The Department had registered 3 692 information claims in the first semester of 2014. Altogether 151 of these claims were not answered. In 427 cases, the answer was delayed. Most of the 427 claims which received a late response concerned cuts in military pensions. Seemingly this was mainly due to insufficient staff to deal with the workload.

The MoD publishes the budget documents on its website. The defence budget and balance sheet are available on the official website as from 2004 to 2013.

Financial data are presented in such a way that the economic category of each planned expenditure can be easily spotted. The entire MoD budget is public, except certain investment programmes on defence and national security under Law 500/2002 to which only reference is made. MoD budget chapters are not detailed. The defence budget is divided into eight main budget programmes (e.g. Air Forces) and the programme director is the head of the specific unit or department (e.g. Programme Director for the Air Forces – Head of the Air Force Branch). The redistribution of funds between the eight programmes is the preserve of the Minister of National Defence, while the decision to redistribute funds within each chapter is the competence of the programme director. However, due to the structure of the budget and the Law on Public Finance as well as the absence of real programme-based budgeting, it is hard to obtain any performance-related information. Judging the overall state of affairs in programme budgeting, the MoD is one of the leading institutions with the most modern approach to programming and budget execution.

In summary, the implementation of the FOIA created some problems for the Romanian authorities. Civil society organisations have constantly been raising concerns regarding the actual implementation of FOIA. Various NGOs monitoring the implementation of the law, complained of the lack of interest and resources from the central level to push for its implementation. Drafting FOIA and supporting its implementation was mainly the job of the civil society. The administrative authorities including the MoD have however progressed by increasingly implementing FOIA requirements in practice.

5 Policies under the Control of the Executive

5.1 Internal Financial Control

The legal framework on internal financial control is complex but comprehensive as regards internal audit, financial management and managerial control. Law 672/2002 on Public Internal Audit, as republished in 2011,[9] is the main law defining the system of public internal financial control (PIFC). According to its article 2, the PIFC system consists of an Internal Public Audit Committee (IAC), a Central Harmonisation Unit for Public Internal Audit (CHUPIA); several internal audit committees; and the internal audit departments of public entities.

Other relevant pieces of legislation include Government Ordinance No 119/1999 on Internal Control and Preventive Financial Control as republished, subsequently amended and supplemented,[10] which provides operational guidance on internal control and financial management, and Law 500/2002 on Public Finances,[11] which establishes the principles, framework and procedures for training, administration, recruitment and use of public funds and responsibilities of public institutions involved in the budget process.

In the wake of the current economic crisis, a Law on Fiscal Responsibility[12] (Law 69/2010) was enacted under the auspices of the IMF and the European Commission. It sets out the major medium-term macroeconomic objectives and principles for financial management. Among these medium-term objectives the following are salient: to ensure and maintain the fiscal budgetary discipline; transparency and sustainability of public finances, in the medium and long term; to establish a framework of principles and rules based on which the government ensures the implementation of fiscal budgetary policies leading to good financial management; to manage public funds effectively so as to serve the public interest in the long term.

The PIFC[13] regulatory framework is supplemented by Government Decision 235/2003 approving the norms regarding nomination of the members of the Internal Audit Committee (amended and supplemented), Order 252/2004 for approving the Code of Ethics of Internal Auditors, as amended and supplemented; Order 38/2003 on the general performance of the internal audit (amended and supplemented) as well as Order 981/ 2005 on the internal managerial control. According to the 2012 "Compendium of the Public Internal

[9] Law No 672/2002 on public internal audit, as subsequently amended and supplemented.
[10] Government Ordinance No 119/1999 on internal control and preventive financial control, republished, as subsequently amended and supplemented.
[11] Law No 500/2002 on public finance, as subsequently amended and supplemented.
[12] Law No 69/2010 on Fiscal and Budgetary Responsibility. Available at: http://www.dreptonline.ro/legislatie/legea_69_2010_responsabilitatii_fiscal_bugetare.php
[13] Development strategy, public internal financial control in Romania for 2010–2013. Available at: http://discutii.mfinante.ro/static/10/Mfp/audit/StrategiaCFPI2010.pdf

Control Systems in the EU Member States"[14] published by the European Commission, the regulatory framework for public internal financial control in Romania addresses good governance procedures and the implementation of accountability mechanisms.

In practice, audit and managerial control and performance auditing still focus mostly on procedural aspects. Performance-driven audits focusing on the results attained and the efficiency of the interventions financed by public funds are scarce. This rather formulaic approach reflects the lingering tradition of the Romanian administrative system which is very procedural, focused on respecting the letter of the law without paying much attention to actual performance. However, as an exception, some internal audit departments are striving to carry out performance-based auditing (e.g. Internal Audit Department of the Ministry of Public Finance audited the staffing needs of different departments within the institution).

The EU accession process was decisive for Romania to transpose the EU rules of chapter 28 on Financial Control, to harmonise national and EU legislation and develop the institutional infrastructure necessary for its implementation. The Ministry of Public Finance (MoPF) took the lead on the PIFC reforms. Pressure from the EU was, as in many other areas, the main driver for change. The harmonisation of the internal legislation with the EU rules pushed the government to develop a PIFC strategy. The document illustrates the actual state of the PIFC and sets out direction for future developments. The alignment of the national PIFC system with internationally accepted standards and good practice from the European Union has been quite successful. The role of protecting the financial interests of the European Union and combating fraud is placed at the Ministry of Public Finance, the Court of Accounts and the internal structures specialised in combating fraud.

The Central Unit for the Harmonisation of Public Internal Audit (CHUPIA) sets standards for financial management and control and internal audit. CHUPIA is responsible for harmonising internal audit, drawing up general methodological norms, procedures and guidelines, carrying out multi-sector internal audit missions, providing training on European standards and elaborating an Internal Auditors Code of Conduct. The CHUPIA drafted general rules based on the Standards of the Internal Auditors Institute (IIA), including the Internal Audit Charter. The Internal Audit Charter regulates the role and objectives of internal audit, the status of the internal audit department, the principles applicable to the internal audit department and to the internal auditors, and the methodology and rules of conduct governing internal audit. Based on these documents, each public internal audit unit elaborates its specific internal audit rules, including its own internal audit charter. According to the 2012 Compendium of the Public Internal Control Systems in EU Member States, the legal regulation for the operation of this unit is in accordance with international standards. Within the MoPF, the Central Harmonisation Unit for Financial Management and Control

[14] European Commission (2012), *Compendium of the public internal control systems in the EU member states*. Available at: http://ec.europa.eu/budget/library/biblio/publications/2011/compendium_27_countries_en.pdf

Systems is responsible for the overall policy on financial management and control, including delegated *ex-ante* financial control, standards and procedures for managerial control etc.

The *ex-ante* financial control is performed in all public institutions, including the MoD. Its legal basis is set by Ordinance 2426/2008 on internal financial preventive control, and the Government Ordinance 199/1999 on financial preventive control. Legislation defines *ex-ante* financial control as the activity which checks the legality and the regularity of the operations made with public funds or public property, prior to these being approved. The MoPF is the institution in charge of *ex-ante* financial control. Controllers within all public institutions have a double accountability line, one to the respective head of institution and another one to the MoPF (the latter being the one to endorse any change in the status of *ex-ante* financial controllers, e.g. replacement, dismissal etc.)

In accordance with Law 346/2006 on the organisation and functioning of the Ministry of National Defence[15] and Law 672/2002 on Public Internal Audit, as subsequently amended and supplemented, there is a special Internal Audit Department at the MoD. The audit department is directly subordinated to the Minister of Defence and is organised in three offices at central level supplemented by local audit offices. The Internal Audit Department staff and subordinate units leading or performing internal audit is made up of military personnel, civil servants and contractual employees whose educational background is mainly in economics, law or technical areas.

The Internal Audit Department at the MoD has the following responsibilities: 1) Elaboration of methodological norms specific to the MoD, with the approval of the Central Unit for the Harmonisation of the Public Internal Audit established within the Ministry of Finance; 2) Elaboration of the annual internal audit plan for the MoD, which is submitted to the minister for approval; 3) Carrying out public internal audit on the basis of the approved annual public internal audit plan, to evaluate whether the systems of financial management and control of the ministry and its subordinated military units are transparent and abide by the principles of legality, regularity, economy, efficiency and efficacy; 4) Carrying out missions of internal public audit not included in the annual plan, following the instructions of the minister or other requests or complaints; 5) Reporting to the minister of national defence on observations, conclusions and recommendations resulting from its audit work; 6) Elaboration of the annual report of the public internal audit activity; 7) Reporting back to the management of the public institution on the results and conclusions of the audit missions.

Internal audit offices are organised on a territorial basis, under the MoD's Internal Audit Department. They audit budgetary and legal commitments arising directly or indirectly from payment obligations, including EU funds; payments made by budgetary and legal commitments, including EU funds; sale, pledge, lease or rental of goods from the private domain of the State; leasing or

[15] Official Gazette no. 654 of 28 July 2006.

renting of goods in the public domain; public revenues; allocation of budget appropriations; accounting system and its reliability etc. According to the 2011 Report on Internal Control, the MoD uses internationally recognised auditing standards. Likewise, the *Compendium of the public internal control systems in EU Member States 2012*, points out that the MoD, as other Romanian public institutions, has implemented the components of public internal control, managerial control, managerial responsibility and accountability and management and internal control standards.

The existing legal framework describes managerial responsibility as a process in which managers at all levels are responsible for the decisions made and actions taken to achieve the objectives of the public entity of which they are part. This involves the accountability of the managers for good financial governance and the legality of public funds and/or public asset management. The 2012 Methodological Norms on the System of Internal Control and Management at the Ministry of National Defence[16] included the concept of responsibility for internal management. The first chapter of this document describes the responsibilities for the implementation and development of the system of internal control and financial management. Article 5 lists the units responsible for the development of the internal control system: the General Secretariat and committees responsible for monitoring, coordination and methodological guidance to implement and develop internal control systems. The document provides the institutional objectives, and a clear allocation of responsibilities as well as related performance indicators. However, the document does not clearly state the responsibility for *ex-ante* controls of commitments and payments and recovery of unduly paid amounts. As mentioned above, performance management standards and the results-based approach that the internal managerial control system is trying to promote meet the resistance of the traditional administrative approach.

In summary, the alignment of the national PIFC system with internationally accepted standards and good practice from the European Union has been quite successful. According to the 2011 Report on Internal Control, the MoD uses internationally recognised auditing standards. Likewise, the 2012 Compendium of the Public Internal Control Systems in EU Member States points out that the MoD, as other Romanian public institutions, has implemented the components of public internal control, managerial control, managerial accountability and management and internal control standards.

5.2 General Administrative Inspectorates

The MoD Inspector General institution has been recently reorganised and it is now represented by the Control and Inspection Body led by a major general. The units within the Control and Inspection Body are: a) Service evaluation

[16] Methodological Norms in 2012 on the system of internal control / management at the Ministry of National Defence, available at: http://lege5.ro/Gratuit/gmzdmnrvha/norma-metodologica-din-2012-norme-metodologice-privind-sistemul-de-control-intern-managerial-in-ministerul-apararii-nationale#

system; b) Service staff and control; c) Department of Environment, safety and health, technical supervision and legal metrology; c) Supporting structures. According to Law 346/2006 on the Organisation and Functioning of the Ministry of Defence, the chief of the Control and Inspection Body has direct and regular access to the highest leadership level.

The mission of the Control and Inspection Body is to evaluate systemic policies, processes, programmes, structures and resources in order to identify the status and evolution, to plan parameters in the Ministry of Defence, and to control / inspect / investigate specific issues ordered by the Minister of National Defence. The Control and Inspection Body performs inspections, investigations, collection of information, preparation of documentation, etc. Its main areas of expertise include 1) the systematic evaluation of policies, programmes, processes, structures and resources allocated according to approved plans; 2) the identification of data and provision of status information to the military on areas that have been evaluated, and the promotion of solutions, proposals and corrections to the Minister of National Defence in support of decision cycles; 3) the management planning assessment activities (inspections, controls) within the military; 4) the investigation / verification, requested by the Minister of National Defence; 5) the unitary coordination of policies and programmes for environmental protection, safety and health, technical supervision and legal metrology in the military. The reports by the Control and Inspection Body are not made public.

5.3 Public Procurement and Military Asset Surplus Disposal

5.3.1 Acquisitions

The public procurement system is similar to those in other EU member states. The EU legislation, namely Directives 2004/18/CE and 2004/17/CE, was rigorously transposed. Consequently, public contracting is governed by the principles set by the European directives relating to non-discrimination, equal treatment, mutual recognition, transparency, proportionality, the efficient use of public funds and accountability. The most important domestic piece of legislation regarding the procurement system is set out in the Government Emergency Ordinance (GEO) 34/2006[17]. The Public Procurement law is supplemented by enforcement norms and secondary legislation. The EU had a direct influence over the procurement legal framework and its implementation also after the accession. Public procurement shortcomings were noted in the Verification and Cooperation Mechanism reports. Romania introduced relevant measures accordingly, including legislative amendments to support coherent implementation.

[17] Law on Public Procurement, G.E.O. 34/2006, available on: http://www.anrmap.ro/legislatie/ordonanta-de-urgenta-nr-342006-versiune-vigoare-forme-precedente-si-acte-normative-de-mod

The public procurement legal framework includes other relevant regulatory acts as well as secondary legislation which contain special provisions, such as: 1) Government Decision 925/2006 on the application of GEO 34/2006; 2) Government Decision 71/2007 on awarding public works and services concession contracts, as provided in GEO 34/2006; 3) Government Emergency Ordinance 114/2011 on awarding certain public contracts in the defence and security fields; 4) Government Decision 1037/2011 on the organisation and functioning of the National Council for Solving Complaints; 5) Law 178/2010 on public-private partnerships; 6) Government Decision 525/2007 on the organisation and functioning of the National Authority for Regulating and Monitoring Public Procurement (NARMPP). These pieces of legislation are completed by tertiary legislation, namely several orders adopted by NARMPP on specific legal provisions of GEO 34/2006.

The national legislation on public procurement is quite unstable. The law was successively amended to comply with the EU norms and remedy shortcomings in the system. Technical carelessness on repealing provisions and enacting new ones has been detrimental to the transparency of the system. As a consequence, it is now extremely difficult to know and understand the legislation in force, a factor limiting a wide participation of bidders in public procurement processes, so favouring a supply oligopoly.

According to GEO 34/2006, certain public contracts are excluded *de jure* from the scope of the ordinance. The PPL shall not apply to i.a. the following public procurement contracts:

- contracts having as an object the delivery of services included in annex 2B to GEO 34/2006 with an estimated value below the thresholds for publication of award notices in the Official Journal of the EU (OJEU);
- contracts included in the category of state secrets, as well as contracts subjected to special security measures to protect national interests;
- contracts awarded by contracting authorities' units operating on other states' territory when the estimated value of the contract is lower than the thresholds provided for publication of contract notices in the OJEU;
- contracts having as an object the purchase or lease, by any financial means, of lands, existing buildings, other real estates or rights over such real estates;
- contracts referring to the purchase, development, production or co-production of programmes destined to broadcasting, by radio-broadcasting or television institutions;
- contracts referring to the performance of services of arbitration and conciliation;
- contracts referring to the performance of financial services related to the issuance, purchase, sale or transfer of equity or other financial instruments, especially operations of the contracting authority with the purpose of attracting financial and/or capital resources, as well as services specific to a central bank provided by the National Bank of Romania;

- contracts referring to the employment of work force and the conclusion of labour contracts;
- contracts referring to the performance of research-development services entirely paid by the contracting authority, the results of which are not destined exclusively to the contracting authority for its own benefit;
- the services contracts of research and release of archaeological finds for the archaeological patrimony and archaeological sites.

The National Authority for the Regulation and Monitoring of Public Procurement is the central authority with overall responsibility for the design and implementation of public procurement policy. It is set-up by Emergency Ordinance 74/2005[18] as approved with amendments and supplements by Law 111/2006. The institution's organisation and functioning details are set by Government Decision 525/2007, as amended. The National Authority for the Regulation and Monitoring of Public Procurement is directly subordinate to the Prime Minister. Its responsibilities include: 1) The conception and implementation of public procurement policies; 2) Drafting the legal framework on procedures for awarding public procurement contracts; 3) Monitoring, evaluating, analysing and supervising (*ex-post* control) the manner of awarding public procurement contracts; 4) Representing Romania in advisory committees, work groups and communication networks organised by the European Commission; 5) Initiating/sustaining the projects or training actions of the personnel involved in the specific public procurement activities; 6) Procedural counselling of contracting authorities in the awarding process of public procurement contracts.

The procurement procedure within the MoD is governed by two set of regulations: Firstly, OUG 34/2006, which is applicable to all the procurement procedures in the public sector and secondly, OUG 114/2011, which applies only to military and national security procurement procedures. Seemingly there is almost no single-source procurements at the MoD. The general rule is competitive procurement, using the on-line specialised IT platform for public procurement.

The procurement of military equipment and weaponry is the responsibility of the Armaments Department at the MoD. The department also deals with the harmonisation of national and international laws concerning the optimisation of products and services in procurement, integration of modern technology and balancing domestic and foreign acquisitions. The department is led by a state secretary. Other internal units involved in procurement include the Resource Management Directorate for Endowment, the Technical Direction and Procurement Programmes, and the Contract Management Directorate. The Armaments Department has an Ethics and Integrity Code which applies to all the staff involved in public procurement.

[18] G.E.O. no. 74/2005.

At the MoD, the Integrated Management System of Defence Procurement introduced a series of instructions, policies, principles and basic procedures shaping the organisation of the procurement process. It assigns key responsibilities on establishing specific requirements, allocation of funds and programme management. It also ensures compliance with the principle that no procurement is carried out without an approved requirement, without having full financial coverage from the budget and without a procurement strategy directly led by a programme director. It analyses the coherence between resources and requirements for conducting defence procurement programmes and examines various feasible alternatives before starting a procurement procedure. Moreover it conducts the procurement procedure through its various phases or "decision points" while keeping costs under control. The system also ensures that procurement contract negotiation is fair and equitable, sharing the risk between the MoD and the supplier while ensuring an offset package to the benefit of the domestic industry. Costs, implementation schedule and performance parameters are to be established at the beginning of the procurement process, and assessed and adjusted throughout the programme execution.

All procurement procedures are published online on the MoD website. Specific Terms of References are sent to all possible suppliers showing an interest in the procedure. The procurement procedure follows a complex mechanism. First, a document containing specific requirements for army equipment is issued and approved. The technical requests are then discussed and approved. Afterwards, the Council for Defence Planning establishes the budget for the procurement and, finally, the Procurement Council issues the final decision by approving or rejecting the procurement procedure. In the Army, there are three systems, each represented by a different decision-making authority (or Council): 1) The Issuing System Requirement, which is led by the Supervisory Board of Requirements that validates and approves the "Document with the Mission Needs" and the "Operational Requirements Document"; 2) Planning, Programming Budgeting System or PPB. It is supervised by the Defence Planning Council (chaired by the minister of national defence), which approves funding for the programmes and sets, along with other systems, priorities in resource allocation in accordance with the State Budget Law; 3) Procurement Management System. This is led by the Procurement Council (CODA), which is responsible for the procurement programme, project and contract management, test and evaluation (T&E), managing the financial resources, quality management and reporting.

New documents are drafted for launching new procurement programmes in accordance with mission needs, operational requirements established by the General Army Chief, forces categories and other structures of the MoD. A methodological guide on procurement is not publically available on the MoD website. The Ministry publishes the Contracts Bulletin, summing up the current contracts and planned procurement, announcing its intention to contract particular services and publicising the specific criteria etc. All the bulletins are available on the MoD website, starting with those of 2005. The procurement of special purpose goods is executed in accordance with the Annual Plan of Public Procurements drafted by the Technical Department and Endowment

Programmes of the MoD, and is approved by the Minister of Defence. However, it is not published on the MoD website.

In order to ensure transparency, the public procurement law stipulated the mandatory publication of public procurement adverts on the Electronic System of Public Procurement (ESPP) and if appropriate, in the OJEU and optionally in the Romanian Official Gazette. The Public Procurement Portal – ESPP[19] is a nation-wide governmental web portal for procurement where government clients and private sector vendors can interact after being authorised to access the system. More than 80 different categories of goods are included in procurement notices published by roughly 1 000 public agencies. A total of 2 500 suppliers are digitally-certified via the system. Hundreds of procurement transactions are undertaken each day, with typical examples being the purchase of office supplies for some schools, or bulk-buying of drugs by a hospital (though there are much larger contracts as well).

The system works on a reverse auction basis. The contracting authority from the government side issues a public notice through the system with terms of reference for the purchases, including a clear description of the goods required. There is a time-bound automated bidding system. The choice of the winner is based on the criteria that were included in the bidding documentation. In addition to being the online platform for procurement auctions, *E-licitatie* offers information on how public funds are being spent by the participating institutions, the rules and procedures used in procurement, the participants (both contracting authorities and bidders) and the winners of the contracts. *E-licitatie* is also meant to ensure transparency, equal chances for all players and easy access to critical business information in public purchasing. The time span allotted for preparing bidding proposals is not considered problematic by the bidders.

The ToRs for procurement shall respond to some need that has been previously identified. In general this is the case as there are several operational programmes that define the major priority axes and fields for interventions. Romania is now using EU structural funds, so most procurement is on capital investment projects. In practice all funds come from the national budget and then they are reimbursed by the European Commission. *E-licitatie* is thus the procurement platform for all public funds, regardless of their origin. This was something the Romanian authorities accepted reluctantly, as the administrative tradition is characterised by an ad-hoc and personalised decision-making system.

Article 33 of GEO 34/2006 (and OUG 114/2011 on certain public contracts in the fields of defence and security) establishes that the tender documentation must contain general information on the contracting authority at minimum, including contact details; instructions which must be complied with for participating in the procedure; minimal requirements for qualification, as well as documents to be presented by tenderers/candidates to prove that they fulfil

[19] www.e-licitatie.ro.E-licitatie.

the qualification and selection criteria; the specifications or descriptive documentation, the latter being used in the case of competitive dialogue or negotiation procedure; instructions regarding the manner of preparing and submitting the technical and the financial proposals; detailed and complete information on the criteria to determine the winner of the tender; instructions on appeal; and information on key contractual clauses. As an additional mechanism to ensure the quality of the tender documentation, the National Authority for Regulating and Monitoring of Public Procurement evaluates the conformity of the tender documentation with the public procurement legislation before the submission of the announcement/invitation notice. There are cases where some large-scale investments programmes (National Investment Plan) are submitted for the government's approval. In the defence sector, strategic decisions on major procurement plans are taken with the involvement or endorsement of the Supreme Council for National Defence.

According to the procurement law, the contracting authority shall appoint the members of the evaluation committee who must be members of the public procurement department of the contracting authority. The committee must include specialists in the field of the object of the contract. The contracting authority can appoint external experts to provide support in the evaluation. The members of the evaluation committee and the external experts shall avoid conflicts of interest. They shall also keep the contents of the tenders and any other information submitted by the tenderers confidential, especially if their disclosure might harm intellectual property rights or commercial know-how. A prior statement of personal responsibility by evaluation committee members guarantees their compliance with these rules.

The evaluation committee may request bidders to submit clarifications or additional information, whether formal or confirmatory, within certain deadlines. If the bidder fails to answer these requests or his explanations are unclear, he may be excluded from the procedure. The evaluation committee can correct arithmetical errors and formal flaws only with the bidder's approval. If a bidder does not accept the correction of these errors/flaws, the tender will be considered irregular. The evaluation committee is obliged to reject unacceptable tenders and irregular tenders. Within 20 days of the date of the opening of tenders, the evaluation committee must establish the successful tenderer. This deadline may be extended only once, in duly justified cases. Despite this provision of the law, in practice the evaluation lasts longer without clear justification. Once the evaluation is completed, the evaluation committee must write a report, which shall be signed by all the members of the evaluation committee, including its president. The report is forwarded to the head of the contracting authority for approval. The results of the evaluation are communicated to all tenderers.

The evaluation committee is solely responsible for the tender evaluation. No interference is allowed under the law. According to the law, the role of the minister or head of institution in the procurement procedure terminates with the appointment of the evaluation committee. The contract is signed with the successful tenderer after the publication of the tender results by the committee

and after the appeal period has elapsed. Usually, the contract is signed by the head of the contracting authority.

In its 2011 report, the Court of Accounts stressed the "poor management of the verification of public procurement procedures in respect to cohesion funds". The European Commission has confirmed the findings of the CoA and warned the Romanian authorities several times about the lack of administrative capacity and the wide range of deficiencies in the management and control of EU funds. Since some of these problems have not been addressed, the Commission decided to suspend payments on five key Operational Programmes (Development of Human Resources, Regional Development, Transport, Environment and Competitiveness) for approximately 6 months. As a result, the National Integrity Agency (NIA) was tasked with the *ex-ante* control of conflicts of interest in public procurement (in relation to EU funds). The NIA is currently developing an integrated mechanism for early warning and signalling of possible conflicts of interest in public procurement procedures. The NIA's involvement in procurement is positive. However, each public authority has its own internal management and control of procurement procedures, and bears responsibility to implement constant monitoring of contracts. There is a two-step procedure to contest a procurement. First, an internal committee evaluates the procurement procedure and gives its verdict. If the company is not satisfied with the response, it can take the case to the Court of Appeal. About 10% to 20% of the procurement procedures are contested.

Detailed written records are available following a formal request. The only records which are not public refer to procurements excepted by the law (certain procurement in the defence and security domains.) According to the procurement law, the contracting authority is required to prepare the public procurement file for each contract or framework agreement concluded, and for every purchase launch. The public procurement file and the tenders, accompanied by the qualification and selection documents, are kept by the contracting authority as long as the public contract/ framework agreement has legal effect, but not less than 5 years after completion of the respective contract. In the case of cancellation of the awarding procedure, the file is kept for at least 5 years after the cancellation of the respective procedure.

The National Council for Solving Complaints (NCSC) is the complaint review mechanism. It started operations on 1 January 2007 as a legal person created by GEO 34/2006 and Law 337/2006. The council has a quasi-jurisdictional nature. It is independent and is not subordinated to the National Authority for Regulating and Monitoring Public Procurement. The council has the competence to deal with the complaints formulated within a procurement procedure before the conclusion of the contract through the use of specialised panels of advisers for claims settlement. The creation of the NCSC allowed Romania to comply with a commitment assumed in its accession to the European Union. The council has 88 employees and its members or counsellors are public servants with special status who deal with complaints on public procurement. Through its specialised chambers, the Council is competent to settle complaints lodged within the awarding procedure, before the contract is concluded. The Council is composed of 11 chambers. Complaints are dealt with

by a chamber composed of three Council members, one of whom is the president of the chamber and holds a law degree. In order to perform its activity in a satisfactory manner, each chamber has also technical-administrative staff: an economic counsellor, a legal adviser, a technical counsellor and an expert. As for the quality of the Council's decisions, in 2011, out of a total of 6 562 of decisions issued, only 1.4 % were annulled and only 0.5 % were partly repealed by the courts.

National legislation on public procurement is quite unstable. The law was successively amended to comply with EU norms and to remedy shortcomings in the system. Technical carelessness when repealing provisions and enacting new ones has been detrimental to the transparency of the system. Consequently it is now extremely difficult to know and understand the legislation in force, a factor limiting a wide participation of bidders in public procurement processes, so favouring a supply oligopoly.

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According to the 2011 Annual Audit Report, the Court of Accounts rated the Ministry of Defence as "very good". There were no major concerns raised in the Romanian media over the procurement system at the MoD. Military asset disposal does not seem to represent a major issue. Most procurement scandals targeted other institutions, not the MoD or the EU funds management.

5.3.2 Asset Surplus Disposal

Romtehnica is the department in charge of military assets disposal. It was established by Government Decision 1771/1974, as a foreign trade department in defence. The current legal status of C.N. ROMTEHNICA S.A. is defined by Government Decision 738/2001, its capital being entirely owned by the State, represented by the Ministry of National Defence as the sole shareholder. The value of the assets that will be disposed of is established by an internal Commission, not by external assessors.

5.4 Human Resource Management

The civil service legal framework is comprehensive. The 2003 Civil Service Law amended the 1998 Law. It set out the legal basis for the development of an independent, merit-based and professional civil service. The legislation clearly distinguishes between political and technical positions in the administration. In practice, the implementation of the law is far from flawless, with political influence over the civil service which raises capacity issues throughout the administration. Military personnel have special legislation regulating their

status.[20] Government Decision 106/2011 regulates military careers. Government Decision 611/2008 regulates the organisation and development of the career of civil servants. Law 284/2010 regulates the remuneration system both for military and civilian personnel. The Labour Code (Law 53/2003) regulates the contractual personnel.

According to the law, there is clear distinction between civil service and political positions in the public administration. For any central ministry, political positions include the minister, the state secretary (deputy minister) and their advisers. All other positions are formally non-political (civil service, contractual or military personnel). In practice however, the situation varies across institutions. The politicisation of the civil service is a challenge. Military personnel are not allowed to engage in any political activities or be part of a political party.

Politicisation is a big challenge for the Romanian civil service. The European Commission and other international organisations[21] have requested clear commitments from the Romanian Government to deal with the weak capacity of the administration and associated problems. The 2014 PAR strategy includes HRM coordination and associated measures. However, this over-politicisation seems to affect the MoD to a lesser extent than other central public authorities.

Appointments to senior positions within the civil service remain politicised, mainly through transfers or temporary appointments which generally bypass the normal competition requirements. Data from the National Agency for Civil Servants (NACS) show that while the overall incidence of temporary appointments within the central civil service was 18.6% in 2012, it was significantly higher among the more senior ranks; particularly among high-ranking civil servants (79%) and Directors (28.5%).[22]

Some 90% of the MoD staff are military personnel, while 10% are either civil servants or contractual personnel. Each institution, including the MoD, has to assess the position's vulnerability to corruption and include mobility and other related measures to mitigate corruption risks. However in practice, implementing such provisions is a cumbersome process for obvious reasons ranging from the lack of alternative capacity and relevant skills needed to replace the staff member and to ensure adequate mobility, to the absence of real political will.

Recruitment within the civil service to entry-level positions has been temporarily limited by the financial crisis in recent years. Promotions within the ranks below director and director general (i.e. apart from the politicised temporary appointments and transfers practices noted above) remain driven

[20] Law 80/1995 and Law 346/2006 on organisation and functioning of the MoD.
[21] See the Functional Review of the Central Public Administration in Romania – Public Administration Reform: An overview of cross-cutting issues, World Bank 2010–2011; Analysis of the Structural Causes underlying the weak capacity of the Romanian public administration, prepared in 2013 by the working group under the Prime Minister Chancellery.
[22] http://www.anfp.gov.ro/DocumenteEditor/Upload/2013/Raport%20activitate/Raport%20de%20activitate%20al%20ANFP%202012.pdf

primarily by seniority and credentials, rather than merit or performance. As highlighted above, promotions into and within the managerial ranks (director and above) appear to be characterised by promotions through transfers, driven by the preferences of political-level decision-makers such as state secretaries, rather than by merit and performance through competitive procedures. This is "particularly problematic given the age structure of Romania's public administration, which is heavily weighted toward older, more senior staff".[23]

Military personnel at the MoD have to follow a three-step process with fairly clear and transparent selection procedures: 1) Recruitment; 2) Selection and 3) Admission. At the first step, the recruiter will guide the candidate to choose the most suitable branch of the military for him. Further, during the selection process, each candidate has to pass a series of trials (24 hours long for enlisted personnel and 48 hours for officers/sub officers/warrant officers). The selection phase consists of psychological tests, physical trials and a final interview. Those who have passed all the selection procedures and choose the enlisted personnel will be assigned to the military unit according to some specific criteria (personal options, tests results, number of available openings, etc.). Those choosing to become an officer/sub officer/warrant officer have to enrol in a specific military education institution. There are 12 military education institutions.

To ensure a transparent process, temporary selection committees are created each time MoD staff are to be promoted/advanced in rank or to become an officer. These committees have the competences to analyze, prioritise and select MoD staff that are eligible for promotion, taking into consideration the Military Career Guide and all the relevant legislation in this field. Decisions by these committees are mandatory and have to be enforced by the commanders of the military units. This process regularly takes place once a year. Rank advancement can be achieved "in term" or "exceptionally" (before the given term elapses). All the criteria are described in detail by the Military Career Guide and Law 80/1995. All appointment and dismissals decisions within the military units, with the exception of civil servants appointed according to the civil service law, are decided through Order of the Minister of Defence.

Once in place, the MoD military staff are assessed yearly. This assessment is the only document that certifies professional competences, moral standards and promotion prospects. Promotion and rank advancement is virtually based on this annual performance appraisal. For the reserve military staff, this assessment is fulfilled during the year when the staff are eligible for promotion. The methodological framework for military staff performance appraisal is set through an order of the Minister of Defence. There are five performance appraisal grades that could be issued: "exceptionally", "very good", "good", "mediocre" and "inadequate". As the procedure for promotion follows this performance appraisal process, the framework for promotion on the basis of the merit principle may be deemed to be well-established within the MoD.

[23] World Bank (2013), "Analysis of Capacity Building Activities in the Public Administration."

The performance appraisal for civil servants, set through the Government Decision no. 611/2011, is organised slightly differently. An annual process has been established with individual objective-setting at the beginning of the year and a four grade scale to appraise performance. The implementation of the civil servants staff performance appraisal process generally fails to distinguish between various levels of performance. Over 95% of civil servants are rated in the top-ranking category of performance.

There is no direct connection between political affiliation/ patronage and recruitment or career progression within the MoD, since military personnel are not allowed to be part of a political party or express political views. There is a clear legal delimitation between the political sphere and the defence system. Nevertheless, the mass media have highlighted links between politicians and members of the defence system. There are also cases of former MoD staff contesting the current promotion system and the "easiness" of achieving the highest possible ranks for some well-connected individuals. A dispute highlighted the refusal of Romania's President to promote a former tennis player who had been proposed by the MoD for advancement to the rank of lieutenant-general.[24] Furthermore, the media also highlighted the promotion of certain military personnel following political support.

The general rule is that appointment to the civil service is permanent. Under the Civil Service statute, dismissal is extremely difficult. Several procedural steps (difficult and in general cumbersome) are required and various commissions have to prove the lack of professionalism or serious mistakes committed. Dismissal is complicated and usually reversed by courts that award compensation.[25]

In the case of military personnel, the MoD distinguishes between two types of personnel categories: firstly soldiers and military volunteers, and secondly officers/sub officers and warrant officers. The former are entitled to job permanence, dismissal being possible only in specific cases, according to the law. The first category is based on fixed contracts which can be revised. Dismissal of MoD staff is possible only in certain cases, specified by the law, such as dishonouring the military or not fulfilling your duties. A special committee has to analyse and evaluate your file and express an opinion. Furthermore, the MoD staff has the right to contest the report within the military courts but also to file a claim in a civil court. A recent case involved a lieutenant who took part in the 2012 political protests while wearing his military uniform, an act forbidden by law. The MoD put him on reserve status, but he appealed to the civil court and won the process against the MoD, being reinstated in the same position.

A unitary pay system law (Law 284/2010) is in place regulating wages for all categories of civil servants and other public sector employees. The law is not

[24] In response, the person accused referred to political pressures since he said that he had voiced opinions on the President's inner circle.

[25] To circumvent those difficulties "temporary assignments" are extensively used for filling high-ranking civil service positions.

currently implemented to its full potential due to lack of financial resources. Under the Government's agreement with the IMF in 2009,[26] a number of pay reforms were undertaken over the 2009−2010 period to support the fight against the economic crisis, namely pay freeze; employment reduction (1-in-7 attrition replacement); establishment of a uniform pay structure (Unitary Pay Law).[27] The Unitary Pay Law was enacted, but only partially implemented, i.e., many of the performance bonuses were eliminated but the restructured salary scale is yet to be implemented; reduction of bonuses and elimination of all non-monetary bonuses; eliminating or consolidating the remaining monetary bonuses into the basic salary[28]; cuts in overtime and two-week unpaid leave.

There is no clear and direct link between the staff annual performance appraisal results and the level of salary in the general civil service. Performance appraisal results are important for promotion, hence the appraisal results have an indirect impact on the salaries of the assessed personnel. The only direct connection between staff appraisal and monetary benefits is for officials managing EU funds − the performance appraisal grade of the staff involved in EU funds management determines the level of top-ups received.

The response of the Romanian authorities to the crisis included an additional 25% cut across the board in salaries that impacted heavily on the employees of the public sector. As the "Analysis of Capacity Building Activities in the Public Administration" report[29] mentioned, more recently the government granted across the board salary increases for several years[30] – 15% (January 2011), 8% (June 2012), 7.4% (December 2012)[31] − but then imposed a moratorium on further pay increases. The across-the-board salary increases may have addressed pressing demands for increased salary levels, but in so doing made implementation of a restructured salary scale, mandated by the Unitary Pay Law, fiscally more challenging. The reason for this is that the across-the-board salary increases raised the salaries not only of those whose remuneration was particularly uncompetitive, but also of those whose remuneration was relatively more competitive. Thus any restructuring of the salary scale that includes protection of current staff from pay cuts (a typical provision of such reforms) will now be more expensive than would have been the case prior to the across-the-board salary increases.

Family members of active personnel benefit from medical assistance within the military medical system and transport facilities when the military is being moved from a military unit to another. Following the death of an active military personnel, the MoD grants a sum of money equivalent to two months of payment. Descendants of active or retired military personnel deceased during and because of military activities, accidents, disasters or part of international

[26] Letter of intent to International Monetary Fund, 24 April 2009.
[27] Framework Law No. 330/2009, 5 November 2009 followed by the Law 284/2010.
[28] With the exception of the bonus for staff managing EU funds.
[29] World Bank (2013), "Analysis of Capacity Building Activities in the Public Administration."
[30] The stated objective was to regain the level of salaries prior to the 2010 cuts.
[31] Vasile, Valentina (2012), "Continuous Flow of Public Sector Reforms in Romania", presentation at Conference on Adjustments in the Public Sector in Europe: Scope, Effects and Policy Issues" (June), available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/meetingdocument/wcms_184247.pdf

missions are entitled to pension rights equivalent to the monthly payment of the deceased, which is constantly updated according to the law. If there are no descendants and the deceased was the sole financial supporter of the parents, they are entitled to half of the sum. The children of the deceased can be also transferred to a military high school, following an aptitude test.

MoD has a special Directorate in charge of protecting the identity of the person reporting perceived corruption practices – the Directorate for the Prevention and Investigation of Corruption and Fraud. Protection mechanisms for whistleblowing are also part of their anti-corruption strategy. MoD officials and armed forces personnel are encouraged to report corrupt practices. The MoD internal regulations (Military Discipline Regulation) are in accordance with Law 571/2004 on the protection of personnel from public authorities, public institutions and other institutions that report corruption practices. The MoD does not reveal the identity of the person who reported corrupt practices and ensures his protection. Three reports on corrupt practices were received during the first semester of 2014. The interest of the MoD in the topic is also proven by the fact that there were 45 internal training sessions on this issue in the first semester of 2014, with a total of around 4.000 staff members trained. The MoD is one of the institutions praised for its success in implementing anti-corruption practices. As such, there are no reports raising concerns on the MoD practices regarding whistleblowing.

There is no single institution in charge of coordinating a strategic approach to HRM. Important HRM functions are scattered across institutions: the Ministry of Regional Development and Public Administration, Ministry of Finance, National Agency of Civil Servants, Ministry of Labour, Ministry of Education, Ministry of Health, and the MoD. Each of these organisations is responsible for developing HR policies for their personnel. No one has responsibility for linking HRM policies to a broader public administration modernisation agenda. Policies on pay and HRM lack a strategic approach. Crosscutting HRM practices are not adequately coordinated and kept in line through HRM strategic policy priorities, when such priorities exist. The system is characterised by reactive (rather than pro-active and strategic) policy decisions and the inadequate institutional design and authority of the key central agents (of the National Agency of Civil Servants, in particular) to effectively ensure that key HRM objectives are being pursued by line Ministries and agencies. Within HR departments at line ministries, the management of human resources is perceived and conducted mainly from the technical, administrative point of view. HR departments are not used to meet the strategic challenges of the organisation. Prioritisation and HR policy-making remain important challenges for most of the Romanian public entities.[32]

With respect to ensuring meritocratic, depoliticised hiring and promotion as shown above, the central institution responsible for administering that process for civil servants (the National Agency for Civil Servants) has achieved limited success in enforcing the competition requirements mandated under the civil

[32] As noted in World Bank (2013), "Analysis of Capacity Building Activities in the Public Administration."

service legal framework (particularly for appointments to senior positions, such as director and director general where transfers and temporary appointments are widely used, as noted in the previous section,).

As in many other public sector reform areas, in HRM related policies there is a tendency for both government coordinating institution and HR Departments within individual line ministries to be considerably more concerned and focused on *procedural compliance* than with developing and achieving *strategic HRM objectives* embodied in the various policy documents and legislative norms. A report prepared by the World Bank as an overview of a series of functional reviews undertaken in recent years identified the following five core sets of HRM reforms urgently needed to really transform Romania's HRM policies and practices[33]:

- professionalisation of the senior civil service;
- strengthening recruitment and promotion to focus on merit and performance;
- updating organisational structures and staffing structures to support business needs;
- rationalising the pay system and level of employment;
- building institutional accountability for strategic HRM across the public sector.

In summary, politicisation is a big challenge for the Romanian civil service. The European Commission and other international organisations have requested clear commitments from the Romanian Government to deal with the weak capacity of the administration and associated problems. The central institution responsible for professionalising the civil service, the National Agency for Civil Servants, has not been successful in enforcing the competition requirements mandated under the civil service legal framework.

However, this over-politicisation seems to affect the MoD to a lesser extent than other central public authorities. There is no direct connection between political affiliation or patronage and recruitment or career progression within the MoD, as military personnel are not allowed to be part of a political party or express political views. There is a clear legal delimitation between the political sphere and the defence system.

Important HRM functions are scattered across institutions: the Ministry of Regional Development and Public Administration, Ministry of Finance, National Agency of Civil Servants, Ministry of Labour, Ministry of Education, Ministry of Health, MoD. Each of these organisations is responsible for developing HR policies for their own personnel. No one has responsibility for linking HRM policies to a broader public administration modernisation agenda.

[33] The World Bank (2011), "Public Administration Reform: An Overview of Cross-cutting Issues."

6 Anticorruption Policies and Anticorruption Bodies

6.1 Anticorruption Policies

Fighting corruption is rhetorically pledged by every political party. The two major electoral coalitions regularly had an anti-corruption section in their electoral manifestos. Although the prominence of corruption in election debates has declined in recent years, replaced by the economic crisis and the social damages caused by austerity in public spending, corruption continues to be a salient topic in Romanian politics. Mainstream political parties recurrently pay lip service to anti-corruption while uttering vague policy generalisations. The presidential elections of 16 November 2014 focused on judicial independence as a core campaign issue. The newly elected president won on a clear anti-corruption platform.

After winning the December 2012 parliamentary election, the Social Liberal Union (USL) published the government programme, which differed from their electoral manifesto in many respects including with regard to anti-corruption. In the chapter on the justice system, the programme states that the government will implement the National Anti-corruption Strategy 2012–2015, accomplish the objectives of the EU Cooperation and Verification Mechanism (CVM) and guarantee resources for a proper implementation of the new Civil and Penal Codes. At the same time, this programme contains some unclear provisions such as "to clarify the status of the prosecutors and the role of the General Prosecutor's Office", a matter which is already quite clear and well established after years of relentless reforms. This programmatic goal of the government is viewed with suspicion by the judiciary and civil society because the prosecutorial services have been one of the major investigators of corrupt politicians for many years now.

The 2013 CVM report underlined the fact that mainstream political party leaders, some of whom are members of the executive, did not adequately respect judicial independence. In the wake of the political events of summer 2012, the European Commission warned about the need to respect the judiciary's decisions and its independence. That summer the political pressure on judicial institutions and the active undermining of the independence of the judiciary by politicians were brought into the spotlight. The political disparagement of the judiciary remains a major source of concern. Numerous reports were forwarded to the European Commission referring to intimidation or harassment against individuals working in key judicial and anti-corruption institutions, including personal threats against judges and their families. Media campaigns amounting to harassment, pillorying of certain judges and prosecutors were commonplace. The Commission demanded that these attacks be ended, but its claims were not fully heeded. Politically motivated criticism of the judiciary continues today. Disparaging judicial decisions remains a weak point of the Romanian democracy.

The Ministry of Justice retains only a stewardship function within the justice system. The Superior Council of Magistracy (SCM), a body directly elected by the judges and prosecutors, exercises the real authority over the magistrates' careers. The Minister of Justice nominates the General Prosecutor and the head of the National Anticorruption Directorate. The nominees are questioned by the SCM in public hearings and later appointed by the President of the Republic. The President can reject the proposals. In January 2013, subsequent to having been rejected by the SCM, the President rejected two appointment proposals which had been made by the USL government.

The Ministry of Justice is also in charge of the 2012–2015 National Anticorruption Strategy (NAS), a stand-alone document prepared within the Ministry and adopted by Government Ordinance 215/2012. The NAS provides a long list of objectives, anticorruption measures, performance indicators and an action plan. However, the defence sector is not specifically mentioned in the document even if other ministries do have their specific anti-corruption or prevention policy documents. For example, the Ministry of Administration and Interior developed an anti-corruption strategy for 2011–2013 which is consistent with the overall NAS. The Ministry of Justice also manages several platforms where it invited prominent personalities to monitor the implementation of the NAS. There are such platforms for NGOs, local authorities, central authorities and businesses. The ministerial staff in charge of the NAS is experienced and has previously contributed to other anti-corruption policy documents. Their openness towards civil society and other experts in the field is highly appreciated. Enlarging public participation in policy making is a positive development, but its effectiveness remains to be seen.

The first National Anticorruption Strategy was adopted in 2001. The EU considered it weak. Ten years later, the 2011 CVM Report of July 2011 still recommended strengthening the general anti-corruption policy framework. The current NAS aims to address the issues identified as priorities by the EU which include: the recovery of assets from corruption-related crimes; whistle-blower protection;[34] public procurement; the prevention of, and the fight against political corruption; and the protection of EU financial interests. Having an improved strategy is also useful for the Romanian Government in preparation for the fourth round of GRECO (Group of States against Corruption) evaluation on the "Prevention of corruption among MPs, judges and prosecutors".

The current 2012–2015 NAS lists preventive measures against corruption and performance and result indicators. Measures include: ethics /deontological/ code of conduct; declaration of assets; declaration of gifts and benefits; conflicts of interest; ethics advice; incompatibilities; transparency in decision making; access to public information; whistle-blower protection; random distribution of cases/duties in courts; interdictions after the end of employment in public institutions (revolving doors); registry of misconduct on the part of

[34] In 2004 Romania became the first continental European country to pass a dedicated law to shield whistle-blowers from retaliation. The Law was devised by the Ministry of Justice and Transparency International Romania. The results are mixed, as the Romanian administration was not ready to implement the law in a resolute way. See Transparency International (2013), "Whistleblowing in Europe: Legal Protections for Whistle-blowers in the EU".

officials, civil servants and contractual staff with responsibility for protecting EU financial interests; and codes of conduct for personnel with control functions in the protection of EU financial interests.

Before 2007, the year of the Romania's EU accession, the European Commission was the main anti-corruption policy driver. Now local expertise has dramatically increased, both within the civil service and the NGOs. Therefore, the main challenge Romanian society is facing is not a scarcity of local understanding of anti-corruption policies and instruments, but the lack of political resolve to tackle this problem. The NAS encompasses major challenges and is based on previous research into and analysis of corruption in the local context. From the policy-making perspective, the quality of the document is more than satisfactory, taking into account the current needs and contexts. However, its weak point is a questionable political will to take action. The NAS risks being another programme document drafted by NGOs and specialists from various ministries, with limited political support. On the other hand, it is too early to draw firm conclusions on the actual use of the monitoring mechanisms envisaged in the NAS and on how monitoring information is fed back into the policy-making cycle.

At the MoD, the Directorate for the Prevention and Investigation of Corruption and Fraud, which was created in 2006 under the direct purview of the Minister, is responsible for anti-corruption policy implementation and oversight. The unit establishes and implements anticorruption preventative measures and investigates corruption allegations within the MoD and the armed forces. Its staff is a mixture of military and civilian personnel with an educational background in economics, finance, law, technology, IT, etc. Currently, the directorate's staff consists of 32 persons, divided into 4 sectors, and it is insufficiently resourced to cover all anti-corruption tasks. The directorate is relatively unknown to the general public and rarely referred to in public debates. Its reports are not published.

The directorate is responsible for managing the National Anti-corruption Strategy at the MoD. Each military unit was informed and consulted on the NAS, all the proposals were centralised and a report was issued. Although the NAS is coordinated at central level by the Ministry of Justice, each military unit has its own anticorruption plan based on a prior corruption risk assessment, and a person responsible for the anti-corruption efforts. The MoD Directorate provided methodological guidance and assistance to all military units and other central departments. Guidelines were developed, examples were prepared and workshops organised in order to facilitate the understanding of corruption risks. Two major corruption risks have been highlighted: HRM and public procurement. The directorate collects information on the implementation of the NAS centrally, contributes to the integrated report and submits it to the Ministry of Justice.

The Directorate has also established a procedure on conflict of interests and incompatibilities, which acts as an early warning mechanism to reveal this type of situation. The procedure encompasses preventative measures, a work plan, documents needed to notify this type of situations, measures to be adopted in

order to prevent and identify conflicts of interests, etc. If it proves efficient, the procedure can act as a pilot mechanism for other ministries which are bereft of instruments to detect conflicts of interests. The directorate carries out some 170-180 evaluation/investigation missions yearly. Because of the insufficient staff numbers, these missions are prioritised by the staff in order to better respond to existing challenges.

The directorate annually assesses and reports on corruption risks. The risks are split in three categories according to their significance. A colour code is used to represent the various categories: Green symbolises a low level of risk, yellow a medium level of risk and red a high level of risk. As mentioned above, according to the latest report human resources and procurement are singled out as major corruption risk sources. A yearly internal evaluation report is prepared in order to evaluate the measures taken by the MoD to tackle corruption risks. The problems highlighted by the 2014 report refer to human resources and financial and budgetary limitations, but also to the insufficient legal framework regarding the Ethics Counsellor.

Special importance has been given to the conflict of interests' procedure. A standard draft procedure has been prepared by the department and adapted to each military unit while an early warning mechanism has been operationalised to disclose any potential conflict of interests. Moreover, a whistle-blower procedure has been established and the identity of the person is protected. In order to increase the level of awareness regarding conflict of interests, six missions were carried out during the first semester of 2014 within the units which presented highest risks. Various assessments of the level of understanding of the conflict of interests' procedure among MoD staffers have been carried out, which highlighted that 80% of the staff are fully aware of the procedure. No conflict of interests was reported in 2013 when only one case was investigated by the Directorate.

According to the 2011 MoD Annual Report, 160 specific activities covering prevention and investigation of corruption and fraud were carried out in that year. Compared with the previous year, this was an increase of 22%. More recent data on the anticorruption measures taken at the MoD (included in their NAS implementation report) highlight the following: According to the 2014 Self-Evaluation Report, there were 38 notifications of breaches of ethical behaviour, 30 of them were dealt with within 30 days. Furthermore, the MoD staff have been assessed on their knowledge of ethical behaviour. The overall score at the MoD is 84.33%. 10 120 MoD staff were legally obliged to fill in their annual declaration of interests: 66 failed to comply in time and 19 did not fill them at all; 129 training sessions on conflict of interests were organised during the first semester of 2014 with a total number of 5 268 participants. According to the report, 100 additional training sessions on incompatibilities have been organised with a total number of 4 897 participants; in order to improve transparency in decision making, during the first semester 29 notifications on regulatory documents have been published, 19 recommendations were received and 60% of them were approved.

The National Defence Strategy (NDS) was adopted in 2007 by the Supreme Council of Defence, a constitutional body that brings together several members of the Cabinet and the heads of secret services, and is chaired by the President of Romania. This was the first ever document mentioning corruption as a security threat to the country. That mention was controversial at that time. Some accused President Basescu of trying to involve the secret services in the fight against corruption. Nevertheless, the National Strategy provided the legal basis for the secret services to cooperate with prosecutors in probing corruption cases. The head of the National Anticorruption Department (NAD), an institution regularly praised by the European Commission, admitted in public interviews that the cooperation with the Romanian Intelligence Service – the most important secret service – was very helpful after 2007. However, despite being a matter of strategic importance for the country, anti-corruption measures in the military were not addressed by this Strategy. Moreover, the MoD had its own Strategic Plan for 2010–2013, where corruption was not mentioned at all.

Romania joined NATO in 2004. At that time pressure from the EU on the implementation of serious anti-corruption mechanisms was only starting. Unlike the EU's more visible role in the civilian area, NATO adopted a less visible stance, although it was active in the preparation of the National Anticorruption Strategy. Nevertheless, it seems that currently the military in Romania lacks integrity mechanisms comparable to the civilian ones and further steps could be taken in order to reinforce these mechanisms. Corruption is highly present in Romanian public debates. The steady pressure from the EU, which started in early 2000s and continued after the country's EU accession, was instrumental in pushing anti-corruption efforts. In contrast, the MoD was largely absent from the public eye. Its anti-corruption efforts lacked the public scrutiny and external pressure necessary to make significant breakthroughs.

In summary, there is an overarching National Anticorruption Strategy approved in 2012. Comprehensive legislation on Specialised Anticorruption Bodies (ACB) complete the legal framework on the matter, but it does not include the defence sector. The strategy is three-pronged: a) prevention of corruption in public institutions; b) increasing education concerning corruption; c) and fighting against corruption through administrative and penal measures. It contains specific objectives, measures and performance indicators for the period 2012–2015. An action plan details the implementation measures. In practice, the Strategy is very well developed, but its implementation started only recently. It is too early to assess any intermediary results. However, due to the lack of political support and ownership, the actual impact of the strategy may eventually be very limited.

6.2 Anticorruption Bodies (ACB)

There are two ACBs, the National Anticorruption Directorate (NAD), established as an autonomous body within the General Prosecutor's Office in 2003 (more efficient since 2005), and the National Integrity Agency (NIA) established in 2007 and charged with detecting conflicts of interest, incompatibilities and the investigation of significant inconsistencies between the income and assets of public officials. The ACBs have been instrumental in

pushing anticorruption efforts. Both NAD and NIA have been commended by the European Commission. They developed into real regional institutional models for organising anticorruption activities and enjoy the support of civil society organisations. Both the NAD and the NIA publish activity reports on their websites. The NIA does this every three months and the NAD annually. Those reports are publicly available in Romanian and in English.

Despite their results, or perhaps because of their results, both institutions are in the firing line from politicians. EU pressure has been a strong critical success factor for pushing reforms in the judiciary and supporting the two ACBs. The Anticorruption agenda is not yet fully internalised by the Romanian administration and the effectiveness of any ACB is very dependent on the performance and dedication of the head of the institution.

6.2.1 The National Anti-corruption Directorate

The legal mandate of the NAD is to investigate corruption cases in which high level officials are involved (above certain hierarchical level) or involving amounts above € 100 000. The NAD was created in 2003 to address the specific demands of the European Commission to fight high-level corruption. It was ineffective in its first years, but it started to function satisfactorily from 2005 on with the appointment of a new Chief Prosecutor, Daniel Morar. The European Commission has been the main supporter of the NAD. The Commission's regular reports helped the Institution to survive. In 2007, an attempt by the then Minister of Justice to replace the Deputy Chief Prosecutor of the NAD led to an intervention from the Commission and preeminent Western ambassadors, which made the government step back.

The Head of the NAD is appointed by the President upon proposal of the Minister of Justice. The NAD is led by a Chief Prosecutor, equal in rank to the Deputy General Prosecutor. The Chief Prosecutor of the NAD is assisted by two deputy chief prosecutors. In late 2013, difficulties also arose with the appointments of the head and deputy heads of section at the NAD. The European Commission's CVM assessment underlined again the importance of "clear, objective and considered procedures to govern such appointments: non-politically motivated appointments of people with a high level of professionalism and integrity are essential for public trust in the judicial system". Eventually, the appointments of the Prosecutor General and the Chief Prosecutor were confirmed following high-level negotiations between the Prime Minister and the President, without clear compliance with the recommended procedures. These negotiations did not face any visible criticism from the European Commission or Romania's external partners. Rank and file NAD prosecutors are selected from among regular prosecutors voluntarily applying for those positions. They have additional salary incentives. In 2011 the NAD had 511 occupied positions out of 567 in the budget. Magistrates in Romania (NAD prosecutors are part of the magistracy) have better salaries than the regular civil servants. The salary is competitive by Romanian standards.

The NAD started as a completely independent office, but its founding law was challenged before the Constitutional Court. The Court ruled that the NAD had

to be subordinated to the General Prosecutor. A solution was found in the new Law to formally put the NAD under the General Prosecutor but preserve its full administrative and financial autonomy. Although the NAD cannot formally propose legislation, over a period of years its Chief Prosecutor advocated some legislative amendments supporting the institution (concerning prosecutors' career and remuneration in particular), which were largely accepted by the parliament after being endorsed by the European Commission.

The NAD works closely with other institutions, especially the Fiscal Authority. The Romanian Intelligence Service also provides tipoffs and technical support for the NAD, as the 2007 National Security Strategy included corruption as a threat to the national security, thus bringing it within the mandate of the Secret Services. The NAD starts *ex-officio* investigations. Some cases (e.g. the case of former Prime Minister Adrian Nastase, sentenced to two years for corruption) started after the media reported a scam to finance the 2004 electoral campaign.

Between 2006 and February 2013, six senior MoD staff members were convicted of corruption. In 2011, 298 officials were convicted of corruption and sentenced. In February 2013, 879 officials had appeals awaiting judgement. More recently, in Nov 2013, 97 servicemen, including two generals, were sentenced. A section of the central unit of the NAD deals exclusively with offences perpetrated by military personnel, but according to the annual report of the NAD, released at the end of 2013, that section was understaffed since it had only four prosecutors instead of the eight needed and foreseen. Quantitatively, the section had to deal with 177 criminal cases (143 in 2012), 110 of which were decided while 67 remained unresolved. The NAD does not have any special agreements with the MoD, although staff from the Directorate for the Prevention and Investigation of Corruption and Fraud have provided technical expertise on several DNA cases. The same level of collaboration exists between the Directorate and the Prosecutor's office when any MoD staff is involved.

6.2.2 The National Integrity Agency

The NIA was also created as a result of EU pressure. Although it was established in May 2007, the NIA was not operational during the election in 2008. In the European Commission report of July 2008, the Commission challenged this body to show its capabilities to monitor conflicts of interest and cash flows, and to detect and sanction unjustified increases in assets. The NIA is overseen by the National Council of Integrity, a body appointed by the Senate with representatives from each parliamentary group, the Ministry of Justice, several local authorities and civil society. The Council is meant to be the interface between the NIA and the parliament. Having representatives from so many different institutions, the Council is not controlled by any political faction.

According to its statute, each year the NIA has to contract by public bid an external evaluator to assess the effectiveness of its management. Such a report has been available each year as of 2009. The evaluator's recommendations were generally implemented by the management of the agency. This principle of good practice can be furtherly adapted by other Romanian agencies and bodies.

The main roles of the NIA are to: 1) receive, collect, compare and process data and information on existing wealth generated through a public appointment tenure, and assess the incompatibilities and conflicts of interests of persons in public positions; 2) assess asset declarations and declarations of interest; 3) identify conflict of interest or incompatibility of persons in official positions; 4) assess significant divergence between wealth and official income; 5) report violations of the legislation on asset declaration, conflicts of interest, disciplinary infringements, and undertake administrative or penal action; and 6) impose the sanctions foreseen by the law.

As mentioned, the NIA does not propose legislation, but it has informally proposed some legislative improvements and amendments to existing legislation. When such situations occur, it is generally the Ministry of Justice that presents the initiative to the government. In 2013, the government agreed to raise the salaries of NIA personnel (around 50% increase for the integrity inspectors) and to develop a programme proposed by NIA management allowing the agency to perform *ex-ante* control and to flag up possible conflicts of interest in the management of EU funds. The EU had blocked some financing operational programmes for Romania because of conflicts of interests.

The NIA can start *ex-officio* investigations. When the agency was established in 2008, the first cases were built as *ex-officio* investigations prompted by media reports. A majority of cases were started in this manner during the first years. Once the NIA created procedures to collect information and cases from other institutions, the percentage of *ex-officio* investigations decreased.

The NIA has signed protocols with 16 institutions to share information. In some cases the transfer of information to the NIA is automatic (e.g. the agency has direct access to the Trade Registry Database where all companies are registered with details of shareholders). In other cases, the information is transmitted to the NIA following an official request. According to NIA officials, the information sharing with other State institutions is regular and unproblematic. The MoD officials must comply with the law regarding the integrity of public officials and dignitaries. There is no specific regulation regarding the armed forces.

The NIA President and Vice-President are appointed by the Senate for a 4-year non-renewable term following a competition organised in accordance with the law. Candidates have to fulfil various requirements, mainly: education in law or economics; not be a member of a political party, group or alliance; not be a former agent or undercover collaborator of the intelligence services before 1990; not be convicted of a criminal offence committed with intent for which a rehabilitation order has not been issued and which renders him/her incompatible with the public dignitary function, and not have an adverse fiscal record.

NIA integrity inspectors are selected through open competition. Given the unattractive salary package and the tough responsibilities, competitions have not attracted many candidates. However, the recent substantial salary increase

for NIA integrity inspectors should improve the situation. NIA staff are paid at the standard level for civil servants. The entry level monthly salary is around €250 and averages at around €400. At the end of January 2013, the government agreed together with the NIA an increase of 50% for staff salaries. At the end of December 2012, the NIA had a total of 86 employees and because of the low salaries there were a large number of vacant positions. The NIA provides regular training to its staff. It is also supported financially by the EU through several technical assistance projects.

The MoD personnel participate in some training on anticorruption. The Anti-corruption Department at the MoD is part of the network of central administration bodies responsible for the NAS and has access to relevant exchanges of experience and on-the-job training. It also is a methodological coordinator for the rest of the ministry and subordinate institutions, organising capacity building (including some training) on related policy issues (e.g. in the first semester of 2014, 264 training sessions were organised on this topic, covering almost 2 800 MoD and armed forces staff members).

In summary, there are two ACBs, the National Anticorruption Directorate (NAD), established as an autonomous body within the General Prosecutor`s Office in 2003 (more efficient since 2005), and the National Integrity Agency (NIA) established in 2007 and charged with detecting conflicts of interest, incompatibilities and the investigation of significant inconsistencies between the income and assets of public officials. The ACBs have been instrumental in pushing anticorruption efforts. Both the NAD and NIA have been commended by the European Commission. They developed into real regional institutional models for organising anticorruption activities and enjoy the support of civil society organisations. Both the NAD and the NIA publish activity reports on their websites. The NIA does this every three months and the NAD annually. These reports are publicly available in Romanian and English. Despite their results, or perhaps because of their results, both institutions are in the firing line from politicians. EU pressure has been a strong critical success factor for pushing reforms in the judiciary and supporting the two ACBs. The anticorruption agenda is not yet fully internalised by the Romanian administration and the effectiveness of any ACB is highly dependent on the performance and dedication of the head of the institution.

7 Recommendations

During the last decade Romania has made significant progress in fighting corruption and addressing the critical issues around this endemic problem. Critical factors creating a solid framework for fighting corruption were as follows: *1)* Understanding and acknowledging the wide negative impacts of corruption and corrupted practices; *2)* support from the international community (mainly from the European Union); *3)* the determination of some (few) prosecutors and judges as well as politicians to fight corruption; and *4)* the increased self-awareness of civil society and the social refusal to accept corruption as part of the "regular state of play". Specialised Anticorruption Bodies that were created, along with the complex policy-mix developed and implemented, led to some concrete and visible results. However, the progress achieved is reversible. Sustained efforts are necessary. This section suggests recommendations on the areas assessed above, focusing on concrete measures that could be adopted to strengthen the general integrity and anti-corruption framework and also that within the MoD:

1. Strengthen the control function of the parliament and introduce a more efficient and transparent oversight over the security and defence bodies:

    - increase the capacity of the professional staff supporting the activity of the parliamentary committees on defense and national security (ensure adequate staffing levels and build their specific competencies);
    - develop joint training and capacity building programmes involving professional parliamentary staff and central MoD staff (a special training programme could be developed including common areas of interest as well as exchange experience between the two institutions);
    - reduce the use of Government Emergency Ordinances;
    - increase civil society pressure on the Ombudsman to contest Government Emergency Ordinances (especially those with a potential negative impact or which are very controversial).

2. The People's Advocate plays a crucial role in defending the rights and freedoms of the individuals in their relationship with public authorities. The constitutional crisis of 2012, which culminated with the dismissal of the Ombudsman, was perceived as a direct and unacceptable attack against the independence of the institution. The following measures should be considered:

    - the Ombudsman should more frequently contest Government Emergency Ordinances (especially those with a potential negative impact or which are very controversial);
    - guarantee timely response to petitions and appeals;
    - ensure full respect and transparency of the procedure for appointing the Ombudsman in the future by allowing sufficient time for consultation (including the participation of the political parties and civil society).

3. Prevention of conflict of interests has had an important role on the public agenda in Romania in recent years, especially after the creation of the National Agency of Integrity as the special body to administer the conflicts of interest policy. At the MoD level, the following actions are recommended:

    - continue to rigorously apply the conflict of interests policies and regulations within the MoD and develop methodological guidance for the staff within the system;
    - formalise for the MoD staff engaged in procurement procedures the interdiction/ incompatibility to hold other positions in the private sector that could interfere with their activity within the MoD.

4. Within the MoD, all the legal provisions regarding free access to information are applied, including *ex officio* information. Following the interviews with the MoD staff responsible for FOIA, some measures are recommended below:

    - continue the efforts to strengthen the whistleblowing protection policy and ensure a more timely response to FOIA requests;
    - ensure adequate staffing of the MoD Department responsible for FOIA;
    - provide additional training for MoD staff responsible for FOIA.

5. The public procurement system is similar to those in other EU Member States and is generally adequate. Nevertheless, more transparency would be beneficial:

    - identify ways of increasing transparency for the specific military procurements (public information on the website and *ex-officio* information on military procurement);
    - develop the capacity of the staff involved in procurement procedures through specialised training programmes;
    - support exchange programmes with other line ministries' representatives and apply government-wide measures targeted at increasing transparency in procurement and simplifying procedures.

6. Human Resource Management: at the MoD, personnel are managed based on their specific status, either military personnel, civil servants or contractual personnel. The following measures are recommended:

    - improve the staff performance appraisal scheme and move towards a unitary system that can be applied for all the MoD staff (the performance of staff carrying out similar functions must be assessed in a similar manner);
    - exchange experiences with other MoD representatives from different NATO member-states on HRM topics;
    - exchange experiences with other line ministries (exporting good practices and knowledge from the MoD).

7. Strengthening the anti-corruption policy framework is a high level objective generally assumed by all national authorities. At the MoD some measures could better support anti-corruption policy implementation:

    - develop procedures to support increased cooperation with other ACBs (NAD) of the system and highlight the specificities of the defence sector;
    - continue representing the defence sector at the National Anti-Corruption Strategy (NAS) and activate defence-related measures;
    - develop a defense sector anti-corruption strategy;
    - prepare an annual assessment report on the contribution of the MoD intelligence service (General Department of Defence Intelligence) to anti-corruption activities.

8. The two ACBs have been instrumental in pushing anticorruption efforts. In order to strengthen cooperation and the exchange of good practices in MoD's anti-corruption department (Directorate for the Prevention and Investigation of Corruption and Fraud) with other ACBS, the following may be useful:

    - disseminate good practices and institutional settings of NAD and NIA in the region, with a focus on eastern Partnership Countries and the Balkans;
    - establish formal institutional cooperation between the MoD Anti-corruption Department, NAD, NIA and other intelligence services;
    - ensure proper staffing of the NAD's Defence Section and highlight its profile (assess the number and capacity of the specialised military prosecutors and act upon the findings).

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Abstract:
This report assesses the institutional risks of corruption in the defence area of Romania. It uses a holistic approach to security sector reform. Pro-integrity reforms internal to the defence sector are set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Romanian Ministry of Defence (MoD), not the armed forces. It treats the ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across the national system of public governance and impacting on the MoD as on any other ministry.

Key words: Parliamentary control, control of intelligence and security institutions, ombudsman, freedom of access to information, internal and external audit, conflict of interest, anti-corruption bodies, anti-corruption policies, human resources management, public procurement, asset disposal, corruption, integrity, good governance, corruption risks.

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