Executive Summary

I. Legislative Evolutions

I.1. Prevention

A first modification discussed in the Report refers to reutilization of information from public institutions. The need to make this modification came from the defective implementation of the obligation to transpose the communitarian acquis into the national legislation: Law no. 213/2008 changes those aspects that conspicuously contravened to the Directive 2003/98/CE, as for instance the definition of the notion of "tertiary", the inclusion of the discretionary treatment with regard to access to reusable information according to its nature, commercial or not, to its tariffs and procedures of getting it.

The adoption of the Law no. 298/2008 on the retention of data generated or processed by the providers of electronic communications intended for the public or of public networks of communications gave way to many debates because this legislative framework created the basis of the interception of the content and information seen during the use of a electronic communication network. The law has been interpreted as a restriction of the right to private life et to secrecy of personal correspondence, as well as a reversal of the presumption to innocence.

The modification of the regime of irredeemable public financing allocated for non-profit activities established the framework for accessing communitarian funds allotted to Romania through the General Program "Solidarity and the Management of the Migration Flows" for the period 2007-2013.

From the point of view of the alignment to international standards, in 2008, the conditions for exercising the profession of notary have been updated according with the dispositions of the European Convention on the citizenship in the sense of eliminating the requirement of holding exclusively Romanian citizenship for practicing this profession; at present, enjoying other citizenships, along with the Romanian one, is compatible with the career of notary.

Some of the norms of legislative technique have been changed as well: the obligation of pursuing impact studies regarding ample legislative projects has been taken off; as well, the possibility of modifying or abrogating normative acts even during the time between their publication in the Official Journal and their date of becoming effective. They have been modified following the protests of civil society organizations with regard to the untransparent manner of elaboration and adoption of civil and penal codes.

Regarding property rights, there have been adopted norms concerning the identification and the supplementation of the financing sources for indemnities afferent to the real estates abusively taken by the State.

I.2. Combating

From the perspective of the public judicial assistance, there have been adopted the necessary dispositions for the completion of the correspondent legal framework, along with another ones referring to the profession of lawyer. These comprise the means of enhancing the professional

competence of lawyers in what may regard the free judicial assistance, the procedures of selection and acquiring the definitive title of lawyer, and some measures of increasing their accountability. As well, there are express stipulations on the obligation of these professionals to provide free judicial assistance.

During the period of reporting, there have been made a number of modifications to the general statute of the public servants and of the public servants with special statute. One of the consequences of these changes has been the excessive politicizing of the public office.

The Law no. 76/2008 referring to the institution of the National System for Genetic Data. The aim of this system is to contribute to the prevention and combating of certain types of crimes perpetrated against fundamental rights and liberties, as well as to identification of corpses with unknown identity, of the missing individuals or the deceased following natural catastrophes, mass accidents and killings and terrorist acts.

I.3. Sanctioning

In the context of elaborating new judicial codes, during the period May 2008- July 2009, the penal code and the code of penal procedure didn't suffer significant changes as the amendments that have been brought were only meant to ensure its application under reasonable conditions, before the entry into force of the new codes.

With regard to the Penal Code, the amendments refer to ensuring an appropriate legal framework for protecting impartiality and the independence of the magistrates and of the personnel involved in criminal investigations, institutionalizing an aggravating form for the crime of assault in case of this one being perpetrated against one of them or against spouse or family. As well, a new stipulation on "defying the judicial bodies" was introduced.

The adoption of these modifications was pursued with no prior impact study and with no transparency in decision-making, under the alleged reason that similar dispositions have been submitted to debate within the context of the procedure for the adoption of the Penal Code.

The Penal Procedure Code has been modified in a greater measure. These changes refer to the evaluation proceeding of the infant, to making explicit the situations in which the execution of the sanction is deferred for reasons of health, to the exclusion of those dispositions eliminating the possibility of appeal in case if the recurred decisions are contrary to the law or in case if there was an inaccurate application of the law, following a decision of unconstitutionality.

Some modifications concerning the judicial record have been made, as well. These refer to the institution of this record for legal persons and to the creation of the National System of Computerized Evidence of Judicial Records which would allow for cooperation on this matter with other States from the European Union.

II. Institutional Evolutions

II.1. Prevention

In what may concern the organization and the functioning of the Superior Council of Magistracy, one major modification has been registered in the reporting period, namely the change in the

composition of the discipline commissions for judges and prosecutors in the sense of removing the members of the Council. Thus, the scheme of the discipline commission comprises three inspectors from the Service of Judicial Inspection for the judges and respectively three inspectors of the Service of Judicial Inspection for prosecutors.

In the selection of the inspectors both the geographical areas of provenance and the number of judges/prosecutors from the respective area will be taken into consideration. As well, in order to avoid conflicts of interests, there is an express stipulation according to which inspectors cannot exercise their specific attributions with regard to the magistrates who pursue their activities in the courts/ prosecutor offices in which the former are detached.

II.2. Combating

Addressing the National Integrity Agency, during the reporting period, problems referring to the nomination of a president and to the transformation of this institution into an operational one have been solved. However, the way in which the Agency fulfills its attributions raises peculiar problems, stemming from both the secret character of the work procedures and the high number of acts abated by Court decisions.

During the year of reporting, the General Anticorruption Directorate registered minor institutional evolutions. From the perspective of public policies, all the documents of the kind have had as programmatic basis the National Anticorruption Strategy in the vulnerable sectors and in the local public administration 2008-2010. As well, this institution has not been subject to debate in the public space. It is to be mentioned, however, the sudden change in the management of this institution following certain corruption allegations that appeared in the media.

Ever since the beginning of 2008 and during the entire reporting period, the National Council for the Study of the Securitate Archives (CNSAS) had an extremely uneven institutional evolution, marked by fundamental changes of its competences. Consequently, as result of the entire law regarding its organization and functioning having being declared unconstitutional, CNSAS worked for several months just as an institution preserving the archives of the former „Securitate" and ensuring the access to one's own file.

Later on, the Urgent Government Ordinance (OUG) 24/2008 had been adopted, whose dispositions were not fundamentally different from those stipulated in Law 187/1999, except for those provisions the Constitutional Court considered unconstitutional. Specifically, all the jurisdictional competences of CNSAS had been annulled, so that no more critics on extraordinary jurisdiction could arise.

Law 217/2008 brought substantial changes to the organization and functioning of the Audit Court, in order to adapt the Romanian legislation to the international recommendations in this field and to answer the requirements of the European Union regarding external audit. Following the adoption of the new law regarding its organization and functioning, the activity of this institution was divided into control, financial audit and performance audit. The effective control capacity of the institution was thus significantly reduced, as the same personnel had to perform three types of verifications.

The current law also includes provisions on the Audit Authority, created as body without legal personality, but operationally independent from the Audit Court and from the other institutions responsible with managing and implementing the non reimbursable communitary funds. The Audit

Authority is the only national institution with competences of public external audit of the communitary funds.

The Antifraud Department also experienced an unprecedented institutional crisis, when attempts had been made to turn it from a body within the Prime Minister's Office into a kind of control body. The bill in this respect had been declared unconstitutional by the Constitutional Court on July 9, 2009.

II.3. Sanctioning

The National Anticorruption Department (DNA) had a significant evolution in terms of institutional practice. Despite some serious political pressures to change the legal framework governing this institution, DNA improved, both qualitatively and quantitatively, its investigation activities, and succeeded to preserve its operational independence and to avoid turning the investigated cases into major media subjects. The most important events regarding this institution are those concerning the appointment of a new chief prosecutor, after the mandate of the old chief prosecutor ended. The fact that this appointment coincided with the parliamentary elections in 2008 led to a delay in naming the new chief prosecutor and confirmed the interactions between the political factor and the justice system.

III. Evolutions in the public policies

III.1 Prevention

The public administration is an indispensable element in any analysis of the public policies meant to prevent corruption. The report considers as essential aspects in this respect the access to information, the transparency in the decision-making process and the protection of whistleblowers.

The public administration still has major deficiencies in implementing efficient anticorruption mechanisms. For the first time since the creation of the Cooperation and Verification Mechanism, corruption in local public administration proved to be a major obstacle to reaching the standards imposed by the European Commission on Romania. The importance of the prevention policies and mechanisms is also emphasized in the recommendations comprised in the Country Report published in July 2009, which remind the structural reforms in preventing corruption are more efficient on the long term than specific measures to address specific issues.

As in the past, the implementation of the legal provisions regarding the protection of whistleblowers is greatly deficient, as the implementation of the instrument of whistleblowing in public interest within the local public administration is extremely slow. The poor harmonization of the Regulations of Internal Order with the provisions of the Law regarding the Protection of Whistleblowers, as well as the inadequate information of the public local administration staff on the provisions of the mentioned law require the adoption and implementation of a set of measures meant to inform the civil servants on the legal provisions, as well as the constant monitoring and evaluation of the implementation of Law 571/2004, as part of the monitoring procedures of the disciplinary commissions.

The health care system still requires the implementation of the corruption prevention policies, the more so that the statistics and analyses of the system show worrying levels of both low-level and high-level corruption. Despite the efforts made to improve the legislation and to review the public

policies to increase transparency within the health care system, the problems deriving from the implementation still rise serious suspicions. During the reporting period, the legal interventions focused on the processes of transferring competences from the central to the local authorities and reforming the health care system, but their effects are still to be seen. The assessment of the regulation process regarding the increase in quality, efficiency and access to health care services shows a coherent strategy, with complex, systemic and concerted measures has not yet been implemented, the measures adopted rather addressing specific issues.

As for education, all strategic and public policy documents dealing with this field constantly refer to the wish to implement European standards at national level. Nontheless, education remains vulnerable to corruption. The problems extensively covered by the media, as well as the scandals regarding the so called „factories of university graduation diplomas" stress the need for major structural reforms meant to combat and sanction systemic corruption, and for public policies designed to prevent this phenomenon. The inflation of laws in the field culminated, towards the end of the period under study, with the Government assuming responsability over the education laws, major package which led to many controversies. Their efficiency is still to be proven.

III.2 Combating

As far as the use of public funds is concerned, the reporting period was an extremely tormented one, with no less than four significant changes of the laws regarding public acquisitions. While the first change was prompted by a decision of unconstitutionality of the provisions regarding the obligativity to file complaints against the decisions of the National Council Solving Litigations with this council and not with the competent court of justice as well, the following changes were the result of several consecutive laws.

They aimed, mainly, to simplify and speed the public acquisition procedures, and to harmonize them with the European standards in the field. Unfortunately, as was the case with other similar changes, after these harmonization laws were adopted it became obvious they were wrong and did not entirely meet the harmonization requirements, which led to the adoption of other laws to correct those errors.

Most of the errors could be attributed to the expedited and superficial approach of the harmonization process, several legal texts being successively reformulated, introduced in the laws and then repealed. Another matter of concern was the legal tecnique lacking provisions regarding the implicit annulment of some texts when replaced with clearly different texts, or their introduction in other sections or articles.

All these drawbacks have extremely negative consequences on the implementation of the mentioned laws and on the fairness and integrity of the acquisitions made based on these laws.

During the reporting period, steady efforts have been made to fully harmonize the national primary and, mainly, secondary national legislation regarding the public policy aiming at preventing and fighting against money laundering with the provisions of Directive 2005/60/EC on preventing the use of the financial system for money laundering and financing terrorism, as well as with those of Regulation no. 1178/2006 of the European Parliament and Council, published on November 15, 2006, regarding the information on the payer which accompany the money transfers.

In this respect, all entities with competences of prudential supervision drew up secondary norms for the implementation of the Urgent Government Ordinance 53/2008. Their common elements refer to

provisions regarding standard, simplified and additional measures to know the clients, as well as minimum data they should include.

New rules for the organization and functioning of the National Bureau for the Prevention and Fight Against Money Laundering (ONPCSB) have also been adopted. They provide for an increase in the number of employees and the creation of two new departments in order to increase the efficiency of the ONPCSB activity, as well as for the possibility of automatic intimation and verifications in suspicious cases.

The most significant changes to the elections process and political parties financing, have been made during the reporting period before the major events: local elections, parliamentary elections and elections for the European Parliament. Many of these changes have been urgent and made just before the mentioned events.

As far as the elections process is concerned, the main change refers to the election of the members of the Chamber of Deputies and Senate, in uninominal constituencies, according to the principles one man-one vote and proportional representativity. The procedure regarding legal disputes during the elections process had been clarified, and the provisions regarding elections fraud had been slightly changed. The Standing Elections Authority received new competences, including its participation in the decisions taken by the Central Elections Body created for each elections.

Furthermore, the candidates enjoy free access to the public radio and TV stations during the elections campaign. But, at the same time, a discriminatory and unjustified division of the time allocated for two types of competitors in the mentioned media was introduced.

As for the political parties financing, the most significant change was that the people who donated money to the parties to support their elections campaign were no longer obliged to attach additional documents to the donation form. Another major change refers to the accountability of the financial manager appointed by each party during the elections campaign for the two Houses of Parliament.

III.3 Sanctioning

Legal system

During the period June 2008 – September 2009, no concerted measures had beed taken to help reform the legal system in Romania, but heterogenous laws, converging towards the judiciary. Despite the repeated requests from Trasparency International Romania, no strategy for this system was adopted.

This climax of this situation was the magistrates' protest, which blocked any investigation and act of judging for over three weeks.

The measures adopted during the reporting period mainly referred to cashing in and managing the money from legal taxes, that went either to the central budget or to the local budgets, but was included as specific sum in the budgets of the Superior Council of Magistracy (CSM), the Ministry of Justice, the High Court of Justice and Appeal and the General Prosecutor's Office.

Other changes include the structure of the disciplinary commissions within CSM – namely that any member can be excluded thereof – and criteria of regional representativity when selecting

inspectors. A special case of conflict of interests was also included, i.e.: a magistrate cannot be part of the committee taking a disciplinary measure against another magistrate coming from the same court.

Attempts have been made to establish special competences regarding the litigations concerning the salaries and benefits of the personnel in the justice system, as well as new competences in appointing the prosecutors with managerial attributions within the General Prosecutor's Office. Both initiatives have been repealed following decisions of unconstitutionality, even if the first had effect untill the decision was published.

Other changes regard the organization of the technical judiciary and extrajudiciary expertise, and additional measures to consolidate the legal cooperation with the EU member States.

Conclusions

In the period referred by the report, a constant deterioration of the Romanian public integrity climate can be observed, a deterioration marked by the lack of strategic coordination with regards to the adopted legislative and institutional measures. The analyzed period overlaps with the electoral calendar for parliamentary and presidential elections and is marked by the fight for resources between the main actors of the political stage.

The second half of 2008 lead to the stagnation of any progresses within the justice and anticorruption area, and 2009 manifested into several policies and decisions that de-structure the national integrity system contributing to an unprecedented increase of vulnerabilities to corruption of the public sector, from the beginning of the EU accession negotiations.

Thus, the public procurement system was modified five times consecutively, which resulted in shortcomings in the standards for public funds spending. In the same time, at an institutional level, the operational independence of the Antifraud Department was cancelled, the personnel of the institution becoming a political one, a severe issue taking into account that DLAF is a key instrument for the protection of EU funds against corruption and fraud. In addition, some political attempts to dissolve or suppress the importance of the National Council for Contestations Settlement as independent administrative jurisdiction took place. Under these circumstances, the National Authority for Regulating and Monitoring Public Procurement was accused to have issued notifications and points of view regarding suspect public procurements on the basis of political fidelity, and not on a legal basis, when such requested by the investigation commissions of the Romanian Parliament. This de-structure of the safety mechanisms for the public resources spending, in the economic crisis context and the increasing external debt of the country, seriously affects the national interest and might even threaten the safety of the state.

Another segment affecting the National Integrity System and that experienced serious drawbacks is that of public administration, where the civil service had been politicized. Even if the prefects had become high-ranking civil servants, enjoying stability and being entitled to career development, according to the provisions of the Civil Servants Statute of 2003, those appointed in 2007 had been all removed and replaced at the beginning of 2009 by new prefects chosen according to political criteria; over 90% of these new prefects had never before worked in public administration. Mention

should be made that turning prefects into high-ranking civil servants had been one of Romania's commitments during the accession negotiations. The changes to the Civil Servants Statute excluded the managers of the decentralized or devolved public services from the category of civil servants and allowed them to be replaced by people appointed according to political criteria, who signed management contracts. The media reported on press conferences of the political parties member of the governing coalition, who said cooperation protocoles had been concluded at local level and the managers of public services had been appointed according to the „algorithm". Furthermore, the Unitary Salary Law annulled all incompatibilities for civil servants, allowing them to have other jobs. The measure is said to have been taken to compensate the poor wages of the civil servants. But this jeopardizes the integrity of the entire central and local public administration.

The changes to the Civil and Penal Codes were made in an authoritarian and totally untransparent manner, and the society was completely disregarded in this process of redefining the country's legal infrastructure. The Parliament was also disregarded and given a consultative role, instead of the lawmaking role enshrined in the Constitution. The MPs had been given ten days to table amendments, and the two Houses of Parliament were denied the right to debate and adopt the new laws according to the parliamentary procedure. The Codes had been adopted at the Government's will, who assumed responsability over them. This abusive, undemocratic and untransparent manner of dealing with fundamental social relations triggered ample protests from the civil society, who formed the coalition „Stop the Codes!", gathering together NGOs, trade unions and employers' associations. The coalition accused the Government of violating the citizens' right to public consultation and the proper procedures to adopt laws, by obviously disegarding the provisions of Law 52/2003 regarding the transparency of the decision making process. These protests led to an extension of the deadline given to the Parliament and made the Government postpone the adoption, in the same abusive manner, of the codes of procedure. The Civil Code thus adopted legalizes usury and plunges into ambiguity the specific differences between the civil legal relations and the commercial legal relations. This seriously endangers the climate of security and public integrity as far as contracts are concerned, with potential risks of money laundering, false contracts, civil contracts of consultancy that could cover bribery, in the relationship private sector – public sector. The provisions of the new Penal Code have been considered to be tools allowing to pardon already committed crimes. The criminal sanctions were greatly reduced, while criminality is on the rise. The new Penal Code proves to be more lenient with the acts of corruption; at the same time, the changes to the offence in the general part of the Code could lead to the investigation of the already committed acts of corruption to be stopped, as the more favourabla provisions should be applied.

These codes were drawn up and adopted without any impact study or analysis of the need to regulate and they risk to turn, from declared elements of reform, into tools of regress, when applied. There are though good provisions and juristic institutions in these Codes, but no feasability study had been made regarding their possible implementation.

During the reporting period, the anticorruption agencies made some progress. The National Anticorruption Department succeeded in reducing the excessive politicized media coverage of the ongoing investigations and the critics according to which it was a political legal instrument. At the same time, DNA continued its investigations regarding high-level corruption, but statistically obtained no significant results in obtaining the condemnation of the acts of corruption investigated. At the beginning of 2009, the chief prosecutor of DNA had his mandate renewed.

The General Anticorruption Directorate increased during this period its investigative activity, from the point of view of both the number of investigations concluded and the importance of the

people investigated. At the beginning of 2009, the institution was affected by a scandal involving the director for operations. He was replaced, and this did affect neither its structure and organization, nor its functioning.

As for the National Integrity Agency (ANI), during the period under study, it consolidated its administrative capacity and became a fully operational structure. Nontheless, the procedures for the competition and subsequent appointment of the Agency's Vice-President have not yet been concluded. As far as the results are concerned, it is a matter of concern that over 80% of the sanctions of contravention against which appeals had been made were declared null and void by court decision. One of the causes determining the annulment of the investigations carried out by ANI is the secret kept over the administrative and legal procedures, which comes in conflict with the European Convention of Human Rights. There were also some scandals regarding the Agency's leaders, accused of incompatibility and of illegal use of public funds. Following the actions of some whistleblowers, the Agency's managers are criminally investigated by the Prosecutor's Office.

The National Integrity Council met some obstacles in achieving its mission, and is practically unable to make important decisions under its competence, such as the decision to investigate the managers of the National Integrity Agency; in that case, even if all evidence pointed to the dismissal of the President, the decision could not be made because of the lack of quorum. Another important decision, that of organizing the competition to chose ANI Vice-President, could not be made. Similarly, CNI could not perform its most important prerogative, namely the annual assessment of ANI management based on an independent audit. Mention should be made that no annual independent assessment of the Agency's activity had been made since its creation, even if the law provides for such an assessment.

No progress has been made as far as the transparency of the decision-making process and the access to information of public interest, as stipulated by Laws 52/2003 and 544/2001; the rights guaranteed for by these laws were frequently violated. Furthermore, the standards of public responsability for the management of public services and public policies diminished, due to the excessive politicizing of the issues relating to public affairs.

As for the relations between the powers in the State, during the reporting period, no less than four constitutional conflicts were brought to the attention of the Constitutional Court, and during 2009 concerns over the democratic standards were expressed. The Parliament increased its control over the Government throught special inquiry committees, but did not fulfil its main, law-making mission. During the last six months of the reference period, the Government passed five times organic laws, resorting to the exceptional procedure of assuming its responsability. It also used excessively urgent ordinances to pass laws instead of the Parliament. In fact, over 90% of the laws adopted by the Parliament were urgent ordinances issued by the Government. This kind of law-making reduces the possibility of participative procedures and the use of the mechanisms of transparent decision-making; it affects the capacity to mediate and negotiate the legislative projects among the social parties interested.

The Government, subject to the pressures of the financial and economic crisis, diminished the standards of transparency regarding the decisions on the use of public funds, preferring quicker decisions immediately applicable. It was mainly criticised for the total lack of transparency regarding the conditions under which an external loan of 20 billion euro from the International Monetary Fund and the European Union had been granted, as well as for the lack of transparency regarding the criteria according to which the money from the State budget had been divided among ministries, which led to suspicions that the criteria for distributing the financial resources were highly politicized.