



**Conference of the States Parties
to the United Nations
Convention against Corruption**

Distr.: General
23 October 2013

Original: English

Implementation Review Group

Resumed fourth session

Panama City, 26-27 November 2013

Agenda item 2

**Review of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

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II. Executive summary

Romania

1. Introduction: Overview of the legal and institutional framework of Romania in the context of implementation of the United Nations Convention against Corruption

The Convention was signed on 9 December 2003, ratified by the Parliament on 6 September 2004, and signed by the President of the Republic on 14 September 2004. Romania deposited its instrument of ratification with the Secretary-General of the United Nations on 2 November 2004, and the Convention entered into force for Romania on 14 December 2005.

Article 11 paragraph 2 of the Constitution states that generally accepted rules of international law and international conventions that have been ratified by an act of law and have come into effect shall form an integral part of Romania's domestic law and shall override any other contrary provision of domestic law.

Romania's legal framework against corruption includes provisions from the Constitution, the Criminal Code and the Criminal Procedure Code. A new Criminal Code will enter into force in February 2014. It further contains specific legislation on: preventing and sanctioning corruption acts, preventing and sanctioning money-laundering, witness and whistle-blower protection, and international cooperation in criminal matters.

Furthermore, Romania established the National Anticorruption Directorate (NAD), which is the specialized prosecutorial and investigative agency competent in the field of preventing and countering high and medium-level corruption offences, as well as economic-financial offences related to corruption. Moreover, the Anticorruption General Directorate, set up in 2005 in the Ministry of Internal Affairs as a judicial police unit specialized in preventing and combating corruption within the ministry's personnel, had its competence extended in June 2013 to general competence in the field of prevention and countering corruption. In addition, the National Integrity Agency (NIA) is an autonomous administrative authority with competence to verify the assets acquired by persons exercising public functions, to identify any potential conflicts of interests and incompatibilities, and to implement strategies for the prevention of unjustified enrichment.

Romania is currently implementing its National Anti-corruption Strategy for 2012-2015. The Strategy includes cooperation platforms with the private sector and civil society organizations for monitoring achievement.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Promising, offering or giving money or other advantages to a public official, or the request or acceptance thereof, directly or indirectly, are punished by the Criminal Code and the new Criminal Code. The Criminal Code makes a distinction between taking a bribe for the purpose of a future act and receiving an undue advantage

connected to an act already accomplished. However, the new Criminal Code does not distinguish between taking a bribe and receiving an undue advantage. In those instances where the person offering the bribe informs the authorities before the investigation bodies know of the offence, s/he will enjoy immunity from prosecution, and will have the bribe returned. These provisions also criminalize active and passive bribery in the private sector pursuant to the broad definition of "official" included in the Criminal Code, which includes any employee who performs a task in the service of a legal person. The Law No. 78/2000 and the new Criminal Code extend the scope of active and passive bribery, including when it is linked to international economic operations. However, bribery of officials of public international organizations is limited to those belonging to international organizations and international courts to which Romania is a party. The new Criminal Code allows different rules to be applied once a treaty is signed. Confiscation of the bribe or of a similar amount is provided for.

Active and passive trading in influence is criminalized in the same manner.

Money-laundering, concealment (arts. 23 and 24)

The Law No. 656/2002 makes it a crime for any person, being aware of its illicit origin, to convert or transfer property for the purpose of concealing or disguising the illicit origin or of assisting any person who is involved to avoid prosecution. Similarly, the acquisition, possession, use, concealment or disguise of the true nature, source, location, or ownership of rights with respect to property, knowing it is derived from a criminal activity, is an offence. Any offence can be considered as a predicate offence to money-laundering. The jurisprudence considers money-laundering as a stand-alone offence. The perpetrator of the predicate offence can also be subject to money-laundering charges. Intent and knowledge can be inferred from factual circumstances.

The receipt, acquisition, or transformation of a good, or the facilitation of its use, while being aware of its illicit origin, is sanctioned by the Criminal Code, as long as the purpose was to obtain, directly or for somebody else, a material advantage.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The Criminal Code sanctions the misappropriation, use or traffic, by an official (the employee of a legal person), in his/her interest or in the interest of others, of money, values or assets managed or administered by him/her. The intentional or reckless damage caused by a person called upon to manage or preserve the assets of an institution to such property is also sanctioned. Diversion of funds or resources, if a public authority, institution or other legal person suffered damage, is also punished. The new Criminal Code clarifies the distinction between the first two offences, limiting the applicability of "embezzlement" to the acts committed *by a public official* (and not by an employee of any legal person).

Abuse of functions against public or private interest, if the official obtained for him or herself or another person an undue advantage, is sanctioned. If such acts cause serious consequences or the official obtained an undue advantage, these are considered aggravating circumstances.

Romania adopted administrative procedures authorizing the NIA to investigate unjustified enrichment instead of criminalizing illicit enrichment, due to

constitutional concerns. Bank secrecy does not impede administrative investigations.

Obstruction of justice (art. 25)

The Criminal Code punishes acts that deter the participation in a criminal, civil or administrative case of any witness, expert, interpreter or defender by the use of violence, threat or any other means of constraint against them, their spouses or close relatives. The attempt to constrain testimony or cause the aforementioned individuals to give false testimony is also penalized. Specifically criminalized are the intimidation of, and use of violence or physical injury performed against, a public official. The penalty is increased by half when the subjects of the offence are judges, prosecutors, investigators, experts, judicial executors, police officers and gendarmes or military personnel. The new Criminal Code criminalizes the act of a person preventing the court from carrying out a criminal investigation or refusing to make available existing information requested.

Liability of legal persons (art. 26)

Convention offences apply to natural and legal persons alike. The Criminal Code establishes that legal persons, with the exception of public authorities, institutions and the State, are subject to criminal liability. Such liability does not exclude the criminal responsibility of the natural person who contributed in any way to committing the same offence as the legal person. The Criminal Code establishes a series of penalties that range from fine, dissolution of the legal person or suspension of its activities, and closure of specific working centres, to interdiction of participation in public procurement and public announcement of the sentence. These features are established in the new criminal code.

Participation and attempt (art. 27)

The Criminal Code introduces the concept of the “participant” which refers to any person who contributes to the perpetration of an offence other than the perpetrator. The participation of instigators and accomplices in a criminal act is sanctioned with the same penalty as provided for the underlying offence. A person who conceals the assets generated through the offence or who favours the commission of the act by the offender is sanctioned instead as a perpetrator of one of two distinct offences: *concealment* or *favorizing the perpetrator*. In cases of bribery of national and international public officials, bribery of officials of international organizations and in the private sector and trading in influence, the attempt is punishable through the criminalization of the mere promise or solicitation of an undue advantage as elements of the relevant offences. In the case of embezzlement in the public and private sectors, the attempt is criminalized by the Criminal Code. Mere preparation to commit an offence is not in itself an offence.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Sanctions against corruption-related offences were found to be adequate and dissuasive. Aggravating circumstances are regulated in cases of particular gravity if there is damage to the institution. Immunity is granted to parliamentary deputies and senators for discussions and votes in relation to their positions. They can be subject

to criminal investigation and prosecution for acts that are not connected to their votes or their political opinion expressed during their term of office; however, they cannot be detained, searched or arrested without the authorization of the Chamber they belong to. In cases of *flagrante delicto*, they can be detained and searched, but the President of the Chamber must be notified, and if there are not enough grounds for the detention, the Chamber may override the decision. Judges, prosecutors and assistant magistrates can be subject to criminal investigation and prosecution, but they cannot be detained, searched and arrested without the consent of the Superior Council of the Magistracy.

Provisional release and bail can be granted for corruption offences, provided there is no risk of flight. Early parole for good conduct and discipline can be awarded when two thirds of the sentence has been served, if the penalty does not exceed 10 years of imprisonment and, when three quarters of the sentence has been served if the penalty does exceed 10 years. The Statute of Civil Servants provides that if the public official is arrested or prosecuted for corruption offences, inter alia, s/he will be suspended from the public position s/he holds. Judges and prosecutors are suspended if an *actio penalis* is initiated against them. Moreover, they can be suspended if they commit acts that may affect the professional honour or probity or the prestige of justice. Considering the conditions for admission (readmission) into magistracy, it is impossible to reappoint a judge or a prosecutor who had committed an act of corruption.

GEO No. 43/2002 stipulates that the offender who provides substantial information which will facilitate the investigation shall benefit from a reduction to half of the penalty limits provided by the law. Immunity from prosecution is granted automatically for active bribery and trading in influence if the offender informs the authorities about the criminal conduct before the investigative bodies are notified about the offence. Protection to cooperating offenders is provided in the terms of article 32 of the Convention.

Protection of witnesses and reporting persons (arts. 32 and 33)

Witness protection measures include protection of identity and statements, hearings by technical means, protection while in custody, security at home, relocation, change of identity, change of physiognomy, and social and employment reinsertion. Witnesses in investigations of corruption offences may be considered for enrolment in the programme. Victims may benefit from general protection measures, such as hearings by technical means, security at home or during times at the court or prosecutor's office, when certain conditions are met.

Protection of civil servants, contractual personnel and other categories working for public authorities, institutions and other units that report corruption offences is provided for by the law in all public institutions in Romania. The Ministry of Internal Affairs' General Anti-corruption Directorate is implementing the regulations and undertakes operational action, including a database of whistle-blowers.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The Criminal Code and the Criminal Procedure Code provide measures for the freezing, seizing, confiscation and extended confiscation of property or instruments

associated with offences under the Convention. The investigating bodies can draw on experts to identify and evaluate the assets that are to be seized. Seizure and confiscation orders are executed without prejudice to the rights of bona fide third parties. The Criminal Procedure Code contains provisions that authorize the prosecutor to identify, freeze and confiscate criminal assets. The management of seized assets is carried out by the Romanian Police.

Bank secrecy is not a ground to refuse to comply with a court order or a written request from the prosecutor to disclose financial records related to an investigation. However, bank secrecy requirements cannot be lifted before a criminal investigation is opened.

Statute of limitations; criminal record (arts. 29 and 41)

Article 122 of the Criminal Code establishes statutes of limitations for crimes committed by natural and legal persons, which were deemed long enough to preserve the interest of the administration of justice. The terms of prescription are interrupted by the completion of any action in accordance with the law and thus, a new prescription term would be initiated. However, the interruptions cannot exceed the double of the statute of limitation prescribed. The statute can be suspended for the period during which a legal provision or an unforeseen circumstance hinders the commencement or continuation of a criminal proceeding.

Provisions from various Conventions and regulations (European Union, Council of Europe) regarding the exchange of information on criminal records are applicable in Romania.

Jurisdiction (art. 42)

The Criminal Code establishes jurisdiction over all crimes committed in the territory of Romania and outside, if the perpetrator is a Romanian citizen or resident in Romania. Regarding offences committed in ships and aircrafts, Romania establishes its jurisdiction under the competence of the court in whose territory the ship anchored or the aircraft landed. Jurisdiction for offences committed outside the Romanian territory is also established, with prior authorization of the Prosecutor General, when the act affects Romanian state security or a Romanian citizen's life. Romania also provides for the prosecution of those foreign citizens who commit crimes in foreign jurisdictions, if the person is found in Romania, and under the condition of double criminality.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

GEO No. 34/2006 obliges the contracting authority to expel from the public procurement procedure any natural or legal person who has been convicted during the past five years of corruption, fraud or money-laundering offences. The same applies when the tenderer has been convicted in the past three years of an act that has caused damage to professional ethics or for having made a professional error. The Civil Code provides for the nullity of any contract that was concluded in violation of the law, if there is no other foreseen sanction.

Where a person has been convicted of a corruption offence, the Criminal Procedure Code states that the product and the instrumentalities of the crime will be confiscated. If they cannot be found, the offender will have to pay the equivalent of

its value. The person who has suffered damage may constitute him or herself as a civil party in the proceedings.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Romania has several specialized agencies working in the area of preventing and combating corruption and law enforcement, which are detailed above. All individuals and institutions are legally required to report crimes to the law enforcement authorities. A Strategic Committee is tasked to support the activities of the General Anti-corruption Directorate. Various ways to report corruption have been enabled: e-mail, the hot-line “Telverde” and online at www.pna.ro and www.mai-dga.ro.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The broad criminalization of active and passive international bribery and the criminalization of international trading in influence.
- The broad concept of public official has been applied in practice.
- The MoU signed between the Office of the Prosecutor and the NIA by which prosecutorial decisions not to investigate may be reconsidered by the Prosecutor General based on information collected by the NIA.
- Rules on corporate liability are applied and Romania is encouraged to continue applying them to increase the number of convictions.
- Representatives of the private sector and civil society organizations reported that Romania has a strong legal framework against corruption and that prosecution of corruption offences have increased in the last years, but that further efforts could be made in consistency and effectiveness of implementation.
- The involvement of the private sector and civil society organizations in the implementation and monitoring of the National Anti-corruption Strategy. Additionally, significant efforts have been made to implement public-private sector partnerships.

2.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Romania provides automatic immunity from prosecution in cases of self-denunciation before the investigation starts. Consideration could be given to amending the relevant domestic provisions so as to allow the public prosecutor to “weigh” in the level of cooperation of the perpetrator of the crime. Romania is encouraged to consider abolishing the restrictive condition which limits the applicability of bribery of international public officials to those belonging to international organizations and courts to which Romania is a party.

- As regards the rules applied by the NIA, Romania should consider extending the scope of investigations to any natural or legal third person susceptible to be used as a holder of the unjustified assets.
- Requiring a pre-authorization from the Chambers of Parliament to proceed to a search of a Member of the Chamber of Deputies or Senate could constitute an obstacle to securing evidence and to the efficiency of the investigations. Romania may wish to consider amending the legislation in this regard.
- The creation of a body with explicit powers to administer seized and confiscated assets.
- Romania is encouraged to consider initiating the pertinent legal reforms to allow for the lifting of bank secrecy from the earliest stage of the investigation.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

*Extradition; transfer of sentenced persons; transfer of criminal proceedings
(arts. 44, 45 and 47)*

The Romanian legal framework governing international cooperation includes Law 302/2004 on international judicial cooperation in criminal matters, as well as provisions of the Constitution and several bilateral and multilateral treaties.

Romania uses the United Nations Convention against Corruption as a subsidiary legal basis for extradition by virtue of the Romanian Constitution, which states that treaties ratified by Parliament, in accordance with the law, are part of the domestic law.

Law 302/2004 defines the persons subject to extradition upon request from a foreign state as those who are in Romanian territory and are under criminal prosecution or brought to justice for the commission of an offence, or who are wanted for serving a penalty or a preventive measure in the requesting State.

Extraditable offences are offences that are punishable by imprisonment or other deprivation of liberty for a maximum period of at least one year, or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least four months of such sentence remains to be served.

Extradition is subject to dual criminality; however, extradition can be granted provided that an applicable international convention provides for an exception to the rule. Differences in legal classification and the denomination of the offence in question are irrelevant when applying the dual criminality requirement.

Romania does not make extradition conditional on the existence of treaty. Extradition can be granted under the Convention or based on general principles of international courtesy and reciprocity. Despite the broad based applicability of the Convention, Romania has also concluded treaties relevant to extradition with Algeria, Australia, Bosnia and Herzegovina, Brazil, Canada, China, Cuba, Egypt,

Morocco, New Zealand, North Korea, Republic of Moldova, Syria, Tunisia and the United States of America.

Romania does not consider any of the corruption offences in the Convention to be political crimes. Law 302/2004 refers to offences which are excluded from the concept of political offence. They include any offence whose political character has been eliminated by the treaties, conventions and international agreements to which Romania is a party.

Romania has several grounds for refusal of extradition requests, such as those concerning: the right to a fair trial; serious reasons for believing that the request was submitted for the purpose of prosecuting or punishing in the requesting State the person sought for reasons of race, religion, sex, nationality, language, political or ideological opinion or belonging to a certain social group; pending criminal proceedings elsewhere or in Romania; or where the surrender of such person is likely to entail particularly serious consequences due to his/her age or health. Extradition cannot be refused solely on the ground that the offence in question involves fiscal matters.

According to the Constitution, Romania does not extradite its own nationals. Law 302/2004, however, outlines an exception whereby a Romanian national can be extradited if an international convention to which Romania is a party so permits.

Romania seeks to cooperate with other States before refusing to extradite. For example, it is a common practice for judicial authorities to request additional information from the requesting state before rendering a refusal based on insufficient information.

In case of a refusal to extradite Romanian citizens, the case should be submitted to the competent judicial authorities to trigger domestic criminal prosecution. Romania can enforce a foreign sentence domestically, at the request of the requesting State.

With regard to other Member States of the European Union, the surrender of fugitives is carried out in line with the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States of the European Union. The Framework Decision does not include nationality as a mandatory ground for non-execution. Nationality is, according to article 4, paragraph 6, an optional ground for non-execution, but under certain specific conditions. Article 5, paragraph 3, provides for the option of making execution conditional on a guarantee that, upon conviction, the individual is returned to his/her State of nationality to serve the sentence there. Against this, there are cases of surrender of Romanian nationals to other Member States of the European Union.

Law 302/2004 guarantees fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

In principle, according to Romanian law, the transfer of convicted persons may be made even in the absence of a bilateral treaty, if it proves to be necessary because of the nature of the act, of the need to fight against certain serious forms of crime, it may contribute to an improvement of the defendant or convict's status; or it may serve to clarify the judicial status of a Romanian national.

Romania may consider the Convention as a legal basis when transferring a foreigner convicted by a Romanian court or a Romanian national convicted abroad. Romania has concluded bilateral treaties on transfer of the sentenced persons with Egypt, Turkey and Republic of Moldova. Furthermore, the 1983 Council of Europe Convention on the transfer of sentenced persons applies to all 63 States parties, including non-members of the Council of Europe.

Romania allows for the transfer of criminal proceedings and the Convention can be used as legal basis to this effect.

Mutual legal assistance (art. 46)

Apart from the self-executing nature of the provisions of article 46, paragraph 1, the general provisions from Law 302/2004 related to international judicial cooperation, as well as those related to mutual legal assistance in the special chapter dedicated to this matter, allow Romanian authorities to afford the widest measure of assistance in matters related to the Convention offences. Procedural guidelines have been developed by the central authorities and judicial authorities.

Under Law 302/2004, mutual legal assistance may include the execution of letters rogatory; hearings by videoconference; appearance in the requesting state of witnesses, experts and prosecuted persons; service of procedural documents drawn up or submitted in criminal proceedings; exchange of judicial records; and other forms of judicial assistance.

There is no general provision in Law 302/2004 which establishes the lack of dual criminality as a ground for refusing assistance. Based on the principle that mutual legal assistance should be granted to the widest extent possible and taking into account the gravity of corruption offences, Romanian judicial authorities try to execute to the best extent possible foreign requests.

Mutual legal assistance can also be afforded in relation to offences for which legal persons may be held criminally liable. To ensure the widest cooperation, judicial authorities have the right to exchange information spontaneously and to forward information to competent authorities of a foreign State, when they consider that the disclosure of such information may assist the receiving State in initiating criminal proceedings.

As Chapter IV of the Convention is self-executing, Romania does not refuse MLA requests on the grounds of bank secrecy. A similar approach is followed in MLA relations with other Member States of the European Union (Art. 216 of Law 302/2004).

Law 302/2004 contains provisions relating to the active and passive temporary transfer of detained persons.

Romania accepts direct communication through central authorities and also accepts transmission through the International Criminal Police Organization. In urgent cases, direct transmission to the central authority (Ministry of Justice or Prosecutor's Office attached to the High Court of Cassation and Justice depending on the stage of the trial) through fax/email is highly recommendable with formal confirmation to follow.

Romania accepts MLA requests and supportive documentation in Romanian, English and French.

Video testimony can be used, based on compliance with several conditions, such as the supervision of the procedure by the competent Romanian authority to ensure the protection of witnesses.

Law 302/2004 provides that Romania shall not use the documents and information it receives from the requesting state for any purpose other than that of fulfilling the letters rogatory for which the request was made.

Romania is obliged to make sure, to the extent possible, the confidentiality of requests and of any attached documents. In the event that it would be impossible to ensure confidentiality, Romania shall notify the foreign state, which shall decide whether to proceed.

Romania may delay the handing over of any property, records or documents requested, if it also requires them in connection with pending criminal proceedings.

Safe conduct is ensured under Law 302/2004 which states that a witness or expert, whatever his/her nationality, appearing on a summons before the judicial authorities of Romania shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of Romania in respect of acts or convictions prior to his departure from the territory of the requested State.

Costs related to the execution of a mutual legal assistance request are usually incurred by the requested state.

Romania has concluded some bilateral agreements on mutual legal assistance with: Albania, Algeria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, China, Croatia, Cuba, Czech Republic, Egypt, France, Greece, Italy, Montenegro, Morocco, Democratic People's Republic of Korea, Poland, Hungary, Republic of Moldova, Russian Federation, Serbia, Slovakia, Syria, Tunisia and United States.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

GEO No. 43/2002 on setting up of the NAD provides for mutual consultations in cases of corruption offences through an established liaison bureau. It also outlines measures to develop national legal and institutional frameworks and international police cooperation under national law, agreements, conventions and treaties to which Romania is a party and under relevant European Union legal instruments.

Law No. 508/2004 on setting up the Directorate for Investigating Organized Crime and Terrorism (DIOCT) provides for the establishment of an international assistance office for mutual consultations and the exchange of information with similar bodies in other countries for offences, such as money-laundering in connection to organized crime and terrorism.

In practice, for MLA requests, the NAD often cooperates with other law enforcement agencies through contact points within the European Judicial Network, Eurojust, EPAC, EACN, and liaison officers to facilitate the exchange of information.

Law No. 302/2004 states that joint investigation teams may be set up for a specific purpose and a limited period to facilitate the resolution of a request for rogatory letters.

Romania has outlined in legislation the special investigative techniques that may be used to assist in mutual legal assistance cases, such as controlled delivery, covert investigations, and the interception and recording of conversations and communications.

3.2. Successes and good practices

Overall, the following successes and good practices were observed relating to the framework of implementation of Chapter IV of the Convention.

- Statistics and cases examples demonstrate that the Convention has actually been used in practice for numerous international corruption-related requests.
- Romania accepts international cooperation requests in Romanian, English and French, demonstrating a spirit of cooperation.
- The central authority developed guidelines on mutual legal assistance and the transfer of sentenced persons, which are used to train practitioners at the central and regional level on procedures, including those relating to the direct applicability of the Convention and the United Nations Convention against Transnational Organized Crime.
- Romania has seen an increase in international cooperation requests and cases, which demonstrates that Romania's wide application of the Convention has facilitated international cooperation in corruption-related cases.

3.3. Challenges in implementation

The following point could serve as a framework to strengthen and consolidate the actions taken by Romania to combat corruption:

- Romania noted some challenges in the transfer of criminal proceedings in the past, which led to the drafting of amendments to Law 302/2004 which includes a procedure for exchange of information and coordination directly with European Union Member States or via central authorities, when a competent authority has reasonable grounds to believe that parallel proceedings are being conducted in another State. Romania should consider enacting this provision to facilitate cooperation.