

1 September 2023

English only

---

**Implementation Review Group**  
**Resumed fourteenth session**  
Vienna, 4–8 September 2023  
Agenda item 4  
**State of implementation of the United Nations**  
**Convention against Corruption**

**Executive summary**

**Note by the Secretariat**

**Addendum**

Contents

	<i>Page</i>
II. Executive summary . . . . .	2
Romania . . . . .	2



## 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

Romania deposited its instrument of ratification of the Convention against Corruption with the Secretary-General of the United Nations on 2 November 2004, and the Convention entered into force for Romania on 14 December 2005.

The implementation by Romania of chapters III and IV of the Convention was reviewed in the third year of the first review cycle, and the executive summary of that review was issued on 23 October 2013 ([CAC/COSP/IRG/I/3/1/Add.4](#)).

The main authorities in Romania with functions relevant to preventing and countering corruption are the Ministry of Justice, the National Anti-Corruption Directorate, the National Integrity Agency, the Prosecutor's Office attached to the High Court of Cassation and Justice, the General Anti-Corruption Directorate, the National Office for the Prevention and Control of Money-Laundering (the country's financial intelligence unit), the National Agency for the Management of Seized Assets, the National Agency for Fiscal Administration.

Romania is an active member of international organizations, including the European Union, the Organisation for Economic Co-operation and Development (the Working Group on Bribery and the Anti-Corruption Network), the Council of Europe (as a member of the Group of States against Corruption and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism), the Regional Anti-Corruption Initiative, the South-East European Cooperation Process and the Egmont Group of Financial Intelligence Units. Romania also participates in international European Union projects and twinning projects with partner countries.

#### 2. Chapter II: preventive measures

##### 2.1. Observations on the implementation of the articles under review

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

The country's key anti-corruption commitments are reflected in the National Anti-Corruption Strategy 2021–2025, adopted through Government Decision 269/2021, which is complemented by sectoral integrity plans. The Ministry of Justice coordinated the development of the Strategy and oversees and coordinates its implementation.

The Strategy was developed on the basis of broad consultations and an independent evaluation of the impact and implementation of the previous strategy covering the years 2016 to 2020.

A research project on causes of corruption was conducted in partnership with relevant national public entities and academia in order to better understand the motivations for and consequences of engaging in corruption.

The National Anti-Corruption Strategy is implemented by executive, legislative and judicial authorities, local public administrations, the business sector and civil society. To support monitoring and implementation, cooperation platforms are convened, and ministries and relevant institutions have designated coordinators. To further facilitate monitoring and enable access to open data, the Ministry of Justice operates an integrated information technology system called PORTAL, which at the time of the country visit was under revision with a view to enhancing its effectiveness. All

monitoring and evaluation reports are public, and the Ministry of Justice publishes an annual report on the Strategy's implementation.

Romania endeavours to strengthen its anti-corruption measures, including by continuing the progress of investigating and adjudicating high- and local-level corruption.

Under the National Anti-Corruption Strategy, peer reviews are carried out to assess how integrity instruments are working throughout the administration.

Romania uses the results or recommendations of international organizations and monitoring by the European Commission and the Council of Europe as one of the bases for legislative initiatives and strategies. However, past reports have expressed concerns about the excessive use of legislative amendments made using expedited or emergency procedures.<sup>1</sup>

The Ministry of Justice is in charge of developing and promoting most of the anti-corruption legislation, formulating policies, monitoring institutional developments and increasing and disseminating knowledge. The parliament can also initiate the revision of anti-corruption legislation, given that the primary regulatory competence in Romania rests with the Parliament.

There are some legal protections in place to strengthen the independence of the four main corruption prevention bodies in Romania, particularly the National Integrity Agency. The president and vice-president of the Agency are appointed for a non-renewable four-year term following an examination by the National Integrity Council and may be removed from office only in the circumstances stipulated by law. To strengthen the independence of the Agency, the Council may, pursuant to an operational procedure and at its request, adopt public positions on specific issues to support the Agency's functions<sup>2</sup> after consulting all members. Independent external audits monitor the quality of the Agency's management and compliance with legal rules and internal procedures. For the National Anti-Corruption Directorate, reference is made to the information concerning the appointment and removal procedure of its Head, described in the section covering article 11 of the Convention below. As government bodies, the General Anti-Corruption Directorate and the NAS Technical Secretariat in the Ministry of Justice are not independent institutions.

Material resources, specialized staff and relevant training are provided from the state budget with support from external sources, such as the European Union and the Norwegian Financial Mechanism. However, there is a need to continue to invest in the development of human resources.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

The National Agency of Civil Servants ensures the management of civil servants in accordance with the Administrative Code (GEO 57/2019), the statute of civil servants and Government Decision 611/2008. The Agency supervises the observance of fundamental principles of the civil service, which include legality, impartiality, objectivity, transparency, efficiency, citizen orientation, stability and hierarchical subordination (art. 3 of the statute of civil servants). The recruitment procedure for civil servants is based on the principles of open competition, transparency, professional merit, competence and equal access (art. 57 (1) and (3) of the statute)

<sup>1</sup> These ordinances can amend or modify organic laws and have the same legal powers as ordinary laws. As noted in the European Commission's "2020 Rule of Law Report: the rule of law situation in the European Union", excessive use of accelerated and emergency legislation can give rise to concerns over the rule of law. In a consultative referendum held in May 2019, the majority of citizens voted in support of banning the use of government emergency ordinances in the area of justice.

<sup>2</sup> Examples include legislative changes that negatively affected the efficiency of the Agency, enforcement of court sentences or implementation by the Agency of recommendations of the European Commission in the context of the former Cooperation and Verification Mechanism.

and became operational in accordance with article 467 paragraphs (1) and (2) of the Administrative Code. The promotion of civil servants is done in accordance with Section 3, Chapter VI, Title II of GEO no. 57/2019, as amended.

Sensitive functions are identified by heads of public entities, and plans are drawn up for ensuring risk mitigation (Order 600/2018). Benchmark 418 of the recovery and resilience plan approved by the European Union for Romania is aimed at establishing rules for the rotation of staff, including those holding positions vulnerable to corruption, to be adopted by the end of 2024. There is a need for continuous specialized training in the public sector on the topic of vulnerable positions.

Law 153/2017 on the unitary remuneration of personnel from public funds regulates the remuneration system, which is based on equitable and competitive principles.

Pursuant to article 449 (5) (e) of the Administrative Code, senior civil servants are responsible for evaluating, with objectivity, the professional training needs of subordinated civil servants and for identifying and formulating proposals for their training and professional development. Specialized training and guidance should be provided to enhance awareness of corruption risks.

The general framework on the exercise of the right to be elected is regulated by the Constitution (arts. 16, 37, 38, 40, 62, 81, 121 and 122) and by laws governing specific elections. Candidates must file statements of assets and interests in accordance with the respective legislation, with oversight exercised by relevant institutions, such as election bureaus and the National Integrity Agency. Provisions relating to corruption and fraud in elections are contained in Law 78/2000, the Criminal Code and Law 176/2010.<sup>3</sup>

Article 1 of Law 334/2006 stipulates that the financing of political parties and electoral campaigns must be based, among other factors, on the principle of transparency of income and expenses. Although subsidies from the state budget are permitted (art. 3), the use of other public resources and funds from foreign sources is prohibited (arts. 14 and 15). There are also restrictions on corporate donations (art. 33) and on donations received from legal persons. Moreover, the national legislative framework prohibits any financing of electoral campaigns by, among others, national companies or companies in which the state or administrative territorial units are majority shareholders or by companies which carry out activities financed from public funds (art. 33 of Law No. 334/2006). Foreign legal persons cannot be donors or finance electoral campaigns (art. 32). Law 334/2006 requires political parties to publish income from membership fees and donations, as well as the identity of donors, although the identity of donors can remain confidential if so requested, provided that the annual amount they contribute is below a specified threshold (about 6,000 euros) (art. 11). Campaign financing requirements are enforced by the Permanent Electoral Authority, which publishes data and reports on political party financing, issues guidelines and conducts training.

Article 70 of Law 161/2003 on certain measures to ensure transparency in the exercise of high official positions, public functions and in the business environment, and for preventing and sanctioning corruption, regulates conflicts of interest, although the definition of such conflicts does not cover non-financial conflicts.<sup>4</sup> While potential conflicts of interest are not explicitly regulated, such situations may be covered to some extent by the prohibition against incompatibilities (art. 94 of Law 161/2003). When a conflict of interest arises, public servants are obliged to refrain from taking the relevant action or decision and to inform their direct superior within three days (art. 79 (2)). Incompatibilities and conflicts of interest are considered grounds for

<sup>3</sup> By law, nominations for local and parliamentary elections must be accompanied by declarations of assets and interests and sworn statements as to whether candidates were employees or collaborators of the Securitate. Candidatures that do not meet the legal conditions are dismissed by constituency electoral bureaus.

<sup>4</sup> The High Court of Cassation and Justice Decision 4024/2019 has interpreted the notion of “personal interest” as including any benefit or advantage of a patrimonial or non-patrimonial nature that a person can acquire. This has not yet been reflected in the legislation.

dismissal or punishment (art. 25 of Law 176/2010 on integrity in exercising public offices and dignities). Additional regulations apply to local authorities and to other categories of officials.<sup>5</sup> While parliamentarians are subject to the same obligation to prevent conflicts of interest as other public officials and must equally declare their assets, interests and any gifts or advantages, there is no ad hoc disclosure requirement for specific conflicts of interest in relation to parliamentary matters. Rules on dealings with lobbyists are under development.

A public portal of asset and interest disclosures, containing over 10 million disclosures from public officials enumerated in Law 176/2010, and including information in relation to their spouses and children, is available, and the National Integrity Agency provides clarifications on situations of conflicts of interest, incompatibilities and declaration requirements upon request. Asset and interest disclosures are submitted electronically, and a comprehensive verification mechanism is applied. The acceptance of gifts and benefits by civil servants is regulated, and these items must be declared (art. 46 of Law 188/1999 on the statute of civil servants; art. 14 of Law 7/2004 on the code of conduct for public servants).

Rules of conduct are in place for various professional categories across the public sector (e.g., Law 7/2004; the Administrative Code; Parliament Decision 77/2017; Decision of the Superior Council of Magistrates 328/2005).

The Administrative Code establishes the legal framework for disciplinary sanctions for civil servants.

Whistle-blower protection is ensured by Law 571/2004 on the protection of staff in public authorities, public institutions and other entities who report breaches of law. The Law protects permanent and temporary employees who disclose corruption or other crimes in public entities to the receiving authorities. Draft legislation to transpose European Union Directive 2019/1937 is being prepared.<sup>6</sup>

Judges and prosecutors are independent pursuant to Law 303/2004 on the status of judges and prosecutors.<sup>7</sup> They are obliged to safeguard the rule of law, respect the rights and freedoms of persons and their equality before the law, and assure the non-discriminatory legal treatment of all participants in legal proceedings.

Law 304/2004 on judicial organization<sup>8</sup> and Law 317/2004 on the Superior Council of Magistracy<sup>9</sup> contain additional rules to enhance prosecutorial integrity. Draft Law 303/2022 would further enshrine the principle of independence of prosecutors.

Significant amendments were made to the procedure for the appointment and revocation of senior prosecutorial functions in the context of revisions to the laws on the judiciary.<sup>10</sup> Those amendments were adopted by emergency procedure in 2018 and were subsequently amended following constitutional challenges. According to the revised draft legal texts, the new procedure would involve appointment by the President of Romania on the basis of a proposal of the Minister of Justice and with the opinion of the Superior Council of Magistracy, such approval being based only on criteria set out in Law 303/2004. There was some uncertainty as to how the new rules

<sup>5</sup> These laws include the Constitution, which establishes incompatibilities applicable to the President and members of the parliament and the Government; Law 7/2004 on the code of conduct for public servants, which establishes incompatibilities for public servants; Law 303/2004 on the status of judges and prosecutors, which establishes incompatibilities for judges and prosecutors, including a prohibition on holding government or political office; and Law 94/1992 on the organization and functioning of the Court of Accounts, which sets out incompatibilities for members of the Court. Law 96/2006 on the status of deputies and senators contains an administrative provision that sanctions conflicts of interest (art. 19).

<sup>6</sup> The transposing legislation was adopted after the country visit.

<sup>7</sup> This law was replaced by legislation passed after the country visit.

<sup>8</sup> This law was replaced by legislation passed after the country visit.

<sup>9</sup> This law was replaced by legislation passed after the country visit.

<sup>10</sup> Three justice laws (Law 303/2004 on the status of judges and prosecutors, Law 304/2004 on judicial organization and Law 317/2004 on the Superior Council of Magistracy), with subsequent amendments to the Criminal Code and the Criminal Procedure Code.

would be applied in practice, particularly in the event of a negative advisory opinion by the Superior Council of Magistracy.

In addition, through an amendment to Law 304/2004, the Section for the Investigation of Offences in the Judiciary was established; however, it was subsequently abolished following the country visit through Law 49/2022 on the dismantling of the section for the investigation of offences in the judiciary and on modifying the Criminal Procedure Code.

With respect to the selection and promotion of judges and prosecutors, as provided for under Law 303/2004, implementing rules were being developed at the time of the country visit and improved, following concerns raised by international observers.

*Public procurement and management of public finances (art. 9)*

The national legal framework for procurement principally comprises Law 98/2016 on public procurement and Law 99/2016 on sectoral procurement, which transpose European directives. Law 98/2016 reflects the principles of transparency, proportionality and accountability. A number of emergency ordinances have introduced important amendments to the legislation; one such amendment has been challenged in the Constitutional Court. Separate procurement legislation is applicable to procurement in certain sectors, such as the defence and the utilities sectors.

Qualification and selection criteria, including grounds for the exclusion of bidders, are stipulated in tender requests in accordance with Law 98/2016. Emergency Ordinance 25/2020 introduces limitations on access to public procurement on the basis of the nationality of permitted bidders.

As a general rule, contracting authorities must use open or restricted tendering for contracts with a value that exceeds a specified threshold (art. 69 of Law 98/2016). However, in specific circumstances established by law, other award procedures may be used (art. 69). Contract notices are published in the electronic procurement system and, for tenders with a value that exceeds the thresholds established by European Union directives, in the Official Journal of the European Union, and the law sets out specific time frames to be followed. The award of contracts through open or restricted public tender must be based on the most economically advantageous offer. Awards of contracts with a value that exceeds certain thresholds are published.

The National Public Procurement Agency carries out legislative, policymaking, executive and oversight functions, including ex ante control of tender documents before publication. The Court of Accounts conducts external audits of the use of public funds, including in relation to public procurement. The National Council for Solving Complaints has administrative jurisdiction to hear complaints regarding the violation of procurement rules. Its decisions can be challenged before the Court of Appeal.

An integrated information system for preventing conflicts of interest, through which procurement officials must provide personal details in order to identify potential conflicts of interest, is in place.

The European Commission public procurement monitoring report, published in April 2021, notes some common issues regarding the inconsistent application of public procurement rules and legal uncertainty in Romania, including the artificial division of procurement contracts, the inadequate enunciation of criteria, the non-use of open tendering, the failure to publish contract notices, the late publication of awards and frequent non-harmonized changes in national legislation.<sup>11</sup>

The Government has included important strategic objectives aimed at preventing corruption in public procurement in national anti-corruption strategies covering previous years and in the public procurement policy.

---

<sup>11</sup> European Commission public procurement monitoring report 2018–2020, available at <https://ec.europa.eu/docsroom/documents/47782/attachments/1/translations/en/renditions/native>.

Romania has established procedures for the adoption of the national budget and requirements for timely reporting on revenue and expenditure pursuant to Law 500/2002 on public finances and Law 69/2010 on fiscal responsibility. The “transparency principle” provides for a transparent and open budgetary system (art. 9 of Law 500/2002), and the draft State budget is subject to public debate through the mass media.

All public institutions are required to prepare quarterly and annual account statements and to report on receipts and payments on a monthly basis (art. 18 of Law 82/1991 on accounting). The Ministry of Finance publishes monthly information on budget implementation for each public institution.

The Court of Accounts conducts audits in line with established audit standards (art. 1 of Law 94/1992 on the Court of Accounts) and may prescribe corrective action (arts. 43–45 of Law 94/1992). Sanctions for contraventions of laws on public finances are prescribed in article 41 of the Accounting Law.

Government agencies have internal audit units or departments that conduct independent assessments of risk management, control and governance processes (art. 3 of Law 672/2002 on public internal audit).

Romania has adopted measures to preserve the integrity of financial records and prevent their falsification (arts. 25 and 26 of Law 82/1991).

*Public reporting; participation of society (arts. 10 and 13)*

Law 52/2003 on transparency within the decision-making process in public administration provides for the participation of interested persons in decision-making processes and the drafting of normative acts.

The Constitution enshrines the right to freedom of expression and access to information. Law 544/2001 on free access to information of public interest regulates the procedure for accessing information and establishes limitations in specified cases. In its report entitled “2020 Rule of Law Report: the rule of law situation in the European Union”, the European Commission highlighted restrictions on access to information as a concerning tendency that negatively influences democratic practices.

Romania has adopted some measures to simplify administrative procedures. Government Decision 331/2021 establishes an interministerial committee for e-government and the reduction of bureaucracy. Romania joined the Open Government Partnership in 2011.

By Government Decision 599/2018, Romania adopted a standard methodology for the conduct of corruption risk assessments in central public institutions. The country adopted an evaluation methodology for integrity incidents, a template for annual reporting thereon and a template for a corruption risk register. Details are published on the Ministry of Justice website.

Under the National Anti-Corruption Strategy, public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curriculums, are carried out.

Law no. 52/2003 prescribes measures for the participation of society in decision-making processes. Citizens and legal associations are entitled to submit written suggestions, proposals and recommendations in areas of public interest to be addressed in public meetings, which are open to the media and to be announced at least 3 days in advance. Public authorities are obliged to justify in writing the non-observance of any written recommendations and to publish annual reports on decisional transparency (arts. 12–13). Draft laws are to be publicly debated, if so requested, and the procedure for their elaboration is to be announced by public authorities for at least 30 working days before the draft is submitted for endorsement (art.7). Public authorities are to publish meeting minutes, written recommendations, endorsement reports and versions of draft laws within 10 days of concluding public debates (art. 7(10)). In case of non-adherence with these requirements, administrative complaints may be filed and heard in an emergency procedure (art. 14).

All anti-corruption institutions may receive reports of suspected corruption (art. 2 of Law 571/2004 on whistle-blowing protection). The National Integrity Agency (for non-criminal reporting) and the police and prosecution, including the National Anti-Corruption Directorate (in case of criminal reporting) have published information on their websites on how to report corruption, including anonymously.

*Private sector (art. 12)*

The National Anti-Corruption Strategy promotes integrity in the business sector, in particular in State-owned enterprises, by aiming to strengthen corporate compliance policies.

Under the Strategy, the Ministry of Justice maintains a dedicated platform for cooperation with the business sector. It serves as a space for the discussion of topics of common interest to the business community and public administration.<sup>12</sup>

Although many companies apply codes of ethics and internal procedures to prevent corruption and conflicts of interest, implementation remains an ongoing effort. Companies do not regularly work with public sector or civil society stakeholders to strengthen anti-corruption efforts.

All entities in the public and private sectors are required to prepare annual financial statements in accordance with International Financial Reporting Standards or national accounting regulations (art. 1 of Law 82/1991). In line with European Union requirements, the annual financial statements of medium and large entities are audited, and all companies that are required to perform external audits must also conduct internal audits (art. 65 (7) of Law 162/2017 on statutory audit).

All legal entities must register with the National Trade Register Office and disclose beneficial ownership information. To date, such information is included in public registers for more than 80 per cent of legal entities.

Post-employment restrictions have been established for some public officials. However, most limitations apply to the private entities themselves, such as those that employ former public officials in the execution of contracts which were granted with the involvement of those officials.

Article 41 of Law 82/1991 addresses several of the accounting practices referred to in article 12, paragraph 3, of the Convention.

Law 227/2015 on the Fiscal Code establishes that expenses that are recorded in accounts and that, regardless of their nature, are “later proved to be associated with corruption” are not tax deductible (art. 25 (4)). Accordingly, until such time as there is a judicial or other evidentiary finding, those expenses are considered deductible. False declarations may be punishable under criminal law.

*Measures to prevent money-laundering (art. 14)*

The regime to prevent money-laundering is laid down in Law 129/2019 on the prevention and combating of money-laundering and terrorism financing (the Anti-Money-Laundering Act). The Act applies to financial institutions, including money or value transfer service providers, and designated non-financial businesses and professions.

Chapter IV of the Anti-Money-Laundering Act establishes requirements related to customer due diligence (art. 10). Reporting entities are required to apply standard customer due diligence measures to identify customers and beneficial owners, verify their identity and perform ongoing monitoring of the business relationship (art. 11). Enhanced customer due diligence must be carried out in situations where there is an increased risk of money-laundering (art. 17).

---

<sup>12</sup> Examples include compliance systems, anti-bribery programmes in companies, the use of anti-corruption clauses in relations with suppliers and distributors, public procurement procedures, and transparency of lobbying and data.



The Anti-Money-Laundering Act sets out requirements related to record-keeping (arts. 21 and 22) and the reporting of suspicious transactions (art. 6 et seq.).

The implementation of and compliance with the Anti-Money-Laundering Act are supervised principally by the National Bank, the Financial Supervisory Authority and the National Office for the Prevention and Control of Money-Laundering (art. 26).

The Office may exchange information, on its own initiative or upon request, with foreign financial intelligence units or foreign competent authorities.

Pursuant to Regulation (EU) 2018/1672, carriers of currency and bearer negotiable instruments with a value of 10,000 euros or more must declare such valuables to the National Agency for Fiscal Administration (art. 3). Unaccompanied valuables must similarly be declared (art. 4). Failure to comply with the declaration system is penalized under criminal law.

On the basis of Regulation (EU) 2015/847, payment service providers must ensure that all fund transfers are accompanied by accurate and complete information about the payer. Incomplete or inadmissible information will trigger a rejection of the transfer or a request for the required information before the transfer is initiated.

The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism most recently evaluated Romania in 2022, but at the time of the country visit the report had not yet been published. The country's financial intelligence unit is a member of the Egmont Group.

## 2.2. Successes and good practices

- Thematic assessment visits to public administration institutions are conducted by teams of experts composed of representatives of cooperation platforms under the National Anti-Corruption Strategy, including from public authorities, the business sector and civil society. The institutions to be assessed are selected either on a voluntary basis or by drawing of lots; final reports are published on the Strategy website (art. 5, para. 1).
- With regard to the enforcement mechanism for the system of asset and interest disclosures, each public entity must designate one person who is responsible for collecting disclosures, who acts as the counterpart of the National Integrity Agency and who must answer directly to the head of the public entity. Both the designated person and the head of the entity are held responsible for the sound functioning of the system; the possibility to cross-check declarations across several databases exists (art. 8, para. 5).
- An integrated information system for preventing conflicts of interest, through which procurement officials must provide personal details in order to identify potential conflicts of interest, is in place (art. 9, para. 1 (e)).

## 2.3. Challenges in implementation

It is recommended that Romania:

- Continue efforts to enhance the integrated reporting system on the effective implementation of the National Anti-Corruption Strategy, in order to strengthen real-time monitoring and impact assessment (art. 5, para. 2).
- Take the necessary measures to limit the use of urgent procedures and ensure their application on an exceptional basis only; and continue to ensure the implementation in practice of rules on the transparency of the legislative process (art. 5, para. 3).
- Ensure that relevant authorities entrusted with corruption prevention functions as outlined in paragraph 1 of article 6 of the Convention have the necessary independence and continue to invest in the development of human resources (art. 6, para. 2).

- Consider introducing procedures for the selection, training and periodic rotation of individuals for public positions considered vulnerable to corruption (art. 7, para. 1 (b)).
- Review and consider amending legal provisions that allow the identity of persons providing political party financing in an amount below the specified threshold to be concealed, with a view to increasing transparency and preventing corruption (art. 7, para. 3).
- Consider expanding the definition of conflicts of interest in the legislation, in line with jurisprudence by the High Court of Cassation and Justice, to specifically include, beyond personal financial interests, a wide range of non-financial interests from which a potential conflict may arise, in line with articles 7, paragraph 4, and 8, paragraph 5, of the Convention.
- Consider introducing an ad hoc disclosure requirement for members of parliament regarding conflicts between private interests and specific matters under consideration, and continue efforts to develop rules on dealings with lobbyists (art. 7, para. 4).
- Continue efforts to strengthen whistle-blower protection, including by continuing to implement the legislation transposing EU Directive 2019/1937 (arts. 8, para. 4, and 13, para. 2).
- Adopt measures to address the findings identified in the European Commission public procurement monitoring report; continue to take steps to implement the specific objectives and concrete measures aimed at preventing corruption in public procurement identified in national anti-corruption strategies covering previous years and in the public procurement policy; and limit the use of emergency procedures in the area of public procurement, except on an exceptional basis (art. 9, para. 1).
- Continue to facilitate public access to information, to ensure the implementation of a broad definition of public information and to facilitate mechanisms for public access (art. 10 (a)).
- Take measures to strengthen integrity in the judiciary, taking into account that the laws that are the specific subject of the recommendation below were replaced by legislation passed after the country visit, including by:
  - assessing the practice followed in the adoption of the recent judicial amendments, ensuring that the revised laws are subject to adequate impact assessments, and taking the necessary measures to improve the transparency of the legislative process with regard to the judiciary;
  - ensuring that institutional structures to investigate and prosecute criminal conduct involving judges and prosecutors ensure adequate independence and avoid political interference;
  - ensuring that rules for the selection and promotion of judges and prosecutors based on objective and clear criteria, taking into account merit and qualifications, continue to be applied in practice;
  - ensuring that the procedure for the appointment and revocation of senior prosecutorial functions is based on objective criteria and is conducted in a transparent manner, based on an assessment by the Superior Council of Magistracy, in order to enhance judicial independence; furthermore, enshrine the principle of independence of prosecutors by adopting draft legislation (art. 11).<sup>13</sup>

---

<sup>13</sup> Authorities indicated this recommendation is addressed by the adoption of draft Law 303/2022 after the country visit.

- Monitor the application of post-employment restrictions in order to assess their continued adequacy for preventing conflicts of interest among former public officials engaged in private sector activities (art. 12, para. 2 (e)).
- Adopt clear legal provisions to prohibit the accounting practices listed in article 12, paragraph 3, of the Convention and to prohibit the tax deductibility of expenses associated with corruption (art. 12, para. 4).

### 3. Chapter V: asset recovery

#### 3.1. Observations on the implementation of the articles under review

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

Law 302/2004 on international cooperation establishes rules on the confiscation and return of assets at the request of foreign States (arts. 146 and 324).

Pursuant to the country's constitutional law, once treaties have been ratified, they become part of domestic law and directly applicable. In international cooperation in criminal matters, domestic law supplements international legal obligations, which take precedence (art. 4 of Law 302/2004).

The National Agency for the Management of Seized Assets serves as the national asset recovery office. Its responsibilities include tracing and managing seized assets, facilitating cooperation in international cases and facilitating the conclusion of asset sharing agreements.

Increasing the level of recovery of proceeds of crime and strengthening judicial practice have been a priority for Romania. The national strategy on the recovery of proceeds of crime 2021–2025 is aimed at facilitating, in particular, the identification of assets in foreign jurisdictions.

In 2019 and 2020, the National Agency for the Management of Seized Assets negotiated and facilitated the conclusion of eleven bilateral agreements that resulted in the return by Romania of assets with an aggregate value of approximately 1,463,340 euros.

The country's judicial authorities may spontaneously share information with foreign States (art. 236 of Law 302/2004).

Romania is a party to several multilateral treaties relevant to asset recovery. The National Agency for the Management of Seized Assets represents Romania in international asset recovery forums.

*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

Articles 10 to 17 of the Anti-Money-Laundering Act establish customer due diligence measures that must be applied by reporting entities. Such entities are required to identify and verify the identity of customers, determine the identity of beneficial owners and adopt measures to verify their identity, assess the nature of the business relationship and perform ongoing monitoring (art. 11). Reporting entities are required to apply enhanced customer due diligence measures when establishing business relationships or carrying out one-off transactions with politically exposed persons or clients whose beneficial owners are politically exposed persons (art. 17). The definition of politically exposed persons extends to the family members and close associates of such persons, domestic or foreign (art. 3, paras. 4 and 5). The requirements cease to apply one year after the termination of functions (art. 6, para. 3).

The National Office for the Prevention and Control of Money-Laundering and the National Bank have issued guidelines on suspicious transactions and due diligence. Romania has not received any requests from foreign States to notify its financial institutions to apply enhanced due diligence to particular natural or legal persons, but the National Office for the Prevention and Control of Money-Laundering may freeze

transactions upon request and can instruct the relevant financial institutions through an inter-bank messaging system.

Reporting entities are required to retain, in printed or electronic format, all customer due diligence and related records for at least five years following the end of the transaction or business relationship (art. 21 of the Anti-Money-Laundering Act).

Financial institutions must be licensed and have a physical presence in Romania (art. 14 of Emergency Ordinance 99/2006; arts. 4 and 8 of Regulation 12/2020 regarding the authorisation of credit institutions; and registration procedures established by the National Bank of Romania pursuant to arts. 25, 27, 36 and 61 of Law 93/2009). Such institutions are not allowed to establish or continue correspondent relationships with shell banks or with foreign financial institutions that permit their accounts to be used by shell banks (art. 10 of the Act).

Romania maintains a public portal containing asset and interest disclosures submitted to the National Integrity Agency on behalf of public officials, their spouses and their children, as described in the section covering article 8 (5) of the Convention, above. Assets to be declared include real estate, movable assets and liabilities. Relevant information can be shared with foreign authorities in the context of criminal matters.

Officials subject to asset disclosure requirements are obliged to declare foreign bank accounts that are in their name, but there is no requirement to declare interests in or signature or other authority over foreign bank accounts.

The National Office for the Prevention and Control of Money-Laundering receives suspicious transaction reports and is required to inform the appropriate authorities when there is evidence of money-laundering (arts. 33–39 of the Anti-Money-Laundering Act).

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

The law of Romania does not explicitly permit foreign States to initiate civil action in its courts to establish title to or ownership of property. However, authorities indicated that nothing would preclude such civil litigation in Romania on the basis of the Civil Procedure Code (art. 30).

Victims of crime may initiate civil action in criminal proceedings to establish the tortious liability of persons who have committed criminal acts (title 2, chapter 2, of the Criminal Procedure Code). Victims may also initiate action in the civil courts for damages caused by an offence (art. 27 of the Criminal Procedure Code). Authorities indicated that these measures apply equally to foreign States. For a foreign State to have legal standing as a civil party in a criminal trial, it must be determined that it is an injured party in the sense of article 79 of the Criminal Procedure Code.

The country's courts may order the confiscation of assets only if they have not been returned or used to indemnify the aggrieved party (art. 112 (1) (e) of the Criminal Code). This applies to Romanian and foreign persons and entities, which, according to the authorities, includes States.

Article 146 (10) of Law 302/2004 provides for the enforcement of foreign confiscation orders, except if the grounds for non-recognition referred to therein apply. Foreign confiscation orders are recognized and enforced under the conditions of the applicable treaty or, in the absence of a treaty, the provisions of domestic law, if the condition of reciprocity is met (art. 146 of Law 302/2004). Confiscation orders issued by authorities of other European Union member States are enforceable in Romania on the basis of Regulation (EU) 2018/1805 (art. 18) and Framework Decision 2006/783/JHA in relation to those EU countries that do not apply the aforementioned Regulation (Ireland and Denmark). The Romanian authorities can confiscate property in relation to non-EU member States based solely on a foreign

request made through a letters rogatory procedure (arts. 146 and 231 of Law 302/2004).

In cases of money-laundering, assets can be confiscated irrespective of where the predicate offence was committed (arts. 49 and 51 of the Anti-Money-Laundering Act; art. 112 of the Criminal Code).

Non-conviction-based confiscation is possible in Romania (art. 146, paras. 2 and 3, of Law 302/2004; arts. 16, 315 and 549 (1) of the Criminal Procedure Code).

The country's authorities have the power to freeze or seize property upon a request or order issued by a foreign court or competent authority by means of a letters rogatory procedure (arts. 146 (6) and 231 (1) (a) of Law 302/2004). It was noted that additional time could be required to execute such requests using this process. The enforcement of seizure and freezing orders issued by European Union member States is regulated by Regulation (EU) 2018/1805 and Framework Decision 2006/783/JHA, respectively. It is not possible to preserve property for confiscation if there is no request from the competent authorities of a foreign State and if no criminal proceedings are ongoing in Romania.

The Ministry of Justice, as the central authority, has a model for requests for mutual legal assistance, and it provides guidance to foreign counterparts wherever necessary.

No request for confiscation has ever been received or transmitted on the basis of the Convention.

The enforcement of foreign confiscation orders cannot be refused on the ground that the property is of de minimis value; grounds for non-recognition are listed in Law 302/2004 (arts. 146 (10) and 321) and the limited value of the assets in question is not included.

The country's law does not explicitly provide for consultations with a requesting State prior to the lifting of provisional measures; however, authorities confirmed that such consultations would take place in practice. No relevant examples were provided.

The rights of bona fide third parties are taken into account when enforcing confiscation or freezing orders (e.g. arts. 17 and 284 of Law 302/2004).

#### *Return and disposal of assets (art. 57)*

Property that is confiscated in Romania as a result of the recognition and enforcement of a foreign confiscation order is disposed of in accordance with article 324, paragraphs 1 to 3, of Law 302/2004, unless otherwise provided in a treaty with the requesting State or, if such a treaty does not contain provisions to that effect, unless otherwise agreed between the competent Romanian and foreign authorities (art. 146 (9) of Law 302/2004).

Article 324 of Law 302/2004 stipulates that money obtained following the execution of a confiscation order accrues to the State budget if the value is less than the equivalent of 10,000 euros. If the value is higher, 50 per cent of the amount will be transferred to the requesting State. If other, non-monetary assets have been confiscated, they can either be liquidated and disposed of in accordance with the above provisions, or the goods may be transferred to the requesting State.

The country's authorities confirmed that in cases where a relevant treaty – including the Convention – provides otherwise, the treaty prevails. However, requesting States would have to explicitly base their request on the Convention and indicate that full asset return in accordance with article 57 was expected. In the absence of such an explicit request, the default rules apply. Within the European Union, confiscated assets are disposed of in accordance with Regulation (EU) 2018/1805.

The general rules on asset confiscation recognize the rights of prior legitimate owners and victims (art. 112 (1) (e) of the Criminal Code).

Romania deducts expenses incurred in the process leading to the return of seized and confiscated property (art. 272 of the Criminal Procedure Code and art. 7 of Government Ordinance 14/2007).

### **3.2. Successes and good practices**

- The National Agency for the Management of Seized Assets takes a multidisciplinary approach, with staff specialized in different disciplines; this, together with an extended operational mandate, e.g. interlocutory sales, management of high value assets, international tracing of criminal assets, ensures coordination and cooperation between relevant domestic agencies.

### **3.3. Challenges in implementation**

It is recommended that Romania:

- Continue to focus efforts and attention on asset recovery, building on past efforts and in line with the National Anti-Corruption Strategy (art. 51).
- Consider extending the prescribed time limit of one year after which former public officials case to be considered politically exposed persons for purposes of the application of enhanced due diligence measures (art. 52, para. 1).
- Consider requiring appropriate public officials having an interest in or signature or other authority over a foreign financial account to report that relationship to appropriate authorities and to maintain appropriate records (art. 52, para. 6).
- Adopt such measures as may be necessary to allow its competent authorities to freeze or seize property upon a request or order from another State party that provides a reasonable basis for such action, in a fast and effective manner (art. 54, para. 2 (a) and (b)).
- Consider taking additional measures to permit competent authorities to preserve property for confiscation, by allowing for temporary measures other than freezing and seizure in the absence of a criminal proceeding in Romania (art. 54, para. 2 (c)).
- Establish the necessary measures to provide for the full return of proceeds of offences under the circumstances established in article 57, paragraph, 3, of the Convention, in particular in cases of embezzlement of public funds or laundering of embezzled public funds, and ensure their implementation in practice (art. 57, para. 3).

---