Information requested from States Parties for the preparation of documentation for the twelfth meeting of the Working Group on Prevention, organized in the framework of the implementation of UNCAC

a) The role of audit institutions in preventing and combating corruption (Article 9 (2) of UNCAC)

1. Independence of the supreme audit institutions and implementation of policies for their effective functioning

Based on the legal framework of organization and functioning of the institution, its functional, operational and financial independence is ensured. Thus:

- The Romanian Court of Audit (RCoA) does not receive instructions from other authorities and both the Parliament and the Executive do not interfere in the organization and management of the institution;

- According to the current legal provisions, the RCoA is ensured with full freedom in order to establish its own rules and procedures for carrying out its specific activity, fulfilling the tasks and obligations deriving from its constitutional and legal mandate;

- The relationship between the RCoA and the Parliament, as well as the Government is well defined in the Constitution and the Law no. 94/1992 on Organization and Functioning of RCoA republished;

- The Constitution and the Law on Organization and Functioning of RCoA republished, provide for the conditions for the appointment, renewal and termination of the term of office of the president of the RCoA and of the members of the plenum (counselors of accounts), through a process that ensures their independence;

- The members of the RCoA are appointed for a fixed term of 9 years long, and they are irremovable and independent during the exercise of their mandates;

- In the last 20 years, there have been no cases in which the President of the RCoA or the members of the plenum to be removed from their function by an illegal act or in a way that would compromise the independence of the RCoA;

- All public financial operations, regardless of whether and how they are reflected in the national budget, are subject to the RCoA audit;

- The mandate of the RCoA provided by Law 94/1992 ensures the audit of all annual budget execution accounts - in the case of the main authorizing officers from the central level the auditing of the financial statements is performed every year, and at the level of the territorial administrative units annually, or once every 3 years, within the legal limitation period;

- RCoA carries out its activity based on the annual program that is establishes autonomously;
- According to the Law of Organization and Functioning, RCoA has unrestricted access to records, documents and information necessary for auditing the entities in its area of competence;

- The RCoA has the right to decide what information it needs to carry out its audits;

- According to the Romanian Constitution, republished, the RCoA has the authority and the obligation to report annually and independently to the Parliament on its findings. According to the Rules of Procedure for the organization and conduct of the joint sittings of the two Houses of Parliament, the reports submitted by the RCoA are debated in a joint sitting;

- RCoA has the right, according to the Law, to publish the Annual Public Report in the Official Journal of Romania;

- According to art. No. 40 of the law, the RCoA may submit to the Parliament or, through the county chambers of accounts, to the deliberative public authorities of the administrative-territorial units reports on the fields in which it is competent, whenever it deems necessary;

- There are no provisions in the Law on the Organization and Functioning of the RCoA that limit the freedom of the institution to decide the content of audit reports;

- There are no provisions in the Law on the Organization and Functioning of the RCoA that restrict the freedom to decide on the time of publication of its reports, except for the provisions of art. No. 38, where it is established that, within 6 months from the receipt of the annual execution accounts from the bodies competent to draw them up and obliged to transmit them, the RCoA draws up the Annual Public Report which it submits to Parliament;

- The legal framework explicitly provides for the financial independence of the RCoA. According to art. No.6 of the Law, the RCoA draws up and approves its own budget, which is sent to the Government, in order to include it in the draft state budget subject to the approval of the Parliament;

- The RCoA budget is approved by the Parliament as an annex to the annual law approving the state budget;

It should be noted that, over the years, there have been situations when the RCoA budget has undergone changes that have been made by the Government through the Ministry of Finance, which is contrary to the Lima Declaration on Public Finance Audit Guidelines (ISSAI 1). The Lima Declaration is equally important for all INTOSAI Supreme Audit Institutions, regardless of the region to which they belong, their level of development, their integration into the system of government or their organization. The main objective of the Lima Declaration is a call for the independence of public finance audit. The Supreme Audit Institution that cannot meet this requirement cannot claim to meet the requirements in the field.

Thus, the section of the standard on the independence of Supreme Audit Institutions sets out very clearly the following:

1. The Supreme Audit Institutions must have financial means to enable them to carry out their duties.

2. If necessary, the Supreme Audit Institutions (SAIs) will be able to request directly from the public body responsible for the national budget the necessary financial resources.
3. The Supreme Audit Institutions (SAIs) will be able to manage the funds allocated to them within a separate chapter of the budget, as they deem appropriate.

RCoA has the right to use the funds allocated through a separate budget chapter, as an annex of the annual law approving the state budget, in compliance with the provisions of the law on public finances on budget execution, respectively on the provisions on commitment, liquidation, ordering and payment of expenditures;

2. In accordance with art. 9 paragraph (2) of UNCAC, the legal framework must ensure that the Supreme Audit Institution takes appropriate measures to promote transparency and accountability in the management of public finances

Through the specific activities organized and carried out, RCoA verifies the manner of constitution and use of the state financial resources and the way of administration of the public and private patrimony of the state and of the administrative-territorial units. According to the Law, the RCoA decides autonomously on its activity program.

Regarding the reporting attributions of the RCoA and the transparency of the public finance management, Law no. 94/1992 on the organization and functioning of the RCoA, republished, with subsequent amendments and completions, provides in art. 4 para. (1) that “the RCoA presents annually to the Parliament a report on the management accounts of the general consolidated budget from the expired budget year”, and at art. 39 provides that “Annual Public Report includes:

- The RCoA's observations on the budget execution accounts subject to its control;
- The conclusions deduced from the controls ordered by the Chamber of Deputies or the Senate or carried out at autonomous companies, commercial companies with integral or majority state capital and at the other legal persons subject to the control of the Court;
- violations of the law found and measures of liability taken; other matters which the RCoA considers necessary”.

According to the Law, the RCoA prepares the annual reports regarding the local public finances which are submitted by the county chambers of accounts to the deliberative public authorities of the administrative-territorial units.

Also, in the context of strengthening the responsibility in the management of public finances, Law no. 500/2002 on public finances, with subsequent amendments and completions, provides in art. 56 para. (5) The following: “The Annual General Execution Account of the State Budget, of the State Social Insurance Budget and the other Annual Execution Accounts are approved by Law after their verification by the RCoA”.

The Annual Public Report of the RCoA is published in the Official Journal of Romania and on the external Portal of the RCoA. The Annual Activity Report of the institution, the Annual Reports on Local Public Finances, as well as special or performance reports on various aspects of interest to stakeholders, in particular citizens, are also published on the RCoA website.

In order to fulfill its attributions of reporting and strengthening the responsibility in the management of public finances, RCoA carried out in 2020 a number of 1,546 financial audit
missions, 53 performance audit missions (17 topics) in areas considered priority and 1,426 compliance audit missions. At the same time, 3,899 actions were performed to monitor the implementation of the measures ordered by decisions and 102 actions to verify the implementation of the recommendations formulated in the performance audit.

Although the activity of the entities has improved as a result of the recommendations made by the external public auditors, the financial and compliance audit missions performed by RCoA in 2020 also identified a number of cases of non-compliance with legal regulations, finding deviations that led either to the non-establishment, non-pursuit and non-collection of some budgetary revenues, either to the production of some prejudices or to the distortion of some data and information from the financial statements.

On the occasion of the verifications carried out, following the established audit objectives, 16,082 cases of deviations, irregularities and / or errors were identified, which are summarized, by objectives, as follows:

- 3,806 on the accuracy and reality of the data reflected in the financial statements;
- 3,381 regarding the way of establishing, highlighting and following the collection of revenues of the General Consolidated Budget;
- 1,079 deviations regarding the internal public audit;
- 6,036 regarding the quality of economic-financial management;
- 489 on the elaboration, substantiation of the draft budget and modification of the initial budgets during the budget execution;
- 1,272 in the field of public procurement;
- 19 other deviations.

The objectives stated above are those pursued in audit activities and aimed at examining managerial responsibility in substantiating the draft budget, in the use and management of public funds, in respecting financial-fiscal discipline, good economic and financial management, in order to improve the activity of audited entities, the elimination of errors, as well as the development of high quality and efficient internal control and audit systems.

Increasing the responsibility in the management of public finances based on the RCoA recommendations as a result of the evaluation of the internal / managerial control system at the public sector entities

The evaluation of the managerial internal control system, which RCoA carried out in 2020 within its specific actions highlighted, more than ever, the need for a well-implemented and developed internal control system according to internal and external factors that affect the functioning an entity. External factors can be the biggest disruptors to the balance of an organization that is not sufficiently consolidated. The declaration of a state of emergency and all the measures that public entities had to take quickly to counteract the effects of the pandemic, highlighted the importance of the levers that internal control offers to an institution.
Failure to properly implement the internal control system and the public internal audit function increases the likelihood that existing deficiencies in audited activities or topics of the entities will be perpetuated over time, especially in those public institutions where their own internal management control systems operate inadequately in terms of the ability to prevent, detect and/or correct irregularities. This is also the reason why the RCoAs findings are still numerous in number and importance of the deficiencies found. It is the responsibility of entity managers to be aware of the real need for a viable internal control system, with an effective role to contribute to the proper functioning of the entity and not to tick, on paper, the implementation of internal control requirements only for a formal compliance.

As the guardian of State and Public Sector Financial Resources, the RCoA ensures that they are spent responsibly, on the principles of economy, efficiency and effectiveness, in a transparent manner and for the benefit of citizens, and all this can be successfully achieved through the mechanisms of the internal control system which leads to the protection of public funds against losses caused by errors, waste, abuse or fraud.

Through the recommendations formulated in the field of the internal managerial control system, RCoA contributes to the implementation of the internal managerial control at the level of the entities and to the increase of the degree of responsibility for the act of managing the budgetary resources.

The main recommendations of the RCoA were:

- continuation of the steps for the complete implementation of the internal managerial control standards, for the functioning of the Monitoring Commission and the fulfillment of the Development Program, in order to consolidate the internal managerial control system;
- verification of the reports of the subordinated public entities from the point of view of the conformity of the reporting with the reality, based on supporting documents;
- taking measures in order to participate all members of the Monitoring Commission at training courses on internal managerial control, according to the legal provisions in the field, including through courses organized by employees qualified in professional training;
- ensuring the participation of internal auditors at courses and seminars on topics related to the fields of the general framework of professional competences or those specific to the public entity;
- ensuring the conditions for the operation and capitalization of the internal public audit function;
- inventory of the activities of the organizational structures at least once a year on the occasion of self-evaluation of the stage of implementation of the internal managerial control system or whenever there are changes in the organizational structure of the organization;
- identifying the activities for which no procedures have been developed and taking measures in order to establish and apply rules and working methods, generally valid, in order to fulfill, in conditions of regularity, effectiveness, economy and efficiency the objectives of the organizational structure;
- organizing and exercising its own preventive financial control according to the legal provisions in the field.
Operational actions taken by the RCoA to limit the phenomenon of corruption by notifying the criminal investigation bodies:

In order to combat corruption, it is necessary for public institutions and authorities with competence in this area to step up their actions, including by identifying practical solutions to limit or prevent crime.

The RCoA’s mission in society is essential because it is the main authority responsible for verifying compliance with the law on spending public funds, while reducing costs and increasing the efficiency of resource use.

According to the provisions of the law on organization and functioning, the RCoA filed complaints to the competent criminal bodies, given that the verifications performed at the public entities subject to audit found the existence of indications regarding the commission of criminal acts, based on the findings of external public auditors, which determined specialized investigations by the criminal bodies, being submitted the entire documentation that substantiated the concluded control act.

The notification of the criminal investigation bodies was made for damages identified and recorded in the audit documents related to the financial year 2019 and previous years. Thus, RCoA formulated in 2020 a number of 66 notifications, at the proposal of the departments and chambers of accounts, of which 53 notifications based on art. 64 of Law no. 94/1992, republished, with subsequent amendments and completions, and 13 notifications pursuant to art. 33 paragraph (4) of the above-mentioned law.

Notification of the follow-up bodies based on the provisions of art. 33 para. (4) Of Law no. 94/1992 was formulated mainly for:

- fictitious acquisitions of assets that did not enter through the management of the administrative-territorial units, by falsifying the instruments for making payments;
- stealing sums collected in cash by not depositing them at the cashier’s office, by falsifying documents (receipts, receipts) regarding the amounts collected, which, in reality, were higher than the amounts written on documents, by deleting the data related to tax collection and local fees in the computer application;
- withdrawal of cash from the treasury for salary rights and social benefits, higher than those paid according to the payment statements;
- the appropriation in personal interest of public funds from the budgets of some schools subordinated to the administrative-territorial units, by using fraudulent methods by the person who exercised the attributions of financial administrator;
- committing expenditure without the existence of budget appropriations, generating the payment of penalties for non-payment of invoices on time.

3. The audited entities must respond to the findings of the audit reports and implement the recommendations made by the RCoA

Through the recommendations formulated and the measures ordered by the decisions issued in the process of capitalization of the documents drawn up following the audit missions, RCoA
consistently and continuously aimed at promoting a culture of management quality and improving the economic and financial performance of the entities within its audit competence, having as support the observance of the normative regulatory framework specific to each field of activity.

In order to eliminate the deficiencies found, which were not corrected during the audit missions, decisions were issued with measures to remove irregularities, to hold the decision-makers in the audited entities accountable for the way in which public funds are used.

The synthesis of the impact of the implementation of the measures ordered by the RCoA on the activity of the audited entities, resulting in the conclusions included in follow-up reports prepared in 2020, structured on the main objectives pursued in the external public audit activity reveals a series of positive aspects having impact on the entire activity of the audited entities, from the realistic substantiation of the draft annual budget, the correct execution of expenditures during the budget execution, the registration of all operations in the accounting and fiscal records and the administration of the patrimony in legal conditions, to the increase of the quality until the amendment of the legal and regulatory framework governing the activity of the audited entities.

The reports concluded following the verifications show that, as a rule, the managements of the audited public entities order and follow the measures transmitted by the RCoA regarding the establishment of the extent and order of recovery of damages, establishment and pursuit of their tax. However, the level of collection / recovery of amounts representing additional revenue or damage estimated by the concluded audit / control acts is not at the level of expectations. The recovery from damage is slow, and large-scale damage, estimated in some audit / control acts, is not yet recovered or is recovered to a small extent.

The measures aimed at the accuracy and reality of the data presented in the financial statements have contributed to optimizing the activity of the entities in terms of data mirrored and presented in the financial statements, by making staff aware of the importance and accuracy of data recorded in the accounting records. To a large extent, the impact of the measures ordered was reflected in the financial-accounting records, the actions of the entities leading to an improvement of the activity from the financial-accounting point of view and, implicitly, of the financial management.

Regarding the stage of implementation and development of internal managerial control systems at the level of public entities, RCoA aimed, through the measures provided, the process of updating the general and specific objectives, the procedural activities, the risk management process, the system to monitor the performance, the situation of the procedures and the monitoring and reporting system, respectively to inform the head of the public entity. The implementation of the measures marked a strengthening of the organization of the internal control system, an increase in awareness of its role and importance, including the internal audit function, and the intensification of efforts by managers to apply management principles in order to ensure a good administration of public funds.

Regarding the way of establishing, highlighting and following the collection of budget revenues in the amount and terms provided by law, it should be mentioned that the audit missions performed by RCoA had a positive impact by increasing their collection, but also by awareness that it is not enough to establish and highlight the income, you must also monitor their
collection within the legal limitation period. The results of the recommendations and measures ordered by the RCoA materialized in the transfer to the public budgets of some amounts representing, mainly, receivables due to these budgets, to which were added ancillary fiscal obligations, unduly granted pension rights, guarantees of participation in tenders, for which the right to request a refund has expired, obligations established by the court on the buyer of shares as a result of non-compliance with the investment clause in the contract of sale-purchase shares, differences resulting from the calculation of payments due by legal entities for disabled people unframed etc.

Regarding the quality of economic and financial management, the implementation of the measures ordered by the RCoA has led to an increase of responsibility in the use of public funds by focusing on obtaining superior economic and financial results, by reducing costs, increasing efficiency in using public funds and/or in the administration of assets, the replenishment of budgetary appropriations as a result of the recovery of damages, the connection of expenditure to revenue in relation to the degree of revenue collection, the reduction of risks of error associated with procurement procedures by monitoring and controlling investments. Through the measures ordered, aiming at the quality of economic and financial management, RCoA has contributed to increasing the quality of public finances, to increasing compliance with the principles and rules governing budget expenditures and to promoting the audited entities' responsibility in the act of managing public resources.

The achievement of such results depends on the extent to which the management practiced at the level of each public entity will be oriented towards the observance of the legal regulations that define the specific attributions in the field of substantiation, elaboration, approval and execution of the budget, public patrimony management and to the principles of economy, efficiency and effectiveness in terms of capitalizing on the material, human, financial and informational resources at their disposal.

Since the implementation of the measures ordered by decisions depends on the deadlines set by the RCoA, deadlines which in some cases are extended either by mutual agreement, for objective reasons or by the Court settlement procedure, the gap between the moment of issuing the decision and verifying the implementation of the measures for several years, especially when the measures concern the recovery of damages.

As in previous years, in 2020 there was still a general tendency for the managements of the audited entities to challenge the administrative acts of valuation issued by the Court of Accounts, as a result of the external public audit carried out, even and in the conditions in which the managements of the audited entities consider that they are not good enough reasons to request the annulment of the audit documents.

b) The role of parliament and other legislative bodies in strengthening the implementation of UNCAD

The Romanian Parliament actively participates in international and regional interparliamentary meetings for dialogue and cooperation in which the exchange of information and best practices on legislation, monitoring and surveillance in the field of fight against corruption are promoted.

A. The institutions of Council of Europe
The Romanian Parliament is represented at the level of the Parliamentary Assembly of the Council of Europe (PACE) with a national delegation of 10 representatives and 10 substitutes, an organization whose mission is, amongst others, the rule of law.

Within the Assembly, the Romanian deputies were members and rapporteurs of the PACE Monitoring Committee, which has the mandate to monitor the fulfillment of the obligations of the Member States regarding the Statute of the Council of Europe, the European Convention on Human Rights, as well as all other conventions signed by the Organisation, and to which the respective State is a party.

Regarding the collaboration of the Romanian Parliament with the bodies of the Council of Europe for combating corruption and promoting the rule of law, in the 2016-2020 legislature several interparliamentary cooperation meetings took place, among which we mention:

- Meeting of the President of the Chamber of Deputies with the President of the Parliamentary Assembly of the Council of Europe, (Bucharest, April 7th, 2017):
  - among the topics of discussion, there was the GRECO Report for Romania and references were made to the immunity of parliamentarians, to the transparency of the parliamentary activity, as well as to the Code of Conduct for parliamentarians, a document enclosed to the Statute of Deputies and Senators.

Note: The Group of States against Corruption (GRECO) adopted the Evaluation Report on Romania during its 2015 plenary meeting. The meeting took place in Strasbourg and is part of the Fourth Evaluation Round, that was initiated in January 2012. The topic of this round was Corruption prevention in respect of members of parliament, judges and prosecutors.

The recommendations regarding the activity of the Romanian Parliament aim at increasing the degree of transparency and citizens’ access to information related to legislative process, transparency of lobbying activities, adoption and effective application of a code of ethics of the parliamentarians, strengthening the system of restrictions on gifts, hospitality, favours and other benefits for parliamentarians.

Moreover, the report highlights the need to clarify the conflict of interest regime and incompatibilities, calling for a proactive role on the part of the National Integrity Agency in the ex officio management of cases concerning Members of Parliament. Last but not least, GRECO calls for clarifications on the immunity system and its improvement, including by regulating clear and objective criteria for decisions on the lifting of immunity.

The 83rd Plenary Meeting of the Group of States against Corruption (GRECO) of the Council of Europe (Strasbourg, 17-21 June 2019):

Romania participated in the GRECO Session, in Strasbourg, with a national delegation, in which a representative of the Chamber of Deputies, Romanian Senate and of the National Integrity Agency were invited to be part, as specialists.

The agenda of the GRECO Session included, among others, two debates on Romania, namely: The GRECO interim compliance report for the Fourth Evaluation Round on Corruption prevention in respect of members of parliament, judges and prosecutors and...
the Report on the degree of implementation of the recommendations addressed to Romania through the Ad-hoc Report (adopted in accordance with Rule 34 of GRECO’s Rules of Procedure - which regulates the ad-hoc procedure which can be triggered in exceptional circumstances; the exceptional circumstances were: amendment of Law no. 303/2004 on the statute of judges and prosecutors, of Law No. 304/2004 on the judicial organization and of Law No. 317/2004 on the Superior Council of Magistracy).

Note: We would like to mention the fact that on March 23rd, 2018, the Ad-hoc Report was adopted, containing five new recommendations regarding the amendments on the three normative acts indicated above, and that the anti-corruption body decided to invite the Romanian delegation to present at its Plenary Meeting, from June 2018, an update of the state of the proposed reforms regarding the judicial system (including institutional issues, as well as material and procedural criminal law).

➢ Numerous meetings were organized with experts of the European Commission for Democracy through Law (Venice Commission) in order to prepare opinions on: compatibility of draft Law No 140/2017 to amend and supplement Government Ordinance No 26/2000 on Associations and Foundations with the standards in the field (February 2018); the three draft laws prepared for the completion and amendment of the laws on the organization of justice, the Superior Council of Magistracy and the status of judges and prosecutors (June 2018); amendments to the Criminal Code and the Criminal Procedure Code (September 2018); amendments to draft laws amending and supplementing the laws of justice in Romania - Government Emergency Ordinance 7/2019 and 12/2019 (April 2019).

B. Regarding the interparliamentary cooperation at European level, the Romanian Parliament participates in the works of the Joint Parliamentary Scrutiny Group on Europol (JPSG) with a permanent delegation, as well as to the interparliamentary meetings for the evaluation of Eurojust’s activity.

Europol is the European Union’s Agency for Law Enforcement Cooperation and supports Member States in their fight against terrorism and other serious and organised forms of crime. In accordance with Article 88 of the Treaty on the Functioning of the European Union, the scrutiny of Europol’s activities is carried out by the European Parliament together with national parliaments. To this end, a Joint Specialised Parliamentary Scrutiny Group (JPSG) has been set up by national parliaments and the competent committee of the European Parliament. The JPSG aims to monitor Europol’s activity from a political point of view, including in terms of the impact on the fundamental rights and freedoms of individuals.

At the same time, according to the Eurojust Regulation, which entered into force at the end of 2019, the European Parliament together with the national parliaments of the EU Member States have the right to evaluate the Agency’s activity. Thus, a Romanian member of the Chamber of Deputies took part, in December 2020, in the first interparliamentary meeting at committee level for the evaluation of Eurojust, organised by the European Parliament together with the German Parliament, the country which at the time held the Presidency of the EU Council.

Participants’ attention was drawn to both the Agency’s activity and its objectives for the future, as well as on how the relationship between Eurojust and the European Public Prosecutor’s
Office, which has the power to investigate and prosecute crimes affecting the EU budget, such as fraud, corruption, money laundering, cross-border VAT fraud, was developing.

C. In the framework of the political dialogue with the European Commission, the Chamber of Deputies issued an opinion on the Communication “Fighting Corruption in the EU”, COM(2011)308, stating its position in this relevant field.

The Romanian Chamber of Deputies supported inter alia the establishment of a European mechanism to monitor the fight against corruption, as broader and relevant as possible, and with a focus on the challenging issues. It was emphasised the need to collect, process and present relevant data, in particular as regards high-level corruption.

Another important aspect is referring to the political declarations presented by the members of the Chamber of Deputies in the plenary sessions of the Chamber of Deputies emphasize the high relevance of the UNCAC.

In addition to its activity in international cooperation, the Chamber of Deputies has also acted at legislative level in the fight against corruption and money laundering. In this regard, the law maker has intervened on the current legislation to develop state capacity against corruption, in accordance to international standards, while taking into account the balance between the mechanisms developed to prevent these antisocial phenomena as well as the effort of the duties assigned to the subjects of law.

Please find below two of the most recent laws adopted by the Chamber of Deputies, as decisional Chamber, which concern the field of interest of your approach:


At the same time, we would like to specify that, for the Romanian Chamber of Deputies, there are several legislative initiatives at various stages of the legislative procedure, aiming to fight against corruption and money laundering. Please find below some of these relevant initiatives for the topic of our approach, which are in the legislative process:

- PL-x 461/17.08.2020 - Draft Law supplementing art.49 of the Law no.129 / 2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing certain normative acts;
- PL-x 588/28.10.2019 - Draft Law supplementing Law no.161/2003 on measures ensuring transparency in the exercise of public dignity, public office and in the business environment, as well as the prevention and sanctioning of corruption.