

THE FUTURE OF THE NATIONAL INTEGRITY AGENCY AFTER THE CVM REMOVAL. POSSIBLE SCENARIOS

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Abstract

The National Integrity Agency is an institution whose establishment and operationalizing has been assumed by Romania in the process of negotiation for accession to the European Union, in order to solve the problems of incompatibility, conflicts of interests and unjustified wealth among public servants and dignitaries. Once Romania joined the EU, in 2007, in order to monitor the fulfillment of the most important commitments of our country, including those related to the above mentioned Agency, the European Commission has set up a mechanism for cooperation and verification (CVM), for conformity and evolution status checking. Through it, the evolution is analyzed and, in this regard, periodic reports on progress are published.

The Agency's whole evolution has been based on CVM since its inception; due to its pressures, recommendations and alarm signals, the institution has been set up, has become operational and has constantly tried to respond to the challenges and aggression that have come from the political representatives. However, in recent years, especially after Croatia's accession to the EU, which has not been subject to such monitoring, there is an increasing phenomenon of CVM disproof in our country, considering that its elimination is urgent and more than necessary; the reason for this attitude is determined by the selective use of such a mechanism only for Romania and Bulgaria, and not uniformly at the level of all the Member States or, at least, imposed as a condition for the newest states accepted in the EU.

Considering the situation of the CVM elimination, which seems to be predictable in the near future, we ask ourselves what will happen to the National Integrity Agency in its absence. An exercise of imagination and a little anticipation lead us to several possible scenarios: 1) the Agency will continue its course according to the progress made so far; 2) it will be discredited, and the political factor will try to eliminate it given the lack of an external pressure and control mechanism – this will affect its efficiency and effectiveness; 3) the Agency will disappear. In this article, all these hypothetical perspectives will be examined one by one, to conclude the feasibility of each of them.

Keywords: *National Integrity Agency, CVM, fight against corruption, asset declaration, unjustified wealth, incompatibility, conflict of interest*

1. Introduction

The idea of setting up an autonomous administrative body with a role in combating corruption through administrative means has emerged as a commitment undertaken by Romania to the European Union in the pre-accession process, such authority being considered a solution to the problems existing at national level in terms of integrity. Thus, its role in the institutional structure was to identify situations of conflict of interest, incompatibility and unjustified wealth, by assessing the wealth and interests' statements of dignitaries and civil servants.

From the promise to the promulgation of a law regulating the operational activity of the National Integrity Agency, it has been almost seven years (2000-2007). During this time, several successive attempts were made to allocate similar tasks to existing structures or to newly established and abolished mechanisms at short intervals, which were mainly related to the Government's activity. It turned out that none of them fully complied with the requirements assumed by Romania: they did not cover the categories of personnel concerned exhaustively and did not have the capacity to achieve such a large volume of work,

quantified in the number of declarations whose filing had to be monitored, which had to be evaluated, the results of the evaluations made public and, in case of irregularities, the competent bodies referred.

Finally, in December 2006, the establishment of the National Integrity Agency was transformed from a national promise made to the European Union into a conditionality imposed by the latter and monitored through the Cooperation and Verification Mechanism (CVM), in order to ensure that the assumed commitments are implemented in a timely and appropriate manner. Six months after this decision was taken by the European Commission, Parliament adopted Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency. CVM has been both a pressure factor, periodically monitoring the progress, which has involved drawing attention to the skirmishes and exerting the constraint to speed up the process of setting up the new institution, as well as providing support, advice and know-how.

CVM was not introduced for a fixed period of time, the European Commission affirming that it would only be abandoned when all the benchmarks set and monitored were considered to be met. Lately, however, it is almost unanimous to invoke the idea that the

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Mechanism must be eliminated, either definitively or to be replaced by another instrument. In this context, given the link of the National Integrity Agency's dependence on the Cooperation and Verification Mechanism, it is legitimate to ask what will happen to ANI with the disappearance of CVM. Therefore, the purpose of the article is to try to find answers to this concern through an exercise of imagination and anticipation.

In the beginning, respectively in the first part, will be presented the framework that determined the appearance of the National Integrity Agency, including the promises made to the European Union regarding this aspect; successive, abandoned or approved legislative drafts to set up such an instrument; the analysis of more or less independent institutional structures that have been warranted over the years with powers of control in the field of conflicts of interest, incompatibilities and unjustified wealth; recommendations made by the most important internal and external actors interested in this issue, etc. At the end of the chapter, we will be fully familiar with the trajectory of the National Integrity Agency, from idea to materialization.

The second part follows the evolution of the Agency in the light of a synthesis of the elaborated reports within CVM in the period 2007-2018; they show a difficult path, with frequent changes to the legislative framework, permanent political pressures and attempts to minimize the authority of the institution as much as possible. The reports of the recent years outline a mature institution capable of fulfilling the role for which it was created, despite ongoing attacks by political representatives.

The third part gives an overview of the prospects for the future of the Cooperation and Verification Mechanism, showing both the supporters' opinion and the critics' opinion, which will be detailed in the last part of the article. It starts from the hypothesis that CVM will definitely disappear, either permanently or be replaced by a new instrument more suited to current needs. Thus, starting from the existing possibilities regarding the future of the CVM and taking into account the close link between it and the National Integrity Agency, the fourth part was divided in three ways, by means of three possible correlative scenarios regarding the future of the National Integrity Agency with the disappearance of CVM, which we will see at the right time.

2. Establishment, evolution and role of the National Integrity Agency

2.1. General determinant framework

On December 12, 2001, Romania submitted the Position Paper on Chapter 24 – Justice and Home Affairs to the Conference on EU Accession, where, referring to “Combating Corruption”¹, it is noted that, in order to reduce the phenomenon, Romania adopted the National Program for Prevention of Corruption 2001-2004, which will be implemented in accordance with the National Action Plan against Corruption and with the support of civil society.²

The basis for the above mentioned program is the World Bank's 2000 study, which highlighted the problem of seizing the state from private interests, a situation that affects how laws and regulations are shaped. The suggested method of solving is, inter alia, “the introduction of transparency in political life through public declarations of income and goods, the declaration of conflict of interests and transparency in party financing”, and among the proposed solutions are the amendment of the legislation on the declaration of wealth and regulation incompatibility regime.

In this direction, the National Action Plan against Corruption 2001-2004 includes two objectives:

1. *Statement of assets* by amending the legislation in force, as well as establishing a mechanism for monitoring the implementation of the legal provisions. The National Crime Prevention Committee³, together with the ministries and institutions involved, is in charge of this objective, in partnership with the Legislative Council and non-governmental organizations.
2. *Regulating the conflict of interest (incompatibility regime)* by amending the conflict of interest legislation. The Ministry of Justice is responsible for this objective in partnership with the Legislative Council.

It is only after two years that the first concrete manifestations in the fulfillment of the assumed objectives begin to emerge, with the occurrence of a governmental scandal reflected at European level. Hence, the first key moment was recorded in October 2003, when Hildegard Puwak, the Minister for European Integration at the time, left the Government following charges of violating conflict of interest laws, being suspected of facilitating husband and son of a non-reimbursable 150,000 euro funding through the

¹ Romania's Position Paper Chapter 24 – Justice and Home Affairs, Conference on Accession to the European Union – Romania, CONF-RO 47/01, Brussels, 12.12.2001, p. 18.

² Hotărârea nr. 1065/2001 privind aprobarea Programului național de prevenire a corupției și a Planului național de acțiune împotriva corupției (Decision no. 1065/2001 on the approval of the National Program for Prevention of Corruption and the National Action Plan Against Corruption), published in the Official Journal of Romania, Part I, no. 728 of November 15, 2001, available online at <https://lege5.ro/Gratuit/gmydcmsz/hotararea-nr-1065-2001-privind-aprobarea-programului-national-de-prevenire-a-coruptiei-si-a-planului-national-de-actiune-impotriva-coruptiei>, accessed on 02.03.2019.

³ The National Committee for Crime Prevention, with a role in elaborating, integrating, correlating and monitoring the Government's crime prevention policy at national level, was established by the Government Decision no. 763 of July 26, 2001 on the establishment, organization and functioning of the National Committee for Crime Prevention (Hotărârea Guvernului nr. 763 din 26 iulie 2001 privind înființarea, organizarea și funcționarea Comitetului Național de Prevenire a Criminalității), published in the Official Journal of Romania, Part I, no. 490 of August 23, 2001, available online at <http://legislatie.just.ro/Public/DetaliiDocument/30215>, accessed on 02.03.2019.

“Leonardo da Vinci” program⁴. At that time, Prime Minister Adrian Năstase, while publicly asserting Puwak, said that her resignation was necessary “to eliminate the suspicions and the risk that the government would be forced to explain the minor issues instead of dealing with important issues”, referring to the accession of Romania to the European Union⁵. This situation had the role of triggering a more serious mobilization at the political level regarding the fight against corruption in Romania. Therefore, there was an attempt by establishing successive mechanisms to act in this direction, which we will enumerate in the following.

2.2. Successive attempts to create an autonomous body to combat corruption through administrative means

a) First attempt (concretized): Government Control Body (2003)

By Emergency Ordinance no. 64/2003, in Article 16 paragraph (1), “the National Control Authority is established, a specialized body of the central public administration, with legal personality, subordinated to the Government, led by the delegated minister for the coordination of the control authorities”⁶, and through Government Decision no. 745/2003⁷, the role and attributions of this public institution have been established. Under the charge of the Authority, a Government Control Body is created, a structure with its own legal personality, which takes over from the duties and staff of the Prime Minister Control Body and of the control bodies within the ministries and public institutions (which are abolished), and which will act on the basis of full functional and decisional autonomy.

According to the Decision no. 766/2003 on the organization and functioning of the Government

Control Body⁸, among the attributions and competences of this body are: verification of the notifications regarding the conflict of interests, according to the provisions of Law no. 161/2003⁹ (Article 3 (b)); ensuring the coordination of the fight against fraud and protecting the financial interests of the European Union in Romania as a single point of contact with OLAF; coordinating the monitoring actions for the implementation of the National Program for Prevention of Corruption and the National Action Plan against Corruption.

The Control Body assesses any referral or self-dismissal by the Prime Minister regarding the conflict of interest in the exercise of the office of a member of the Government, Secretary of State, Undersecretary of State or Assimilated Function, Prefect or Sub-Prefect; the result of the verifications shall be submitted to the Prime Minister, who shall decide the necessary measures, and the person who has filed the conflict of interest shall be notified, in writing, within 30 days, the manner of settlement.

b) Second attempt (not materialized): Integrity Council (2004)

In September 2004, the Chamber of Deputies passed draft law no. 484¹⁰, aimed at amending Law no. 161/2003, invoking, in the explanatory memorandum, the recommendations of the Council of Europe Group of Anti-Corruption States (GRECO), contained in the March 2002 Evaluation Report of Romania, as well as the fulfillment of the undertaken commitments, the acceleration of the process of accession to the European Union and the closing of the Justice and Home Affairs negotiation chapter.

The draft law was destined to regulate the conflict of interests and incompatibilities by extending the scope to the elected or political appointees and

⁴ Vrabie, C., Savin, A., Zăbavă, O., (coord.), *Raport Național asupra Corupției*, p. 15, available online at <https://www.transparency.org.ro/files/File/RNC%202004%20ro.pdf>, accessed on 27.02.2019.

⁵ *Three Romanian ministers quit*, BBC, 20.10.2003, available online at <http://news.bbc.co.uk/2/hi/europe/3207076.stm>, accessed on 27.02.2019.

⁶ *Ordonanța de Urgență nr. 64/2003 pentru stabilirea unor măsuri privind înființarea, organizarea, reorganizarea sau funcționarea unor structuri din cadrul aparatului de lucru al Guvernului, a ministerelor, a altor organe de specialitate ale administrației publice centrale și a unor instituții publice (Emergency Ordinance no. 64/2003 for the establishment of some measures regarding the setting up, organization, reorganization or functioning of some structures within the working apparatus of the Government, ministries, other specialized bodies of the central public administration and public institutions)*, published in the Official Journal of Romania, Part I, no. 464 of June 29, 2003, available online at <https://lege5.ro/Gratuit/gq3tgmbby/ordonanta-de-urgenta-nr-64-2003-pentru-stabilirea-unor-masuri-privind-infiintarea-organizarea-reorganizarea-sau-functionarea-unor-structuri-din-cadrul-aparatului-de-lucru-al-guvernului-a-ministerelor>, accessed on 25.02.2019.

⁷ *Hotărârea nr. 745 din 3 iulie 2003 privind organizarea și funcționarea Autorității Naționale de Control (Decision no. 745 of July 3, 2003, on the organization and functioning of the National Control Authority)*, published in the Official Journal of Romania, Part I, no. 496 of July 9, 2003, available online at <http://legislatie.just.ro/Public/DetaliiDocument/44872>, accessed on 25.02.2019.

⁸ *Hotărârea nr. 766/2003 privind organizarea și funcționarea Corpului de Control al Guvernului (Decision no. 766/2003 on the organization and functioning of the Government Control Body)*, published in the Official Journal of Romania, Part I, no. 497 of July 9, 2003, available online at <https://lege5.ro/Gratuit/gqzdmobr/hotararea-nr-766-2003-privind-organizarea-si-functionarea-corpului-de-control-al-guvernului>, accessed on 25.02.2019.

⁹ *Legea nr. 161 din 19 aprilie 2003 privind unele măsuri pentru asigurarea transparenței în exercitarea demnităților publice, a funcțiilor publice și în mediul de afaceri, prevenirea și sancționarea corupției (Law no. 161 of April 19, 2003 on measures to ensure transparency in the exercise of public dignities, public functions and business environment, prevention and sanctioning of corruption)*, published in the Official Journal of Romania, Part I, no. 279 of April 21, 2003, available online at <http://legislatie.just.ro/Public/DetaliiDocument/43323>, accessed on 25.02.2019.

¹⁰ *Proiectul de Lege nr. 484/2004 pentru modificarea și completarea Legii nr.161/2003 privind unele măsuri pentru asigurarea transparenței în exercitarea demnităților publice, a funcțiilor publice și în mediul de afaceri, prevenirea și sancționarea corupției (Draft Law no. 484/2004 amending and supplementing Law no.161/2003 on certain measures for ensuring transparency in the exercise of public dignities, public functions and business environment, preventing and sanctioning corruption)*, available online at <http://www.cdep.ro/pls/caseta/caseta.Lista?tip=&ctg=&nrp=484&anp=2004&txt=&dat1=&dat2=&nppag=50&crpag=1&cumul=&maxdc=&ilg=2016&prm=1>, accessed on 25.02.2019.

magistrates; defining the public interest and private interest, as well as the opposition between the two; the establishment of a mechanism specific to the Romanian organizational culture, conducting operative research activities and finding conflicts of interests and incompatibilities, called the National Integrity Council.

The Council will be an autonomous body with its own legal personality, under the control of Parliament, organized at national level and functioning in a single structure. It will also have administrative jurisdictional powers and control and sanctioning powers, consisting of 11 members with a technical apparatus, as follows: 1 judge from the High Court of Cassation and Justice and 6 judges from the courts of appeal, appointed by Superior Council of Magistracy; 2 legal advisers from the Ministry of Justice, appointed by the Minister; 2 prosecutors within the Prosecutor's Office attached to the High Court of Cassation and Justice, appointed by the Attorney General.

At the request of any legal or natural person, or ex officio, the Council will initiate the procedure to investigate conflicts of interest and incompatibilities; following the inspection, it draws up reports on the basis of which, by a majority of votes, it notifies the competent authorities for taking the necessary measures (the body or public authority of the verifiable person, the court competent to declare the nullity of the legal acts issued, the competent criminal investigation body).

However, although it was presented "as a success" at the time, achieved together with civil society and EU representatives, the project was rejected by the Ministry of Finance because it considered costly the establishment of a new institution.

c) Third attempt (concretized): Government Control Authority (2005)

By Decision no. 25/2005 regarding the modification of the List of the Romanian Government, the position of delegated minister for the coordination of the control activities was suppressed¹¹, and the Emergency Ordinance no. 49/2005 on the establishment of reorganization measures within the central public administration abolishes the National Control Authority, whose resources are transferred to the Prime Minister's Chancellery.

Within the Chancellery, the Government Control Authority is established, a structure without legal personality, subordinated to the Deputy Minister for the

control of the implementation of internationally funded programs and the pursuit of the *acquis communautaire* application. Ergo, the Authority has the task of verifying the application of the *acquis communautaire*, the efficiency and transparency of the activity carried out by the local public administration and exercises the control ordered by the Prime Minister on the activity of the central and local public authorities and institutions¹².

d) External analyzes on the state of implementation of the commitments assumed by Romania in the field of institutional corruption management (2005)

In October 2005, Romania received a new series of recommendations from GRECO formulated in the evaluation report adopted at the 25th plenary meeting in Strasbourg¹³. The document was elaborated following the application of questionnaires to the representative authorities, the analysis of legislation and other relevant documents, as well as the visit of an expert team (GET) on the spot, from 21-25.02.2005.

The overall objective of the report was to assess the effectiveness of the measures taken by the Romanian authorities to comply with the requirements of the three themes subject to evaluation at the 10th plenary meeting (July 2002), namely: corruption damages; public administration and corruption; legal entities and corruption. At the time of the GET visit, many provisions on conflicts of interest and incompatibilities in the public system had not yet been harmonized and some categories of officials were not subject to these rules. There is still no authority responsible for monitoring compliance with legislation on conflicts of interest, although a draft governmental decision provided for the establishment of a National Integrity Agency with supervisory powers in the field of conflicts of interest and asset declarations.

It has been noticed that the existing system for verifying asset declarations is not effective, as the investigative commission rarely acts. To this, the high level of evidence required to initiate such a process and the lack of a preliminary and independent administrative examination of the declarations to identify actual or apparent violations of the law, undue fluctuations in civil servants' financial statements, conflicts of interest, incompatibilities and forbidden gifts.

¹¹ Hotărârea nr. 25/2005 privind modificarea Listei Guvernului României, aprobată prin Hotărârea Parlamentului nr. 24/2004 (Decision no. 25/2005 regarding the modification of the List of the Romanian Government, approved by the Parliament Decision no. 24/2004), published in the Official Journal of Romania, Part I, no. 367 of April 29, 2005, available online at <https://lege5.ro/Gratuit/g4ydsnrq/hotararea-nr-25-2005-privind-modificarea-listei-guvernului-romaniei-aprobata-prin-hotararea-parlamentului-nr-24-2004?d=2018-09-12>, accessed on 23.02.2019.

¹² Ordonanța de urgență nr. 17/2009 privind desființarea Cancelariei Primului-Ministru și stabilirea unor măsuri pentru reorganizarea aparatului de lucru al Guvernului (Emergency Ordinance no. 17/2009 on the abolition of the Prime Minister's Chancellery and on the establishment of some measures for the reorganization of the Government's working apparatus), published in the Official Journal of Romania, Part I, no. 599 of August 31, 2009, available online at <http://legislatie.just.ro/Public/DetaliuDocument/110920>, accessed on 24.02.2019. By this Ordinance, the Chancellery of the Prime Minister is abolished and some measures are being set for the reorganization of the Government's working apparatus; the reason is that there were overlaps with the work of the General Secretariat of the Government, as well as the unjustified disruption of some competencies.

¹³ GRECO – Group of States against corruption, Second Evaluation Round – Evaluation Report on Romania, adopted by GRECO at its 25th Plenary Meeting, Strasbourg, 10-14 October 2005, p. 22, available online at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c7c18>, accessed on 03.03.2019.

These requests were included by Romania in the 2005-2007 National Anti-Corruption Strategy (NACS) adopted by the Government after the visit of GRECO's experts, whose mission is "to prevent and combat corruption through the rigorous improvement and enforcement of the regulatory framework, through legislative stability and coherence, institutional strengthening of bodies with decisive powers in the field"¹⁴. According to the Action Plan for implementing the Strategy, one of the measures under the Ministry of Justice is to revise the legislative framework to designate an institution empowered to verify and control the declarations of assets, interests and incompatibilities¹⁵.

At the conclusion of the accession negotiations of 14 December 2004, Romania committed itself to carry out an independent audit of the results and the impact of the National Anticorruption Strategy 2001-2004 and to translate its conclusions and recommendations into a new multi-annual strategy and concrete action plan, to be drafted by March 2005¹⁶. It was conducted by Freedom House Washington during January-March 2005 and submitted to the Ministry of Justice on 2 November 2005.

The evaluation report "Anticorruption Policies of the Romanian Government", elaborated through the audit¹⁷, shows that during the period 2000-2004, Romania created numerous legal instruments for the fight against corruption, some of which generated positive effects, but others still the impact is expected. Administrative tools to combat corruption are unused, and the alternative seems to be between prosecution (costly, taking into account the level of spread of corruption practices) and the free practice of corruption¹⁸. Therefore, it is recommended to extend the definition of conflict of interest and to empower a single authority responsible for integrity monitoring (asset declarations, conflicts of interest, incompatibilities), objectives that could be achieved by amending Law no. 161/2003.

It was proposed to transform the National Crime Prevention Council into an integrity check and coordination on the fight against corruption, renamed the Integrity Council. In addition to monitoring and coordination, the Council should ensure that the

verification of dignitaries and civil servants at central level is carried out efficiently and objectively. Under the coordination of the Council, a semi-autonomous Integrity Agency (IA) should operate, with a wide range of tasks in the investigation of corruption cases and sufficient human resources and expertise for rapid settlement of cases. The Agency may notify the National Anti-Corruption Prosecutor's Office in case of problems, which, according to Freedom House, should be rebuilt because it is inefficient and lacking in autonomy.

It is considered that the asset and interest declaration forms have been improved. These were introduced for the first time through Law no. 115/1996¹⁹ for dignitaries, magistrates and civil servants, but their content was not public. By Law no. 161/2003, the status of public information was granted to all declarations of wealth and public institutions were obliged to grant free access to them. However, there is no statement completing guide, which leads to a non-uniform practice in this respect. It should be noted that until then, no prosecutor had ever opened a file of forgery in the declaration of wealth.

The NACS 2005-2007 also invokes the "National Report on Corruption"²⁰, published by Transparency International Romania in March 2005, which characterizes Law no. 161/2003 as imperfect for several reasons: the definition of conflict of interest creates confusion, does not regulate the situations covered by interfering persons, the public interest vs. the personal interest are not defined, and the manner of publication of the statements do not take into account the logistical possibilities of the local public authorities (especially from the rural area), and the local elected ones are omitted from the chapter on conflicts of interest, which has determined the inclusion of the obligation of filing and the form of the declaration of interests in the Law on the Statute of the Local Elected (a solution determined exceptionally by a special law)²¹.

Observations on lack of institutional capacity are also relevant to the incompatibility regime. In this respect, the case of the deputy lawyer Iorgovan, against whom no action was taken, was filed, although he represented in court the state secretary of the Ministry

¹⁴ Hotărârea nr. 231 din 30 martie 2005 privind aprobarea Strategiei naționale anticorupție pe perioada 2005 - 2007 și a Planului de acțiune pentru implementarea Strategiei naționale anticorupție pe perioada 2005 - 2007 (Decision no. 231 of March 30, 2005, on the approval of the National Anti-Corruption Strategy 2005-2007 and the Action Plan for the Implementation of the National Anticorruption Strategy 2005-2007), published in the Official Journal of Romania, Part I, no. 272 of April 1st, 2005, available online at <http://sna.just.ro/Portals/0/Strategia%20Nationala%20Anticorupție%202005-2007.pdf>, accessed on 04.03.2019.

¹⁵ Strategia Națională Anticorupție 2005-2007 – Obiectivul numărul 8 (National Anticorruption Strategy 2005-2007 – Objective no. 8), available online at <http://www.gov.ro/upload/articles/100063/050401-strategie-anticorupție.pdf>, accessed on 04.03.2019.

¹⁶ Accession Treaty: Protocol, Annex IX, AA 12/2/05 REV 2, Brussels, 31.03.2005, available online at <http://www.cdep.ro/ue/tratat/ro/aa00012-re02.ro05.pdf>, accessed on 05.03.2019.

¹⁷ Freedom House Washington, Politicile Anticorupție ale Guvernului României, Raport de Evaluare, Washington D.C., 17.03.2005.

¹⁸ *Ibidem*, p. 8.

¹⁹ Legea nr. 115 din 16 octombrie 1996 privind declararea și controlul averii demnitarilor, magistraților, funcționarilor publici și a unor persoane cu funcții de conducere (Law no. 115 of October 16, 1996 on the declaration and control of the wealth of dignitaries, magistrates, civil servants and persons with leading positions), published in the Official Journal of Romania, Part I, no. 263 of October 28, 1996, available online at http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=9344, accessed on 07.03.2019.

²⁰ Savin, A., Alistar, V., Zăbavă, O., Codru, V., Raportul Național asupra Corupției – ediția martie 2005, available online at <https://www.transparency.org.ro/files/File/RNC%202005%20ro.pdf>, accessed on 07.03.2019.

²¹ *Ibidem*, p. 14.

of Agriculture, Reman Domocos, arrested for bribery in the SAPARD file²².

In the matter of property control, TI maintains the finding on the total ineffectiveness of the mechanism provided by Law no. 115/1996, to which were added successive modifications, but without any real effect. The commissions for asset control at the courts of appeal had little but isolated activity, their research being sold in eight years with only two solutions.

Transparency International Romania has made a number of proposals and recommendations, including consolidating in one single institutional mechanism independent of the executive power and the private or group interests of all the powers to monitor conflicts of interest for all categories of persons prescribed by law.

It should be noted that the recommendations made in GRECO, Freedom House and Transparency International Romania's reports on the establishment of an autonomous administrative body to fight corruption by administrative means come after Romania, at the conclusion of the accession negotiations of 14 December 2004, assumed specific commitments, including this. Thus, on this subject, the documents relied on contain in fact only the reconfirmations presented as "recommendations".

e) Fourth attempt (materialized with great difficulties): National Integrity Agency

As a result of the institutional, procedural and normative pressures exerted in the context of Romania's accession to the European Union, in July 2006 an organic law draft on the establishment of the National Integrity Agency appears as a "legislative priority for integration"; it was drafted by Justice Minister Monica Macovei at the time, and it was the subject of heated debates in Parliament²³, where the suitable NGOs also attended²⁴.

The draft law was amended by the Legal Commission of the Chamber of Deputies (the first chamber notified), for which reason, in the meeting of 23 October 2006, Monica Macovei requested the

deletion of the new amendments, arguing that they overlap the activity of the ANI with that of the Police and the Prosecutor's Office, and assign a single purpose to the Agency, to notify the criminal investigation bodies. Representatives of all parliamentary groups have spoken in Parliament to support one or other of the proposed versions of the law, but reaching consensus was far away.

It was not until May 9, 2007 that the Senate (the decision-making chamber) adopted Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency²⁵. According to Tudor Chiuariu, the Minister of Justice at the time²⁶, the basis for the establishment of ANI is found in Decision 2006/928/EC, adopted by the European Commission on 13 December 2006²⁷, which provided for the establishment of a mechanism for cooperation and verification of progress made by Romania in order to achieve certain benchmarks after accession to the European Union, specific to the reform of the judiciary and the fight against corruption²⁸.

The decision came as a result of the Commission's identification in the last pre-accession²⁹ monitoring report of unresolved issues regarding the accountability and efficiency of the judiciary. In this respect, on the basis of Articles 37 and 38 of the Accession Treaty, the Commission established a mechanism for cooperation and verification of progress made after accession, which will operate until the four benchmarks are met. Of these, we are interested in benchmark no. 2, which consists of "establish(ing), as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken".

The Action Plan for the fulfillment of the benchmarks under the Cooperation and Verification Mechanism of Romania's progress in the field of

²² Iorgovan violated the provisions of Law no. 280/2004 for the approval of GEO no. 77/2003, according to which "The deputy or senator who, during the exercise of the mandate of a parliamentarian, also wishes to exercise the profession of lawyer, can not plead in the cases which are judged by judges or tribunals nor can he give legal assistance to the prosecutor's offices from these courts. The deputy or senator in the situation stipulated in par. (1) can not provide legal assistance to chargeables or defendants and can not assist them in the criminal cases regarding: corruption offenses, crimes assimilated to corruption offenses, offenses directly related to corruption offenses, as well as offenses against the financial interests of the European Communities, provided for in Law no. 78/2000 on the Prevention, Detection and Sanctioning of Corruption, as amended and supplemented".

²³ *Sitting of the Chamber of Deputies of October 23, 2006. General debates on the Draft Law on the establishment of the National Integrity Agency*, verbatim report available at <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6176&idm=8&prn=1>, accessed on 08.03.2019.

²⁴ *Verbatim Report of the Public Debate entitled "National Integrity Agency: Powers, Competencies, Procedures"*, July 11, 2006, available online at <http://www.cdep.ro/pls/dic/site.page?id=570>, accessed on 08.03.2019.

²⁵ *Legea nr. 144/2007 privind înființarea, organizarea și funcționarea Agenției Naționale de Integritate (Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency)*, published in the Official Journal of Romania, Part I, no. 359 of May 25, 2007, available online at <http://parlamentare2016.bec.ro/wp-content/uploads/2016/09/Lege-144-2007-1.pdf>, accessed on 08.03.2019.

²⁶ In his mandate, Law no. 144/2007 (ANI Law) mentioned above has been approved.

²⁷ *Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption* (notified under document number C(2006) 6569), (2006/928/EC), published in the Official Journal of the European Union, L354/56, 14.12.2006, available online at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006D0928&from=RO>, accessed on 25.02.2019.

²⁸ Chiurariu, T., *Controlul averilor, incompatibilităților și conflictelor de interese. Legislație, doctrină și jurisprudență*, Hamangiu Publishing House, Bucharest, 2016, p. 31.

²⁹ *Communication from the Commission – Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania*, COM (2006) 549 final, Brussels, 26.09.2006, available online at <https://publications.europa.eu/en/publication-detail/-/publication/4eafcc9e-ec05-4fdf-86fc-3a75918dda44/language-en>, accessed on 09.03.2019.

judiciary reform and the fight against corruption³⁰ was elaborated under the coordination of the Ministry of Justice by centralizing its own contributions and those formulated by the institutions with attributions in the field of the judiciary and the fight against corruption, with the involvement of magistrates, representatives of professional associations and civil society. As regards the benchmark no. 2, the necessary measures for the operationalization of the Agency have been established, namely: ensuring the resources of any nature necessary for the good functioning of the Agency; administrative consolidation; design and operationalization of the management system for the conduct of the control activity; increasing integrity in the exercise of public functions and dignities through preventive action.

As a consequence, through Law no. 144/2010 in the consolidated version (the ANI Law has undergone a series of successive changes so that the new institution can become functional), the organization and functioning of an exclusive and autonomous administrative authority with legal personality and permanent activity was regulated. The newly created institution – the National Integrity Agency – has authority to verify the declarations of assets and interests, ex officio or at the request of any interested natural or legal person, and performs the control of their deposit in due time.

3. National Integrity Agency: between the national political pressure and the CVM magnifier

According to the Cooperation and Verification Mechanism reports from 2007-2018, the National Integrity Agency's track record was a tough one. Achieving results in investigating cases of unjustified wealth, incompatibilities and conflicts of interest was lenient, despite expectations, since the initial version of the law was incomplete and did not allow for the best possible practical action, which led to successive changes. Following the rectifications to Law no. 144/2007, necessary to ensure the functioning of the National Integrity Agency, the basic staff was hired in 2008 and started the first surveys by taking over the information from the press.

Until 2009 inclusive, the evolution seemed to continue, but the conclusions of the Constitutional Court in 2010, formulated following the lifting of some exceptions of unconstitutionality over the National Integrity Agency Act, interrupted the institution's impetus for several months, its activity being suspended until the entry into force of Law no.

176/2010. According to the European Commission, the new legislative framework weakens the institution, introducing, among other things, prescription terms, which has led the Agency to give up some cases. In addition, the general context at this time is characterized by slow judicial procedures, uneven jurisprudence, insufficient interinstitutional cooperation, few signs to the National Integrity Agency from other bodies, institutions that did not comply with the complaints made by the National Integrity Agency etc.

Subsequently, the scale of the Agency's activity began to increase progressively, following several actions that have used specific risk assessments and prioritization of the worst cases. However, by 2013, although the number of National Integrity Agency's verifications and notifications had become significant, the results were not anticipated. It is only from 2013 that the National Integrity Agency begins to present itself as an authoritative institution: it enjoys the support of the Government at that time, concludes agreements with other government agencies for collaboration, reaches a confirmation rate of over 90% of the decisions challenged in court in situations of conflict of interest, and a high degree of credibility with regard to its actions, is becoming more and more involved in the area of prevention during the electoral moments (2012, 2016), it becomes a model of good practices for other European countries and maintains its position even after the resignation of President Horia Georgescu. Problems remain in court proceedings in cases of incompatibility that continue to last for a long time, and the cancellation of contracts affected by a conflict of interest and the poor performance of the public administration in pursuing such cases lead to losses in public finances.

In January 2017, the fight against corruption was called into question by the adoption of an emergency ordinance aimed at decriminalizing abuse of office and a proposal for a normative act aimed at pardoning, disputed measures at national level, which led to its abrogation. In the penultimate CVM report, the European Commission expresses its willingness to provide additional assistance to ensure the irreversibility of progress and thus complete the oversight process.

All the problems identified regarding to National Integrity Agency are related, in particular, to external factors. Its actions were constantly challenged by the political members, dissatisfied with the checks they carried out, and Parliament and some successive Governments have frequently tried to undermine their authority, both through legislative proposals designed to reduce its attributions and affect its outcomes, as well

³⁰ Hotărârea nr. 1346/2007 privind aprobarea Planului de acțiune pentru îndeplinirea condiționalităților din cadrul mecanismului de cooperare și verificare a progresului realizat de România în domeniul reformei sistemului judiciar și al luptei împotriva corupției (Decision no. 1346/2007 regarding the approval of the Action Plan for fulfillment of the conditionalities under the mechanism for cooperation and verification of progress made by Romania in the field of judiciary reform and the fight against corruption), published in the Official Journal of Romania, Part I, no. 765 of November 12, 2007, available online at <https://lege5.ro/Gratuit/geydknjtga/hotararea-nr-1346-2007-privind-aprobarea-planului-de-actiune-pentru-indeplinirea-condiionalitatilor-din-cadrul-mecanismului-de-cooperare-si-verificare-a-progresului-realizat-de-romania-in-domeniul-re?d=2018-09-10>, accessed on 11.03.2019.

as the lack of transparency of the Parliament in dealing with cases of members who have not enforced the decisions pronounced by final court rulings or contained in the reports of the National Integrity Agency which have remained final through non-contestation in court.

4. The Future of the Cooperation and Verification Mechanism

Recent comments on the CVM's role show a unanimously accepted view, both supportive and critical, that **the Cooperation and Verification Mechanism should cease**. The supporters believe that due to the Mechanism, important legislative and institutional progress has been made, often as a constraint on deviations from the commitments made. However, evolution has been slow and frequently attacked, with opposition reactions sometimes leading to regressions, which has led to the need for new accountability tools, perhaps even more powerful than CVMs.

It is not clear what form the new mechanisms might take; several approaches are proposed, such as: the continuation of CVM through the renegotiation of benchmarks with 2-year implementation deadlines; creating a simplified CVM procedure and applying it to all Member States; applying the European semester; the realization of a mechanism adapted to the national context. Other suggestions refer to the continuation of reforms under EU programs applicable to all Member States or under existing national instruments.

Critics have all been of the same opinion that the application of CVM has not led to the anticipated effects and outcomes, so the role of the Mechanism should not be exaggerated. They say that during the European Commission's monitoring, reforms in the pre-accession period have not been maintained, a situation found in the ongoing attempts to amend anti-corruption legislation. It is also noted that models from outside can not be taken and applied without regard to the Romanian specifics and context. There have been no radical reforms, but only surface, because even though official rules have been adopted, they have not been put into practice in real terms. Also, when distinguishing between the impact of compliance and the impact of problem solving, it is found that the view on both is negative – first, due to lack of enforcement powers, and the second due to the deficiencies of the mechanisms, including CVM, reflected by inappropriate recommendations, unconscious practice, etc.

Absence of cooperation and full use of monitoring, loss of motivation in the fight against corruption after accession and its support only at declarative level, lack of mechanisms for guaranteeing the implementation of anti-corruption strategies,

constantly changing the requirements and recommendations of the benchmarks, exclusive use only for Romania and Bulgaria – all these affect the efficiency, effectiveness and even legitimacy of CVM. All of the above will be detailed in the next chapter.

5. The Future of the National Integrity Agency in the absence of CVM. Possible correlative scenarios

According to the reports developed and published under the Cooperation and Verification Mechanism, the National Integrity Agency's path was extremely difficult, marked by legislative ambiguities, the desire of the political factor to control it (both from a normative and budgetary point of view), lack of interinstitutional cooperation, corruption in the judiciary, amateurism in institutional organization, lack of will to fight corruption in the public system, etc. Thus, one can notice a constant attempt of institutional isolation of the Agency in the public system, as it was perceived as a threat to the traditional practices of dignitaries and civil servants, in the form of incompatibilities, conflicts of interest and unjustified wealth.

In 2010, the institution was marked by major changes. This happened as a result of a contradiction in terms of Myeong-Gu Seo and W.E. Douglas Creed³¹: One of the premises of institutional theories is that the success of an organization depends on factors rather than on technical efficiency; organizations gain the legitimacy and resources needed due to isomorphism with institutional environments, which can lead to conflicts with technical activities and efficiency requirements. Thus, the contradiction takes place between legitimacy and institutional efficiency. The National Integrity Agency had the goal of achieving technical efficiency, which contradicted the rapid gain of legitimacy, as it depended on the proximity to the political factor (legitimacy was offered by politics). The interference of the political factor, however, did not correspond to the objective of establishing the Agency, which wanted to be an independent and impartial control body.

Generally speaking, the vision of CVM reports on the course and functioning of the National Integrity Agency is a positive one, and the delays in its operation are caused not by the lack of professionalism and ethics of its staff but by the interests of the political factor that has always tried to manipulate the evolution of the institution, so that the impact of its actions will be as low as possible for the dignitaries and civil servants in Romania.

According to the latest reports, the Commission's recommendations based on the findings have been fully complied with. The only major issues that remain to be discussed and resolved are those related to the non-

³¹ Myeong-Gu, S., Creed, D. W. E., „Institutional Contradictions, Praxis, and Institutional Change: A Dialectical Perspective” in *The Academy of Management Review*, Vol. 27, No. 2, 2002, pp. 222-247.

uniform and non-transparent application by the Parliament of final judgments and the lack of a unitary legislative framework on integrity; these are however independent aspects of the National Integrity Agency and have been consistently repeated in the CVM reports without any response to date.

Lately, there is a growing debate about the need to continue or not to monitor Romania through CVM. Some voices, both at national and European level, consider that all benchmarks have not been fully met, so CVM needs to continue; on the opposite side, it is considered necessary to “lift” the CVM because it is believed, or at least publicly expressed, that Romania has responded to the requirements established by the Mechanism, or that progress is registered and irreversible, and evolution will continue even in its absence. Those who want to pursue the CVM fear that, to the contrary, national anti-European political factors and pursuing certain private interests would have every reason to hinder the continuation of any reform or, even more, to influence things in the sense of regress, in this hypothesis targeting the National Integrity Agency.

Hence, in the sense that monitoring through the Cooperation and Verification Mechanism will cease, it is legitimate to ask what the future of the National Integrity Agency will be in its absence. As an exercise of imagination and anticipation, we can think of a series of hypothetical situations about the National Integrity Agency's path with the disappearance of the Mechanism.

a) *Scenario 1*: The National Integrity Agency will continue its course according to the progress made so far

In tackling this scenario, we are based on an official study conducted at the level of the European Union. Thus, in January 2018, the European Parliament published an analysis entitled “Evaluation of the 10 Years of the Cooperation and Verification Mechanism for Romania and Bulgaria”³², which aimed to achieve the CVM balance sheet so that a support strategy to be outlined for the coming years.

According to the study, CVM was a compromise solution, given that Romania had applied to join the European Union but was not considered ready; if the Mechanism had not existed, our country would not have been able to join in 2007, or, if this had happened, the reform process would have been longer to achieve results. If at the beginning of the monitoring period the emphasis was on introducing new laws to promote CVM objectives, the focus is now on reforming and strengthening their irreversible character.

The Commission's reports of 2014, 2015, 2016 and 2017 highlight a positive trend. Significant legislative and institutional progress has been made, and civil society involvement has been crucial in encouraging reform of the judiciary and adopting significant anti-corruption measures. The pace of evolution has been sluggish in some stages, mainly due to several areas where the reform has been difficult or encountered resistance: doubting the independence of the judiciary and the authority of judgments, as well as attempts to reverse the reforms that were obvious at beginning of this year, in the Romanian Parliament. Thus, it is considered that reporting and accountability mechanisms should be maintained after the CVM is completed.

Therefore, according to the analysis, monitoring should be continued, even if the stage reached has been appreciated: “(...) measures should be taken to replace the CVM mechanism with a (stronger) monitoring framework, managed even by the Romanian authorities. Otherwise, there is a risk of slowing or even regressing the reform process”³³. At the same time, if the recommendations of the latest CVM reports are not applied, the issue will be “whether the CVM will be closed if it continues without changes or if a completely different approach is adopted”³⁴.

Continuing monitoring is necessary for a number of reasons: getting closer to the average European standards, combating organized crime and high-level corruption, attracting investors from other Member States, fighting against European fund fraud, executing court decisions, etc.

Given the above, it is clear that even if the Cooperation and Verification Mechanism was eliminated, it is intended to replace it with a new form of control, which would undoubtedly allow the National Integrity Agency to continue its work and progress so far, with no fear of interference with the political factor.

b) *Scenario 2*: The National Integrity Agency will be discredited and try to eliminate it without having an external pressure mechanism

Sedelmeier & Lăcătuș, researchers at the London School of Economics and Political Science, through the article “Post-accession Compliance with the EU's Anti-Corruption Conditions in the ‘Cooperation and Verification Mechanism’: Bite Without Teeth?”³⁵, assessed the CVM's influence on internal changes anti-corruption policies.

First, it is mentioned that CVM is a monitoring tool, not a coercive one, so there is no connection with certain sanctions. Secondly, when studying the impact

³² European Parliament, Directorate General for Internal Policies of the Union, Policy Department for Budgetary Affairs, *Assessment of the 10 years' Cooperation and Verification Mechanism for Bulgaria and Romania*, PE 603.813, January 2018, available online at https://www.caleaeuropeana.ro/wp-content/uploads/2018/01/s_2014_2019_plmrep_COMMITTEES_CONT_DV_2018_01-29_CVM_Bulgaria_Romania_study_EN.pdf, accessed on 10.03.2019.

³³ *Ibidem*, p. 10.

³⁴ *Ibidem*, p. 11.

³⁵ Ulrich Sedelmeier & Corina Lăcătuș, *Post-accession Compliance with the EU's Anti Corruption Conditions in the ‘Cooperation and Verification Mechanism’: Bite without Teeth?*, London School of Economics and Political, paper presented at the Fifteenth Biennial Conference of the European Union Studies Association (EUSA), 4-6 May 2017, Miami Florida.

of CVM, we need to distinguish between *the impact on compliance* – the extent to which the state meets the requirements and recommendations in the reports – and *the impact on problem solving* – the extent to which corruption effectively diminishes.

The paper notes that there is no clear evidence that the positive image determined by CVM compliance also leads to an effective improvement of corruption issues. However, the authors suggest that a CVM compliance analysis is useful, because it can leave room for optimism, while the analysis of the Mechanism as a tool and its impact on corruption tends to be more critical. The first aspect focuses on institution building and the creation of a legislative infrastructure, and although these do not translate directly or immediately into improved corruption control, they are not negligible as they can create favorable conditions for certain changes.

It is appreciated that in Romania, CVM has supported the creation of strong institutions, including the National Integrity Agency. A new generation of young, motivated and well trained civil servants has used these institutional powers to fight corruption. The creation of this institution has allowed progress in investigating high-level corruption cases, which were very limited until 2010. After the CVM report of July 2010 was extremely critical of the attacks on the National Integrity Agency, the Parliament voted for the restoration of powers, although they have been weakened, by limiting the scope of investigations and eliminating commissions for wealth control. Overall, however, the achievements of the National Integrity Agency have led to a significant increase in public confidence in the institution³⁶. Without this body, many cases of conflicts of interest, incompatibilities and unjustified wealth would not have been identified, despite the need for transparency in the field.

However, its impact is still fragile, as a parliamentary coalition seems to intend to limit anti-corruption activities. While this threat weakens progress, this is where CVM comes into play as it has served as a constraint in derailing the fight against corruption, but we must not exaggerate CVM's ability to bring about positive change without an internal initiative. Instead, the impact of the Mechanism is primarily that it limits the ability of Parliament and the Government to openly block anti-corruption efforts and, in particular, to eliminate past institutional achievements.

Therefore, with the disappearance of CVM, there is a possibility that the political factor may continue to try to weaken the authority of the institution and discredit it, this time without hindering in any way the external monitoring tool. Bringing the National Integrity Agency into a shadowy cone and assigning a formal role to it without a real substance seems a situation not far from materializing. The permanent

appeal of the Agency from its establishment to the present day determines us to go free to this idea, and the mere fact that the institution is appreciated at European level would cause the political factor not to definitively disband the National Integrity Agency.

c) *Scenario 3*: The National Integrity Agency will disappear with the CVM lifting

The selective use of CVM in the case of Romania and Bulgaria, Sedelmeier & Lăcătuș points out in its above-mentioned paper, jeopardizing its legitimacy, not being applied to all Member States and even to Croatia, the last state that has joined the EU. Thus, one can speak metaphorically about a “hostage-taking” case that threatens negative consequences and decreases the legitimacy of the Mechanism. In addition, although benchmarks have remained the same over the years, the list of requirements and recommendations under each of the criteria is changing permanently, because some issues are abandoned and new areas of interest are added to the agenda. Also, the limited impact on the problems CVM has to address (corruption, organized crime and the judiciary) is determined by its shortcomings – inadequate recommendations, inconsistent application, lack of focus on practical application, and sometimes deeply rooted cultural ties of post-communist societies.

Martin Mendelski, in the “Romanian Rule of Law Reform: A Two-Dimensional Approach”³⁷, deals with the question of the rule of law from a two-dimensional perspective, namely, a *dimension of judicial capacity* and a *dimension of judicial impartiality*, they being necessary both individually, but which must also be common enough for real progress. In the analysis, the author proposed to show that the two dimensions developed differently in Romania, because, while the judicial capacity has improved for the most part, judicial impartiality remained relatively unchanged. Particular attention is also paid to the role of external and international actors, in particular the potential transformation role of the EU in promoting internal change during and after the pre-accession period.

According to the author, the EU's commitment to the rule of law in Romania has not produced any vertical changes, but has led to superficial reforms that have left the existing power structures unchanged. The result was the adoption of new well-developed rules but which, in practice, have not been implemented, and measures to reform judicial capacity have advanced more rapidly than reforms of judicial impartiality.

Moreover, the pace of reforms has not been maintained after accession. What should be considered are attempts to modify anti-corruption legislation previously adopted or to diminish the power of anti-corruption agencies, recalling here the decision of the Constitutional Court that declared the first version of the law on the National Integrity Agency unconstitutional. According to the European

³⁶ Ibidem, p. 19.

³⁷ Mendelski, M., „Romanian Rule of Law Reform: A Two Dimensional Approach” in *Romania under Basescu: Aspirations, Achievements, and Frustrations during His First Presidential Term*, Lexington Books, New York, 2011, pp.155-179.

Commission, the revised and less strict version of this law seriously undermines the process of verification, sanctioning and confiscation of unjustified assets. The Commission also noted that exceptions of unconstitutionality continue to delay high-level corruption cases and corruption-related crimes remain lengthy, with only a few prominent politicians at first instance.

From the empirical analysis, Mendelski found that some of the issues came from anti-corruption bodies. The selection of staff at the National Integrity Agency was made in an unequivocal manner. The recruitment procedure allowed the recruitment of interviewed persons (rather than written exams) by leaving them room for the preferential treatment of politically connected persons who, although young and reformed, can not always be considered the most competent. The National Integrity Agency and similar bodies were created by emergency ordinances and amendments that are supposed to be inconsistent with the existing constitution. Therefore, ironically, the rule of law was promoted by agencies that might be considered outside the rule of law. The creation of new surveillance agencies does not cause any transformation, unless the actors appointed within them change their mindset.

Creating the rule of law is a complex process in which models can not simply be translated from abroad, and this is demonstrated by the Romanian case. Even when similar formal rules are adopted and judicial capacity is extended, efficacy can be undermined by powerful political actors who use methods of influence in the absence of transparency and supervision. Also, the results are not necessarily better when creating new formal institutions sensitive to the Romanian context. Old habits die hard, especially when they are protected by rooted interests.

Given the above, we are facing a discredited CVM, even considered illegitimate, which did not cause a real positive impact on Romania, but only superficial effects. Consequently, for the authors mentioned above, the lifting of the Mechanism does not affect the situation at all, because internal decisions have not depended on and will not depend on it, but on changing mentalities, a situation that can not occur in such a short time. Power structures remained the same over time, so real progress could not be recorded because there was no interest in doing so. Therefore, with the disappearance of CVM, the National Integrity Agency may disappear too (not necessarily simultaneously but slowly), as the institution is not seen as effective and efficacious in the fight against corruption, given the conditions of its establishment and functioning, mentioned by Mendelski. In addition, it seems irrelevant whether the National Integrity Agency continues to exist or disappears because, without a radical transformation of the way of thinking in Romanian society, this institution does not appear to eliminate considerably the existing practices in the field

of conflicts of interests, incompatibilities and unjustified wealth.

Conclusions

Summing up all of the information presented above, we were able to pursue a four-step structured study of the past and future of the National Integrity Agency. Thus, on the one hand, we tried to understand its place and role on the Romanian institutional map, its essential link with a monitoring mechanism established at the European Commission level (CVM), and its ineluctable dependence on the latter; on the other hand, we figured out what could happen to the National Integrity Agency with the removal of CVM, since its entire course, from its establishment to the present, depended and was influenced by it.

The first step consisted in analysing the moments that preceded the attempts to set up an autonomous administrative body, as a measure taken by Romania in the process of joining the European Union, in order to show its involvement in the fight against corruption. There were listed the structures previously established by the National Integrity Agency, a kind of incomplete political annexes, with a superficial role and a lack of clarity, which is the reason why none of them resisted for a long time. The data presented showed their ineffectiveness and inefficiency, as no quantifiable results were recorded from their activity. It is only from 2005 that the problem of setting up this body has been seriously raised, together with the National Anti-Corruption Strategy 2005-2007, which was based on a series of external recommendations. After two failed legislative projects in 2005 and 2006, the momentum of utmost importance was the decision of the European Commission in December 2006 to establish a Cooperation and Verification Mechanism to follow the commitments made by Romania. It was only in mid-2007 that the legal framework for the establishment of the National Integrity Agency was adopted.

The second step consisted in briefly presenting the National Integrity Agency's pathway as reflected in the CVM reports, whose role is to monitor the smooth running of the work and to formulate recommendations for correction of deviations, when it is necessary. It has been stated difficulties encountered by the Agency in its operationalization and functioning, including issues related to the unconstitutionality of several articles of Law no. 144/2007. Consequently, the debut was a difficult one, but the obstacles were perpetuated, given the constant negative attitude of the political factor regarding this institution.

The third step was defined by general considerations on the future of CVM. We have seen that both supporters and critics want to end it, even if for different reasons: first, in order for the Mechanism to be replaced by a new instrument to take over its functions, but more adapted to the current reality, perhaps even stronger, and the last because they have never seen its usefulness and believe that it has not

produced any real effects, since after Romania's accession, Romania lost its motivation in the anti-corruption fight.

In the last step, the two visions mentioned above were deepened by presenting some representative bibliographic references. The most important aspect was the correlation between the future CVM and the future of the National Integrity Agency, as the Agency was set up and operates as a direct result of the establishment of the Mechanism. Considering the close link between the two, we tried to imagine what could happen to the Agency with the disappearance of the Mechanism. We have reached three possible scenarios: 1) The National Integrity Agency will continue its work in line with its progress, because it has a very good image at the European Union level and its results are considered satisfactory; 2) it will be discredited and try to eliminate it, the only restraint that would prevent this from happening could be the accusations made by European officials; 3) will disappear with CVM, if the

views of those who believe that the impact of the Mechanism did not have a real substance and the situation would be similar, with or without the Agency, will prevail.

In the next period, once the destiny of the Mechanism is decided, we will see which scenarios are more feasible. If the course of the Agency is going to follow any of these, future research could start from our study and can be continued by trying to answer the question "Why did you choose this solution?", analysing, in this regard, all the decisive factors. If the scenarios do not come true, the study can be continued by analysing decisions that have determined another perspective. Moreover, new research could extend the CVM's relationship analysis to the other three benchmarks monitored to follow their evolution since 2007, the current stage vs. expectations, as well as launching potential scenarios for their future with the lifting (rising) of the CVM.

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